**EUROPEAN PARLIAMENT**

**COMMITTEE ON INDUSTRY, EXTERNAL TRADE, RESEARCH AND ENERGY**

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# PUBLIC HEARING

# ON

# WTO: AGRICULTURE, TRIPS, SINGAPORE ISSUES

Wednesday 11 June 2003
from 9 a.m. to 6.30 p.m.

**CHAIRED BY : MR JAIME VALDIVIELSO DE CUÉ**
VICE-CHAIRMAN OF THE COMMITTEE ON INDUSTRY, EXTERNAL TRADE, RESEARCH AND ENERGY

PAUL HENRY SPAAK
ROOM PHS P1A002

**BRUSSELS**

# OPENING OF THE PUBLIC HEARING

## MR. JAIME VALDIVIELSO DE CUÉ

## COMMITTEE VICE-CHAIRMAN

# SINGAPORE ISSUES

# MR. JAMES HOWARD

## BIOGRAPHICAL NOTE

**James Howard** is Director of Employment and International Labour Standards at the International Confederation of Free Trade Unions (ICFTU), the world's largest trade union confederation with a membership of 158 million workers in 150 countries.

Mr. Howard's work at the ICFTU covers a range of issues associated with globalisation, international trade and the impact of WTO negotiations and agreements on development and on the observance of international workers rights; analysis of the policies of the IMF and the World Bank, particularly structural adjustment and Poverty Reduction Strategy Papers (PRSPs); and general world economic developments.

Mr. Howard has represented the ICFTU at meetings world-wide on the WTO, IMF, World Bank, ILO, the World Social Forum, APEC, ASEM, SADC and many others. He has made several addresses to United Nations Conferences and other UN meetings and has acted as the Secretary of the Workers' Group on various technical committees at the International Labour Conference since 1990.

Born 13 March 1963, James Howard was brought up in Nigeria and Oxfordshire (UK) and graduated from the University of Sussex, where he studied Economics in the School of European Studies, including a one-year course in Development Economics at the University of Social Sciences in Grenoble (France). He is married with two children and holds British and Swiss dual-nationality.

# SPEECH BY JAMES HOWARD, ICFTU
# ON "SINGAPORE ISSUES"
# FOR THE EUROPEAN PARLIAMENT PUBLIC HEARING
# Brussels, 11 June 2003

Chair, Ladies and Gentlemen,

Thank you for the invitation to speak here today.

Although the agenda for this Hearing takes the four areas known as the "Singapore issues" together, the trade union movement has never considered these to be one whole.

In the area of transparency in government procurement, for example, we see the possibility of WTO negotiations as fairly positive. We believe that requirements concerning transparency in government procurement could have a positive role to play, including in eliminating corruption.

In the area of investment, the union movement is not, a priori, opposed to multilateral negotiations. We certainly do not support the status quo, of a lack of regulation of foreign direct investment. But at the present time, the proposals tabled at the WTO are going in a significantly different direction to what is required.

We believe that negotiations are needed that would be built around the promotion and protection of social policies, through binding and enforceable investor obligations covering core labour standards, observance of the ILO Tripartite Declaration on Multinational Enterprises and Social Policies, the OECD Guidelines for Multinational Enterprises, environmental norms, and commitments not to lower domestic labour standards or violate core labour standards in order to attract investment.

But those labour rights not only are absent from the current terms of reference at the WTO, but furthermore appear to have been specifically excluded by Commissioner Pascal Lamy from the scope of WTO negotiations, in his appearance before the Parliament to discuss this subject last year.

Furthermore, we are concerned by the proposal of the current Doha terms of reference to include National Treatment provisions that would eliminate governments' autonomy to pursue their chosen economic and social strategies. We believe that investment agreements must exclude any National Treatment provisions, whether pre or post-establishment.

We are further concerned that the provisions of new negotiations would further reinforce the provisions of the existing TRIMS agreement - which in itself needs to be renegotiated - by preventing governments from subsidising domestic industries and investment, in order to encourage the emergence of new and infant industries.

Finally, it appears clear that the current proposals for multilateral negotiations would not aim to replace bilateral investment treaties, but merely add one further layer of investor protections. It would not deprive multinational companies of their rights to use the existing bilateral international treaties to their advantage, nor introduce a single obligation to regulate the behaviour of those companies.

In short, current proposals appear designed to strengthen the rights of multinational companies – which do not need further strengthening – with no consideration whatsoever to the rights of the workers in those companies.

Set against all these considerations therefore, as things stand the international union movement opposes the proposal for Trade Ministers at Cancún to give a green light to negotiations on investment at the WTO.

In the area of competition policy, once again, we believe some form of multilateral negotiation could, in principle, prove positive. Increasing control over international mergers and acquisitions would be welcome, as would increased regulation of hard-core cartels and restrictive business practices of multinational companies, particularly with regard to the trade in primary commodities that is frequently concentrated among a handful of companies.

However, it is far from clear that the WTO is the best forum for such negotiations. We are particularly concerned about the current proposals to base competition policy discussions at the WTO on the principle of non-discrimination, which would prevent governments from applying different treatment to their domestic companies. We are also opposed to the proposal to require all WTO members to legislate and implement a competition policy – something which, in our view, should be left up to any WTO member to decide upon, depending on their own choices as to their priorities for use of their resources.

In the light of current proposals, therefore, again we do not believe that the current discussions of competition policy at the WTO are on the right track. While there is a case for international co-operation on competition policy and a need to prevent market abuses by multinational companies, this could in our view probably be attained better through negotiations in some other forum. A convincing case has not been made for negotiating a competition policy agreement at the WTO, with its focus on disputes resolutions and trade liberalisation, not on consumer protection.

Finally, in the area of trade facilitation, we believe the objectives of minimising unnecessary customs procedures and speeding up movement of goods are worthy enough. But the requirements of investing in modern customs equipment and information technology would be extremely costly for developing countries. The use of WTO procedures would leave a choice between paying those costs or facing WTO trade disputes procedures for non-compliance.

Furthermore, WTO principles such as "least trade restrictive measures" are entirely inappropriate in the context of trade facilitation, which is an issue linked intrinsically to safety and security in the cross-border transit of goods. Existing specialised agencies such as the International Maritime Organisation and the International Civil Aviation Organisation are competent in this area, as they can deal with trade facilitation under the same roof as the regulation of safety and security.

Given these considerations, we believe that negotiations post-Cancún would not be appropriate on trade facilitation. Instead, WTO measures to promote trade facilitation should remain of a non-enforceable nature. Large-scale technical assistance should be provided to help developing countries upgrade their trade facilities, rather than negotiations which would introduce WTO disciplines into this complex and costly area. Discussions should instead continue in the WTO working group on trade facilitation.

Chair, in conclusion, therefore, the union movement believes that, given the current terms of reference, for all the "Singapore issues" except transparency in government procurement, there is not a good case for opening negotiations at the current time.

Thank you.

# TRADE UNION[2] STATEMENT ON THE AGENDA FOR THE 5TH MINISTERIAL CONFERENCE OF THE WORLD TRADE ORGANISATION (WTO)

## (Cancún, 10-14 September 2003)

By James HOWARD

## Introduction

1. Hopes that the 4th WTO Ministerial Conference in Doha had set the agenda for a genuine Development Round are being disappointed as one deadline after another is missed, against a context of slowing economic growth world-wide. All the while, the impact of China's WTO accession on other developing countries, in terms of continual pressure to reduce core labour standards[3] and, all too often, to increase misery and exploitation (particularly of women workers) often in export processing zones, is continuing to worsen. The rights to food security and to adequate health care in developing countries are increasingly far from being realised, particularly for the world's poorest and again with the worst impact on women.

2. If the current WTO negotiations are to produce an outcome that could benefit working people, particularly in developing countries, the broken promises from Doha must be resolved and developing countries' concerns dealt with first, before discussion gets underway on the rest of the Doha agenda. WTO members must recognize that trade is only one of the elements in the three pillars of sustainable development endorsed at the World Summit on Sustainable Development in 2002. Debt relief, democracy, environmental protection, poverty eradication and decent employment (including the respect of fundamental workers' rights) must simultaneously be achieved as part of a wider, far-reaching agenda to achieve development and higher living standards for all people, in accordance with the objectives outlined in the preamble of the WTO Agreement. In addition, WTO agreements must not undermine the rights of democratic governments to conduct their own education, social welfare and public investment policies.

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2 This statement has been endorsed by the **GLOBAL UNIONS GROUP** - including the International Confederation of Free Trade Unions (ICFTU), the Global Union Federations (GUFs) and the Trade Union Advisory Committee (TUAC) to the OECD); - the **WORLD CONFEDERATION OF LABOUR** (WCL); - and the **EUROPEAN TRADE UNION CONFEDERATION** (ETUC). The Global Union Federations comprise UNI, IFBWW, IUF, IMF, PSI, EI, ITGLWF, IFJ, ITF and ICEM.

3 Core labour standards are fundamental human rights for all workers, irrespective of countries' level of development, that cover freedom of association and the right to collective bargaining; the elimination of discrimination in respect of employment and occupation; the elimination of all forms of forced or compulsory labour; and the effective abolition of child labour, including its worst forms. Minimum wages have never been part of the proposal to protect core labour standards at the WTO.

## Democracy, Transparency, Consultation and Reform of the WTO

3. The WTO needs urgently to be reformed and made more transparent and democratic, in order to redress the power imbalances evident in recent WTO Ministerial Conferences and to achieve coherence and consistency with the goals agreed through the UN system, as enshrined in the Universal Declaration of Human Rights and other multilaterally agreed instruments such as the ILO Declaration on Fundamental Principles and Rights at Work. The weight of the UN and its specialized agencies, including the ILO, needs to be increased relative to that of the WTO. A closer link and co-ordination between the WTO and other international institutions, including the ILO, with reciprocal observer status, must be agreed before or at the 5th WTO Ministerial Conference.

4. WTO negotiations must progress with due regard to the capacities of smaller and poorer countries, and developing country WTO members must enhance their co-operation and co-ordination. Increased transparency and financial assistance are needed to ensure that all WTO members (particularly the least developed) are able to take part fully in the current negotiations as well as all WTO activities and procedures. Formal commitments to provide such assistance must be made at latest at the 5th WTO Ministerial Conference. The internal negotiation processes of the WTO must be fair, transparent and predictable so as to ensure the effective participation of all its members.

5. The WTO must also be opened up to outside participation and to relevant social issues. A WTO Parliamentary Assembly is needed, to provide direct contact with elected representatives. A formal consultative process should be established to ensure that trade unions, non-governmental organisations and other representative elements of civil society can present their views to WTO committees and discuss issues of mutual concern with trade ministers, and with the WTO General Council, as well as at national level. Environmental and social concerns must be incorporated fully throughout WTO mechanisms and structures, and the scope of the Trade Policy Review Mechanism (TPRM) expanded to include relevant environmental, gender and social concerns, including the right of all to food security and respect for core labour standards, with the full involvement of the ILO. WTO members should already begin to include such concerns in the reports they submit to the TPRM meetings of the WTO.

6. In view of its unprecedented powers, the dispute settlement procedure must be opened up for public information and involvement. In relevant cases, such as those with health, labour and environmental implications, the WTO must involve the UN agencies competent in the areas concerned. Trade unions and other civil society groups concerned by any dispute settlement process should be able to participate directly in the procedures with a right to submit amicus curiae briefs. The experts judging any disputes case must not merely be trade specialists but must include people with varied backgrounds representing labour, environment and development organisations. There should be a swift public release of the findings and conclusions of disputes settlement procedures.

## Advancing Development Priorities

7. The missed deadlines from Doha are compromising the credibility of the multilateral trading system. A major effort to boost the sustainable development of developing countries is needed in every area of the multilateral system, including greatly enhanced debt relief, a substantial increase in development assistance (including technical assistance

and capacity building on trade issues), and fundamental reform of IMF/World Bank economic adjustment policies.

8. In the WTO negotiations, urgent agreement is needed on a range of issues where developing countries require action, as follows:

   - A decision in the TRIPS discussions to define health problems broadly enough for all developing countries to be able to achieve access to low-cost medicines in case of health need;
   - Decisions on special and differential treatment to enable developing countries to have increased flexibility in their implementation and interpretation of the various WTO agreements when favourable to their economic and social development, and so that the Uruguay Round implementation deadlines are extended for all developing countries on a multilateral basis;
   - Evaluation of non-tariff barriers to developing country exports to ensure they are reasonable requirements for consumer and environmental protection, with the involvement of the specialized UN agencies as well as trade unions and other civil society groups concerned, and provision of technical assistance so developing countries can attain such standards;
   - Provision of international funding to support employment adjustment assistance, especially if jobs are lost as a result of trade liberalisation;
   - Progress in the industrial tariffs negotiations to provide improved market access for developing countries (addressing tariff peaks and tariff escalation in their areas of interest), particularly for least developed countries, and continued commitment by the industrialised countries to their own implementation requirements under the Uruguay Round, parallel with progress on respect for core labour standards so that workers in developing countries benefit from improved market access.

## Making Progress on Workers' Rights at the WTO

9. It is a priority to protect the fundamental rights of workers against unscrupulous governments or companies which seek to gain an unfair advantage in international trade through the violation of core labour standards. Furthermore, respect of core labour standards is crucial to achieving sustainable, equitable, democratic economic development.

10. Before or at the 5th Cancún, therefore, the following measures need to be taken:

    - All WTO members must renew and demonstrate their commitment to uphold core labour standards;
    - A first-ever meeting of Trade and Labour Ministers must be organised, with the participation of trade unions and employers' organizations;
    - WTO members must agree that UN treaties have primacy over trade rules, and must therefore update the WTO agreements (including GATT Article XX and GATS Article XIV) to incorporate human rights standards including the core labour standards;
    - To enable a full examination of the relationship between trade, employment and core labour standards, the WTO together with the full and equal participation of the ILO, must establish a formal structure to address trade and core labour standards. Such a body should also address wider trade-related social issues, such as the impact of trade

policies on women, and the provision of adjustment assistance for workers displaced by trade. Clearly, such discussions must not result in any arbitrary or unjustified discrimination;

- As noted in para. 5 above, core labour standards should be included in WTO trade policy reviews;
- Agreement that the WTO General Council will give serious consideration to the recommendations, once they are published, of the ILO World Commission on the Social Dimensions of Globalisation;
- A clarifying statement is needed to the effect that the weakening of internationally-recognised core labour standards in order to increase exports, as in export processing zones (EPZs), is an illegitimate trade-distorting export incentive that is not permissible under WTO rules.

## Safeguarding Services

11. Public services and other services of general interest reflect democratically-determined public policy objectives, and it is essential that these not be undermined by private sector competition under WTO disciplines. Governments need to preserve full responsibility and accountability in the area of such services.

12. The Cancún Ministerial should adopt the following measures:

- Building on recent statements by WTO members like the European Union, the 5th WTO Conference should amend the terms of the GATS agreement to exclude formally public services (above all, education, health and essential public utilities) including at sub-national levels of government, and socially beneficial service sector activities from all further GATS negotiations;
- A timetable and deadline should be established for completion, in conformity with Article XIX of the GATS, of a full assessment of trade in services in overall terms and on a sectoral basis, which should be conducted before the completion of the current negotiating round;
- To protect effectively the ability of governments to regulate and to enact domestic regulatory measures (in accordance with the preamble of the GATS) without possibility of legal challenge, GATS Article VI.4 should be deleted or revised and a clarifying statement adopted that social and environmental concerns have primacy over the principle of 'free trade' and that such regulations will not be subject to any 'necessity test' through the WTO dispute settlement mechanism;
- Attempts to limit regulations (even when completely non-discriminatory) involving qualifications, standards, and licensing requirements, as is discussed in the GATS Working Party on Domestic Regulation, pose a serious threat to government regulation and it is essential that the Cancún Ministerial eliminate the principle of "no more burdensome than necessary", such that government regulations cannot be subject to any potential challenge by the GATS negotiations;
- Article XXI of the GATS agreement should be amended to include an explicit clause to enable governments to withdraw or diminish their GATS commitments so that they can improve their public services without any risk of challenge under WTO rules (so

preventing foreign service suppliers from using the WTO as a tool to maintain market access);

- Article I.3 (b) of GATS should be clarified to make it absolutely clear that 'the exercise of governmental authority' allows, without threat of legal challenge, WTO members to exclude competition from public services and services of general interest;
- Regarding "Mode 3" of the GATS on 'commercial presence' (i.e. investment), GATS negotiations and GATS commitments should incorporate the factors indicated in the section on investment below;
- With regard to "Mode 4" (i.e. temporary cross-border movement of natural persons), GATS negotiations and commitments must ensure: observance of core labour standards, national labour law (incorporating those standards) and existing collective agreements by all parties, with regard to all workers concerned; protection of migrant workers against all forms of discrimination, and of the remittance of their contributions to social security and insurance schemes; and the full involvement of the ILO;
- In media, the GATS negotiations and GATS commitments must not jeopardise domestic measures to protect the cultural diversity and cultural identity of WTO member countries;
- Desirable regulations that are necessary to ensure the continued availability of quality retail trade services and support smaller companies that would be unable to compete with large enterprises in a deregulated environment, must not be dismantled through the GATS negotiations;
- Negotiations in sectors such as post and telecommunications must not jeopardise the provision of universal services at uniform and affordable prices;
- the Cancún Ministerial should take a decision to end the conditions of secrecy under which the GATS negotiations have been taking place, with publication of the details of the access "requests" and "offers" under negotiation.

## Investment at the WTO

13. Discussions are on the agenda for Cancún that some governments hope will lead to the opening of WTO negotiations to create a multilateral framework on investment. The status quo concerning foreign direct investment (FDI) is a barrier to sustainable development. An international regime is emerging based on bilateral and regional investment agreements that disproportionately favour investors, entrenching their rights with no countervailing binding mechanism governing their responsibilities. Meanwhile, domestic economic deregulation and liberalisation has led to the explosive growth of export processing zones that exempt foreign investors from compliance with labour and environmental protection, and often offer tax breaks or regulatory loopholes. Multilateral investment rules could in principle help governments avoid engaging in such destructive competition for scarce FDI.
14. The international union movement therefore agrees on the need for multilateral investment rules, that would govern only foreign direct investment, and which would promote, not hinder, sustainable development, in conjunction with the implementation of revisions to the IMF Articles of Agreement to bring order and stability to international capital markets and short-term capital flows. Such investment rules must be built around the promotion and protection of social policies, through binding and enforceable investor obligations

covering core labour standards and observance of the provisions of the ILO Tripartite Declaration on Multinational Enterprises and Social Policies, and the OECD Guidelines for Multinational Enterprises, and environmental norms, as well as commitments not to lower domestic labour standards or violate core labour standards in order to attract investment. Any multilateral investment regime must be compatible with the right of governments to regulate in all areas of public interest including investment, and must respect the value of public services and state ownership. Governments must have the leeway to implement legitimate domestically-based economic development strategies, especially to promote decent employment and strong communities, so that they can support domestic industries and investment, and encourage the emergence of new and infant industries. Investment agreements should exclude provisions on expropriation, or National Treatment provisions (whether pre – or post-establishment) that limit the scope to pursue local, regional and national economic and social development strategies, in particular social priorities. Disputes must be solved only through transparent government-to-government procedures that promote the full and active participation of the social partners, and wider civil society groups.

15. Set against these criteria, the current proposals tabled at the WTO fall far short. The international union movement will review its position should new proposals emerge in favour of our vision of a multilateral investment regime. However, as things stand, we cannot support Trade Ministers at Cancún giving a green light to the commencement of negotiations on investment at the WTO.

## Trade and Competition Policy

16. The global union movement is extremely concerned by the vast increase in mergers and acquisitions taking place worldwide, frequently under a definition of foreign investment flows, which stand to further increase the concentration of capital at global level. A multilateral negotiation to monitor international mergers (with particular regard to employment, working conditions and respect for core labour standards) and to increase control over them would be welcome, as would increased regulation of hard-core cartels and restrictive business practices of multinational companies (particularly with regard to the trade in primary commodities that is frequently concentrated among a handful of companies).

17. However, any WTO negotiation on trade and competition policy must allow developing countries to continue to apply different treatment to domestic companies (both state monopolies and private companies) as far as market share is concerned, and must allow developing country WTO members to preserve the ability to decide whether or not to legislate a competition policy. Any negotiation must not affect the right of governments to regulate or restrict economic competition, nor include any provision for investor-to-state disputes mechanisms.

18. In view of the above considerations, and in the light of current proposals, we do not believe that the current discussions of competition policy at the WTO are on the right track. While there is a case for international co-operation on competition policy and a need to prevent market abuses by multinational companies, the case has not been made for negotiating a competition policy agreement at the WTO, with its focus on trade liberalisation.

## Government Procurement

19. Negotiations on transparency in government procurement have a positive role to play in eliminating corruption. Such negotiations must cover the protection of workers employed on government contracts, including migrant workers, on the basis of the relevant international standards standards such as the core labour standards as well as ILO Convention No. 94 on Labour Clauses (Public Contracts), the aim of which is to ensure that acceptable labour standards are observed in public contracts.

20. Negotiations should also commence on remedying the flaws in the existing Government Procurement Agreement (GPA). Specifically, the ban in the GPA on the use of "non-economic" criteria should be removed. in order to authorize public authorities to include development, ethical, social, regional and local objectives in their purchasing policies. In addition the GPA must include reference to the application of labour standards when workers are employed on government contracts. There must be no consideration of expansion of the GPA on a multilateral basis until such problems have been addressed fully.

## Trade Facilitation

21. The objectives of the trade facilitation debate on minimising unnecessary customs procedures and speeding up movement of goods are worthy of support. At the same time, investing in modern customs equipment and information technology stands to be extremely costly for developing countries. The use of WTO procedures which would leave a choice between paying those costs or facing penalties for non-compliance would be wholly inappropriate in this area. Furthermore, WTO principles such as "least trade restrictive measures" are inappropriate in the context of trade facilitation, which is an issue linked intrinsically to safety and security in the cross-border transit of goods. Attention is needed to ensure that the existing competences of UN specialised agencies such as the IMO and the ICAO, which deal with trade facilitation under the same roof as the regulation of safety and security, are not undermined by WTO negotiations.

22. Given the above, it would be more appropriate for WTO measures to promote trade facilitation to remain of a non-enforceable nature. Large-scale technical assistance should be provided to help developing countries upgrade their trade facilities, rather than negotiations which would introduce WTO disciplines into this complex and costly area. Discussions should instead continue in the WTO working group on trade facilitation.

## Sustainable Development at the WTO

23. Sustainable development needs to be incorporated effectively into every aspect of WTO work. This could be facilitated by the following specific measures:

- Agreement on large-scale assistance for developing countries to improve their environmental standards;
- Achieving a clarification in the negotiations on Multilateral Environmental Agreements (MEAs) that MEAs, such as the Biodiversity Protocol, take precedence over WTO rules;

- The implementation of sustainability impact assessments (SIAs) at a multilateral as well as national level, covering both environmental and developmental sustainability and social concerns including core labour standards and the effect of trade on women;
- Strengthening of the precautionary principle to ensure that consumers' or workers' health and safety can under no circumstances be threatened by WTO rulings;
- The reorientation of harmful fisheries subsidies to those areas which would promote sustainable and responsible fisheries practices, address the social aspects of restructuring and improve the life and working conditions of fishers;
- Clarification that eco-labelling schemes such as forestry certification should not be subject to challenge at the WTO.

## Agriculture

24. The present levels of agricultural subsidies in many industrialised countries impose heavy costs, often failing to target subsidies on the poorest farmers and boosting the incomes of large wealthy agro-businesses instead. Furthermore, the subsidisation of agricultural exports has artificially depressed prices in many developing countries, leading to the destruction of farms, plantations and rural employment.

25. Therefore, the trade union movement proposes:

- the elimination of all forms of agricultural export subsidies;
- the reduction and reorientation of other agricultural subsidies towards sound rural development through the eradication of rural poverty, the improvement of employment conditions and the promotion of animal welfare and ecological sustainability;
- increased stable and predictable market access for developing countries to industrialised country agricultural markets;
- strong rights for special and differential treatment concerning developing countries so that they have the requisite flexibility to enhance domestic agricultural production, in particular for domestic consumption, poverty eradication, land reform and food security, and to take other measures as necessary to improve the livelihood of farmers, particularly low-income and resource-poor farmers;
- provision of technical assistance to weaker developing countries to ensure their agricultural production for domestic consumption as well as exports can benefit.

## Conclusions

26. The Cancún Ministerial finds the WTO at a watershed. The failure so far to meet many commitments in the Doha Round is creating a crisis of trust between the WTO's industrialised and developing country members. At the same time, the WTO's credibility and legitimacy among the general public, including the trade union movement, continue to be widely questioned. The global union movement calls on WTO members to take decisive actions at the Cancún Ministerial and in its preparatory period, in order to reform the WTO to fulfil its commitments to developing countries, to address fundamental social and labour priorities and to achieve a fair world trading system that can provide a balance between the strong and the weak in the globalisation process, help lead to an expansion in

world trade, and promote better living standards in both the developing and the industrialised countries.

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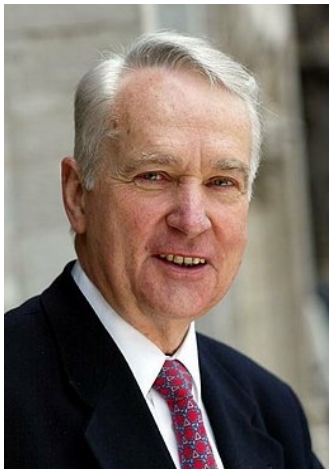
# MR. CLAUS-DIETER EHLERMANN



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**Claus-Dieter Ehlermann** is Senior Counsel at Wilmer, Cutler & Pickering, resident in the firm's Brussels office. Mr. Ehlermann is one of the leading authorities on trade, European competition, and EU administrative law.

Mr. Ehlermann was Chairman of the Appellate Body of the World Trade Organization in Geneva in 2001 during the last year of his mandate as a member which started in December 1995. The Appellate Body hears appeals from WTO dispute panel decisions.

Prior to his service on the WTO Appellate Body, Mr. Ehlermann held several senior positions with the European Commission. From 1990 to 1995, he was Director-General of the Directorate-General for Competition (then DG-IV), the highest ranking civil servant of the competition authority in Brussels. Before holding that position, Mr. Ehlermann served for ten years as Director-General of the Legal Service of the European Commission -- the most senior legal advisor of the European Commission.

In addition to his experience in Brussels, Mr. Ehlermann is considered one of the leading academic thinkers on EC law, notably he was Professor of EC Law at the European University Institute (Florence) and is co-editor of one of the most important commentaries on the EC Treaty. He has published nearly 200 journal articles, and holds honorary degrees from the Universities of Hamburg and Neuchatel.

Mr. Ehlermann obtained a Doctorate in Law in Heidelberg. He was educated at the Universities of Marburg/Lahn and Heidelberg and the University of Michigan Law School.

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# THE CURRENT NEGOTIATIONS ON COMPETITION POLICY IN THE WTO

## STATEMENT FOR THE HEARING BY THE EUROPEAN PARLIAMENT

## BRUSSELS, 16 JUNE 2003

**CLAUS-DIETER EHLERMANN**
**SENIOR COUNSEL, WILMER, CUTLER & PICKERING, BRUSSELS**

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# I. WHERE DO WE COME FROM?

## *1. A EU INITIATIVE*

The idea of a WTO Competition Agreement was launched by the EU in the early 90's. The EU initiative was based on the same conviction that inspired the competition provisions of the EC Treaty. The progressive elimination of State barriers to international trade is usefully accompanied by the fight against similar barriers established by private or public undertakings, in particular by the fight against international cartels. The EU initiative is also an expression of faith in the multilateral trading system, and in the rule of international law. [The initiative reflects what we might call the EU's own "DNA", i. e., international cooperation in a rule-based legal system.] [Moreover, the initiative was, and is, inspired by the remarkable results of the Antitrust Cooperation Agreement concluded between the EU and the US in 1991.]

## *2. STRONGLY OPPOSED BY THE US ANTITRUST COMMUNITY*

The US antitrust community reacted negatively to the early EU proposals. US commentators saw greater value in bilateral cooperation than in binding rules agreed in the WTO. Competition policy negotiations in the WTO were held to be counterproductive. Binding international rules were considered to be a threat to the organic development of economically justified domestic antitrust policies. For the US opponents, the WTO is an organization for international *trade* and dominated by concerns for market access and *fair* trading (cf. "dumping). Therefore, the WTO was considered to be the wrong forum for antitrust negotiations and implementation. [However, the US antitrust community did not remain purely negative. It launched in 2000 the basic ideas that underlie the remarkably successful "International Competition Network".]

## *3. ENCOUNTERING SKEPTICISM FROM DEVELOPING COUNTRIES*

Most developing countries also expressed concerns about the EU proposal. Many developing countries felt that the growing interest manifested by the industrialized countries was mainly another pretext to help multinationals to break into their economies. [Moreover, only few developing countries had already domestic antitrust legislations and even fewer had an enforcement agency. Therefore, developing countries suggested that attention should be paid to

their needs for creating a "competition culture" and developing "tailor-made" competition laws, as well as building "capacity" for the national competition authorities[4]. Consequently, most developing countries asked for "education to competition" and technical assistance as well as some kind of "public interest clause" in order to mitigate the effect of a future agreement on the access to their markets.]

# II. WHERE DO WE STAND

## *A. THE MINISTERIAL DECLARATION ADOPTED IN DOHA*

As you recall, the Ministerial Conference meeting in Singapore in December 1996 established a "Working Group on the Interaction between Trade and Competition Policy". The Working Group, chaired by Professor Frédéric Jenny, has done an excellent job. Its work has allowed the Ministerial Conference in Doha to declare that negotiations will take place after [the Ministerial Conference in Cancun] on the basis of a decision to be taken, by explicit consensus,…on modalities of negotiations.

[According to the Doha Declaration, in the meantime, the Working Group will focus on the clarification of: core principles, including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building.]

## *B. THE RESULTS OF DISCUSSIONS UNTIL NOW*

In line with the Doha Declaration, the discussions in the Working Group cover mainly 5 groups of issues:

1. A commitment by WTO Members to set a core of principles relating to the application of competition policy, including transparency, non-discrimination and procedural fairness.
2. A commitment on the adoption of common measures against hardcore cartels.
3. An agreement on the development of modalities for cooperation between Member States in the field of competition law and policy.
4. A commitment to provide ongoing support for the introduction and strengthening of competition institutions in developing countries.
5. The establishment of a Standing WTO Committee on Competition Policy.

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[4] UNCTAD, Consolidated Report on issues discussed during the Panama, Tunis, Hong Kong and Odessa Regional Post-Doha Seminars on Competition Policy held between 21 March and 26 April 2002 15 May 2002

## *C. BRIEF COMMENTS ON EACH OF THESE POINTS*

### 1. Transparency, Non-Discrimination and Procedural Fairness

A substantive degree of convergence has been reached that these traditional WTO principles are compatible with antitrust law. These principles are recognized as guarantees against the risk of protectionist abuses of domestic competition laws[5].

### 2. Common measures against hardcore cartels

The proposals suggesting the introduction of provisions on merger control, vertical restraints and the abuse of dominance have been quickly abandoned. Instead, the idea of banning hardcore cartels has reached a wide consensus among the parties. It is generally recognized that international hardcore cartels have negative effects on the economies of industrialized, developing and least developed countries alike[6].

### 3. Modalities of cooperation

Cooperation has been beneficial for the enforcement of and the exchange of experiences in competition law. Cooperation at WTO level would complement, rather than replace cooperation pursuant to bilateral cooperation agreements. [Cooperation, based on relationship of trust and solidarity built over years, cannot be offered to members whose competition expertise is still at a rudimentary stage[7]]

### 4. Introduction and strengthening of competition law in developing countries

The Doha Declaration places great emphasis on support for technical assistance and capacity building. This emphasis reflects the concerns of most developing countries which request assistance to overcome "the possible excessive burden arising from the requirements for transparency, the problem of national treatment in applying the principle of non-discrimination, the necessary protection of the weak, small and infant industries in developing countries"[8].

### 5. A Standing WTO Committee on Competition Policy

A Standing Committee on Competition Policy could administer the proposed agreement and act as a forum for the exchange of national experiences. The establishment and tasks of such a Committee remain however controversial. The discussions are motivated by differences of view about the implementation of a future WTO agreement. While the EU is supporting a limited

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5 Moving the Trade and Competition debate forward, Ignacio Garcia Bercero and Stefan D. Amarasinha, Journal of International Economic Law (2001)

6 International price fixing cartels and developing countries: a discussion of effects and policy remedies, Margaret Levenstein, Political Economy Research Institute, University of Massachussetts

7 Communication from Australia

8 Communication from China

application of the existing WTO dispute settlement rules, the US and Canada are in favor of the adoption of a simple peer-review system.

### *D. OPEN ISSUES*

Although some degree of convergence has been achieved, no consensus has been reached on the launching of negotiations in Cancun. Several issues are still open to debate. In particular, many developing countries remain to be convinced of the benefits that a WTO Competition Law Agreement would bring for their development. Moreover, some developing countries ask for adequate and effective special and differential treatment. Thailand, for instance, has proposed that developing countries should be allowed to exempt national and international export cartels, a request that industrialized countries do not seem to be willing to accept.

## III. WHERE WILL WE END

### *A. GROWING CONVERGENCE IN NEGOTIATIONS*

However, there is room for a reasonably optimistic outlook. The positions of the parties show a growing degree of convergence. In particular, the EU has abandoned its initial stance for a broad competition agreement. Instead, the EU has limited its requests to a few, fairly modest basic points, i.e. the adoption of provisions on hardcore cartels, the application of the core principles of transparency, non-discrimination and procedural fairness, and the limitation of traditional WTO dispute settlement rules to national competition laws, as opposed to individual decisions. On these bases, most WTO Members should be ready to start negotiations in Cancun.

### *B. THE POSSIBLE RESULTS*

However, whether negotiations on a WTO Competition Agreement will effectively begin, and whether they will be finally successful, will not depend on competition policy questions alone. More will depend on other issues. The most important are the results of the negotiations on agriculture. But that is true for the entire Doha Development Round.

# MR. MARTIN KHOR

## BIODATA OF MARTIN KHOR KOK-PENG

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He has also been a Consultant to UNCTAD, UNDP, UNEP and the UN University, and has conducted studies and written papers for these agencies. Recently he coordinated a report of the Third World Network for UNDP on *The Multilateral Trading System: A Development Perspective* which was published by UNDP in January 2002. He is the author of the book, *Globalisation and the South*, which was a report he wrote for UNCTAD and distributed at the South Summit in Havana in 2000, and has written several other books and papers on trade and WTO issues, and on environment and development issues, including the book on *Intellectual Property, Biodiversity and Sustainable Development*. An economist trained at Cambridge University, UK, he has lectured in Economics at the Science University of Malaysia.

# WTO "NEW ISSUES": THE IMPLICATIONS FOR DEVELOPMENT AND SOCIAL RIGHTS

**By Martin Khor**
**Third World Network**

## BACKGROUND

When the WTO holds its Ministerial Conference in Cancun in September, its most important decision will be whether to launch negotiations on the "new issues": investment, competition, transparency in government procurement, trade facilitation.

If the Ministers do decide to go ahead with negotiations, it would probably lead to new agreements that would expand the mandate and authority of the WTO many times. These new rules will result in much greater damage to development and to social rights. They are even more dangerous than the already damaging existing rules.

The "new issues" are being vigorously pushed by the EU, aided by Japan, Canada and Australia, with the US also playing a supporting role. Most developing country governments are against launching negotiations on them. However, there is the fear that once again in Cancun, as in Doha, these governments may be manipulated into accepting something they really do not want. This is due to the undemocratic and untransparent way in which WTO Ministerials operate.

Before Doha (November 2001), the developing countries were strongly arguing that the WTO should in the next years focus on resolving the problems arising from the Uruguay Round, but the
developed countries pushed very hard to have the WTO expand its mandate to the new issues.

Due to a series of manipulative tactics, the views of many of the developing countries in key areas were not reflected in the drafts of the Ministerial Declaration that were prepared in Geneva and in Doha. The Declaration implies that negotiations to have new rules have been agreed to on the 'Singapore issues' following the Cancun Ministerial on the basis of an explicit consensus on 'modalities' of negotiations.

However, due to objections at the last 'informal' session at Doha, the Declaration was tempered by a clarification by the Conference chairperson that the consensus referred to would be required for negotiations to begin (the implication being that the required consensus would not be only for modalities). So, the Ministers in Cancun would indeed need to make a political decision, whether or not to launch negotiations on these issues.

So there will be a major fight in Cancun (and in Geneva before that) over this question. Most developing countries are opposed to or most reluctant to start negotiations. Large numbers of NGOs and social movements are also against negotiations starting in these issues. The common theme of three of the issues (investment5, competition, government procurement) is an attempt to maximise the rights of foreign enterprises to have market access to developing countries

through their products and investment; to reduce to a minimum the rights of the host government to regulate foreign investors; and to prohibit government from measures that support or encourage local enterprises.

If these agreements come into the WTO, developing countries will find it increasingly difficult to devise their own policies for development and for the building up of their local enterprises to be competitive. The rich country governments will press for the principle of "national treatment" to be applied to these new areas. Developing countries would no longer be allowed to support their local industries. Many local companies may not survive, and millions of workers would lose their jobs.

Actually, these issues do not belong to the WTO as they are not directly trade issues. The application of 'national treatment' to the issues is inappropriate as it would prevent or hinder governments from adopting policies and measures needed for development **and other national** goals such as nation building and harmony among ethnic communities.

Thus, social organizations should campaign against negotiations starting on these issues. In WTO, the term 'negotiation' especially applied to 'new issues' implies that a commitment has been made to establish new rules or agreements. Historical record shows that during the negotiations, the developed countries have tremendous advantages to shape the agenda, principles and provisions of the issue and the agreement, and that the final outcome may not be in the interests of developing countries. It is thus important to prevent issues that are not appropriate from coming under a decision to start negotiations.

Below is a description of each of the four Singapore issues (investment, competition, transparency in government procurement, trade facilitation) and the implications for developing countries should agreements of the type envisaged by their proponents be established.

## TRADE AND INVESTMENT

The main proponents of an investment agreement would like international binding rules that allow freedom of foreign investors the rights to enter countries without conditions and regulations, and to operate in the host countries without most conditions now existing, and be granted 'national treatment' and MFN status. Performance requirements (e.g., equity ownership restrictions, obligations on technology transfer, export orientation, geographical location, etc.) and restrictions on movements of funds would be prohibited. Investment incentives may also be disciplined. There would also be strict standards of protection for investors' rights, for example in relation to 'expropriation' of property. (A wide definition could be given to expropriation; the NAFTA experience is worth noting, where expropriation includes government policies such as health or environmental measures that affect the future earnings and profits of an investor; full compensation to the investor is required).

An international agreement on investment rules of this type is ultimately designed to maximise foreign investors' rights whilst minimising the authority, rights and policy space of governments and developing countries. This has serious consequences in terms of policy making in economic, social and political spheres, affecting ability to plan in relation to local participation and ownership, balancing of equity shares between foreign and locals and between local communities, the ability to build capacity of local firms and entrepreneurs, and the need for protecting the balance of payments and the level of foreign reserves. It would also weaken the

bargaining position of government vis-a-vis foreign investors (including portfolio investors) and creditors.

**Conclusion:**

An investment agreement in WTO is most likely to be damaging to development options and interests. The position that should be taken in the WTO is as follows: Investment is not a trade issue, and thus bringing it within the ambit of WTO would be an aberration and could cause distortion to the trade system. It is certainly not clear that the principles of WTO (including national treatment, MFN) that apply to trade in goods should apply to investment nor, that if they were applicable, that they would benefit developing countries. Traditionally developing countries have had the freedom and right to regulate the entry and conditions of establishment and operation of foreign investments; restricting their rights could cause adverse repercussions.

There is no consensus on modalities of negotiations, nor even on the principle of whether there should be an agreement in WTO, and that therefore there should not be a decision to start negotiations at the Fifth Ministerial meeting of 2003.

## TRADE AND COMPETITION POLICY

At present, there is hardly any common understanding let alone agreement among countries on what the competition concept and issue means in the WTO context, especially in terms of its 'interaction' with trade and its relationship with development. The whole set of issues of competition, competition law and competition policy and their relation to trade and to development is extremely complex. The proposal of the proponents of a WTO agreement is to have multilateral rules that discipline Members to establish national competition law and policy. These laws/policies should incorporate the 'core principles of WTO', defined as transparency, non-discrimination (MFN and national treatment.) Thus, the location of the venue of the competition issue and the agreement within the WTO would bias the manner in which the subject and the agreement is to be treated. In this case, the 'core WTO principles' would be applied to competition.

Competition law and policy, in appropriate forms, are beneficial, including to developing countries. However each country must have full flexibility to choose a model which is suitable, and which can also change through time to suit changing conditions. Having an appropriate model is especially important in the context of globalisation and liberalisation where local firms are already facing intense foreign competition. In particular, developing countries must have the flexibility to choose the paradigm of competition and competition policy/law that is deemed to be more suitable to their level of development and their development interests.

The EU proposal for competition policy to provide 'effective opportunity for competition' in the local market for foreign firms, and thus to apply the WTO 'core principles' to competition law/policy would affect the needed flexibility for the country to have its own appropriate model or models of competition law/policy.

Competition can be viewed from many perspectives. From the developing countries' perspective, it is important to curb the mega-mergers and acquisitions taking place, which threaten the competitive position of local firms in developing countries. Also, the abuse of anti-dumping actions in the developed countries is anti-competitive against developing countries'

products. The restrictive business practices of large firms also hinder competition. However these issues are unlikely to find favour with the major countries, especially the US, which wants to continue its use of anti-dumping actions as a protectionist device. If negotiations begin, the EU interpretation of competition; i.e., the need for foreign firms to have national treatment and a free competition environment in the host country, could well prevail, especially given the unequal negotiating strength which works against the developing countries. The likely result is that developing countries would have to establish national competition laws and policies that are inappropriate for their conditions. This would curb the right of governments to provide advantages to local firms, and local firms themselves may be restricted from practices, which are to their advantage.

What is required is a paradigm to view competition from a development perspective. Competition law/policy should complement other national objectives and policies (such as industrial policy) and the need for local firms and sectors to be able to successfully compete, including in the context of increased liberalisation. From a development perspective, a competition and development framework requires that local industrial and services firms and agricultural farms must build up the capacity to become more and more capable of competing successfully, starting with the local market, and then if possible internationally. This requires a long time frame, and cannot be done in a short while. It also requires a vital role for the state, which has to play the role of nurturing, subsidising, encouraging the local firms. The build up of local capacity to remain competitive and become more competitive also requires protection from the 'free' and full force of the world market for the time it takes for the local capacity to build up. This means that development strategy has to be at the centre, and competition as well as competition policy has to be approached to meet the central development needs and strategy.

Therefore some of the conventional models of competition may not be appropriate for a developing country. On the other hand other models may be more appropriate, but their adoption may be hindered or prohibited by a WTO agreement on competition that is based on the 'core principles of WTO.'

**Conclusion:**

There is not a convincing case for a multilateral set of binding rules to govern the competition policies and laws of countries; and there are especially justified grounds for serious concern if such an agreement were to be located within the WTO, as it is likely to be skewed in a way that is inappropriate for the development interests of developing countries as a result of the attempt by proponents to apply the 'core principles' of WTO to the issue and to the agreement. If a multilateral approach is needed, there are other venues that are more suitable, for example, UNCTAD already has a Set of Principles on Restrictive Business Practices. Moreover, if the objective is to arrange for cooperation among competition authorities of countries, then it is unnecessary and inappropriate for the WTO to be the venue.

## TRANSPARENCY IN GOVERNMENT PROCUREMENT

The Singapore WTO Conference (1996) agreed 'to establish a working group to conduct a study on transparency in government procurement practices, taking into account national policies, and based on this study, to develop elements for inclusion in an appropriate agreement'. The decision does not specify that there must result an agreement; it only commits Members set up a working group to study the subject of transparency and based on this study to develop the elements to include in an appropriate agreement. It is thus important to discuss what an

appropriate agreement, if any, should be like, from the perspective of the interests of developing countries and also their need for policy flexibility.

The study in the working group, and the agreement, is only mandated to cover transparency (and not the practices themselves), and this limited scope has been reaffirmed by the Doha Declaration. However, the major countries advocating this issue had made clear their ultimate goal to fully integrate the large worldwide government procurement market into the WTO rules and system. At present, WTO Members are allowed to exempt government procurement from WTO market access rules. The exceptions are those Members who have joined the WTO's plurilateral agreement on government procurement. Hardly any developing country is a member of this plurilateral agreement. Since developing countries have found it unacceptable to integrate government procurement and its market access aspect into the WTO, the major developed countries devised the tactic of a two-stage process: firstly, to draw in all Members into an agreement on transparency; and secondly, to then extend the scope from transparency to other areas (for example, due process) and then to the ultimate areas of market access, MFN and national treatment for foreign firms. This is clear from various papers submitted to the WTO.

If the integration of procurement into WTO eventually takes place (as is clearly the aim of the major developed countries), governments in future will not be allowed to give preferences to local companies for the supply of goods and services and for the granting of or concessions for implementing projects. The effects on developing countries would be severe.

Government procurement and policies related to it have very important economic, social and even political roles:

* The level of expenditure, and the attempt to direct the expenditure to locally produced materials, is a major macroeconomic instrument, especially during recessionary periods, to counter economic downturn.
* There are national policies to give preference to local firms, suppliers and contractors, in order to boost the domestic economy and participation of locals in economic development and benefits.
* There is specification that certain groups or communities, especially those that are under-represented in economic standing, be given preference
* For procurement or concessions where foreign firms are invited to bid, there could be a preference to give the award to firms from particular countries (e.g. other developing countries, or particular developed countries, with which there is a special commercial or political relationship).

Should government procurement be opened up through the national treatment and MFN principles, the scope and space for a government to use procurement as an instrument for development would be severely curtailed. For example:

* If the foreign share increases, there would be a 'leakage' in government attempts to boost the economy through increased spending, during a downturn.
* The ability to assist local companies, and particular socio-economic groups or ethnic communities would be seriously curtailed.
* The ability to give preferences to certain foreign countries would similarly be curtailed.

Given the great importance of government procurement policy as an important tool required for economic and social development and nation building, it is imperative that developing countries

retain the right to have full autonomy and flexibility over its procurement policy. The attempts to draw this issue into the WTO are thus of grave concern.

Given the ambitions of the major countries, it is realistic to anticipate that following the establishment of an agreement on transparency, there will be strong pressures to extend its scope to also cover market access, or the rights of foreign companies to compete on a 'national treatment' basis for the procurement business. Thus, the discussions on 'transparency' and on a 'transparency agreement' should be seen in the light of the strategic objective of the majors to draw in the developing countries into the real goal of market access and full integration of procurement practices. Therefore if there is an agreement on transparency, it is likely to be the start of a slippery slope that could lead, in years ahead, to a full market-access agreement.

**Proposal**:

A major strategic decision should be taken to prevent the issue of government procurement from entering the WTO as a negotiating topic. If so, then even a transparency agreement should not be welcomed. It should be recognised that the existence of a transparency agreement would make an eventual market-access agreement very difficult to stop.

## TRADE FACILITATION

As with other Singapore issues, a decision on negotiations in this subject will be taken at the Fifth Ministerial. It is thus also not clear whether there will be negotiations towards an agreement on trade facilitation in the WTO. The Doha Declaration (para 27) states that until the Fifth Ministerial the Council for Trade in Goods shall review and as appropriate clarify and improve relevant aspects of Articles V, VIII and X of GATT 1994 and identify the trade facilitation needs and priorities of Members, particularly developing and least developed countries. [Article V is on freedom of transit, Article VIII is on fees and formalities connected with import and export and Article X is on publication and administration of trade regulations.]

Although the term 'trade facilitation' may seem innocuous, the establishment of multilateral rules in this area may be disadvantageous to developing countries as they may find it difficult to adhere to the standards or procedures envisaged. According to Das (2000): 'There are grave dangers involved in the potential agreements in this area if the proposals of the proponents are incorporated in the form of binding commitments. The main objective of the proponents is to have the rules and procedures similar to theirs adopted by the developing countries. It ignores the wide difference in the administrative, financial and human resources between the developed countries and developing countries. Also it does not give weightage to the wide difference in social and working environment'. For example, it may be proposed that physical examination of goods by the customs authorities should only be in a small number of cases selected on a random basis to improve the flow of goods through the customs barrier. But this increases the risk of avoidance of payment of adequate customs duties. Such a practice may be appropriate for the major developed countries where the chances of leakage is negligible, but it may not be appropriate for the developing countries where leakage is higher.

**Conclusion:**

Negotiations should not start on trade facilitation after the Fifth Ministerial. Clarification and improvement of the rules in these areas will add to the commitments of the developing countries in the WTO, adding new burdens and may have adverse implications too. Improvements in trade facilitation should be made through national efforts aided by technical assistance, rather than through imposing additional obligations in the WTO.

# THE INVESTMENT ISSUE IN WTO: A DEVELOPMENT PERSPECTIVE

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## A. BACKGROUND TO THE DOHA DECISION

At the Singapore WTO Ministerial (1996), Ministers agreed to form a **working group** to study the relationship between trade and investment. It was explicitly stated **there was no commitment to negotiate an agreement.**

For the next five years (1997-2001) the WTO Working Group on Trade and Investment held several discussions. Major developed countries pressed very hard to have the working group be transformed into a negotiating group that would negotiate an investment agreement in WTO. However, the majority of developing countries were extremely reluctant to agree to this. Some of these countries were strongly opposed.

Ministerial Conferences of the LDC group (Zanzibar Sept 2001), of the African region under the OAU (Abuja October 2001) and the ACP group (Brussels, November 2001) issued statements stating the view that they were not prepared to enter negotiations on the issue. At the WTO in Geneva, the majority of developing countries also made clear their opposition. However the draft Declaration sent from Geneva to Doha reflected the EU-led position that negotiations should start on investment.

At the Doha Ministerial, the opposition of developing countries continued, as can be seen in formal plenary statements made by many Ministers as well as in the informal meetings on new issues. Even on the last scheduled day (13 November 2001), the Africa, LDC and ACP groups issued a set of proposals to replace the draft text on investment and other new issues. The new text proposed by these countries stated that most developing countries lack the capacity to engage these issues with full aprreciation of the implications for their countries and people, that the relevant bodies undertake further work and that the 5th Ministerial "shall determine the desirability or otherwise of negotiations in these areas." It was clear from this proposal that the countries wanted the study process to continue (i.e. that they did not want a negotiation process to begin) and that the next Ministerial would decide "on the desirability or otherwise" of negotiations on these areas.

However, as a result of pressures and tactical measures, including the convening of a marathon Green Room session on the last night at Doha (6pm to 5am), a draft Declaration was issued on the morning of 14 November which in para 20 "recognized the case for a multilateral framework" on investment and which agreed that "negotiations will take place after the 5th Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations."

Then, and even now, it is not clear at all how the new text was drafted or by who. It certainly was not drafted in an open, transparent session where all countries could be present and put forward their position or alternative formulations. The text was put before an informal plenary meeting in the afternoon of 14 November. India supported by a dozen countries, requested changes to the text to the effect that the consensus required was for negotiations and not merely on modalities. The compromise reached was that the draft Declaration would be adopted

unmodified but that the Conference chairman would clarify that the position of India and the dozen other countries was accepted. At the final formal session, the Chairman made the following statement:

"*I would like to note that some delegations have requested clarification concerning Paragraphs 20, 23, 26 and 27 of the draft declaration. Let me say that with respect to the reference to an 'explicit consensus' being needed, in these paragraphs, for a decision to be taken at the Fifth Session of the Ministerial Conference, my understanding is that, at that session, a decision would indeed need to be taken by explicit consensus, before negotiations on trade and investment and trade and competition policy, transparency in government procurement, and trade facilitation could proceed.*

*In my view, this would also give each member the right to take a position on modalities that would prevent negotiations from proceeding after the Fifth Session of the Ministerial Conference until that member is prepared to join in an explicit consensus*."

Statement by Conference chairman, Hon'ble Mr Youssef Hussain Kamal, Minister of Finance, Economy and Trade, Qatar at the closing plenary session of the Doha Ministerial Conference, 14 November 2001

According to the renowned authority on international trade, Bhagirath Lal Das (2002), the Chairman's statement has legal standing and force in the WTO context. According to Das:

The Chairman has made this statement in response to the requests of some delegations to have "clarification concerning paragraphs 20,23,26 and 27". Hence his statement is in the nature of the "clarification" of the language in these paragraphs. Also the Chairman has termed the first part of it as "(his) understanding". Normally a chairman gets such understanding by a process of consultations with the participants in the meeting and he/she includes agreed formulations in his/her understanding. If there is no objection or reservation from the participants after the chairman has expressed his/her understanding, it is considered to be the collective wish of the meeting. In this plenary during this Conference, there was no objection or reservation from the participants after the Chairman expressed his understanding. All this makes this part binding on the WTO process unless it is modified by a later WTO Ministerial Conference.

This part of his statement will be considered to interpret the meaning of the language in these paragraphs (i.e., paragraphs 20,23,26 and 27). Hence it is necessary to have an explicit consensus before negotiations in these four respective areas "could proceed". The text in the relevant paragraphs in the Declaration speaks about the decision by explicit consensus on modalities of negotiations. A question arises whether the negotiation will automatically proceed when the modalities are agreed to by explicit consensus. Here the text in the Chairman's statement comes into play. It speaks about decision by explicit consensus on the negotiation to proceed. All this considered together suggests a two-stage decision by explicit consensus, one stage for the modalities for negotiation and another stage for the negotiation to proceed. It should be noted that there is no prescribed sequencing in these two stages; for example, even before the modalities are taken up for a decision (by explicit consensus), the matter of negotiation itself can be taken up for decision (by explicit consensus).

Decision by consensus is defined in the footnote 1 to Article IX of the Marrakesh Agreement Establishing the WTO as a situation when "no Member, present at the meeting when the decision is taken, formally objects to the proposed decision". Thus technically speaking, even one Member can withhold consensus on modalities and thereby withhold the negotiation in this area thereon. Also even one Member can withhold consensus on negotiation to proceed.

In actual practice, it will depend on the motivation of the Members and the political situation existing at that time. The Fifth Ministerial Conference will be technically within its rights to alter the situation created by this understanding."

Thus, from a legal viewpoint, the two texts (Declaration and Chairman's statement) have to be read together, and the Doha Ministerial has not mandated that there will be negotiations on an investment agreement. Moreover, although the Declaration recognizes the need for a multilateral framework, it does not say what kind of framework (in substance or whether legally binding or non-binding) nor what is the appropriate venue.

## B. POST DOHA WORK IN WTO

Between Doha and the 5th Ministerial, the working group and the General Council would have to undertake discussion on three categories of issues: (1) the working out of the issue of modalities of negotiations, that had been mentioned in para 20 of the Doha Declaration; (2) subjects mentioned in para 22 "for clarification", ie clarification of scope and definition, transparency, non-discrimination, modalities for pre-establishment commitments based on a GATS-type, positive list approach, development provisions, exceptions and balance of payments safeguards, consultation and the settlement of disputes; (3) other subjects mentioned in para 22, ie any framework should reflect in a balanced way the interests of home and host countries, take account of development policies and objectives of host governments and their right to regulate in the public interest. There is mention also that the special needs of developing countries should be taken into account; due regard to other relevant WTO provisions; and account should be taken of existing bilateral and regional investment arrangements.

Since Doha the Working Group has procceded to discuss the issues mandated by Doha for clarification, as well as other issues, notably the obligations of foreign investors and of their home states (following a paper submitted on this by a group of developing countries).

Comments and suggestions on how to deal with the above issues from the perspective of developing countries' interests have been made in a paper by B.L. Das (2002). The relevant part of Das's paper is annexed to this paper (See **Annex 1**).

A reading of the 2002 report of the Working Group clearly reveals that there is no consensus among the Members on the various issues discussed. Even in relation to the WTO as a suitable forum some members have doubts regarding propriety of WTO being the right forum for the discussion of an issue whose relationship with trade is only tenous. On scope and definition, there is a major split between countries like the United States that want a comprehensive coverage, including portfolio investment, whilst most other countries want to restrict the discussion to foreign direct investment. There are many points of disagreement regarding development provisions, with many developing countries wanting maximum flexibility for development policies whilst developed countries want a much more restrictive approach. On non-discrimination, the developed countries insist this is a core principle, and several developing countries doubt its appropriateness in relation to investment. On investor and home country obligations, some countries insist this issue must be included including for the sake of having some balance, whist others do not think it even belongs in an investment framework.

(See **Annex 2** for a preliminary listing of areas of differences in the working group among WTO Members).

Since the Working Group's work is near completion, and there are hardly a few months before Cancun, the reaching of an explicit consensus on modalities based on the substance of the issues would appear to be an impossibility, with so many wide and serious disagreements on all the key issues. It remains to be seen if the proponents can still "manufacture" a consensus even when substantially there is none.

## C. HISTORICAL BACKGROUND

The EU and Japan are the main developed economies seeking to upgrade the study process into a negotiation for an agreement. Since many developing countries are opposed to introducing an investment agreement in WTO, the EU and Japan etc are attempting to portray their aim as one intended to produce a development-friendly investment agreement. A large number of developing countries remain opposed or reluctant to move into negotiations.

There is a long history of developed countries attempting to persuade developing countries to agree to a binding international investment treaty. During the Uruguay Round, the developed countries included investment rules in the TRIMS negotiations. However, developing countries were unable to accept this and succeeded in restricting the TRIMS agreement to only trade-related measures. The developed countries tried again in 1995-96 to have the WTO negotiate an investment agreement but the Singapore Ministerial only agreed on setting up a working group for discussion on trade and investment. They tried again through the OECD to have an investment agreement, but this failed. The efforts to have the negotiations in the WTO intensified after the OECD failure and this intensified before and at the Seattle Ministerial of 1999.

In the Draft Ministerial Text for Seattle Ministerial (dated 19 Oct 1999), the position of an influential group of developing countries (the like-minded group) on investment is laid out in para 56. In brief it says that the investment working group shall pursue its present mandate, and further work should focus on issues of interest to developing countries, in particular the effects of FDI (positive and negative) on the development objectives of host countries, the obligations of foreign investors to host countries, and the obligations of home countries in respect of disciplines on their investors. The working group shall report to the next Ministerial Conference on the results of its work. On the other hand, para 41 presents the developed countries' position, that "negotiations shall aim to establish a multilateral framework of rules on foreign direct investment", with eight points on the framework.

The collapse of the Seattle Ministerial meant that there was a two-year "reprieve." However, the Doha decision has re-opened the prospect of negotiation, albeit if there is an explict consensus. And that is a very big "IF".

## D. MAIN DESIGN AND STRATEGIC AIM OF PROPONENTS

The main features of a possible international investment agreement as advocated by the major developed countries are rather well known and have remained constant in the past many years,

although there may be differences in some of the details. Among these main features are the following:

- Obligations on the right to entry and establishment: These provide foreign investors the rights to entry and establishment in member countries without (or with minimal) conditions and regulations and to operate in the host countries without most conditions now existing.
- "Non-discrimination" principle: National treatment and MFN status would be given to foreign investors and investments. This would apply at the pre and post establishment phases.
- Scope and definition: The original definition of investment has been very broad (eg in the proposed OECD MAI it covers FDI, portfolio investments, credit, IPRs and even non-commercial organisations, and in all sectors except security and defence. According to the Doha Declaration, cross-border FDI is mentioned as an issue for clarification. However in the discussions, some countries, notably the US, have proposed a broad definition of investment and investor, to include portfolio investment.
- Performance requirements (eg. regulation on limits and conditions on equity, obligations for technology transfer, measures for using local materials and for increasing exports or limiting imports) would be prohibited or disciplined.
- Investors' rights and funds transfer: Obligations to allow free mobility of funds into and out of the country, thus restricting or prohibiting regulations/controls on funds transfer.
- Investors' rights and expropriation: There would also be strict standards of protection for investors's rights, in relation to "expropriation" of property. A wide definition is given to expropriation in the MAI model; it includes "creeping expropriation". The NAFTA experience is very pertinent. The developed countries are likely to advocate both direct and indirect expropriation; the latter is likely to include the loss of goodwill and future revenue/profits of a company or an investor, as a result of a government measure or policy.
- It is advocated that the agreement be legally binding, with a dispute settlement system. In NAFTA and the proposed OECD-MAI, the dispute settlement system would also enable investors to bring cases against a state.

Most of the elements above are in the original EC paper (1995) proposing an international investment agreement, or in the OECD draft of the MAI, or in NAFTA.

Although several of the above elements are not directly mentioned in the Doha Declaration as issues for clarification, some of them have entered the discussion under one item or another. The developed countries will most likely try to ensure that all these elements, and some more, will be part of the negotiations and the outcome.

Due to the unpopularity of this extreme model, including with citizens in the North that successfully opposed the OECD-MAI **,** some of the major proponents are now putting forward watered-down versions. These versions would not be so extreme, and would not enable the proponents to reach the ultimate goals immediately. Instead, step-by-step or stage-by-stage approaches are now proposed, whereby Members of WTO will agree to negotiate an agreement, and in the agreement they can have the choice of which sectors and how fast to liberalise. (This is presumably what the "GATS-type" approach refers to). The approach adopted is to first persuade developing countries to agree to the **concept** that investment rules belong to the mandate of WTO; and then to draw them into negotiations for an agreement which appears not to be so harmful and where there is some space to make choices (especially when compared to the original models); and then later on expose them to the pressures of increasing commitments for liberalisation in more sectors and for obligations in a wider range of policy measures.

Thus, although the current proposals of the EU in the WTO are said to be "different" from the original models, in reality the elements remain the same, albeit in a diluted form.

The EU's GATS-type positive list approach is meant to cover pre-establishment as well. Though in theory GATS allows each country can choose the timing, sectors and degree for liberalisation, in reality there is pressure for accelerating the pace and depth of liberalisation in many sectors. Also, countries that have made a commitment would be unable to "roll back" or backtrack, unless with compensation. Moreover the services agreement also has general rules that apply across all sectors (whether or not they are on the schedule for liberalisation) and these rules are being expanded. Presumably the investment framework would also have general rules that apply, irrespective of what the countries have committed on a sectoral basis.

Moreover, it is also clear that the US would advocate a "higher standard" agreement, and this could be closer to the MAI or NAFTA models. So it is very possible that if negotiations were to begin, some members will advocate for the elements, scope and high standards of the extreme models.

## E. THE NEED FOR SPACE AND FLEXIBILITY FOR INVESTMENT AND DEVELOPMENT POLICIES AND THE EFFECTS OF AN INVESTMENT AGREEMENT

Foreign investment is a complex phenomenon with many aspects. Its relationship with development is such that there can be positive as well as negative aspects. There is an important need for the role of government and government policy to regulate investments so that the positive benefits are derived, while the adverse effects are minimized or controlled. The experience of countries shows that governments have traditionally made use of a wide range fo policy instruments in the formulation of investment policy and in the management of investment. It is crucial that developing countries continue to have the policy space and flexibility to exercise their right to such policies and policy instruments.

Due to its particular features, foreign investment can have the tendency towards adverse effects or trends that require careful management. These include:

(a) possible contribution to financial fragility due to the movements of funds into and out of the country, and to some types of financially destabilizing activities;
(b) possible effects on balance of payments (especially increased imports and outflow of investment income, which has to be balanced by export earnings and new capital inflows; if the balance is not attained naturally, it may have to be attained or attempted through regulation);
(c) possible effects on the competitiveness and viability of local enterprises;
(d) possible effects on balance between local and foreign ownership and participation in the economy.
(e) possible effect on the balance of ownership and participation among local communities in the society.

On the other hand foreign investment can make positive contributions, such as:

(a) use of modern technology and technological spillovers to local firms.

(b) global marketing network
(c) contribution to capital funds and export earnings
(d) increased employment

In order that these potential benefits be realized, and that a good balance is attained between the negative and positive effects, so there be a overall net positive effect, there is a crucial role for governments in a sophisticated set of investment and development policies.

An investment agreement of the type envisaged by the proponents would make it much more difficult to achieve a positive balance as it would severely constrain the space and flexibility for investment and development policies.

An international agreement on investment rules of this type is ultimately designed to maximise foreign investors' rights whilst minimising the authority, rights and policy space of governments and developing countries. This has serious consequences in terms of policy making in economic, social and political spheres, affecting the ability to plan in relation to local participation and ownership, balancing of equity shares between foreign and locals and between local communities, the ability to build capacity of local firms and entrepreneurs, etc. It would also weaken the position of government vis-à-vis foreign investors (including portfolio investors) in such areas as choice of investments and investors, transfer of funds, performance requirements aimed at development objectives such as technology transfer, protecting the balance of payments, and the formulation of social and environmental regulations.

It is argued by proponents that an investment agreement will attract more FDI to developing countries. There is no evidence of this. FDI flows to countries that are already quite developed, or there are resources and infrastructure, or where there is a sizable market.

A move towards a binding investment agreement is thus dangerous as it would threaten options for development, social policies and nation building strategies. It is thus proposed that the strategy to be adopted, should be to prevent the investment issue from entering the mode of "negotiations." In the working group, cogent points should be put forward on why an agreement on investment rules is not suitable nor beneficial for the WTO. In the discussion on "clarification" and on "modality", points should be made towards this end.

## F. CONCLUSIONS

Investment is not a trade issue, and thus bringing it within the ambit of WTO would be an aberration and could cause distortion to the trade system. The principles of WTO (including national treatment, MFN) that apply to trade in goods are inappropriate when applied to investment. Instead, their application would be damaging to the development interests of developing countries. Traditionally developing countries have had the freedom and right to regulate the entry and conditions of establishment and operation of foreign investments; restricting their rights would cause adverse repercussions. An agreement in WTO is likely to be of the type proposed by developed countries. It would be profoundly anti-development.

Whilst Doha recognised the case for a multilateral framework on investment, it can be argued that it can also be recognised that there is a case against a multilateral framework, depending on what the framework is. If the framework is located in the WTO, with the elements and obligations proposed by the advocates, it would be an imbalanced one and thus should not be

accepted. A more appropriate framework must be a balanced one, with the main aim of regulating corporations (instead of regulating governments); it could be one that is not legally binding; and it could be one that is located in the UN and not the WTO.

The WTO agenda is already over-crowded, with delegations unable to cope. Introducing investment and other "Singapore issues" on the negotiating agenda will divert the time and resources of the Members from the urgent uncompleted tasks, including the implementation and other development issues that Members had pledged to give priority to, but which the developed countries have so far not shown a commitment to make progress on.

The establishment of an investment agreement which in fact gives unprecedented rights to foreign investors would cause the already imbalanced WTO system to become much more imbalanced. Since most international investments are owned by the developed countries, they will obtain the overwhelming share of the benefits, whilst developing countries as a whole would bear the costs, including the loss of flexible space for development policy. The proposed investment framework would not be reciprocal in benefits.

For these reasons, and the fact that there is no consensus on the substance of the issues even as Cancun draws near, the Ministers should not take a decision to launch negotiations on investment at Cancun. They should mandate that the process of study and clarification continue. Or better still, they should come to the conclusion that the investment issue has been divisive and has for too long diverted the attention of the WTO Membership from the real issues of trade and development, and that the issue should be dropped after Cancun.

**THE CLASH OF FRAMEWORKS IN THE COMPETITION ISSUE IN WTO**
**Towards a Development Framework for the Present WTO Discussions**

**By Martin Khor, Third World Network**
**July 2002**

## 1. Background

At the WTO's Singapore Ministerial Conference (1996), Ministers decided to set up a working group on the interaction between trade and competition policy. There was a specific mention that this does not commit Members to negotiate an agreement in the WTO on competition. As in the case of the investment issue, most developing countries have voiced reluctance or opposition to the establishment of a WTO agreement on competition policy. However, with their views not adequately represented in the drafts of the Doha Declaration, there will now be a more intensive discussion of the issue in the WTO working group on trade and competition policy. As with the investment issue, the Declaration states that negotiations (on the interaction between trade and competition policy) will take place after the Fifth Ministerial on the basis of a decision on modalities. Similarly with investment, it is not clear that a decision has been made to negotiate an agreement.

In the meanwhile, more intensive discussions are scheduled on the issue. The Doha Declaration (para 25) mandates that in the period until the Fifth Ministerial, the working group on the Interaction between Trade and Competition policy will focus on clarification of: (1) core principles, including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels; (2) modalities for voluntary cooperation; and (3) support for progressive reeinforcement of competition institutions in developing countries through capacity building. Full account shall be taken of the needs of developing and LDC countries and appropriate flexibility provided to address them.

In the discussions, developing countries should try to engage as fully as possible. It can be challenged whether the principle of non-discrimination is appropriate if applied to competition law and policy in developing countries. The needs of developing countries in general and the need for policy flexibility should also be clarified in the discussion. Moreover, since explicit consensus is also required on the "modalities", it is important for the discussion to clarify this issue, especially since there is no agreed definition of "modalities."

At present, there is hardly any common understanding let alone agreement among countries on what the competition concept and issue means in the WTO context, especially in terms of its "interaction" with trade and its relationship with development. The whole set of issues of competition, competition law and competition policy and their relation to trade and to development is extremely complex. The proposal of the proponents of a WTO agreement is to have multilateral rules that discipline Members to establish national competition law and policy. These laws/policies should incorporate the "core principles of WTO", defined as transparency, non-discrimination (MFN and national treatment.) Thus, the location of the venue of the competition issue and the agreement within the WTO would bias the manner in which the subject and the agreement is to be treated. In this case, the "core WTO principles" would be applied to competition.

Competition law and policy, in appropriate forms, are beneficial, including to developing countries. However each country must have full flexibility to choose a model which is suitable, and which can also change through time to suit changing conditions. Having an appropriate model is especially important in the context of globalisation and liberalisation where local firms are already facing intense foreign competition. In particular, developing countries must have the flexibility to choose the paradigm of competition and competition policy/law that is deemed to be more suitable to their level of development and their development interests.

## 2. Developed Countries' Framework

After the end of the Singapore Ministerial Conference in 1996, the heads of the delegations of the US and the EC made it clear at separate press conferences that for them the objective of having a competition agreement in the WTO is to gain greater market access for their corporations to the markets of developing countries.

A subsequent paper by the EC on application of core WTO principles to competition (issued in 1999) explains this "market access framework" more clearly, that a competition policy framework in WTO should provide "effective opportunity for competition" in the local market for foreign firms. This framework, of applying the WTO "core principles" (particularly non-discrimination and national treatment) to competition law/policy would affect the needed flexibility for the country to have its own appropriate model or models of competition law/policy.

The EU approach would look unfavourably on domestic laws or practices in developing countries that favour local firms, on the ground that this is against free competition. The EU argues that what it considers to be the core principles of the WTO (national treatment and non-discrimination) should be applied through WTO rules on competition policy. Through an agreement on competition in the WTO, it would eventually be compulsory for developing countries to establish domestic competition policies and laws of a certain type. Government policies or practices that favour local firms and investors would be called into question. Private sector practices that favour local firms would also be called into question. For example, if there are policies that give importing or distribution rights (or more favourable rights) to local firms (including government agencies or enterprises), or if there are practices among local firms that give them superior marketing channels, these are likely to be called into question and disciplines may be imposed on them.

The developed countries are arguing that policies or practices that give an advantage to local firms create a barrier to foreign products or firms, which should be allowed to compete on equal terms as locals, in the name of free competition. Such pro-local practices and policies are to be targeted for phaseout or elimination in negotiations for a competition agreement.

## 3. Towards A Development Framework on Competition for Developing Countries

The developed countries' conceptual and negotiating framework can be challenged through a different framework that looks at competition through the lens of development. Developing countries can argue that only if local firms and agencies are given certain advantages can they remain viable. If these smaller enterprises are treated on par with the huge foreign

conglomerates, most of them would not be able to survive. Perhaps some would remain because over the years (or generations) they have built up distribution systems based on their intimate knowledge of the local scene that give them an edge over the better-endowed foreign firms. But the operation of such local distribution channels could also come under attack from a competition policy in the WTO, as the developed countries are likely to pressure the local firms to also open their marketing channels to their foreign competitors.

At present, many developing countries would argue that giving favourable treatment to locals is in fact pro-competitive, in that the smaller local firms are given some advantages to withstand the might of foreign giants, which otherwise would monopolise the local market. Providing the giant international firms equal rights would overwhelm the local enterprises which are small- and medium-sized in global terms.

However, such arguments will not be accepted by the developed countries, which will insist that their giant firms be provided a “level playing field” to compete “equally” with the smaller local firms. They would like their interpretation of “competition” (which, ironically, would likely lead to foreign monopolisation of developing-country markets) to be enshrined in WTO law and operationalised through a new round.

Competition can be viewed from many perspectives. From the developing countries' perspective, it is important to curb the mega-mergers and acquisitions taking place which threaten the competitive position of local firms in developing countries. Also, the abuse of anti-dumping actions in the developed countries is anti-competitive against developing countries' products. The restrictive business practices of large firms also hinders competition. However these issues are unlikely to find favour with the major countries, especially the US, which wants to continue its use of anti-dumping actions as a protectionist device. If negotiations begin, the EU interpretation of competition, ie the need for foreign firms to have national treatment and a free competition environment in the host country, could well prevail, especially given the unequal negotiating strength which works against the developing countries. The likely result is that developing countries would have to establish national competition laws and policies that are inappropriate for their conditions. This would curb the right of governments to provide advantages to local firms, and local firms themselves may be restricted from practices which are to their advantage.

What is required is a conceptual framework or paradigm to view competition from a development perspective. Competition law/policy should complement other national objectives and policies (such as industrial policy) and the need for local firms and sectors to be able to successfully compete, including in the context of increased liberalisation. From a development perspective, a competition and development framework requires that local industrial and services firms and agricultural farms must build up the capacity to become more and more capable of competing successfully, starting with the local market, and then if possible internationally. This requires a long time frame, and cannot be done in a short while. It also requires a vital role for the state, which has to play the role of nurturing, subsidising, encouraging the local firms. The build up of local capacity to remain competitive and become more competitive also requires protection from the "free" and full force of the world market for the time it takes for the local capacity to build up. This means that development strategy has to be at the centre, and competition as well as competition policy has to be approached to meet the central development needs and strategy.

Therefore some of the conventional models of competition may not be appropriate for a developing country. On the other hand other models may be more appropriate, but their adoption may be hindered or prohibited by a WTO agreement on competition that is based on the "core principles of WTO."

There is yet not a convincing case for a multilateral set of binding rules to govern the competition policies and laws of countries; and there are especially justified grounds for serious concern if such an agreement were to be located within the WTO, as it is likely to be skewed in a way that is inappropriate for the development interests of developing countries as a result of the attempt by proponents to apply the "core principles" of WTO to the issue and to the agreement.

If a multilateral approach is needed, there are other venues that are more suitable, for example, UNCTAD which already has a Set of Principles on Restrictive Business Practices. Moreover, if the objective is to arrange for cooperation among competition authorities of countries, then it is unneceassary and inappropriate for the WTO to be the venue.

## 4. Positions for the Current Discussions in WTO

In the discussion on the issues mentioned in the Doha Declaration for the working group, the above points should be taken into account, especially in relation to the needs of developing countries and the need for their policy flexibility. As the list of issues in the Declaration is not an exhaustive one, developing countries can also add other issues for discussion. Das (2002) suggests that the following additional issues could be put forward:

- Obligations of the foreign firms to the host country.
- Obligation of the home government to ensure the foreign firms fulfil their obligations.
- Competitiveness of domestic firms: to consider measures to be undertaken by domestic firms, government and a possible multilateral framework to enable local firms (especially small firms) to remain or to be competitive and to grow.
- Competition impeded by government action (for example, anti-dumping action).
- Competition impeded by IPR protection
- Global monopolies and oligopolies and their effect on local firms in developing countries.
- Big mergers and acquisitions (by transnational companies) and their effects on developing countries.

An approach that can be taken by developing countries in the on-going discussions is as follows:

1. Prepare papers putting forward a development perspective or development framework of the competition issue. These papers can be submitted as formal documents in the Working Group.

2. In the current discussions on clarification of items, on the items listed for discussion arising from the Doha Declaration, put forward positions on these items from the perspective of the development framework.

3. In the same discussions, also put forward new items for clarification, that arise from the development framework on competition, but are not listed in the Doha Declaration. The items mentioned above by BL Das are examples of these items.

4. Prepare a paper on modalities in the light of the above, and guided by the development framework on competition.

# Comments on EC communication on the modalities for the Singapore Issuesand an alternative approach

**By Martin Khor, Third World Network**

Discussion Paper by the Third World Network

## 1. Background

The Doha Ministerial Declaration paragraphs 20, 23, 26 and 27 state negotiations will take place on the 'Singapore issues' of investment, competition, transparency in government procurement and trade facilitation after the 5th Ministerial on the basis of a decision, to be taken, by explicit consensus, on the 'modalities' of negotiations.

"We agree that negotiations will take place after the Fifth Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations."

This is conscientiously clarified by the Chair in Doha in his final statement to mean that the explicit consensus referred to would be a pre-condition for negotiations to begin and that this gives each Member the right to prevent negotiations from proceeding after the Fifth Ministerial. The chair's statement in Doha states:

"I would like to note that some delegations have requested clarification concerning paragraphs 20, 23, 26 and 27 of the draft declaration. Let me say that with respect to the reference to an explicit consensus being needed in these paragraphs, for a decision to be taken at the Fifth Session of the Ministerial Conference, my understanding is that at that session a decision would indeed need to be taken by explicit consensus, before negotiations on trade and investment and trade in competition policy, transparency in government procurement, and trade facilitation could proceed. In my view, this would also give each Member the right to take a position on modalities that would prevent negotiations from proceeding after the Fifth Ministerial conference, until that Member is prepared to join in an explicit consensus."

Since explicit consensus on modalities is a precondition for commencing negotiations, it is very important to clarify the meaning and issue of modalities. The Doha Declaration itself does not define the term "modalities." It would thus be logical to define it from current WTO practice, for example in the current negotiations on agriculture. It is clear that the "modalities" on negotiations on an issue contains the aspects of the issue that are agreed on and the nature and direction of obligations to be undertaken. Consensus on modalities would therefore require agreement by all Members on the specific issues to be covered, and the substantive treatment of these issues, including the nature and direction of obligations and commitments arising from them.

## 2. EC communication of 27 Feb 2003 (WT/GC/W/491)

The EC communication on "Singapore Issues – the Question of Modalities" is inaccurate on the status of the Singapore issues in two ways.

Firstly, in the introduction section, it asserts that negotiations will begin after Cancun as *fait accompli*, and the member states are in the interim engaged in a process of 'clarification'. It is clear however that the commencement of negotiations on the Singapore Issues is entirely dependent on explicit consensus by all member states to do so. It is by no means certain that such a consensus will be agreed on in Cancun. The clarification of the four issues is still on going and there are many areas in the discussion, including basic issues such as scope, definition, principles, obligations, structure, forum for and nature of further discussions, where there are deep differences of opinion. It cannot be assumed that consensus can be reached by Cancun, especially given the short time left.

The paper also states that the Singapore issues are "part and parcel of the Single Undertaking". However the Doha Ministerial Declaration does not state this. Negotiations on the issues have not commenced, neither is there an explicit consensus to begin negotiations. In the present discussions at the WTO, the four issues are not treated as part of negotiations in the Doha work programme, and thus do not come under the TNC. It is thus misleading to state that these issues are part of the Single Undertaking. There was no commitment made in Doha that they are part of the single undertaking.

Second, the EC paper offers a trivialised approach to and an extremely superficial consideration of 'modalities'. It does this by:

(i) Taking all the four issues together (instead of each issue by itself) and proposing to develop a "common set of options for modalities". According to the EC, the "options" should be "sufficiently broad and flexible" to take into account the obvious differences between the four issues, while ensuring that a "positive decision" is taken for the four issues in Cancun.

(ii) Framing the question of modalities in terms of listing the "elements of modalities" while avoiding the substantive aspects ands content of the modalities. Under a section on "elements of modalities", the paper simply provides three subject matters, namely procedural issues (number of meetings, etc), scope and coverage of negotiating agenda, and special and differential treatment. This short and superficial listing of "elements of modalities" fails to capture the breadth and the substance of the discussions on the Singapore issues. Implicit in the EC paper is that explicit consensus on the modalities themselves is not required, only a superficial listing of 'elements'.

This approach is inappropriate, and a different approach needs to be taken.

## 3. The modalities for each Singapore issue should be taken up within its own discussion

Each of the Singapore issues has its own particular aspects, each of them has their own complexities, and each issue is at its own level or stage of discussion. It would thus not be feasible or appropriate to put the four issues into a single basket to consider the question of modalities. The modalities should be taken up within the discussion of each issue itself.

## 4. The treatment of "modalities."

'Modalities' of negotiations is not defined in the Doha Declaration and the EC approach of simply listing the very broad areas for negotiation is woefully inadequate. Since the declaration

has not defined 'modalities', it is therefore rational to understand this in the context of WTO practice. A proper and fuller understanding can be found in the way 'modalities' are treated in the previous and current negotiations in agriculture.

In agriculture, the 'modalities' comprise both (i) the subjects for negotiations, such as market access, export subsidies and domestic support; and (ii) the nature and direction of obligations in those subjects, such as reduction of subsidies and support, reduction of tariffs, and exemptions, etc. In the discussions on modalities in agriculture, Members have put and are putting forward detailed positions on each of the subjects, as well as detailed proposals on the nature, type and specificities of the obligations on each of the subjects.

Thus, in defining the meaning of "modalities", it is clear that a mere classification of issues and a mere listing of some of the elements is not enough. The substance of those subjects and the nature and direction of obligations form a fundamental and intrinsic part of the modalities.

In this context, the EC's paper falls short. It seeks to divert the decision needed on modalities, to a decision on "elements of modalities" or on the **classification** of issues (rather than on agreement on the listing and substance of the issues). It does not provide the contents and substance of the negotiations and merely seeks a **classification** of the subjects and tries to seek agreement on that classification. On the substance and content of these subjects, it is silent. The EC's 'elements of modalities' therefore do not constitute 'modalities'.

Explicit consensus on the modalities is required for negotiations to commence not consensus on how to classify and group the different aspects of the Singapore issues

**Modalities for an issue should be constituted, inter alia, by:**

(i) a detailed list of the subjects that should constitute the discussion or further discussions, or negotiations;
(ii) on each of the subjects listed, the substantive conclusions of what the subject means and how it should be treated; and
(iii) on each subject, the conclusions on the nature and direction of the obligations.

Following this approach on modalities, there is need in each of the Singapore issues to reach a consensus, among other items, on:

- he listing of subjects (that includes the issues for clarification decided on in Doha; since that is not an exhaustive list, it can also include other issues proposed by Members);

- the substantive meaning of each subject, and how it should be treated in the further discussion or negotiation; and

- on each subject, the content and scope and depth of obligations, as well as the nature and direction of obligations and exemptions.

* * * *

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### PERSONAL DATA

Date and place of birth: 15/02/1945 in Vienna
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- Christian Bernert, born1977, studying religion

### PROFESSIONAL CAREER

since 1990 Sole executive partner in 4th generation in family businesses (textiles retail business), **Zur Brieftaube HandelsgesmbH,** founded in 1860, and **Fa. Josef Deim und Sohn GesmbH & Co KG**
1979 - 1990 Executive partner in the above-mentioned businesses
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- Harrods, London UK
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### MEMBERSHIPS, OTHER DETAILS

since 2001 **EuroCommerce**/Brussels, Member of the Steering Committee
since 2001 **Austrian Chamber of Commerce in Vienna**, Department of Trade, member of committee for textiles retail trade

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- since 1998: Vice-President
- 1997/98: Launching and organisation of the initiative "Doppelte Preisauszeichnung Euro/Shilling" in the city of Vienna. This initiative received the government prize for public relations work

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1968 - 1970 **Doctorate at the Institute for World Trade (Hochschule für Welthandel),** Vienna
Dissertation on the development of economics under socialism taking the example of Sweden and CSSR
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1964 - 1968 **Graduate Degree at the Institute for World Trade (Hochschule für Welthandel),** Vienna
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EuroCommerce

**International Trade Committee**

1. WTO: Agriculture, TRIPS, Singapore Issues

**Hearing at the EP (ITRE)**

EuroCommerce is the lobbying representation of the European Commerce Sector – retail, wholesale and international trade – vis-à-vis the European Union. Its member companies and federations are based in 26 European countries. The sector counts 4.7 million companies, 95% of them SMEs. Jobs provided by European Commerce amount to a total of 23 million.

International trade in goods and services needs stable and reliable framework conditions. The availability of new communication and transport technologies has created a need for a level playing field on the basis of commonly recognised multilateral principles and rules.

This need can best be addressed in the context of the ongoing WTO negotiations. EuroCommerce fully supports a successful conclusion of the Doha Development Agenda, leading to meaningful liberalisation of international trade and strengthening the multilateral trading system.

To this end, industrialised countries like the EU need to evidence their sense of responsibility that needs to encompass, in the first place, the further opening of their markets for goods of particular export interest to developing countries, above all in the field of textiles, clothing and agriculture.

On the other hand, the progressive opening of market needs to be accompanied by a set of structural simplification and harmonisation. This applies especially to the four key components: trade facilitation, investment, competition and transparency in government procurement. The benefits of stable framework conditions for all Singapore Issues will accrue to both investing and developing countries.

## TRADE FACILITATION

Standing for the very trade in Europe, EuroCommerce and its members have a particular stake in significant progress in the field of trade facilitation under the WTO. According to figures by the EU Commission, meaningful trade facilitation measures can reduce the costs of trade transactions by up to EUR 300 billion. Simplification, standardisation and modernisation of the procedures underlying movement and release of goods will bring about considerable time savings and thus boost trade world-wide. Small and medium sized companies – who can least afford a highly specialised customs and transit department - are the main beneficiaries of Trade Facilitation.

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EuroCommerce fully supports the start of ambitious negotiations on Trade Facilitation at the Cancún Ministerial. From a Commerce point of view, particular attention should be dedicated to the following key issues:

- Simplification of customs and international payment procedures
- Further simplification of official export/import documentation
- Promotion of the One Stop Shop/Single Window Approach
- Simplification of regulations relating to transport and transit of goods
- Harmonisation of packaging, labelling, certification standards and/or mutual recognition of technical standards and health/sanitary requirements
- Improved access to distribution channels, including ports
- Increased transparency and predictability of regulations
- Facilitation of trade procedures through increased use of information technology (i.e. automated systems)
- Coherent and complementary working of the existing import procedures-related WTO agreements, such as Import Licensing, Rules of Origin, Customs Valuation and Pre Shipment Inspection
- Making information on Customs requirements and related rules easily available to anyone (full use of the internet).

European Commerce needs multilaterally agreed rules to address these items, aiming at bringing about greater predictability, equality of treatment and, as a consequence, legal certainty for European traders. This purpose can be best achieved by

- respecting transparency, non-discrimination and least-restrictiveness as binding core principles;
- a partnership approach between customs and trade.

The 1999 revised Kyoto Convention, but also national Customs reform projects (in the United Kingdom, Sweden etc.) may inspire a WTO agreement on trade facilitation. Another exemplary initiative is the European Electronic Customs project, brought forward by DG TAXUD in close co-operation with traders.

## TRADE AND INVESTMENT

An international comprehensive agreement on framework conditions for investment would be in the interest of all countries - not only the investing countries, since investment promotes the transfer of technology and contributes to economic development at the investment location.

In the developing countries, investment will take place, in the long term, only if reliable and foreseeable investment conditions are guaranteed regarding market access, non-discrimination and investment protection, in particular warranties against expropriation, transparency and predictability of applicable law. EuroCommerce, convinced that reducing the risk of investing abroad will increase investment flows, welcomes the commitment to open new negotiations on trade and investment.

However, many developing countries have not yet been convinced of the advantages of multilateral investment rules so far. At Doha, winning their support for negotiations on trade and investment was one of the main challenges. All the more, it shall be of core importance to increase persuasive efforts from the part of the industrialised countries.

## TRADE AND COMPETITION

So far, legislation in the developing countries has focussed less on rules on competition restraints than in the industrialised countries. However, as competition-hampering practices are likely to increase with the further reduction of trade barriers, a closer international co-operation and harmonisation of competition law is desirable.

Hence, a WTO agreement on trade and competition should lay down a general framework of main cornerstones, based on the basic principles of transparency, non-discrimination and least-restrictiveness. It can also contribute to more compatibility between national competition laws and, consequently, to stem anti-competitive practices.

European Commerce invites the Members of the WTO to come up with more concrete and tangible proposals than so far with views to the upcoming negotiations.

## TRANSPARENCY IN GOVERNMENT PROCUREMENT

Transparency in Government Procurement does not have a tradition in many developing countries. Hence, some time and persuasive efforts by industrialised countries are still needed.

Further work in the framework of the WTO should take into consideration that many developing countries still have the impression multilateral work on this issue was only in the interest of the industrialised nations. Substantial improvements, in particular in the area of non-discrimination, can only be achieved with the support of the countries concerned.

## CONCLUSION

Successful WTO negotiations on Trade Facilitation are a core priority of the European Commerce Sector in the Doha Round. Progress on investment and competition would also be much welcomed, even though due to some reluctance on the side of a number of WTO members this might be difficult to achieve.

The Singapore Issues as a whole are difficult areas for many developing and least-developed countries. When launching negotiations on these issues at Cancún, it will be of paramount importance to ensure the necessary technical assistance and to support capacity building. EuroCommerce recognises the efforts already undertaken in this direction, but more could still be done.

Development is the make-or-break issue of the DDA. It is one of the strong points of the WTO that nothing can be decided against the representatives of the developing world. Hence, any progress on the Singapore issues requires ensuring the support of those countries for the forthcoming negotiations.

* * *

# TRIPs

# MR. PETER EINARSSON


## Peter Einarsson

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Brief CV

- Born 8 December 1955 in Vetlanda, Sweden
- Swedish citizen. Common law marriage since 1976. Four children.
- Mother tongue Swedish. Fluent English. Good reading skills and basic speaking and writing in French and Spanish. Basic reading in German and Italian.

***Formal education***

1975 High School Diploma

1978-82 Part-time studies Stockholm University. Geography, Philosophy, English. No degree.

***Employment***

1976-81 Railway freight handler, Statens Järnvägar, Stockholm.

1982-present Primarily self-employed. Registered company since 1985.

*Professional activity*

1982-present Free-lance journalist, main focus environmental politics. Mostly print media, occasionally radio.

1982-89 Translations from English and French into Swedish. Books, articles, mainly political philosophy. 1985-89 with 5-year government working grant (Författarfonden).

1985-89 Editor, Odlaren (organic farming journal).

1986-present Part-time farming (vegetables, sheep).

1988-present Shorter and longer consultancies, mainly for Swedish and international NGOs, occasionally for government institutions, in the fields of sustainable agriculture, agrobiodiversity, and agricultural biotechnology. National and international representation and lobby activities. A few full-length reports, numerous speaking engagements, papers and contributions to anthologies.

1989-1993 Editor, Bioteknikinformation (general audience biotechnology newsletter).

1994-present Agricultural Policy Advisor, Swedish Association of Ecological Farmers.

***Some recent and current contracts***

1996 Swedish Society for Nature Conservation, North-South Department: Representation at FAO CGRFA April 1996, CBD Biosafety Working Group July 1996, CBD COP3 November 1996.

1996-97 Swedish Association of Ecological Farmers: Participation in official mid-term review of Sweden's agri-environmental programmes.

1997 Federation of Swedish Farmers (LRF): Participation in five regional seminars in preparation for new biotechnology policy, January-March 1997.

1997 Sida (Swedish International Development Cooperation Agency): Review of global biodiversity activities of IUCN, May-September 1997.

1997-98 EU Commission, DG XII: The Socio-Economic Implications of Biopesticides, Research grant (with partners from UK and Spain).

1998-99 Swedish Agriculture Ministry: Participation in drafting committee for agri-environmental programmes 2001-2005.

2000-01 Sida (Swedish International Development Cooperation Agency): Monitoring of various international negotiation processes related to access and benefit-sharing under the Convention of Biological Diversity, including participation in government delegations to CBD, UNCTAD, FAO, and WIPO.

2001 IFOAM EU Regional Group (International Federation of Organic Agriculture Movements): Participation in "Greening the CAP", a brainstorming process organised by the Institute for European Environmental Policy for the EU Commission (DG Agri).

2002-03 Genetic Resources Action International: Monitoring and analysis of intergovernmental negotiations related to community rights over agrobiodiversity and related knowledge (WIPO; WTO, CBD).

***Some recent papers***

- "Grönare CAP" (Greening the CAP; a three-part series about the history and future of EU agricultural policy), Ekologiskt Lantbruk (Journal of the Swedish Ecological Farmers' Association) 2001:10, 2002:1, 2002:2.
- TRIPS. Consequences for developing countries. Implications for Swedish development cooperation. (With Marie Byström.) Sida, 2001.
- "BSE - galna vetenskapssjukan" (BSE - mad science disease), Ekologiskt Lantbruk (Journal of the Swedish Ecological Farmers' Association) 2001:3
- "Genvägen leder inte mot målet", in Naturliga rättigheter, Naturskyddsföreningen, Stockholm 2000.
- Agricultural trade policy as if food security and ecological sustainability mattered. Forum Syd, 2000.
- "Gene banks forever?", Sveriges Utsädesförenings tidskrift (Journal of the Swedish Seed Association), 1999:4
- Fair and Equitable. Sharing the benefits from use of genetic resources and traditional knowledge. (With Marie Byström and Gunnel Nycander.) Swedish Scientific Council on Biological Diversity, 1999.
- The Agenda 2000 CAP reform proposal. Background, content, consequences. IFOAM EU Group & Ekologiska Lantbrukarna, 1998.
- "Genteknik och ekologi" (Gene Technology and Ecology), in Transgena organismer i naturen, Studies in Bioethics and Research Ethics 1, Acta Universitatis Upsaliensis, Uppsala 1997.
- "Från soldrift till olja - och tillbaka igen?" (From Solar Power to Petroleum - and Back Again?"), in Maten och miljön, Naturskyddsföreningen, Stockholm 1996.
- "Limitations of the Risk Perspective: Implications for Biosafety Capacity Building", in Biosafety Capacity Building: Evaluation Criteria Development, Stockholm Environment Institute, Stockholm 1996.

# Statement on TRIPS by Genetic Resources Action International (GRAIN)*

**by Peter Einarsson**

***Public hearing on "WTO: Agriculture, TRIPS and Singapore Issues"***
***Committee on Industry, External Trade, Research and Energy***
***European Parliament, Brussels, 11 June 2003***

TRIPS, the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, introduced an entirely new element into the multilateral trade framework.

Traditionally, trade agreements under the GATT had centered on gradual reduction of tariffs and other trade barriers which hinder international competition. TRIPS effectively does the opposite. By prescribing a global minimum standard for the protection and enforcement of intellectual property rights (IPR), it creates new restrictions for competition. This is one of the reasons why TRIPS was one of the most controversial items in the Uruguay Round negotiations.

But TRIPS was also controversial because the IPR standard it prescribes is a very high one, equivalent to the level found in the major industrial nations, and much higher than in most developing countries. Developing country WTO members are now required to implement within a period of 5-10 years a level of IPR protection which took over 100 years to reach in developed countries.

It is thus not surprising that developing countries were reluctant to accept the TRIPS Agreement, in particular as it offers them no new opportunities. It is important to remember that TRIPS does not create any new forms of IPRs, only obligations as to which existing forms must be provided. Pre-TRIPS, any country was free to implement the selection of IPR forms it judged appropriate, and accede to those international IPR treaties it found useful for its own economic development. Post-TRIPS, most of this flexibility is gone. Over the last few years, several major studies from UN agencies and other independent bodies have confirmed this and made various suggestions about remedies.[1]

Two areas in particular have been identified where TRIPS creates serious problems for developing countries. One is health care, where the issue of access to pharmaceuticals at affordable cost has become a high-profile political issue. Despite over two years of negotiations, there is still not agreement at the WTO on the interpretation of TRIPS in this respect.

The other area is food and agriculture, where TRIPS obligations regarding patents on life forms remain equally disputed, if not nearly as well reported in the media. We would like to concentrate today on two issues where the European Union has a key role. First, the review of the life patenting provisions in TRIPS Art 27.3(b). Second, the so-called "TRIPS-plus" clauses increasingly common in bilateral trade and development agreements.

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**TRIPS Article 27.3(b)**
3. Members may also exclude from patentability:
(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an

## Background

The TRIPS Agreement states, as a general rule, that patents shall be available for all fields of technology. However, it allows room for exceptions. WTO members do not have to patent "plants" or "animals". Nor do they have to patent "essentially biological processes for the production of plants and animals". All members must, however, provide patents on micro-organisms and on microbiological processes.

**Status of implementation of Art 27.3(b) in the South**
There are 69 developing countries and 30 least developed countries (LDCs) in the WTO. The developing countries were supposed to have implemented Article 27.3(b) by January 2000, and the least developed by January 2006. GRAIN estimates that as of May 2003, only 29 developing countries member of WTO had implemented this provision.[1] As for the LDCs, none have implemented with one notable exception. The 16 member states of the African Organisation for Intellectual Property (OAPI) adopted a common plant variety protection law to conform with TRIPS in 1999. It will soon come into force. Twelve of these countries are LDC members of WTO.

Finally, there is a special provision for "plant varieties", the seeds that farmers sow. Plant varieties must be subject to some form of intellectual property regime, but WTO members can choose either the patent system or "an effective sui generis system". (Sui generis means "of its own kind".) Very few countries in the world allow patents on plant varieties as such, so the sui generis option is important. However, as "effective sui generis system" is not defined it is also a source of confusion and disagreement.

Article 27.3(b) of the TRIPS Agreement encapsulates all of these elements and carries an implementation schedule. Developed countries were supposed to have implemented these provisions by January 1996, developing countries by January 2000 and least developed countries by January 2006. By GRAIN's account, less than one third of the WTO membership from the South has so far implemented them.

The main focus of GRAIN's work is to promote local community control over genetic resources and associated knowledge. Working in this perspective, our experience over more than 15 years has been that the introduction of IPRs on seeds or other forms of agricultural biodiversity

- contributes very strongly to a concentration of power over agricultural development in the hands of large transnational companies
- undermines public research and democratic influence over the research agenda
- prevents farmers from saving and exchanging seed, and thus erodes the traditional basis for the seed supply in many developing countries
- raises the cost of food production and decreases food security
- tends to promote industrial monocultures and export agriculture over food production for domestic needs.

**Issue 1: the review of Article 27.3(b)**

As Members of the European Parliament are certainly aware, the extension of the patent system to life forms was far from an uncontroversial issue even in Europe, despite the fact that Europe has a sizeable biotech industry likely to benefit from such patents. For the great majority of developing countries, there was no economic argument at all to introduce them, as they did not have the relevant industry. One important reason that they nevertheless, very reluctantly, accepted the text, was the inclusion of a clause which mandates a substantive review of the whole 27.3(b) subparagraph *before* it comes into force for developing countries. The review was scheduled to start in 1999, four years after the entry into force of TRIPS, whereas developing countries were granted five years to implement, and least developed countries ten years.

During 1999, a number of developing countries submitted a range of different proposals for adjustments of 27.3(b). Developed countries, including the EU, however argued that the review should not address the substance, only implementation. Over a year passed before agreement could even be reached on the obvious, that it should concern "the provisions of this subparagraph", as clearly stated in the text.

Today, four years after the mandated start, the review is still not finalised, mainly because many of the developing country proposals have not received a serious response from the major powers on the developed country side. Developing countries have nevertheless continued to table proposals, with the latest ones arriving only at the end of May this year as a part of the Cancún preparatory process.

Roughly speaking, the debate has focused on four concerns.

- *The patentability of life forms*. The whole African Group has called for a reversal of the current provision, i e a prohibition of all life patenting. Others have proposed various limitations and restrictions, or clarification of key terms such as 'micro-organism'.
- *Harmonisation with CBD.* Various amendments have been proposed to ensure harmonisation with the provisions of the Convention on Biological Diversity, concluded in 1992, well before TRIPS, at the Earth Summit in Rio. CBD mandates its member states to create legislation regulating access to genetic resources and requiring equitable benefit-sharing with the provider. TRIPS contains no safeguards against the grant of patents on unlawfully acquired genetic resources or traditional knowledge (biopiracy). One amendment suggested by many countries is to require patent applicants to disclose the origin of such resources or knowledge, and submit proof that they were acquired with the prior informed consent (PIC) of the original holder, and that benefit-sharing really is arranged.
- *The meaning of 'an effective sui generis system'*. Many developed countries, including the EU, have been inclined to interpret the expression to mean a system compatible with the

UPOV[*] convention on Plant Breeder's Rights, an increasingly patent-like system used in most developed countries. Developing countries, in contrast, are eager to draft their own systems, often incorporating community rights and biodiversity protection.

- *Longer implementation period.* Very widely, developing countries have been asking for an extension of the implementation deadline.

None of these concerns have so far met with much understanding from developed countries. Both the major actors, the United States and the EU, have clearly stated that they will accept no "weakening" of the provision of TRIPS, in other words that they will admit no reduction of the coverage or standards currently provided.

To its credit, the EU has recently tried to provide some middle ground in this stalemate, through its communication of September 2002 to the TRIPS Council.[2] This document declares a willingness to discuss some form of disclosure of origin requirement as an anti-biopiracy measure. However, at closer scrutiny it includes so many reservations as to make the proposal virtually meaningless. For example, the EU would not really make disclosure of origin into a condition for patentability. Even if an applicant provided no information or false information, this would not stop the grant of a patent. (Please see GRAIN's correspondence with Commissioner Lamy for a more detailed discussion of this proposal; available at http://www.grain.org/publications/lamy.cfm.)

Together with the similar stalemate on access to medicines, the lack of progress with this review has greatly contributed to the crisis of confidence between developed and developing country members of WTO, which in turn is threatening the legitimacy of the whole organisation.

The EU is clearly in a position to provide more constructive input. We would strongly recommend the European Parliament to urge Commissioner Lamy to initiate the following confidence-building measures:

- Table a proposal at the WTO to suspend implementation of TRIPS for all developing countries until the 27.3(b) review has been finalised and agreement reached between WTO members about necessary adjustments.
- Propose an EU-wide moratorium on the patenting of inventions based on genetic resources and traditional knowledge until some substantive safeguard against biopiracy has been implemented in European legislation.
- Invite all other WTO members to join this moratorium.

**Issue 2: TRIPS-plus**

The promise of a pre-implementation review was one important reason why developing countries finally agreed to sign TRIPS. But perhaps even more important was that they also felt they had received a promise that when IPR standards were included in the multilateral trade framework, all bilateral pressure to raise standards further would cease. There is seemingly very clear language to this effect in TRIPS Art 1.1: *"Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement"*.

[*] The International Union for the Protection of New Varieties of Plants; UPOV is the French acronym.

In reality, bilateral pressure has anything but ceased. While the review drags on, and developing countries struggle with the life patenting provisions of the Agreement, developed countries are routinely including TRIPS-plus standards of IPR protection in bilateral and regional trade agreements. Together with the US, the European Union is the major player in this backdoor policymaking.

GRAIN has identified over a dozen bilateral and regional trade, development, or partnership agreements either concluded or in the making between the EU and almost 90 developing countries that contain TRIPS-plus provisions as far as biodiversity is concerned.[3] The TRIPS-plus provisions typically amount to requiring:

- implementation of UPOV standards for intellectual property protection of plant varieties
- accession to the UPOV Convention
- accession to the Budapest Treaty on the Deposit of Microorganisms for the Purpose of Patent Protection
- recognition of patents on plant varieties and/or biotechnological inventions
- commitments to "highest international standards" of IPR protection on life forms

All of these elements take developing countries beyond their obligations to the WTO in a very sensitive area and in a very unfortunate manner. It is very difficult for a developing country to say 'no' to these demands when they come attached to the provision of preferential trade and aid concessions by the European Union. Even worse, this approach undermines democratic processes in the developing countries, at a time when the EU claims to be centrally concerned about good governance. We continuously hear from colleagues in the South how these bilateral negotiations are kept from public view, how they create a legislative and political *fait accompli* and make public debate impossible. Heavy indebtedness is frequently part of the story. A country in debt has little bargaining power.

It is self-contradictory for the EU to tell developing countries at the multilateral level that they have options, choices and flexibility, and then at the bilateral level pressure them to abandon those options, choices and flexibility. And it is anti-democratic to pursue this kind of treaty-making away from public scrutiny.
We ask the European Parliament to help stop this distasteful doubledealing by urging Commissioner Lamy to initiate the following actions:

- Stop including TRIPS-plus clauses in agreements between the EU and developing countries, in particular clauses with direct impact on the control over genetic resources for food and agriculture.
- Amend all current TRIPS-plus agreements or drafts to exclude such provisions.
- Invite all other members of the WTO to do the same.

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# PROF. CARLOS M.CORREA

**Director of the Center for Interdisciplinary Studies of Industrial Property Law and Economics, University of Buenos Aires**

Following studies on economics and law at the University of Buenos Aires, from which he also obtained his doctorate, he has pursued a career in academia and consultancy, with activities for a time in government.

From 1984-89, he was Under-secretary of State for Informatics and Development in the Argentine national government. During this period he was co-ordinator of the Inter-ministerial Group on Intellectual Property. He was also from 1988 to 1991 government delegate in international negotiations on intellectual property (including the Washington Treaty on integrated circuits and the TRIPS Agreement). He also participated, as FAO consultant, in the negotiation of the FAO International Treaty on Plant Genetic Resources.

He was Director of the UNDP/UNIDO Regional Program on Informatics and Microelectronics for Latin America and the Caribbean from 1990 to 1995, and was director of research projects sponsored by the International Development Research Centre of Canada.

He is Director of the Post-graduate Courses on Intellectual Property and of the Masters Program on Science and Technology Policy and Management of the University of Buenos Aires. He has been a Visiting Professor in post-graduate courses of the Universidad Carlos III (Madrid, Spain), Tulane University (New Orleans, USA), Universidad del Externado (Colombia), UNAM (Mexico), Universidad Nacional de Ingeniería (Peru), and of the National Universities del Litoral (Santa Fe), Mar del Plata, Córdoba, Resistencia, La Plata and Entre Ríos (Argentina). He has also taught international trade law at the University of Toronto as well as in courses organized by the World Bank, Inter American Development Bank, UNIDO, UNCTAD, among other international organizations.

He has been a consultant to UNCTAD, UNIDO, WHO, FAO, Inter American Development Bank, INTAL, World Bank, SELA, ECLA, UNDP and other regional and international organizations in different areas of law and economics, including investment, science and technology and intellectual property. At different times he has advised the governments of Canada, Spain, Ecuador, Guatemala, Dominican Republic, Uruguay, Jordan, South Africa, Indonesia on these issues and has been a consultant to the Rockefeller Foundation and DFID (United Kingdom). He is currently a member of the UK International Commission on Intellectual Property, established in 2001.

In 1999 he was a finalist of the "World Technology Award for Policy" competition of *The Economist*, for the contributions made "in the area of intellectual property, particularly in the field of biotechnology in developing countries" .

He is the author of several books and numerous articles on law and economics, particularly on investment, technology and intellectual property. His recent publications include work on intellectual property and international trade; integrating public health concerns into patent legislation; policy options for intellectual property legislation on genetic resources; international investment regimes; and competition law and development policies.

# THE TRIPS AGREEMENT: ISSUES FOR CANCUN AND BEYOND[9]

**Carlos M. Correa**
University of Buenos Aires
June 2003

The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (" TRIPS") brought about a very important change in international standards relating to intellectual property rights. Because of its far-reaching implications, particularly with respect to developing countries, the agreement has been one of the most controversial components of the WTO system. Strong disagreements on the scope and content of the Agreement emerged during the Uruguay Round negotiations, both between developed and developing countries and among developed countries themselves. Implementation of the Agreement and its review under the "built-in agenda" have also been contentious with regard to many aspects of the Agreement.

The developed countries (particularly the USA) insisted upon the negotiation and adoption of standards on intellectual property rights ("IPRs") in the Uruguay Round, based on the argument that strengthened protection of IPRs would promote innovation as well foreign direct investment ("FDI") and technology transfer to developing countries. Although the TRIPS Agreement only became effective in advanced developing countries on January 1, 2000, meaning that there has not been much time to assess its impact, most developing countries seem to remain unconvinced about the benefits that they will obtain from the implementation of the new IPR standards. Moreover, many of them fear that the costs to be paid may be too high, particularly in critical areas such as public health. Essentially, many developing countries feel that despite the balance sought in some provisions, the Agreement mainly benefits technology-rich countries. There are a number of reasons for these concerns.

*First*, higher levels of IPR protection do not appear to lead to tangible increases of FDI in or technology transfer to developing countries. The evidence on the relationship between IPR protection on the one hand and FDI and technology transfer on the other continues to be inconclusive.[10] In addition, the share of developing countries in world research and development expenditures remains very low.[11] Certainly, IPRs may promote innovative activities to the extent that they offer the promise of extraordinary benefits based on the temporal exclusion of competitors. But in order for those benefits to be realized, an adequate industrial and technological infrastructure must exist at the national level, which is not the case in most developing countries. There is also strong evidence suggesting that most of the rewards from innovation are reaped by a small minority of successful companies, while the majority of innovative efforts confer only modest benefits, in addition to the fact that, because of the high cost of litigation, IPR enforcement is biased in favor of large organizations.[12]

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[9] This paper is partially based on "The TRIPS Agreement from the perspective of developing countries", in Patrick Macrory and Arthur Appleton (Editors), in The Kluwer Companion to the World Trade Organization, Kluwer Law International, London (forthcoming 2003).

[10] *See, e.g.,* KEITH MASKUS, INTELLECTUAL PROPERTY RIGHTS IN THE GLOBAL ECONOMY 87-141(2000).
[11] United Nations Development Program, HUMAN DEVELOPMENT REPORT 67 (1999).
[12] F.M. Scherer, *The Innovation Lottery*, in EXPANDING THE BOUNDARIES OF INTELLECTUAL PROPERTY. INNOVATION POLICY FOR THE KNOWLEDGE SOCIETY 15, 21 (Rochelle Dreyfuss, Diane Zimmerman, and Harry First eds. 2001).

*Second*, in some sectors IPRs appear to act as a powerful barrier to access to technologies and products, particularly by the poor. This is notably the case in relation to pharmaceuticals. By their very essence, patents enable pharmaceutical manufacturers to charge higher prices than those that would have existed in a competitive environment. While the high prices are said to be justified by the need to recover costly investments in R&D, the magnitude of such investment, as well as the pricing of drugs in developing countries, has been strongly contested.[13]

The AIDS crisis in Africa, and growing evidence about the negative implications of patents for access to medicines by the poor, have brought the relationship between TRIPS and health to the forefront. With more than thirty million people living with HIV, most of them in the poorest regions of the world, the need to address the problem of access to patented medicines has emerged as a global priority. While it is true, as argued by the pharmaceutical industry, that other factors such as infrastructure and professional support play an important role in determining access to drugs,[14] it is also true that the prices that result from the existence of patents ultimately determine how many will die from AIDS and other diseases in the years to come. It is important to note that the problem of access to medicines is not limited to anti-retrovirals, but involves all kinds of medicines that may fall under patent protection.

Some recent WHO-sponsored studies provide an indication of the potential effects of the TRIPS Agreement in the area of pharmaceuticals. A study undertaken in Thailand on the impact of that country's 1992 revised patent law, which essentially applies the same standards as those required by the TRIPS agreement, found that there had been no significant increase in transfer of technology or foreign direct investment, and that spending on pharmaceuticals had increased at a higher rate than overall health care spending.[15]

Another study on the implications of the new Industrial Property Code (1996) on local production and access to medicines in Brazil revealed *inter alia* that:

- Only 36 (2.6 percent) of the 1387 drug patent applications filed since 1996, when the new Brazilian Industrial Property Act was signed into law, were filed by residents of Brazil. More than five hundred of the filings were made by U.S. residents.

- While Brazil's total imports roughly doubled during the period 1982 - 1998, pharmaceutical imports increased over 47 times.

The study concluded that "the greatest beneficiaries of recent changes in Brazilian legislation and the implementation of the World Trade Organisation's TRIPs Agreement have not been Brazilian companies or institutions, but transnational companies…."[16] .

More generally, Maskus has noted the scarcity of data on price elasticities and market-structure parameters, and the uncertainty about the potential effects of patents on prices, profitability and innovation. However, based on available literature, he found that "the preponderance of

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[13] OXFAM, CUT THE COST -- FATAL SIDE EFFECTS: MEDICINE PATENTS UNDER THE MICROSCOPE 31 (2000).

[14] INTERNATIONAL INTELLECTUAL PROPERTY INSTITUTE, PATENT PROTECTION AND ACCESS TO HIV/AIDS PHARMACEUTICALS IN SUB-SAHARAN AFRICA 23 (2001).

[15] SIRIPEN SUPAKANKUNTI, *et al*., STUDY OF THE IMPLICATIONS OF THE WTO TRIPS AGREEMENT FOR THE PHARMACEUTICAL INDUSTRY IN THAILAND 82 (1999).

[16] Jorge Bermudez, Ruth Epsztejn, Maria Auxiliadora Oliveira and Lia Hasenclever, *The WTO TRIPS Agreement and Patent Protection in Brazil: Recent Changes and Implications for Local Production and Access to Medicines* 95 (MSF/DND Working Paper 2000), available at http://www.neglecteddiseases.org/4-4.pdf.

conclusions is pessimistic about the net effects of drug patents on the economic welfare of developing countries (or, more accurately, of net importers of patented drugs)."[17]

Some of the concerns of developing countries about the implications of the TRIPS Agreement on public health were reflected in the negotiation and adoption of the "Doha Declaration on the TRIPS Agreement and Public Health"[18], at the Fourth WTO Ministerial Conference (November 9-14, 2001). WTO Members took the unprecedented step of adopting a special declaration[19] on this controversial matter. Discussion of the declaration was one of the major issues at the Conference[20], and was the first outcome of a process that started in early 2001 when, upon the request of the African Group and other developing countries, the Council for TRIPS agreed to deal specifically with the relationship between the TRIPS Agreement and public health[21]. Unfortunately, the Council for TRIPS has failed to find a solution for the supply of drugs to countries who, due to insufficient or the lack of manufacturing capacity in pharmaceuticals[22], are unable to use compulsory license in order to obtain access to drugs at lower prices than those charged by patent owners.

While some developed countries have announced unilateral moratoria with regard to the export of certain types of drugs, these measures do not provide a stable framework to encourage Members and the private sector to act in response to public health needs in Members with insufficient or no manufacturing capacity in the pharmaceutical sector.

Even if a waiver were sanctioned under WTO rules to address this problem, it would not dissipate the legal uncertainty about actions that can be legally taken and it would be unlikely, hence, to induce potential exporting countries to encourage production for export, nor would it provide the necessary economic incentives for generic manufacturers to make the investments required to replicate the technology, produce the active ingredients and dosage forms, and obtain the respective marketing approval for the medicines in need.

A possible solution to the para. 6 problem should ensure:

- timely access to medicines by all;

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[17] MASKUS, *supra* note 3, at 160.

[18] WT/MIN(01)/DEC/W/2, November 14, 2001, hereinafter "the Doha Declaration".

[19] Paragraph 17 of the general Ministerial Declaration states: "We stress the importance we attach to implementation and interpretation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in a manner supportive of public health, by promoting both access to existing medicines and research and development into new medicines and, in this connection, are adopting a separate Declaration".

[20] The Director General of WTO emphasized the importance of this issue on the opening day of the Conference, indicating that agreement on public health and TRIPS was the "deal breaker" of the new round. Pascal Lamy, the EU Commissioner for Trade, stated at the Conference that "… we must also find the right mix of trade and other policies — consider the passion surrounding our debate of TRIPS and Access to Medicines, which has risen so dramatically to become a clearly defining issue for us this week, and rightly so".

[21] The Council for TRIPS convened special sessions (which were held in June, August and September 2001) to deal with the relationship between health and TRIPS. *See* the submissions made by the European Communities and their Members States on *The Relationship Between the Provisions of the TRIPS Agreement and Access to Medicines*, IP/C/W/280 (June 12, 2001); the paper submitted on the same issue by the African Group, Barbados, Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, Honduras, India, Indonesia, Jamaica, Pakistan, Paraguay, Philippines, Peru, Sri Lanka, Thailand and Venezuela, *TRIPS and Public Health*, IP/C/W/296 (June 29, 2001). *See also, Special Discussion on Intellectual Property and Access to Medicines,* IP/C/M/31, (July 10, 2001).

[22] See paragraph 6 of the referred to Declaration.

- simple and speedy legal procedures in the exporting and importing countries, to allow for the fast supply of needed medicines, with the required quantity and quality;
- equality of opportunities for countries in need of medicines, even for products not patented in the importing country and for countries which are not WTO Members;
- transparency and predictability of the applicable rules in the exporting and importing countries, so as to provide the required incentives to the private sector to act within the established framework;
- the freedom of importing countries, confirmed by the Doha Declaration, to grant compulsory licenses and authorizations for government use on the grounds determined by the national law, including in cases of health emergencies.
- broad coverage in terms of public health problems and the range of medicines according to the priorities defined by the national health authorities;
- stability of the international legal framework for a long-term solution;
- facilitation of a multiplicity of potential suppliers of the required medicines, both from developed and developing countries, and the realization of economies of scale.

The text of the Chairman of the Council for TRIPS of December 16, 2002 (JOB(02)/217), which received support from the great majority of Members, establishes a number of conditions for allowing exports of patented medicines, which is hardly compatible with the idea of an "expeditious" solution. The opposition by the USA to apply this proposed solution to all diseases, as agreed in Doha, has frustrated the approval of the Chairman's proposal so far[23]. A simpler and more effective approach would be based on the recognition that acts exclusively related to exports to countries with public health needs are not subject to patent rights. Given the territoriality of patent rights, the commercialization of a product in a foreign country does not affect the normal exploitation of the patent in the exporting country. Though the patented invention would be used in the latter, the effects of such use will take place in a foreign jurisdiction and be subject, therefore, to the rules applied therein. Such a limited utilization would not unreasonably prejudice the legitimate interests of the patent owner in the exporting country.

It should be noted, in this regard, that on October 3, 2002, the European Parliament adopted Amendment 196 to the European Medicines Directive, which provides that "manufacturing shall be allowed if the medicinal product is intended for export to a third country that has issued a compulsory licence for that product, or where a patent is not in force and if there is a request to that effect of the competent public health authorities of that third country".This is the approach that should inspire a solution under paragraph 6 of the Doha Declaration.

*Third*, the adoption of the TRIPS Agreement as a component of the WTO system means that any controversy relating to compliance with the minimum standards established by the Agreement should be resolved under the multilateral procedures of the WTO. The adoption by another Member of unilateral trade sanctions would be incompatible with the multilateral rules. Any complaint should be brought to and settled according to the rules of the Dispute Settlement Understanding ("DSU")[24].

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[23] It is important to note that a solution to the paragraph 6 should be found before the Cancun Ministerial Conference. This is not an issue for which developing countries should be expected to make any compensatory concession (as it is the practice in WTO negotiations), since this is only a matter of *implementation* of an agreement reached at the Doha Ministerial Conference.

[24] However, a WTO panel in a case initiated by the EC and their Member States that examined the consistency with WTO obligations of the authorization given to the U.S. government to retaliate under several provisions (such as "Special 301") of the U.S. Trade and Tariff Act of 1984 (19 U.S.C § 2114c(2)(A)) did not find -- based on a

Despite this, many developing countries have continued to be pressured by unilateral demands by some developed countries, notably the United States and the EU, in the area of IPRs, aiming not only at the implementation of the TRIPS Agreement standards, but often asking for " TRIPS-plus" protection, that is, levels of protection beyond the minimum standards required by the TRIPS Agreement. A telling case that received considerable public attention was the attempt by the U.S. government and pharmaceutical industry to block the use of parallel imports and compulsory licenses by the South African government to obtain access to cheaper HIV/AIDS drugs[25]. In other cases, developing countries were persuaded to adopt " TRIPS-plus" standards in order to benefit from other trade concessions under bilateral agreements.[26]

In addition, nothing seems to prevent WTO Members from applying unilateral pressure, for instance, by threatening the removal of trade preferences that go beyond WTO commitments or cuts in development aid, or through simple moral persuasion. As noted by Primo Braga and Fink, the United States has continued to put unilateral pressure on countries where it felt that weak IPR systems disadvantaged U.S. companies. One of the most prominent cases in this context was, in addition to the South African case, the dispute with Argentina on pharmaceutical patents, which in 1997 led to the removal of 50 per cent of Argentina's benefits under the U.S generalized system of preferences (GSP).[27]

*Fourth*, Article 66.2 of the TRIPS Agreement establishes an outright obligation on developed countries "to provide incentives to enterprises and institutions" in their territories for the transfer of technology to least-developed countries. Though Article 66.2 leaves a great deal of leeway to developed countries to determine what kind of incentives to provide, it does require the establishment of a system to encourage technology transfer (including technology protected under intellectual property rights) to least-developed countries. The provision also provides a general standard to judge the appropriateness of such incentives, i.e., that they should enable least developed countries "to create a sound and viable technological base". This obligation remains unfulfilled.

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commitment by the U.S. government not to apply sanctions without WTO authorization-- a violation of WTO obligations. *See* Report of the WTO Panel, *United States – Section 301-310 of the Trade Act of 1974*, WT/DS152/R (2000). *See also* Part III.B.7 *infra*.

[25] An estimated twenty percent of South Africans are infected with HIV. A very minor portion of these have access to AIDS drugs. South Africa law established provisions that were challenged by the pharmaceutical manufacturers trade association and 39 pharmaceutical companies before the South African Supreme Court. U.S. development aid to South Africa was also conditioned on the withdrawal of the provisions (see US Public Law 105-277 (105th Congress, 1999). After a global NGO campaign, in which activists from the U.S., Africa and Asia opposed the U.S. government and commercial sanctions, the legal action was withdrawn. Several pharmaceutical companies offered to provide AIDS drugs at a discounted price (60 – 85 percent off the price charged in the U.S. or Europe) See, e.g., Marie Byström and Peter Einarsson, *TRIPS -- Consequences for Developing Countries: Implications for Swedish Development Cooperation* 38 (2000), Consultancy Report to the Swedish International Development Cooperation Agency, available at http://www.grain.org/docs/sida-trips-2001-en.PDF.

[26] For example, the bilateral agreements entered into between the EC and their Member States and South Africa (1999), Tunisia (1998) and the Palestinian Authority (1997) require the latter to ensure adequate and effective protection of intellectual property rights "in conformity with the highest international standards". *See*, e.g. Peter Drahos, *Developing Countries and International Intellectual Property Standard-Setting* 14-18 (2002), study prepared for the UK Commission on Intellectual Property Rights, available at http://www.iprcommission.org.

[27] Carlos Primo Braga and Carsten Fink, *Trade-related Intellectual Property Rights: From Marrakech to Seattle*, in THE WORLD TRADE ORGANIZATION MILLENNIUM ROUND 192 (Klaus Günter Deutsch and Bernehard Speyer eds. 2001).

*Fifth*, developing countries possess most of the biodiversity available in the world and are the source of materials of great value for agriculture and industry (e.g. medicinal plants). Traditional farmers, for instance, have improved plant varieties and preserved biodiversity for centuries. They have provided gene pools crucial for major food crops and other plants. A major concern in many developing countries has been how to prevent the misappropriation of their traditional and indigenous knowledge and genetic resources, and how to ensure the sharing of the benefits obtained from the commercial exploitation of biological materials and associated knowledge, as provided for by the Convention on Biological Diversity (article 15).

The misappropriation by foreign companies and researchers, notably under patents, of genetic resources and traditional knowledge found in developing countries, has been illustrated by the cases of patents granted on ayahuasca, quinoa and turmeric, among others. Some governments and NGOs have counteracted this form of so-called "bio-piracy" by challenging (in some cases successfully) the validity of such patents or by promoting the publication of traditional knowledge in order to preempt its patentability.

Some of these concerns have been addressed by the International Treaty on Plant Genetic Resources for Food and Agriculture. The prompt ratification and entry into force of the Treaty will ensure that the access to and use of genetic resources for food and agriculture is subject to a Multilateral System under which benefit sharing is provided for. The Treaty lays down international rules to prevent the protection under intellectual property rights of materials in the Multilateral System "in the form received".

The compulsory disclosure of the source of biological materials in patent applications may also provide a mechanism to address developing countries concerns about misappropriation and benefit sharing. Article 29 of the TRIPS Agreement may be amended to this effect, so as to incorporate an obligation on the applicant to make a declaration about

(1) the source and the geographical origin, as known to the applicant, of any biological material claimed or on which a claimed is based;

(2)compliance, where appropriate, with any applicable national laws requiring prior informed consent for the access to biological material claimed or on which a claimed is based.

These obligations do not create an *additional* patentability requirement, but rather aim at obtaining information to apply the existing standards. As a matter of principle, a patent should not be granted to a person who has not made an "inventive contribution". Information about the source or country of origin is important to determine whether the applicant has effectively made the invention. Inventorship is a basic element in patent law and there are no limitations under the TRIPS Agreement with regard to means to determine it[28]. In addition, providing such information would not impose a significant burden on the applicant, and may improve the quality of patent grants, as far the supplied information may be used to improve the examination process.

[28] See the Report of the WTO case *United States-Section 211 Omnibus Appropriations Act of 1998* (WT/DS176/AB/R) where the Appellate Body (supporting the panel's view) held that neither the TRIPS Agreement nor the Paris Convention addresses the question how the ownership of a trademark is determined, and that is an issue to be determined by national law (para. 188-189). The same doctrine is arguably valid for patents and other IPRs.

The obligation to inform about compliance of access legislation, if it exists and is applied in the country from which the material was obtained, would ensure consistency with the prior informed consent principle under the CBD.

The failure to comply with these obligations should lead to rejection of the application. It is important to note that the EC recognised disclosure of origin as a principle in the preamble to Directive 98/44 on the Legal protection of Biotechnological Inventions, and that the EC and their members States have expressed their support to a compulsory requirement relating to the "geographic origin of genetic resources or TK used in the inventions", though they argue that non compliance or false information should have no effect on the grant of the patent or its validity[29].

In sum, developing countries generally feel that the concessions they made during the Uruguay Round with respect to IPRs are not providing them with significant benefits. Strong asymmetries in the development of and access to technologies remain or are even growing. Developing countries are bearing the costs of a system of reinforced IPR protection under the WTO, while enjoying few of its potential advantages. Concrete steps should be taken to redress the asymmetries of the international IPRs system.

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[29] See Communication by the European Communities and their Member States to the TRIPS Council on the review of article 27.3 (b) of the TRIPS Agreement, and the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD) and the protection of traditional knowledge and folklore. A concept paper, 12 September 2002.

# AGRICULTURE

# HIS EXCELLENCY GRAÇA LIMA

## Curriculum Vitae

**Mr. José AIfredo Graca Lima**, a career diplomat, was born in Rio de Janeiro, Brazil, on April 21st, 1946.

Graduated from the Catholic University of Rio de Janeiro (Law School) and from Rio-Branco Institute (school for Brazilian career diplomats) both in 1969.

Second Secretary in the Permanent Mission of Brazil in Geneva and Delegate in the Tokyo Round of Multilateral Trade Negotiations (1974- 1977).

Delegate to UNCTAD and WIPO bodies (1974-1977). Assistant to the Minister of External Relations of Brazil, Brasilia (1977-1980).

Head of the Trade Policy Sector of the Brazilian Embassy in Washington, D.C. (1980-1983).

First Secretary (1983-1984) and Counsellor (1984-1985) in the Brazilian Embassy in Paramaribo.

Counsellor in the Permanent Mission of Brazil in Geneva (1986- 1988).

Head of the Brazilian Delegation to the Committee on Anti-Dumping Practices and to the Committee on Subsidies and Countervailing Measures (1986-1988).

Elected Vice-Chairman of the Subsidies and Countervailing Measures Committee (1988).
Concluded the XVII Course of High Level Studies in Rio- Branco Institute after having substantiated a thesis on the Safeguard Clause of GATT, Article XIX (1988).

Head of the Trade Policy Division of the Ministry of External Relations of Brazil, Brasilia (1988-1991).

Member of the Brazilian Delegation to the Trade Negotiations Committee (Uruguay Round) meetings at ministerial level in Montreal (1988), Brussels (1990) and Marrakesh (1993).

Minister-Counsellor in the Permanent Mission of Brazil in Geneva and Deputy Permanent Representative of Brazil to the GATT (1991-1994).

Deputy Chief Trade Negotiator in the Uruguay Round of Multilateral Trade Negotiations (1991-1994).

Elected Chairman of the Committee on Anti-Dumping Practices (1994).

Senior Economic and Trade Advisor to the Minister of External Relations (1995-1996).

Director-General of the Economic Department, Ministry of External Relations (1996-1998).

Promoted by merit to Ambassador in December 1997.

Undersecretary-General for Integration, Economic and Foreign Trade Affairs of the Ministry of External Relations (1998-2002).
National Coordinator of MERCOSUL and Representative to the Common Market Group; Chairman of the Brazilian Section of the FTAA and Representative to the Trade Negotiations Committee of the FTAA.

Chairman of the Interministerial Group for the WTO Negotiations and Representative to Capital-Based Senior Officials' Meetings in Geneva.

Chairman of the Brazilian Section of the MERCOSUL-European Union.

Agreement and Representative to the Birregional Negotiations Committee.

Market Access Manager of the Special Program for Exports; and Permanent Member of the Brazilian Foreign Trade Board (CAMEX) (1998-2002).

Appointed Ambassador, Head of the Brazilian Mission to the European Communities in Brussels (2002)

**Decorations**

Order of Rio Branco, Brazil
Medal of Merit Tamandaré (Brazilian Navy)
Order of Merit Brazilian Air Force
Order of Infante Dom Henrique (Portugal)
Order of Merit (Federal Republic of Germany)
Order of Merit Brazilian Army
Order of Merit Brazilian Navy
Order of Merit (Italy)
Order of Danebrog (Kingdom of Denmark)
Order of Merit (Romania)
Order of Bernard O'Higgins (Chile)
Ambassador Graça Lima is married to Mrs. Mariza C.S. Graça Lima and has two daughters.

# WTO NEGOTIATIONS

**Ambassador José Alfredo Graça Lima**

## Presentation at the Commission of Industry, External Trade, Research and Energy

The overall objective of Cairns Groups' Countries in the WTO negotiations is to integrate agriculture more fully into the multilateral trading system.

This objective was first foreseen along the negotiations in the GATT-General Agreement on Tariffs and Trade, which preceded WTO.

Nevertheless, at that stage, agriculture was not yet effectively part of the negotiations.

Only during the Uruguay Round (concluded in 1995, with the agreements signed in Marrakech), modest progresses were achieved in agricultural issues.

From the point of view of the Agricultural Sector, it could be said that the deals achieved in the end of the UR concerning reduction of internal support and export subsidies were so important as the compromise included into the Agreement on Agriculture (AoA), that Member States should go on addressing the normalisation in agricultural trade in subsequent rounds of multilateral negotiations.

It was based on this mandate that WTO members – with active participation of former Director General Sir Leon Brittain - began an exercise of preliminary talks in order to launch a new round of trade negotiations. This effort concluded, however, with the unsuccessful Ministerial Meeting of Seattle.

In order to avoid another frustrating attempt, member states made a remarkable effort to achieve a compromise in the meeting of Doha, in November 2002. The adopted "Development Agenda", included aspects concerning "substantial increase" in market access and progressive reduction of subsidies ("pashing out"), as well as other aspects of great importance for the developing countries.

The Doha deadline of 31 March 2003 for reaching agreement for modalities on agriculture negotiations has now come and gone with no agreement having been reached. However, we still expect that the difficulties can be overcome by the Ministerial of Cancun, next September, so that the mandate of Doha can be fully accomplished.

- x -

Cairns Group considers that an ambitious outcome on agriculture in the negotiations is a prerequisite for a successful conclusion to the Doha Round. Real cuts in distorting domestic support are fundamental to agricultural trade reform.

In addition to substantial reductions in all forms of production and trade distorting domestic support, the Cairns Group has proposed in the WTO that certain direct payments be capped and reduced in order to prevent potential distortions.

In Cairn's Group view, the EU's WTO agriculture negotiating proposal tabled in January this year (based on the Agenda 2000 reforms) fails to provide a basis for genuine reform of the world agricultural trading system and fall short of the mandate agreed at Doha in 2001.

In the perception of the Group, the EU is looking for an outcome that would not require any further reform on the part of the EU. We believe that, to allow negotiations to move forward, greater negotiating flexibility is required. The approval of reform proposals could permit the EU to bring forward a revised proposal to the WTO Membership for consideration.

Cairns Group members expect that negotiations in Geneva will conduct to increase liberalisation on agricultural trade. It is our objective that the agricultural products can also benefit from existing clear trade rules.

Besides, our expectation is that CAP reform can eliminate or substantially reduce some practices that provoke distortions on agricultural markets, impeding our countries of taking advantage of being efficient agricultural producers.

* * *

# MR RICARDO MELENDEZ


INTERNATIONAL CENTRE FOR
TRADE AND SUSTAINABLE
DEVELOPMENT

**Ricardo Meléndez-Ortiz** (Colombia) is co-founder and first Executive Director of the International Centre for Trade and Sustainable Development, since 1996. He is the Vice-Chair of the Commission on Environmental, Economic and Social Policy (CEESP) and the Chair of CEESP's Group on Environment, Trade and Investment (GETI). Previously he has in turns been involved in strategic stakeholder positions of the international negotiations system: as Director co-founder and General Director, Fundacion Futuro Latinoamericano (1994-1996, Quito, Ecuador); as a delegate and principal negotiator for Colombia for the Uruguay Round, the UNCED negotiations and other bilateral and plurilateral processes; as spokesman for G-77, non-alligned countries and regional groupings (1988-1994); and as a consultant for an International Organisation, UNDTCP. He has also served in his country's government as Principal Advisor to the Colombian Minister of Economic Development and on several boards and policy committees of Colombia (1987-1988 Bogota). He undertook graduate studies in Administration and Management, at Harvard University; undergraduate studies in Economics and Political Science at Los Andes University, Bogota-Colombia; and holds a Bachelor of Arts in Social Sciences from Harvard University.

# EUROPEAN PARLIAMENT

## Committee on Industry, External Trade, Research and Energy

## Public hearing on "*WTO: Agriculture, TRIPS and Singapore issues"*

**Brussels, 11 June 2003**

Bullet Points for Speech on Agriculture (from 15h20 - 15h30)

- WTO agriculture negotiations currently in impasse, end-March deadline for establishment of modalities missed;
- Members hope to settle most contentious issues by the September Ministerial Conference in Cancun; Mexico;
- Danger: 'Blair House 11' = 'elephants' in Ag trade - i.e. US & EU - strike bilateral deal on key benchmarks in the Ag negotiations which then rest of Membership is forced to accept;
- But process more diverse than during Uruguay Round, others - especially active developing countries - have shaped the international Ag agenda (special & differential treatment! !);
- HOWEVER, the negotiations further need to take account of a wider set of sustainable development issues (most of which are currently subject to "technical consultations" held by the W O Agriculture Committee). These include:

- Further liberalisation must work for disadvantaged countries:
  - o Special treatment of LDCs (no commitments, duty-/quota-free market access to developed country markets)
  - o How to treat 'vulnerable' developing countries (e.g. single commodity producers)?
  - o Small Island Developing States (SIDS)?
  - o Net-food importing developing countries (NFIDCs) (effective implementation and application of the Marrakech Decision to ensure that LDCs and NFIDCs are not negatively affected by raising food prices)
  - o Transition economies?
  - o Recently acceded Members (who had to enter into substantial liberalisation commitments in their accession process)?

- Beneficiaries of trade preferences whose preferential trade terms are being eroded through the reform process?

**(P): further liberalisation on MFN-basis will largely advantage the multi-commodity producing (developing) countries; → derogation from MFN principle / certain degree of differentiation amongst developing countries themselves needed?**

- Non-trade Concerns (NTC) must be taken into account (para 13 Doha Declaration! ! !):

  - Harbinson modalities drafts recognise and address a range of developmental concerns such as food security, rural development,, livelihood security concerns;

  - Reflected in concept of 'Strategic Products', new Special Safeguard for DCs, proposed S&D provisions for rules on farm subsidies → DCs attain certain flexibilities to protect and support - even in a trade-distorting way;

  - But SP concept could be extended, i.e. not only covering defensive/passive measures (e.g. more flexibility in domestic trade policy) but also offensive/active elements such as having developed countries committing to provide significant market access for these products, eliminate trade distorting subsidies for these SPs, etc.

  - Reflection of this concept in the negotiations:

    - Horizontal approach: e.g. 'Development/Food Security Box
    - Sectoral approach: e.g. WCA proposal on cotton subsidies

  - "Northern" NTCs / NTCs in general

    - Some of those also of (potential) interest for DCs as e.g.:
      - Geographical Indications;
      - Precaution, mandatory labelling (GMO products);

    - BUT negotiations need to arrive at results which allow DCs to fully participate in potential new regimes on GIs, labelling, etc. (→ TNCB); and which do not impair DC market access (TA; maybe compensation for new NTBs?) .

    - Measures to address NTCs which clearly result in distorted markets:

      - Tariff peaks / tariff escalation & production-linked subsidies in OECD countries reflection of hidden "NTCs" (protection of 'sensitive' sectors);

      - Pursuit of such objectives not in conformity with spirit of AoA and Doha mandate ("substantial improvements in market access"; "substantial reductions in trade-distorting domestic support");

      - This especially if it hurts developing countries ("Doha Development Agenda"! ! !)

- HOWEVER, significant restructuring sometimes very hard to be pushed through politically → possible intermediate solution: financial compensation to DCs (e.g. percentage of domestic farm subsidies)??

- Similar approach just very recently taken in proposal by African countries for LDCs with respect to cotton subsidies.

- Also debate on "financial compensatory mechanism", funded through taxing OECD farm subsidisation, to encourage DC small farmers and rural communities to preserve ago-biodiversity.

# Agriculture Negotiations at the WTO

# Cancun Outlook Report[30]


INTERNATIONAL CENTRE FOR
TRADE AND SUSTAINABLE
DEVELOPMENT

## Geneva, Switzerland

## April 2003

**ICTSD welcomes any feedback or criticism on the contents of this document. These can be forwarded to: AWERTH@ICTSD.CH**

[30] This report was originally commissioned by the UK Wildlife and Countryside Agencies (UKWCA) to explore agriculture and sustainable development issues from a multifunctionality / joint production perspective. The report puts a broad variety of elements in context from this perspective. Although the report is non-partisan in character, it does not purport to present a fully balanced, sustainable development perspective, nor should it be seen as a reflection of ICTSD's ***own*** priorities. ICTSD has used information gained in writing the reports in its own ***BR/DG€S*** series of publications, and is grateful to UKWCA for its support and for the opportunity to release this report in its entirety for the benefit of ICTSD's audiences.

## Executive Summary

This paper is the second intelligence report of series III detailing topical developments in the ongoing WTO agriculture trade negotiations. The report series is being prepared by the International Centre for Trade and Sustainable Development (ICTSD).

This report, issued in April 2003, wraps up the recent developments in the 'modalities' phase[2] since issuing the last ICTSD intelligence report up to the 31 March 2003 deadline by which Ministers had agreed in Doha to establish modalities for the ongoing agriculture negotiations. Furthermore, as WTO Members were unable to adopt such framework accord during the most recent 25 - 31 special (negotiating) session of the Committee on Agriculture (CoA), the paper makes an attempt to foresee how WTO trading partners could be trying to manage the resulting crisis so as to keep the momentum alive as well as to maximise the likelihood of trade ministers hammering out a compromise modalities text at the forthcoming WTO Ministerial Conference in Cancún, Mexico.

When the Chair of the CoA special session, Stuart Harbinson, presented his first draft of possible modalities for the agriculture negotiations, Members' reactions reflected exactly those divergences in positions and approaches which had been emerging ever since the reopening of the agriculture negotiations in early 2000. Predictably, Members such as the US and those of the Cairns group criticised the lack of ambition in Harbinson's rather balanced proposal, whereas "cautious" liberalisers including the EU, Japan, Switzerland and Norway took the view that the new commitments proposed would go way too far. For their part, non-Cairns developing countries mostly welcomed the special and differential treatment (S&D) provisions spread over the modalities text, but also said that further work needed to be done in that direction.

Whether WTO Members will be able to bridge the many deep gaps prevailing in their negotiation position by the approaching 10 - 14 September Ministerial in Cancún, remains to be seen. On the one hand, it appears that EU member states would have to agree on a rather ambitious reform model for their Common Agricultural Policy (CAP) prior to the Cancún conference so as to provide the European Commission with more negotiating manoeuvrability. On the other hand, it would also be required that the two 'elephants' in agriculture trade - i.e. the US and the EU - could reconcile their core objectives which they are pursuing in the Doha negotiations. However, as virtually all players in the 146-Member WTO of today have to be taken on board, everyone would need to be able to compromise to a certain degree. Ironically, the wilder dynamics surrounding the current Iraq crisis could prove to become an important catalyser of the Doha Round, as key Members - just as it happened at Doha after September 11 and its follow-up - might feel encouraged to underline their commitment to the multilateral trading system.

This report is divided into three sections:

- Section 1 is a brief introduction setting the agriculture negotiations in the overall context of activities at the WTO.

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2 * This term refers to the fact that Members are required to establish the "*modalities for the further commitrnents"* (Doha Declaration paragraph 14) until 31 March 2003. See also the analysis on Doha DeclaraGon paragraph 14 provided in the previous ICTSD Doha Analysis Report, January 2002, page 18.

- Section 2 focuses on key themes within phase Ill of the negotiations, providing descriptive and analytical detail of expressed proposals.

- Section 3 looks ahead at the upcoming issues in connection with the negotiations in agriculture during the 'extra time' of the modalities phase.

The methodology used in compiling this report combined comprehensive in-house analytical work as well as extensive outreach to country delegates based in Geneva and representatives of local non-governmental organisations.

# Section 1 : Context Setting

## 1.1. Background

Paving the way for the next stage of the ongoing WTO agriculture negotiations, Members had agreed in end-March 2002 on a 12-month work programme so as to respect the 31 March 2003 deadline for the establishment of the so-called 'modalities' as provided for in Article 14 of the Doha Declaration. These modalities are to set out targets - including numerical targets - as well as rules-related elements based on which Members will subsequently prepare their individual offers. As a result, negotiating the modalities is one of the most critical stages of the agriculture talks, as the modalities to be agreed will determine the shape of the final outcomes of the agriculture negotiations under the Doha mandate.

On 18 December, Stuart Harbinson, Chair of the special (negotiating) session of the Committee on Agriculture (CoA), circulated a long-awaited 'Overview Paper' that outlined the current status of negotiations on establishing numeric targets, formulas and other 'modalities' for countries' commitments by 31 March 2003. The paper was released in accordance with the agreed work programme. In his general observations, included in the 89-page compendium, Harbinson pointed to "substantial progress" on some issues such as tariff quota administration and export credits. He however went on to list six key points relating to outstanding issues, including: significant differences in interpreting the Doha mandate; developing countries' split on special and differential treatment (S&D); and the role of non-trade- concerns (NTCs).

Subsequently, on 12 February, Harbinson submitted his first proposal ('Harbinson 1 ') far the establishment of modalities for the ongoing agriculture negotiations, which has been drafted by Stuart Harbinson in his personal capacity. Despite the many unresolved issues on how to address the further reduction of Members' tariffs, their exports subsidies and domestic support, Harbinson in his paper took a rather proactive approach by offering modalities options even in the most contested areas - such as the formula for tariff reductions and the handling of Green Box support (mostly decoupled and at most minimally trade-distorting support). However, he widely used square brackets in his 34-page draft, to propose figures for indicative purposes, to suggest alternatives, or possible formulations. On substance, the paper thoroughly addressed special and differential treatment (S&D) in most of the modalities items - as provided for in the Doha Declaration - while no particular role has been assigned to agricultural non-trade concerns (NTCs) on an across-the- board-basis as e.g. demanded by European Members, Japan, Korea and Mauritius[3].

On 18 March, Stuart Harbinson, issued a revision of his first draft modalities ('Harbinson 1 %') for the ongoing agriculture negotiations. Harbinson, who had been talked with preparing an "improved second modalities" draft following the first draft from 12 February, found himself unable to do so due to "insufficient collective guidance" received from Members. He was only able to present "an initial, limited revision of certain elements of the first draft of modalities," he stated in the 18 March document. While the main features of the original draft remained largely

[3] According to the Doha Mandate (para. 13 of the Doha Declaration), Members "take note of the non-trade concerns reflected in the negotiating proposals submitted by Members and confirm that non- trade concerns will be taken into account in the negotiations as provided for in the Agreement on Agriculture."

unchanged, some pro-developing country modifications have been made, for example with respect to market access, a new special safeguard mechanism, and trade preferences.
Finally, during a 31 March wrap-up meeting concluding the last special (negotiating) session of the CoA within the official modalities phase, Chair Stuart Harbinson formally declared that Members' efforts to agree on agricultural modalities by the end-March deadline had failed. Nevertheless, Harbinson said he would continue consultations on technical issues such as tariff formulas and Strategic Products (SPs) for developing countries after the mid-April Easter break, and that further CoA special sessions had been scheduled for June and July. He urged Members to "continue working together towards completing the job given to us by Ministers in Doha as soon as possible".

## Section 2: The Two Harbinson Modalities Drafts

This section tries to provide both an overview and a brief analysis of the most relevant provisions of Harbinson 1, as well as a comparison with major amendments in I-Harbinson 1 1/2. Following these illustrations, the reactions of key Members and country groupings to Harbinson's suggestions will be presented.

### 2.1 The different proposals

#### *2.1.1 Market access*

Harbinson 1

On **market access,** Harbinson suggested in a three-pronged approach: for developed countries, tariffs higher that 90 percent should be slashed by 60 percent on average, with a minimum cut of 45 percent, whereas those between 90 and 1.5 percent should be cut by 50 percent on average, but at least by 35 percent per tariff line? For tariffs from 15 percent downwards the respective numbers would be 40 and 25 percent. All tariffs would be reduced in equal instalments within a five-year term.

Developing countries, however, would be given a ten-year implementation period, in which they would be required to lower tariffs beyond 120 percent by 40 percent and 30 percent on average. For tariffs between 120 and 20 percent as well as 20 percent and lower, Harbinson suggests reductions of 33 and 23 percent, and 27 and 17 percent respectively.

Furthermore, developing countries would be allowed to denominate a number of ***"strategic products*** *[SP] with respect to food security, rural development and/or livelihood security concerns,"* the tariffs of which they would only need to cut by ten percent on average, but at least by five percent per tariff line.

In addition, developing countries could take recourse to the existing **special safeguard mechanism** (AoA Article 5) for these SP products. For developed countries, however, the safeguard mechanism would be eliminated at, or two years after, the end of the five-year implementation period.

Harbinson 1 ½

Harbinson 1 ½ added a further tariff band to the original three-pronged **tariff reduction** model applying to developing countries. According to the revised modalities draft, the original tariff band ranging from 120 to 20 percent (with an average cut of 33 percent, and a minimum cut of 23 percent) would be split into a 120 to 60 percent as well as a 60 to 20 percent category, with average cuts of 35 and 20 percent and minimum cuts per tariff line of 20 and 15 percent, respectively. In1 addition, the tariff reductions would be less in the 20 percent downwards band (25 percent average, 15 percent minimum cut) as compared to the earlier proposal (27 percent and 17 percent).

Furthermore, due to some progress made in the discussions on a **new special safeguard (SSG) mechanism** for developing countries, the original proposal providing that this new *SSG* would be restricted to only a few Strategic Products (SPs) denominated by developing countries, was

dropped. The text now states that *"an outline of a possible new special safeguard. ..is currently subject to technical work and will be included at the appropriate stage"* in an annex to the modalities draft[4].

### 2.1.2 *Domestic support*

Harbinson 1

According to the original draft, the **Green Box** would be maintained in its existing format, but its disciplines would be strengthened as repeatedly demanded by Members, such as the Cairns Group of agriculture exporters. As an example, paragraph 12 of the Green Box (payments under environmental programmes) would be revised such that the provision saying that the specific conditions under the programme could include *"conditions related to production methods and inputs"* would be deleted (last half-sentence in sub-paragraph (a)). Moreover, new sub-paragraph (b) would now read: *"The amount of payment shall be less than the extra costs involved in complying with the government programme and not be related to or - based on the volume of production."*

In contrast, the current wording of the Green Box states that the amount of the payment *"shall be limited to the extra costs or loss of income"* through compliance with the environmental programme.

Nevertheless, the title of para. 12 now reads: *"Payments under environmental programmes/animal welfare payments"*. Consequently, the demands by Members such as the EU and Switzerland to address the non-trade concern animal welfare within the Green Box, has finally found a reflection in the draft modalities text.

In addition, the amended Green Box would link several direct payment schemes[5] to "fixed *and unchanging historical base period[s]* which needed to be notified. This provision would e.g. prevent Members from up-dating the base periods and thereby partly 're-couple' direct payments to actual production[6]. Furthermore, various provisions would be inserted in Annex II paras. 7 to 10 limiting payments and restricting the time period during which a payment can be made.

For developing countries, however, further flexibilities would be provided for the pursuit of food security and rural development objectives.

Developed countries could also take recourse to an expanded Article 6.2 Box **(Special & Differential Treatment [S&D] Box),** allowing them to provide trade- distorting subsidies without reduction commitments in the pursuit of certain rural development objectives.

For its part, the so-called **Blue Box** (only partly decoupled subsidies under production-limiting programmes) would be maintained, but its expenditures capped and bound at 1999-2000 levels,

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4 Cairns Group developing countries such as Argentina, Indonesia and the Philippines are proposing a Special and Differential Countervailing Measure (SDCM) or a Food Security Mechanism which would allow importing developing countries to impose additional duties on products exported from cciluntries that provide "trade-distorting export competition and domestic support measures" on such products. This would have the advantage for non-subsidising agricultural exporters that their exports would not be subject to a SSG. The SSG as currently designed it linked to certain trigger levels and does not differentiate between exporting countries.

5 Direct payments (para. 5), decoupled income support (para. *6),* structural adjustment through See ICTSD Agriculture Report No. 7, p. 17.

6 See ICTSD Agriculture Report N° 7, p. 17

and reduced by 50 percent over five years. Alternatively, the draft suggests merging the Blue Box with the Amber Box. Developing countries would be given S&D treatment.

With regard to the **Amber Box** (trade-distorting support), the aggregate measurement of support (AMS) would decrease by 60 percent in five years for developed countries, and 40 percent in ten years for developing country Members. In addition, Members would be prevented from providing more Amber Box support on an individual product than provided on it on average over the years 1999-2001.

Moreover, the ***de minimis*** for developed countries would be lowered from currently five percent to 2.5 percent over a five-year term. For developing countries, however, the *de minimis* of ten percent would remain unchanged.

Harbinson 1 ½

In Harbinson's revised draft modalities, the amendments to the **Green Box** proposed in the original draft remain largely unchanged, but with one notable exception: the proposed limitations in paragraph 12 (environmental programmes) of Annex 2 (the Green Box) have been fully taken back, and paragraph 12 now expressly applies to *"government environmental, conservation or animal welfare programme* [s] " .

On the **Blue Box,** Harbinson 1 ½ now provides that the Blue Box would be capped al. the *"most recent notified level'* instead of the earlier proposed 1999-2001 average level. Furthermore, the revised text now also offers an alternative model for developing countries. Instead of reducing Blue Box support by 33 percent over ten years, Blue Box payments could also be included in a Member's calculation of its Amber Box support as of the fifth year of the implementation period.

### *2.1.3 Export competition*

Harbinson 1

Harbinson further proposes in his paper that Members have to phase out (while using specific reduction formulas) at least 50 percent of their **export subsidies** within five years, whereas the rest would be reduced to zero in nine years. Developing countries would be given ten years and 12 years respectively.

With regard to the treatment of **export credits,** Harbinson distinguishes between financing support conforming to a set of detailed conditions, and non-conforming financing support, which would be "subject to specific financing reduction commitments" to be agreed. Moreover, Harbinson 1 offers detailed disciplines for **food aid** and **state trading export enterprises.**

Harbinson 1 ½

On export competition, only minor revisions have been made in Harbinson 1 %. It is now provided that that the detailed disciplines for export credits and export credit guarantees and insurance programmes are still subject to *"ongoing technical consultations"*. The same is said for the new draft provisions on food aid (where major changes have been made as compared to Harbinson 1) as well as state trading export enterprises.

### *2.1.4 Non trade concerns (NTCs)*

Looking at both Harbinson 1 and Harbinson 1 %, it becomes clear that the wider set! of non-trade-related concerns asserted by proponents of the concept of 'multifunctionality' - including Members such as the Switzerland, Norway, Japan,, Korea and Mauritius (so-called MF6 Group) - has n corresponding reflection! in the modalities drafts. With the notable exception of animal welfare (see proposed amendments in the Green Box), other - mostly European - NTCs such as extension of additional protection for geographical indications (Gls), consumer protection (including mandatory labelling), food safety (precautionary principle) and environment (e.g. substantial progress in the trade and environment negotiations under paras. 31 and 32 of the Doha Declaration) have been addressed neither in Harbinson 1 nor Harbinson 1 ½**.**

Apparently in response to the critique expressed by the EU et. al. after the release of Harbinson 1, the Harbinson stated in his revised paper that it was *"recalled that under paragraph 13 of the Doha Ministerial Declaration non-trade concerns will be taken into account in the negotiations as provided for in the Agreement* on *Agriculture."* He then points to the fact that *'[s]uch concerns have been taken into account in various parts of the present text (and not only in market access),"* but adds that further consideration would need to be given to NTCs and other market access issues as identified in the overview paper issued in mid-December last year. Furthermore, Members also had to address the *"extent to which these issues should be taken into account in the modalities to be established and/or subsequent work,"* Harbinson explained in his revised modalities draft.

### *2.1.5 Least-developed countries (LDCs)*

Addressing the least-developed countries (LDCs), Harbinson 1 provides that LDCs would not be required to undertake reduction commitments, but that they could be *"encouraged to consider making commitments commensurate with their development needs on a voluntary basis"* which could include *"responding to requests submitted by trading partners"* (added in Harbinson 1 ½*)***.**

In addition, Harbinson 1 took up elements of the most recent EU proposal as it further provides that *"developed countries should provide duty- and quota-free access to their markets for all imports from least-developed Countries."* In Harbinson 1 ½**,** the word *"shall!'* was included as an alternative to *"should',* which would make this provision mandatory for developed countries.

### *2.1.6 Recently Acceded Members*

Harbinson 1 and 1 ½ also provide that Members such as China, that have recently acceded to the WTO shall have the flexibility to defer the respective implementation periods by two years.

### *2.1.7 Other groupings*

Reflecting the many proposals tabled by the respective Members on this issue, Harbinson 1 and 1 ½ state that *"Participants will further consider the possible introduction of additional forms of flexibility for certain groupings"* such as small island developing states (SIDS)**,** vulnerable developing countries, and countries in economic transition.

## 2.2 Members' reactions

### *2.2.1 Those to deliver*

This category of countries comprises those Members which are still maintaining relatively high levels of protection and who are supporting their agricultural sectors through trade distorting subsidies. This grouping certainly includes the EU, Japan, as well as a newly emerged coalition dubbed the 'Ugly Eight' - i.e. Bulgaria, Chinese Taipei, Iceland, Israel, Liechtenstein, Mauritius, Norway and Switzerland. The common feature of this group that they the eight countries are even more "cautious" in1 their approach to further farm liberalisation than the EU.

Expectedly, the **EU** criticised the lack of an overall balance within the modalities proposals between the different interests of Members. "Benefits are mainly for strong exporting countries [such as the US and the Cairns Group countries] and costs are mainly for countries which, while systematically reducing trade-distorting support, pursue policies reflecting domestic objectives which go beyond untrammelled free trade, and which are linked with social, economic and environmental sustainability," EU Agriculture Commissioner Franz Fischler immediately after the release of Harbinson 1. Particularly, the EU seems to have problems with the proposal to cut Blue Box spending by half. As it regards Blue Box spending (which itself is the main user of) to be much less trade-distorting then Amber Box support, the EU demands that - in return - the *de minimis* threshold for developed countries should be fully eliminated. Unlike the EU, trading partner US annually provides several billion of US$ under the non-product-specific *de minimis* level which covers 5 percent of a Member's annual agricultural production. On export competition, the EU complains that while itself would be required to phase out export subsidies completely, other export competition would leave "too many loopholes open for export credits and bogus food aid" (which the US mainly uses).

On market access, the EU pointed to the fact that, while Harbinson proposed a three-pronged harmonising formula, 75 Members (counting the EU plus its 15 member states) had formally asked the Chair to endorse the concept used during the Uruguay Round (average cut of 36 percent, minimum reduction of 15 percent per tariff line). Moreover, the EU criticised the missing balance between reducing tariffs, on the one and, and expanding access for developing countries, on the other; according to the EU, only such an approach would characterise this round as a development round. Here the EU appears to refer to its earlier proposal that LDCs should be granted zero-duty and zero-quota market access by developed countries and by "advanced developing countries". Moreover, the EU had suggested that developed countries should ensure that at least 50 percent of all their imports from developing countries should be imported on a duty-free basis. Under the Harbinson drafts, however, further market access became "an instrument to accommodate developed exporters, instead of a means to differentiate access for the 'benefit of the developing world", Fischler commented.

Last but not least, the EU considers the drafts not to be comprehensive as it does neither include non-trade concerns nor a new peace clause.

For its part, **Japan** rejected the draft as "unacceptable overall". Japanese Agriculture Minister Tadamori Oshima stated it "includes proposals which are incompatible with those of many nations". Specifically, Japan rejected calls to cut its 490 percent rice tariff by a minimum of 45 percent (it also supports the UR formula) as well as to expand its mandatory 7.2 percent rice tariff rate quota (TRQ) to 10 percent of current domestic consumption. In addition to these

market access issues, Japan sees a "serious imbalance and excessive ambition in a number of important arelas" which would need to be fundamentally redressed. At a 28 February formal negotiating session, Japan also noted that the interests of those who delivered (i.e. itself, the EU, the Ugly Eight, etc.) rather than those who simply demanded and hardly paid (US, Cairns Group, etc.), had to be fully respected in establishing modalities.

In a joint statement[8] the **Ugly Eight** group of countries called for a "proper balance between trade and non-trade concerns" within the modalities, as Members had launched the agricultural reform process at Marrakech with the clear understanding the NTCs would be duly taken into account (Preamble and Article 20 of the AoA); this commitment had been confirmed at Doha (Doha Declaration para. 13**).** As a result, only a reduction formula along the lines of the UR approach (36 percent cut on average) - but with a minimum reduction of only 10 percent per tariff line[9] - would take account of the "vast diversity of production conditions faced by Members." In addition, TRQs should not be extended as they had been introduced in 1995 to ensure market access in historic and certain minimum quantities. On domestic support, the group wants to maintain the Green and Blue Box without limitations and "with necessary adjustments to take non-trade concerns duly into account." Also reductions in Amber Box support should be significantly lower than proposed by Harbinson. Export subsidies could be substantially reduced, provided that other forms of export competition (i.e. export credits, food aid, etc.) are equally treated. On special and differential treatment (S&D), the group criticises that LDCs, SIDSs, arid other vulnerable developing countries, who would all be heavily reliant on trade preferences, would "see their market access opportunities deteriorated" as a result of the modalities proposed.

### *2.2.2 The demanders*

Members falling under this sub-set of countries are those who demand significant improvements in all three pillars, but without seeking specific exceptions for themselves. The main protagonists here are the US and the 17 members of the Cairns Group of agriculture exporting countries.

The US applauded Harbinson for suggesting full elimination of export subsidies within nine years, but demanded that this would be flanked by deeper cuts in tariffs (means horizontal cuts down to 25 percent maximum) as well as in Amber Box and Blue Box subsidisation. "To be fair, these reforms must go much, much further toward harmonisation by narrowing the vast disparities among countries in subsidies and tariffs," US Trade Representative (USTR) spokesperson Richard Mills said on 12 February. In this context is should be noted that the USTR is under strong pressure from Congress to negotiate a deal under which a level playing field is created between the US and the EU in terms of tariffs and trade-distortive support. The biggest stone of contention seems to be the fact that the EU is currently allowed to provide some EUR 70 billion in Amber Box support, whereas the US's upper ceiling is at around US$ 20 billion. Furthermore, the US has not been using the Blue Box since the 1996.

Australia's Agriculture Minister, speaking on behalf of the Cairns Group, identified "some good elements" in the first draft modalities text, but said it lacked in ambition with regard to improving market access and substantially cutting "the outrageous levels of domestic support"

8 TN/AG/GENl, statement made by Switzerland at the 28 February formal special session.

9 During the UR Members were required to bring down their tariff by at least 15 percent per tariff line.

provided by the EU, the US, Japan and others. Just as the US, the Cairns Group has been proposing the so-called Swiss formula, which would bring down tariffs uniformly to no more than 25 percent, but in addition to deep cuts in the Amber and Blue Boxes it further wants to put a cap on Members' expenditures under the Green Box category. Therefore, the Cairns Group of agriculture exporters is also targeting the US'S farm policy, under which some US$ 50 billion were spent in Green Box support in 1999[10].

### *2.2.3 The special consideration group*

The main characteristic of this grouping is that the countries involved are strongly urging developed countries to open up their agricultural markets, to bring their domestic support levels down to those applied in developing countries, as well as to eliminate export subsidies. However, they are reluctant to make new commitments themselves, arguing that first the imbalances inherent in international agriculture trade rules needed to be evened out so as to create a level-playing field for the countries of the South. Countries to be named here are those of the Like-Minded Group (LMG), the African Group and least-developed countries (LDCs)

**Like-Minded Group** countries[11] such as India and Nigeria reportedly celebrated Harbinson 1 as a small victory for the coalition of developing countries that have fought hard in the last three years for only further opening up their markets under the condition that their developmental and food security needs were appropriately addressed. Sources indicated that India welcomed the proposed negative-list approach by which developing countries could exempt a number of "strategic products" from general reduction commitments, as well as new flexibilities with respect to domestic support. However, India reportedly rejected the ten-year tariff reduction period for developing countries, regarding it as too short. Also the proposed tariff reductions were seen as too drastic, wherefore it could be assumed that the forth tariff band (ranging from 120 to 60 percent), which had been added in Harbinson 1 %, was mainly the result of pressure from this country grouping. On the issue of strategic products (SPs), for which only very moderate tariff reduction commitments would apply (10 percent on average, minimum cut of 5 percent per product), the Group is demanding that SPs must be declared by developing countries themselves and that they should be "number-based" - e.g. reflecting a certain percentage of all domestically produced agricultural products. Consequently, the LMG argues that stricter criteria such as value of a crop relative to total agricultural GDP, area under a particular crop, significance of the crop for national dietary needs, etc. could not be easily applied due to a lack of relevant data. Moreover, the Group would like to see the concept of SPs also applied in the other AoA pillars, i.e. domestic support and export competition. Related to the SP issue, India in a 28 February statement called on those Members, who were demanding developing countries to harmonise their tariffs, first to harmonise their domestic support in all boxes at the level at which poorer countries would provide domestic support to their agriculture sector.

In their reactions, several **African countries** such as Uganda, Senegal or Kenya voiced their concern about the erosion of preferences without an appropriate compensatory mechanism. Moreover, more ambition in the areas export subsidies and domestic support was demanded. Several African countries welcomed the concept of strategic products introduced, but they demanded in-built flexibility for countries to determine as well as be able to add to the list during the implementation period. It was further said that the application of the special safeguard mechanism should be fully de-linked from the SP concept. In addition, these countries

[10] See US notification G/AG/N/USA/42 as of 5 February 2003.

[11] * The LMG comprises countries such as Cuba, the Dominican Republic, **El** Salvador, Haiti, Honduras, Kenya, India, Nigeria, Pakistan, Sri Lanka, Uganda and Zimbabwe.

missed the appropriate degree of ambition in translating S&D into the modalities as well as making operationally effective the provisions addressing their non-trade concerns such as food security and rural development. It was also noted that the modalities would not make any suggestion on the treatment of the Marrakech Decision for net fool-importing developing countries (NFIDCs) and LDCs.

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Last-developed country **(LDC)** Members welcomed the modalities as a possible basis, but also saw various imbalances on the three main pillars of negotiations. It was therefore suggested to fully eliminate the Blue and Amber Boxes as well as to cap the Green Box. On the concept of SPs**,** it was cautioned that their numbers and criteria for selection needed to be carefully discussed. LDCs further opposed the idea that they were *"encouraged to consider making commitments commensurate with their development needs on a voluntary basis"*. On the proposed duty- and quota-free access of LDCs imports to developed country markets, the LDC group sought further explanations on how this commitment would be implemented in practice (e.g. rules of origin, product coverage, binding nature, etc.). The group also stressed that the stringent application of sanitary and phytosanitary standard (SPS) arid technical barriers to trade (TBT) measures, which impeded real access of LDCs products on developed country markets, should be addressed more accurately.

## Section 3: Looking Ahead

As Members have been unable to adopt modalities for the ongoing agriculture negotiations by the 31 March deadline set by trade ministers at Doha, those actors and observers of the process favouring an accelerated and comprehensive round are now turning their attention to the upcoming Fifth WTO Ministerial Conference, scheduled to be held from 10 to 14 September in Cancún, Mexico. There, it is hoped, WTO trading partners would be able to hammer out - at the ministerial level - a framework accord for agriculture which would be acceptable to all participants in the negotiations. Whether this can be achieved or not, will depend on many WTO internal and external variables which can hardly be assessed at a moment where Members are still recovering from the aftermath following the missed end-March benchmark.

Looking at it from the WTO perspective, participants in the negotiations need to manage the crisis between now and the forthcoming Cancún Ministerial in an optimal way so as to maximise the chances that the many deep gaps prevailing. between Members' positions can be bridged as good as possible. It is thus. key for participants to aim at clarifying most of the technical, systemic and rules-based issues prior to the Cancún Ministerial so as to keep the negotiating agenda to be presented to Ministers in Mexico as short as possible.

### 3.1 Technical work

Therefore, Harbinson announced on 31 March that, after the Easter break, he would continue informal consultations on technical issues, including tariff reduction formulas, tariff rate quotas (TRQs), Strategic Products (SPs) for developing countries, a new special safeguard (SSG) mechanism for developing countries, preferential trade schemes, export credits, food aid, state trading enterprises, and geographical indications. Moreover, he earmarked further negotiating sessions to be held on 26 to 27 June and 1 July, as well as on 16 to 17 July. Harbinson further seemed to be committed to take a more integrated approach to the modalities negotiations, which would comprise numbers and targets, as well as rules-based elements. In his modalities drafts submitted earlier, he suggested agreeing on reduction modalities (i.e. numbers) first, while deciding on disciplines (e.g. on SSG, export credits, etc.) at a later stage. It was also reported that Harbinson will try to get more capital-based officials involved in the informal consultations, and that he would therefore try to schedule future meetings at times more convenient for non-Geneva negotiators. All in all, Harbinson seems to hope to have the modalities established before the Cancún meeting, as he is concerned that Members will need sufficient time to prepare their individual offers which are to be tabled prior to the Ministerial Conference. However, according to some sources it is more than unlikely that modalities could be agreed before trade ministers meet in Mexico.

In the context of continuing technical consultations, a procedural dispute seems to be emerging: at the 31 March formal special session marking the end of the official modalities phase, Bulgaria made an objection to the follow-up process outlined by Harbinson. Bulgaria argued that with the missed deadline the mandate was over 18 arid any renewal would have to come from the Trade Negotiations Committee (TNC)[12]. Harbinson, basing his argument on legal advice and backed by Members such as Chile, India, Argentina and Uruguay, said that missing the deadline would not mean the negotiations came to a halt (the Doha Declaration envisages negotiations

[12] The TNC is the overseeing body of the current trade negotiations under the Doha Round.

continuing beyond 31 March), and the CoA special (negotiating) sessions would not need instructions from the TNC in order to continue work.

According to a delegate of the MF6 group, which includes the EU, Switzerland, Norway, Japan, Korea and Mauritius, the key proponents of multifunctionality might partly take up this argumentation and demand that the Agriculture Committee has to be consulted on the form of the consultative follow-up process as well as on the issues addressed. The reasoning is that the one-year work programme agreed by CoA Members last March had indeed expired, so that a new mandate needed to be sought from the CoA itself. As it appears, the MF6 members are trying to influence the consultative process held under the auspices of the Chair, who could otherwise determine upon his own discretion which Members he invites for his bilateral or plurilateral consultations, and which topics he will address. In this context, Members such as the EU, Switzerland and Japan want to make sure that technical consultations will - in addition to those outlined by Harbinson - further include discussions on issues such as the special safeguard for developed countries, non- trade concerns as well as a renewal of the peace clause.

### 3.2 Overarching principles

In addition to the technical work, Members further need to bridge their differences in terms of overarching principles (such as future of the Blue Box, Green Box, the SSG for developed countries, a new peace clause, etc.) as well as concrete numbers and time lines for further commitments. This, of course, would need a much higher degree of political will and commitment as compared to the technical aspects of the modalities negotiations. In the lead-up to Cancún, several high level meetings will be taking place which could provide the necessary platforms to undertake the political work required. These events include e.g. an OECD Ministerial meeting in end-April, a high-level meeting hosted by the Danish Government in end-May, the G8 conference in early June, as well as the planned end June 'mini-Ministerial' in Sharm El Sheikh, Egypt.

In addition to this process, several Members further need to show their ability to translate their repeatedly expressed commitment to the Doha negotiations into a willingness to reform their internal policies.

Most notably, the EU is in the focus of the Membership because of its current mid- term review of the Common Agricultural Policy (CAP). If EU member states could adopt an approach along the lines of the proposal tabled by the Commission on 22 January, than - so it is hoped - the Commission could be equipped with a new negotiating mandate which would provide greater leeway in terms of tariff reduction, cutting Amber and Blue Box support, etc. Although EU Agriculture Commissioner Franz Fischler and his trade counterpart Pascal Lamy have recently been keen to downplay the importance of the CAP review, it seems questionable whether the current CAP would allow for more liberalisation under the WTO than the EU has already offered in its latest proposal. According to some EU trade sources, the most recent EU negotiating proposal is already partly going beyond the extreme limit of CAP flexibility, especially in the areas of tariffs, Amber Box reductions and cutting down export subsidies. An approach as outlined in the latest Harbinson modalities textile appears therefore incompatible with current CAP benchmarks.

As a result, EU members states needed to agree on a rather ambitious CAP reform model so as to provide the European Commission with the appropriate degree of manoeuvrability in the post-31 March phase of the modalities negotiations. Looking at the big divergences in EU

member states' reactions on Fischler's reform proposal, it appears that this will be an extremely challenging task In particular, it will be interesting to see how Germany - one of the key demandeurs for ambitious reform - will act when the push comes to shove. The problem is that its European neighbour France has strong reservations to concepts proposed by the Commission (such as decoupling and modulation), and does not appear to be willing to agree on substantial changes prior to Cancún. Therefore, in the face of the revived Franco- German friendship which has emerged from the recent Iraq crisis, it seems questionable whether Germany will effectively push for measures which would go directly against the interests of its French partner.

Besides the necessary EU-internal adjustments, another important reconciliation of the key negotiating objectives pursued by the two main actors in the process, i.e. the US and the EU. Although the times of Blairhouse - where a bilateral deal hammered out between the 'two was later taken as the basis for the multilateral Agriculture Agreement - are certainly over, yet the negotiations would go nowhere without synchronised efforts made by Brussels and Washington. Nevertheless, the 145 Member-WTO of today is a different negotiating environment as compared to the GATT during the Uruguay Round, wherefore virtually all actors have to be brought on board, and all need to prove their ability to compromise to a certain extend. Whereas the 'deliverers' in the reform process need to be committed to redistribute the stakes in their domestic farm policies, the demanders need to acknowledge the non-trade-related aspects and concerns which have emerged in the reform process. They further would need to be willing to agree on a new model which mainly served the developing country Membership, as only then the Doha Round would deserve the name 'Development Round'. Only such outcome could be an incentive for poor Members to stay engaged in the multilateral reform process. Last but not least, so as to effectively operationalise the concept of special and differential treatment (SAD), even developing country Members themselves would have to accept that providing poorer trading partners with appropriate flexibilities could eventually lead to certain distortions, even in South-to-South trade.

In conclusion, probably a little wonder would be needed in Cancan to bring about such positive momentum that WTO Members could agree on a reform model which could truly reflect the main objectives set out in the Doha mandate, i.e. substantially improving market access, substantial reductions in trade-distorting support, and phasing out all forms of export subsidies, while effectively operationalising S&D as well as taking account of the non-trade concerns put forward by all participants in the negotiations. Ironically, just as September 11 and the Afghanistan crisis appeared to have facilitated the successful launch of the Doha Round, it might happen again that an armed conflict proves to be the catalyser of multilateral trade negotiations.

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COPA (Committee of Agricultural Organisations in the EU) is the umbrella organisation representing farmers in the EU.

COGECA (General Committee for Agricultural Co-operation in the European Union) is the umbrella organisation of European agricultural co-operative organisations.

Currently there are 44 national organisations from the EU 15 which are full members of COPA and COGECA and a further 40 associate members from the ten accession countries.

Committee of Agricultural Organisations in the European Union

General Committee for Agricultural Cooperation inthe European Union

WTO(03)48S1 02 June 2003

# Hearing on WTO: Agriculture, TRIPS, Singapore issues

## Wednesday, 11 June 2003

## COPA and COGECA's[31] position on the current WTO negotiations

*A further step towards fairer rules of trade in agriculture but one which takes account of the wider concerns of society in both developed and developing countries*

The prime objective in the current WTO negotiations must be to achieve a further step towards fairer rules of trade but in a way which does not put in jeopardy the wider concerns of society in both developed and developing countries.
The challenge for the EU, and for developing countries, is how to ensure these wider concerns are respected in an organisation – WTO - whose main remit is to move towards free trade.

***The proposed modalities of Mr Stuart Harbinson go too far – and no account is taken of non-trade concerns***

Agriculture is still treated differently from other economic sectors in the WTO but it is the aim of several of the big exporting countries to move as fast as possible towards free trade. In particular, the Cairns group reject any support for the farm sector and the USA, while actually increasing support massively to its own producers, wants free access to everyone else's markets. The pressure from these countries is reflected in the modalities paper presented by Mr. Stuart Harbinson. The proposed cuts go far beyond the cuts agreed in the last Uruguay Round. For example, he proposes a 60% cut in domestic support compared with 20% in the last round. He proposes tariff cuts of up to 60% on average compared with 36% in the last Round.

There are clearly economic benefits which can accrue from increased trade. But agriculture is much more than a matter of economics. If we move too far towards free trade we will fail European society.

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[31] COPA (Committee of Agricultural Organisations in the EU) represents farm organisations for agriculture and horticulture in the EU.
COGECA (General Committee for Agricultural Co-operation in the European Union) represents the European agricultural co-operative organisations.

***Agriculture lies at the heart of political choices in Europe in the 21st century***

The concerns of European society are not the same as in the last century. In the 20 century one of the main social issues which took up the energy and attention of politicians was to try to find a balance between the economic benefits of industrialisation on the one hand and social needs – working conditions, pensions, health on the other.

As we move into the 21st century a new set of concerns are emerging. Very many of these concerns touch agriculture in some way or another, but very few of these concerns are economic.

How many times do you see attacks that food prices in Europe are too high or that productivity in agriculture is too low. Perhaps not surprising since food only represents some 12% of household's budget today.

But take any newspaper or TV channel in Europe. You are almost bound to find a debate about food safety, about the environment - water pollution, climate change, bio-fuels, genetics, how we treat animals, the growth in power of huge multi-national food retailers, the standardising of food offered in supermarkets and food outlets – the concern to retain Europe's huge wealth and diversity of high quality foods built up over centuries reflecting regional diversity and traditions.

***Market forces will not bring solutions to society's main concerns in the 21st century***

Opening up the EU's market to imports or by lowering prices to world levels will not bring solutions to the range of concerns and expectations in society today. In fact solutions, more often than not, result in an increase in the cost of producing food.
World prices are driven by a few big exporting countries where farm structure, costs and concerns about the environment, GMOs, animal welfare are completely different from those in the EU. As our own Commissioner for Agriculture has stated, if we were to abolish all support and market protection and let the market decide on the basis of "survival of the fittest" we would wipe out about two-thirds of farmers.

The only way to meet society's concerns requires politicians to find temper the huge global forces which press towards free trade and the survival of the fittest on the one hand and measures which will ensure food safety, environmental protection, animal welfare and a future for rural areas on the other.
This is why it is essential that the Doha round takes into account non-trade concerns

***Developing countries have major non-trade concerns too***

60% of the world's population lives in rural areas. The vast majority of these people are farming families in developing countries. For these countries safeguarding food supplies and protecting their rural way of life is vital if poverty is to be alleviated and there is to be social stability.
But their economic future depends much more heavily on their own internal market than access to markets elsewhere. After all, world trade in agricultural products represented less than 6% of total world trade in 2000.
The message we have repeatedly been given from the truly indigenous farmers is that free trade is ruining their livelihood.

***The EU has been the leader in changing its agricultural policy to benefit developing countries***

The Common Agricultural Policy is often attacked for damaging the interests of developing countries, and in particular the use of export subsidies.
Yet the EU has made considerable efforts to ensure that this does not happen. Export subsidies have fallen by two-thirds over the last decade.

We believe that the EU authorities have managed those remaining export subsidies in a way which does not undermine world prices and cause instability. However, if there are concrete examples of where EU export subsidies are causing problems we have pledged ourselves to examining these cases and taking them up with the authorities.
The EU also already imports more agricultural products from the developing countries (Euro 36 billion) than the US, Canada, Australia, New Zealand and Japan put together (Euro 31 billion).
The EU alone took around 70% of LDC agricultural exports.
In 2001 the EU went further, opening up full access to the EU market for the world's 49 least developed countries for all products except arms.

In contrast, other countries are moving in the opposite direction – the reinforcement of marketing loans and the introduction of counter-cyclical payment in the US are clearly indirect forms of export subsidy which undermine world markets.

***The Doha Round***

COPA and COGECA firmly believe that all countries in the WTO, developed and developing, must be able to shape their policy to meet the concerns of their own citizens.

Of course we want fair rules governing trade and we all have an obligation to find the least trade distorting measures possible. In the Uruguay Round the EU reduced its amber box domestic support by 20%. The price cuts taken as part of Agenda 2000 will enable an even more substantial cut.

But we fear we are all being pushed along the same path in WTO and that eventually we will all only be able apply support measures which are totally decoupled from production.

Yet almost all the concerns of society relate in some way to the way in which we produce food and affect the cost of producing food.

With Agenda 2000 we believe Europe has gone far enough in reducing its prices to world levels and hoping that taxpayers will pay to offset the damaging effects.

There must be sufficient border protection and adequate internal measures linked to production, accompanied by and market management tools, so that the EU can ensure a balanced and stable market and enable both farmers and society's concerns to be met.

# COPA and COGECA specific proposals in the Doha Round

## General modalities

### *Market access*

- tariff cuts should be made using the same formula as in the last Uruguay Round which leaves room for flexibility by product to take account of specific concerns and characteristics.. The level of cut should certainly be no higher than in the last Round.
- all developed and advanced developing countries should provide duty free access to their markets for all imports from the least developed countries.
- any additional increase in tariff rate quotas should be specifically attributed to developing countries
- the special safeguard clause should be maintained

### *Export subsidies*

- all forms of instruments which are used to subsidise commodities which are exported, either directly or indirectly, must be treated on an equal footing;
- there must be flexibility in dealing with the different commodities and priority should be given to reducing expenditure commitments;
- there can be no question of the elimination of export subsidies.

### *Domestic support*

- the EU ***amber box*** can be reduced to reflect the price cuts which took place under our current reform of CAP – Agenda 2000 on condition that the ***blue box*** is maintained and the ***Peace Clause*** is prolonged.
- the ***green box*** definition should stay the same with one exception. If European society imposes standards on EU producers in order to meet food, environmental and animal welfare concerns, and these standards cannot be imposed on imports, it must be ensured that the costs of meeting these standards are covered in the framework of the Common Agricultural Policy and defended in WTO;
- the WTO must also concern itself with the problem of ***global concentration in the agri-food industry*** by supporting an effective competition policy. There must also be a level playing field between co-operatives and the rest of the agri-food industry.

### *Protection of indications of geographical origin*

There must be a reinforcement of the protection of indications of geographical origin. These must include provisions to guarantee effective protection against usurpation of names for agricultural products and foodstuffs and the right to use geographical indications or designations of origin so that consumers have assurances of quality.

This is to ensure that traditional quality products gain the market premium that they deserve in the face of the standardisation being imposed by huge food conglomerates.
This issue is of major concern to agriculture and therefore should be included in the agricultural negotiations but, in addition, must be treated under the TRIPS agreement.

## Special and differential treatment for developing countries

***Farmers in Europe understand the concern of developing countries to achieve food security and stability and to protect the rural way of life. This is why COPA and COGECA consider the following measures should be taken in the current WTO round:***

- all developed and advanced developing countries should grant duty free access to LDCs;
- any additional increase in tariff rate quotas should be specifically attributed to developing countries
- developing countries should be able to use the special safeguard clause to offset any sudden and unforeseen fluctuations in prices and volumes and to meet concerns on agricultural products which are sensitive from a food security point of view.
- COPA and COGECA also support developing countries wish to have a more flexible application of the special safeguard clause, or the possibility of applying countervailing duties, if commodities which are subsidised, either directly or indirectly, and especially those which are not subject to supply management controls, undermine their prices and destroy their markets.
- there should be stricter rules on the *de minimis* clause for developed countries with increased flexibility for developing countries.

However, if developing countries are to be treated differently in this way, they must be truly 'developing' from an agricultural point of view. At present developing countries simply choose whether they are classified as developing or not. There should be clear objective criteria to identify the level of development and which countries and sectors qualify for special and differential treatment within WTO.

# The EU export subsidies and their impact on developing countries: not losing sight of the real priorities

This paper has been elaborated by BOERENBOND, one of the Belgian member organisations of COPA (Committee of Agricultural Organisations in the EU) and COGECA (General Committee for Agricultural Co-operation in the European Union).

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For more background information on BOERENBOND and COPA-COGECA, please visit the following

web- sites: http://www.boerenbond.be and http://www.copa-cogeca.be

## Introduction by Noël DEVISCH, President of Boerenbond ( Belgium )

### Situation

Coffee is traded "freely" in the world. Neither the US nor the EU, nor other big countries distort the coffee market with export subsidies. Still, the coffee market is a disaster for coffee producing developing countrie  drops in prices are especially due to overproduction.

Oxfam writes: *"Today, the world production amounts to about 115 million bags of 60 kg coffee beans.*

*While together, we consume less than 105 million bags. In short, the world is being flooded with coffee. A consequence of the neo-liberal globalisation, based on low wages, free competition and export oriented growth. Countries compete with each other on the free world market. They try to conquer that market, for example by increasing the production. Thus, they contribute to overproduction, which causes prices to drop*."

Pascal Lamy, member of the European Commission, states: *"The logic of liberalisation cannot be applied to the agricultural sector as such, at least as far as it is not exclusively seen as a commercial activity. For this sector is faced with many other goals in the field of environment, landscape management, agricultural use, food quality and availability of food"*.

### Three starting points

**(1) Export subsidies cannot be seen apart from the agricultural policy as a whole**

During these past months, the public debate has focused on agricultural export subsidies, on European as well as on world level, following a.o. the World Food Summit (Rome) and the World Summit on Sustainable Development (Johannesburg). From different sides, positions were taken against export subsidies,. Some talked about export subsidies, others about agricultural subsidies but meant export subsidies. A link was made to agriculture in developing countries. European agriculture is blamed for the poverty in the Third World.

Yet, it is not as simple as that.. It is, after all, of great importance to get an inside view on agriculture in Europe and in the world so as to be able to produce a well founded judgement. Export subsidies cannot be seen apart from the agricultural policy as a whole.

**(2) Some politicians see it wrong**

Facts prove that it is not the export subsidies that chase the farmers in the developing countries away from their fields. It will be clear from some striking examples that abolishing export subsidies and granting more market access to the EU does not make any significant and structural contribution to the improvement of the situation of the poor farmers in developing countries., It will be clear that the European agricultural policy does not immediately threaten the farmers in the Third World.

On the contrary, a solid agricultural policy is needed everywhere in order to offer vulnerable and poor producers a future, and not only "interventions when the free market fails", as some politicians state. This is the core of our present reasoning. According to the interpretation of some politicians a free market, together with social safety nets, development and food aid… is enough to soften the sharp edges. We do certainly not agree with this view. Dismantling the agricultural policy, with a free market as an alternative, is playing with fire, for the farmers in Europe as well as for the farmers in elsewhere in the world. The role of the government cannot be reduced to being a "mere eyewash" whenever the free market fails.

**(3) Agricultural policy and globalisation… "market where possible, government where needed"**

In fact, this debate is not about export subsidies. We defend a further development of a solid agricultural policy that is sustainable and that can handle globalisation. This is in the interest of the farmers in the North and the South and of the consumers. Farmers are in favour of healthy markets, of honest competition.

**Real priorities**

We are of the opinion, and so are our colleagues from agricultural organisations in the South judging from their positions, that other factors are more important in terms of fight against poverty, a.o. a better infrastructure, better access to credit, soil and water, better agricultural information, a better negotiation position with regard to buyers and processors of agricultural products….in short, a real agricultural policy.

For instance, a policy that also tries to find a balance between the need for cheap food for the urbanpopulation, protection against market distortions by imported products that are too cheap, and distributionof food aid.
This leads us to the real priorities concerning (sustainable) agriculture and globalisation. We believe that it is an illusion to think that the abolition of EU export subsidies will lead to a substantial contribution in the fight against poverty. This reasoning is wrong. On the contrary, **only with a solid agricultural policy** the international market organisation will be able to merge with the needs and characteristics of the very different agricultural models we can find in different regions of this world. **Only with a solid agricultural policy** the international market organisation will lead to a real fight against hunger and poverty.

This broadly describes the leitmotiv of our contribution in the exchange of today. On the next pages we will clarify this chapter by chapter. Figures are not everything, but still, it is important to be able to correctly situate a number of facts and data. We are aware of the fact that a lot of issues can be elaborated further but we have already been able to determine that our vision on the whole is shared by many other agricultural organisations, also from developing countries.

## 1. Export subsidies and supply management

***Export subsidies should be seen as a part of the European agricultural policy that is based on supply management. Supply management creates stability on the internal markets, but also on the world market.***

We are under the impression that citizens in Europe are not always aware of the drastic changes that were made to the European agricultural policy almost 10 years ago, later reinforced with Agenda 2000. Since 1993, the course has clearly shifted, in the sense of more market conformity, with the implementation of the MacSharry reforms. The agricultural policy shifted from mainly price support to mainly income support.

In March 1999, the European Council in Berlin reached an agreement on Agenda 2000, with further reforms based on the MacSharry conversion, and with a new policy for rural development as a second pillar in the CAP. The starting points determined for the agricultural policy are a.o. a more market aimed policy, food safety and quality, environmental protection and animal welfare.

Export subsidies cannot be seen apart from this context. Supply management (fixed production or premium quota), direct income support, intervention prices and export subsidies (and/or exportlevies) are parts of a whole. These instruments are part of each agricultural policy that tries to limit overproduction and tries to guarantee a minimum price, whether or not it is about coffee producers in Costa Rica, or sugar producers in Europe.

***The EU export restitutions have dropped considerably over the last 10 years. Today, they only amount to 8% of the total EU agricultural expenditure.***

Ten years ago, export restitutions still amounted to about €10 billion or almost 40% of the total expenditure for the CAP. In the year 2001, we are talking about €3,4 billion, or 8%.

**Table 1**: Evolution of the CAP expenditure in the EU (source: European Commission)
1990 1995 2000 2001 total expenditure EU (billion €) 45.6 68.4 92.3 96.7
CAP expenditure (billion €) 25.6 34.5 41.5 44.6
idem in % total expenditure EU 56% 50% 45% 46%
total export subsidies (billion €) 9.4 6.4 5.6 3.4
idem in % total CAP 37% 19% 14% 8%
intervention stocks grains (million tonnes) 14.4 6.9 8.7 6.8

The sugar and dairy sector in the EU grant most export subsidies:

**Table 2**: Expenditure for export subsidies by sector, 2001 (source: European Commission)
share by sector in % of the production value of each sector
arable crops 8 % 2 %**,** sugar 30 % 12 %**,** dairy 33 % 3 %**,** beefmeat 11 % 1 %**,** pigmeat, eggs,

poultry 3 % 1 %**,** other products 13 % -

***The consecutive reforms of the EU agricultural policy (MacSharry, Agenda 2000) have led to an acceptable price for the consumer and for the taxpayer.***

Before the MacSharry reforms, intervention prices and export restitutions constituted the lion's share of the European expenditure for agriculture. Since the MacSharry and the Agenda 2000 reforms, the direct income support forms the principle part of the CAP expenditure. This policy brought price and income stability for producers, though it should be said that the income in the agricultural sector is still considerable lagging behind the other sectors.

The CAP managed to obtain food security in Europe with relatively few costs. These costs amount to about 1% of the total governmental expenditure, when not only taking into account the EU budget, but also the national budgets of the Member States. Within the EU, agriculture is the most important sector for which a Community policy is pursued. Therefore, it is logical that agriculture weighs heavy on the EU budget (46% in 2001). Nevertheless, this argument should not be used against agriculture.

In the meantime, a Belgian consumer only spends 12% of his budget on food. In the beginning of the 60s, this still amounted to 50%. Thus, the consumer is not the victim of the agricultural policy as it is often suggested. In the meantime, there is enough proof that in well developed economies there is only a small connection between the price producers of agricultural raw material receive and the price paid by the consumer for the processed consumption product. The potential profit gained by the drop in prices of agricultural products (caused by the abolition of agricultural subsidies...) will never benefit the consumer, but the processing industry.

***Supply management is necessary because agricultural markets are different from other markets.***
***Agricultural markets demand a specific policy. Especially poor farmers in developing countries are vulnerable here.***

Many suppliers stand against a few buyers on agricultural markets. Agricultural production cannot really be considered *in itself*. The organisation of the production highly determines what happens with nature and with the rural society. Moreover, agricultural markets are characterised by

- strong fluctuations of the yields, in function of climatic conditions, diseases, etc.
- a very low price elasticity of the demand, as a result of which a slightly too high production will immediately lead to strong price drops,
- a low price elasticity of the supply, that can only slowly adapt to the price changes due to natural restrictions.

This leads to major price fluctuations. In more rich countries this translates in strong fluctuating incomes, a succession of good and bad years which is hard to control. The more rich countries seek insurance systems so as to be hedged against this.
Producers in poor countries are in a more difficult situation: they have fewer possibilities to fall back on. People living on the edge of famine never fully recover from a bad year and end up in a downward spiral of less (physical, human, social) capital and less profits.

***What possibilities do developing countries have to develop their own agricultural policy? Can they not adequately protect their agriculture themselves against distorting import and export***

***streams?***
***This should be made possible.***

In three ways, developing countries are restricted to freely realise an own agricultural policy. The situation and the possibilities strongly differ from country to country. The constraints and the differences are related to:

*(1) agreements with international financial institutions such as the IMF and the World Bank. In this framework, Mozambique, for example, could not apply levies anymore on the export of raw cashew, and many developing countries had to open their borders for imports.*
*(2) financial constraints. Many developing countries cannot (or will not) free any means in their own budget for pursuing a policy that supports agriculture, such as from subsidising improved sowing seeds or fertilisers. The debt burden of many countries form an extra handicap.*
*(3) Multilateral en bilateral.*

*Most countries, even de LDC's (least developed countries) are concerned by commercial agreements with certain countries or groups of countries from the North. The most important are the WTO, the GSP (Generalised System of Preferences), the ACP/EU or Cotonou agreement, the USA Caribbean Basin Initiative, the EU-Mediterranean Cooperation Agreement, the Africa Growth and*

*Opportunity Act (AGOA) with the US, etc.*

In this context, we request that developing countries receive within the WTO the right to protect their agriculture and their internal markets, in order to safeguard the development of their self-sufficient agriculture and the growth possibilities of their own agriculture. As a result, each country can try to find a balance between cheap import, in the interest of consumers and the urban population, and higher prices for agricultural products, in the interest of their own producers.

***World coffee market: coffee is traded freely. This unavoidably leads to oversupply and the collapse of prices.***

"Continents that supply coffee (Latin America, Africa and Asia) will do anything to sell their coffee.

They do not mind selling under the production price. Selling is still better than being left with the coffee.

Another problem for the coffee farmers is that they do not have an alternative. Since they earn little money, they cannot just convert to another agricultural product. The only possibility to earn more is to produce more coffee, what many farmers do. Therefore, more coffee is being brought on the market and the vicious circle continues" (Source: The Financiële Telegraaf, 28 May 2002).

Vietnam is a major victim of this. The country has made special efforts to boost the production of coffee, but a.o. Mexico requested this country last year not to dump any more coffee on the world market and tries very hard to prevent Vietnam to sell its coffee under the market price (Source: InellAsia, March 2001).

"Oversupply and productivity growth, as well as intense competition among suppliers, coupled with higher concentration among buyers, are among the reasons for price declines. But there are still projects financed by the development banks to increase production, for example, of coffee in spite of a market glut". (UNCTAD, LDCIII Conference, Brussels, 18 May 2001, Thematic Session on International Trade).

***World rice market: regularly collapsing prices. Towards a cartel between the major rice producers in the world?***

In Bangkok, in the beginning of October 2002, the major rice exporting countries of Asia (China, Vietnam, India, Pakistan and Thailand) negotiated the proposals to stabilise the price of rice and to set up a "rice cartel". Therefore, each country should strictly control its production (Source: IPS, 11/10/02). The countries concerned watch with interest what happens on the coffee market, where prices collapsed since the abolition of the international coffee agreement. The situation on the rice market is even more complex than on the coffee market because consumers can, to a certain degree, switch to a different type of grain when the price of rice rises.

At the moment, India is the cheapest producer, with prices from 137 €/tonne. Then Vietnam, Thailand and Pakistan follow. Thailand is the biggest exporter, with a yearly export of 7,5 million tonnes a year, followed by India and Vietnam. These five countries together yearly export 25 million tonnes, which corresponds to 70% of the rice trade.

***In the WTO context, a further reduction of export subsidies is envisaged. The EU respects the engagements that were concluded on this subject in the past.***

There are 25 countries in the world that can grant export restitutions for their agricultural products. This was determined by the WTO. Countries that did not grant export subsidies in the past, cannot use restitutions. Countries that did, can still subsidise their export but should gradually reduce these.

Therefore, not only the EU subsidises export. Still, the EU is the country that subsidises its export most.

In the previous GATT agreements on agriculture (URAA) of 1994, that covers the period 1995-2000, it was stated that the total amount of export subsidies should be reduced with 36% in 6 years. The exported quantities, for as far as they are subsidised, should be reduced with 21% in the same period. The general reference period is 1986-1990.

The table hereafter shows that regarding export volume, the EU remains well within the imposed volume constraint. Even as regards the expenditure for export subsidies, the EU remains well within the constraint imposed by the agricultural agreement in the GATT.

**Table 3**: Use of export restitutions constraint imposed by the EU (in volume, in expenditure), 2000/01 (Source: Agra-Europe). 100 % - All export restitutions are used volume expenditure
-Wheat ,-Sugar ,-Beefmeat ,-Skimmed dairy products ,-Cheese ,-Other dairy products ,-Pigmeat ,-Poultry ,-Eggs ,70,67% ,69,27% ,57,77% ,46,97% ,94,80% ,91,08% ,29,00% ,91,12% ,84,82% ,8,40% ,74,67% ,30,58% ,9,5% ,69,65% ,58,78% ,17,67% ,62,62% ,18,54%

***What counts for us in the further negotiations is that a balance is found between market distortion ,and market regulation. The market distorting effect of export restitutions, export credits, export ,companies that are set up by national governments, food aid…. should be limited as much as ,possible, and at the same time, better rules and arrangements are needed to correct the defective ,functioning of the free agricultural markets.***8

## 2. The trade relationship between the EU and the developing countries

Before going deeper into the impact of export subsidies on developing countries, we summarise the main characteristics of the trade relationship between the EU and the developing countries. The adjustments of the CAP (MacSharry, Agenda 2000) have led to some evolutions that are positive for the developing countries, and in particular for the LDC's (least developed countries). The EU is the major importer of agricultural products in the world and the second biggest exporter. The trade balance of the EU with the rest of the world was slightly negative in 2000: the total value of agricultural exports amounted to €58.0 billion, against €58.2 billion for imports.

The EU is often blamed for being very protectionist with regard to the developing countries. This does not correspond with the facts.

***The EU is by far the largest market for agricultural products from developing countries. On the other hand, the EU exports considerably less to developing countries than the US, Canada, Australia en New Zealand together.***

The graph below shows the value, in billion €, of the trade (import and export) between the developing countries with the EU on the one hand, and with the QUAD-countries (US, Japan, Canada) together with Australia and New Zealand on the other (see fig.1).

**Figure 1**: Trade in agricultural products between the developing countries and the industrialised countries (source: European Commission).

This is mostly the result of the EU policy with regard to developing countries, based on the Generalised System of Preference, on the EU/ACP (Lomé/Cotonou) agreements, and on other bilateral agreements.

***How does the trade relationship with the developing countries evolve? The EU imports more and more from developing countries, including agricultural products. 42% of the total EU imports already comes from developing countries, and this share rises.***

The yearly growth of the EU imports from developing countries amounts to 15%, which is higher than the growth of the EU imports in general (see graph below). 42% of what the EU imports, comes from developing countries, which corresponds to a total value of €432 billion in 2000, i.e. twice the value of 1990 (source: DG Trade, European Commission).9

**Figure 2**: Evolution in trade of EU with developing countries, in billion€, 1995 – 2000 (Source: DG Trade)

In a few years time, the EU trade balance with developing countries has become negative. The increase of the export of developing countries to the EU has increased faster since 1995 (see fig. 2).

***The EU is also the major importer from the least developed countries (LDC). The EU imports more LDC-products than all other industrial countries together (US, Canada, Japan, Australia en New Zealand).***

The total export of the developing countries amounted to €38 billion in 2000 To the QUAD-countries (EU, US, Canada, Japan) €21 billion was exported, of which the EU imported more than half (52%)(see fig. 3). More than 70% of the LDC's export of agricultural products goes to the EU (see fig.4).

**Figure 3**: Export of the LDC's according to destination, in €billion, 1995 – 2000 (source: DG Trade)
**All products**
Canada 1%**,** Japan 5%**,** EU 52%**,** US 42%

This can be largely explained by the fact that the EU has concluded many bilateral trade agreements with the developing countries and the least developed countries.

**Figure 4**: Export of agricultural products from the LDC's according to destination, in €billion, 1995 – 2000 (source: DG Trade)
**Agricultural products**
Japan 15%**,** Canada 2%**,** US 10%**,** EU 73%

For agricultural products, the EU plays an even greater role with regard to the LDC's. In September 2000, the EU has accepted the "Everything But Arms" proposal, giving free access to all products (except weapons) from the 49 LDC's.

***One might think that imports from developing countries to the EU are subject to high import tariffs, but this is not true. Of all industrialised countries, the EU has the largest levy free import for developing countries and least developed countries.***
The EU hardly levies import taxes when products from the LDC's enter the EU. If the EU levies import taxes, they are mostly collected from the industrial countries. Countries such as the US, Canada and Japan mostly collect import tariffs from developing countries and least developed countries (see fig.6).

**Figure 5**: Levy free import in industrialised countries according to origin (source: European Commission) Figure 5 shows what share of the import is not subject to import levies, respectively for imports from other industrial countries, from developing countries and from LDC's.

**Figure 6** shows what share of the LDC export can be freely imported in the EU, the US, Canada and Japan and shows that also in this light, the EU pursues by far the most open policy with regard to the LDC's. from industrialised countries from developing countries from LDC's

**Figure 6**: Levies on the export of the LDC countries according to destination (source: European Commission) From all industrialised countries, the EU imports the most agricultural products from developing countries, which are moreover least coupled to import taxes.
It can also be added that a recent study (ITC, International Trade Center, UNCTAD-WTO) has shown that, as regards the so-called "non-tariff barriers" (import constraints on the basis of food safety or environmental legislation), the EU clearly scores better than the other countries from

the QUAD or the Cairns-group (see table 4).

**Table 4**: Findings of ITC Research on environmental barriers Technical barriers notified all sectors In % of the imports
Argentinia 2098 48.3 % , Brasil 1984 46.2 % , New Zealand 1348 40.3 % , United States 1141 31.4 % , Japan 1401 31.2 % , Egypt 838 26.7 % , Australia 928 25.4 % , Uruguay 944 24.5 % , Venezuela 1167 21.9 % , Paraguay 501 20.1 % , Poland 561 18.8 % , Chile 1061 17.8 % , Pakistan 295 17.7 % , Switzerland 643 14.6 % , Canada 610 14.0 % , Thailand 912 12.1 % , Mexico 1128 10.5 % , Marocco 206 8.4 % , Hungary 495 7.6 % , Norway 523 7.5 % , Indonesia 455 7.0 % , Italy 256 6.7 % , Malaysia 387 6.3 % , Portugal 247 5.3 % , Singapore 781 4.8 % , Austria 251 4.8 % , France 256 4.3 % , United Kingdom 254 4.2 % , Germany 254 4.2 % , Spain 256 4.1 % , Philippines 60 2.4 % , India 108 2.1 % , Turkey 28 1.6 %
The EU only applies these constraints on 250 of the 5000 imported products, i.e. in total 5% of the imported products. Other countries impose such constraints on 1000 to 2000 products, which is 20 to 50% of the imported products.

The mentioned study also shows that the EU is wrongfully suspected of illegal use of non-tariff barriers, contrary to for instance countries of the Cairns-group. Within this group, Australia, for example, tries to cut back on the imports of cut flowers from the Philippines on the basis of this and calls upon important Philippine agricultural organisations to leave the Cairns-group.

***Food aid is still too much linked to the surpluses in the rich countries. The EU is an exception to this: EU food aid is strictly related to real crisis situations.***

The EU food aid is directly related to the demand from the countries in need, contrary to the US policy on this matter. In December 2001, the European Commission submitted a document on food aid to the WTO. This document says that some big exporters of agricultural and food products give significantly more food aid when their food surpluses are high during recent years. That is why the European Commission requests to make a difference between the genuine and non-genuine food aid.

Food aid in the EU has dropped from 90% of the total development aid in 1990 to about 40% in 1999. This support is replaced by financial support. Moreover, the EU assumes that, except for certain dramatic situations of food shortage, food aid is not the best instrument for development aid.

In the long term, it does not help food uncertainty in developing countries. Therefore, the European Commission believes that better rules and more transparency regarding food aid should be imposed by the WTO.

***Other types of export support, such as export credits, and the role of exporting state enterprises, of state monopolies for international trade and of multinational enterprises active in trade and processing of agricultural products should be looked into.***

Aside from food aid, other types of export support should be researched, such as export credits and state monopolies for international trade. As is the case with multinational enterprises, the functioning of exporting state enterprises is characterised by a total lack of transparency and by the possibility to abuse the fact that they control the internal market completely (farmers can only deliver to one company), or by the fact that they acquired an export monopoly. In some cases, both are even combined.

**Table 5**: The major exporting state enterprises for agricultural products (source: USDA) country, name product export (€ million)
Canadian Wheat Board wheat 2.900**,** New Zealand Dairy Board dairy 1.800**,** Australian Wheat Board wheat and wheat meal 1.400**,** Queensland Sugar Corporation, Australia sugar 925**,** COFCO, China maize 704**,** COFCO, China sugar 368**,** New South Wales Rice Board, Australia rice 361**,** Native Products Export Company, China tea 308**,** Canadian Wheat Board barley 301**,** South Africa Deciduous Fruits Board apples, pears, peaches, grapes 286**,** COFCO, China rice 261**,** New Zealand Kiwifruit Board kiwifruit 237

Size is not unimportant: the Canadian Wheat Board exports more wheat than the EU.

Therefore it is important to look at the whole of the instruments of each agricultural policy. The EU rightfully requests to take this into account at the next WTO negotiations.

### 3. The market share of the EU on the world market

Not only the EU exports subsidies have substantially dropped, but also the market share of the EU on the major world markets for agricultural products has become smaller these last years.

***The CAP insures self-sufficiency. The EU production always fluctuates around the internal disposal.***

One can wonder whether the EU produces too much, i.e. more than necessary to meet the internal consumption. The situation before the MacSharry reforms is often considered. The EU does not systematically produce or sell surpluses on the world market anymore. Data on the degree of selfsufficiency (total production/internal consumption) shows that this is not the case anymore.

**Table 6**: Degree of self-sufficiency of the EU (source: Eurostat) %
-Grains (1) **,** -Sugar (2) **,** -Protein crops **,** -Beefmeat **,** -Dairy **,** -Pigmeat **,** -Poultry **,** -Eggs **,** 113 **,** 103 **,** 23 **,** 103 **,** 112 **,** 107 **,** 106 **,** 103 **,** (1) rice not included **,** (2) C sugar not included

***On the world markets for agricultural products, the EU is no longer market leader. Especially the , market share of countries from the Cairns-group becomes bigger and bigger.***

Who are the major players on the different agricultural markets on world level?

The EU export of **wheat** amounts to 10% of the total export in the world. The US, Canada and Australia are the major exporters.

**Table 7**: Export of wheat (% of world total in 2000) **,** export share
-EU **,** -US **,** -Canada **,** -Argentina **,** -Australia **,** 10 **,** 25 **,** 15 **,** 10 **,** 17 **,** World 100

Source: FAO and USDA

The share of the EU in the world market for **wheat** was a lot higher in the period 1991-95. Of a total of 97.6 million tonnes, an average of 19.3 tonnes was exported from the EU, i.e. 18.8% of the total trade (source: Agrarwirtschaft).
For the global share of the EU on the world market for wheat, there is a ceiling since 1994

between 12 and 14% for grains and about 10% for wheat

**Figure 7**: Evolution of export of grains in 1991-2000, EU and the rest of the world (in million Euro, source: Comtrade)
This situation is the result of the production constraint within the EU. This is also illustrated by the evolution of the intervention stocks in the EU for different types of grains:

**Table 8**: Evolution of the intervention stocks (initial stock, in 1000 tonnes) in the European Union (source: DG VI-C-1)
GRAIN 1992/93 1993/94 1994/95 1995/96
(1) 1996/97**,** (1)1997/98**,** (1)**,** 1998/99**,** (1) 1999/00, (1) 2000/01**,** (1) 2001/02**,** (1)
Soft wheat 10.977 14.950 6.442 1.993 459 496 2.451 6.395 3.080 734, Durum wheat 4.165 3.398 1.165 399 85 1 0 0 0 0**,** Barley 7.322 8.719 6.480 3.276 1.344 797 7.757 7.802 2.316 2.228**,** Maize 488 3.580 1.113 8 0 10 687 115 25 12**,** Rye 3.564 2.445 2.550 1.208 793 1.049 2.708 3.672 3.270 3.812**,** Sorghum 0 152 160 0 0 0 60 49 5 5
TOTAL 26.516 33.245 17.910 6.884 2.681 2.353 13.663 18.033 8.696 6.791
(1)= Sweden, Austria, Finland included.

At the same time, we may not forget that the EU is also the major importer of wheat: in 2000, 7.0 million tonnes of wheat was imported. Other big importers of wheat are (source: USDA): Brazil (6.5 million tonnes), Iran (6.5 million tonnes), Egypt (5.8 million tonnes), Japan (5.8 million tonnes), Algeria (4.5 million tonnes) and Indonesia (4.0 million tonnes). Brazil dominates the world market for sugar. Other important producers are Australia, Cuba, Thailand, and to an increasingly lesser degree, the EU.

It should also be mentioned that the EU is the only major exporter that imports large amounts of sugar (especially raw cane sugar) at the same time, in particular from the ACP countries

**Figure 8** : Major exporters of sugar Figure 9: Major importers of sugar

**Figure 10**: Evolution export sugar Brazil and EU

The EU is the third major exporter of **beefmeat**, after Australia and the US.

**Table 9**: Export of beefmeat (% of the world total in 2000) export share
-EU**,** -US**,** -Russia**,** -Brazil**,** -Argentina**,** -Australia**,** -China**,** 11**,** 19**,** 9**,** 8**,** 6**,** 23**,** 1**,** World 100%**,** Source: FAO and GATT

**Major exporters of sugar**

1999 - in '000 tonne gross value (FO LICHT'S)
11.247, 5.466, 4.081, 3.201, 3.121, 952, 1.135, 828, 605, 453, 627, Brazil, EU, Australia, Thailand, Cuba, South Africa, Guatemala, Colombia, Mexico, Turkey, Pakistan, '000 tonne gross value

Evolution of the sugar export fro m Brazil and the E U
1989/99 - in '000 tonne gross value (F A O )

Major importers of sugar
1999 - '000 tonne gross value - FO LICHT'S

5 220, 2 291, 1 995, 1 852, 1 551, 1 365, 1 304, 1 187, 1 155, 1 010, 1 165
Russia, Indonesia, EU, United States, Japan, South Korea, Egypt, Maleisia, Canada, Iran, India,
'000 tonne gross value

For **dairy,** the EU has always been a major player on the world market.

**Table 10**: Export of dairy (% of world total in 2000)
Skimmed milk powder Whole milk powder
-EU, -US, -Australia, -New Zealand, -Russia
23, 10, 20, 14, 1, 48, 2, 14, 33, 0
World 100% 100%

Source: European Commission, GATT and FAO

The trade in skimmed, whole or half skimmed milk powder corresponds with respectively a third and half of the world production. But it is important to state that New Zealand has exported 474.000 in 2000/2001, almost as much as the EU (478.000 tonnes). The export from New Zealand and Australia fully compensates the recent drop of export from the EU and other countries on the world market. Therefore the total volume of trade remains at the same level.
The EU is also the largest exporter of **pigmeat** on world level.

**Table 11**: Export of pigs (% of world total in 2000) export share
-EU, -China, -US, -Poland,
43, 2, 17, 5
World 100%
Source: FAO

***There is no world market price as such for a lot of products because the world market only trades surplus productions. Therefore, this is not a perfectly functioning market where demand and supply determine the price.***

The EU price is above world market price for sugar, beefmeat, whole and skimmed milk powder and butter. The EU has world market prices for pigmeat and poultry. The European price for wheat today is almost 40% below the price in Chicago for the same wheat.

***Recent evolutions in the world trade in wheat: new power relations. There are surpluses in India and export subsidies for wheat.***

Next to the already mentioned "structural" evolutions (reduction of relative interest of EU as exporter, rise of Argentina, Australia,...), changes in the harvest results, but also in the policy of big producers such as China or India, play an important role.

India, for instance, imported wheat for years (on average > 1.5 million tonnes/year in the period 1997-1999), then in 2000 and in 2001 exports large amounts (in each case > 2.5 million tonnes). During the last 18 months (2001-2002) large stocks of food grains were built up in India, especially wheat and rice, The Indian government has guaranteed the farmers a minimum price (Minimum Support Price, MSP), but has also increased wholesale prices, which led to a drop of the internal demand.

Now, India cannot but sell these stocks on the world market at the best achievable price. In

practice, this means that the wheat is exported with export subsidies.

In the Philippines, India competes with the wheat that is imported from the US. In Bangladesh, the very cheap wheat from India has taken up 40% of the market. Indonesia, Sri Lanka and Malaysia have imported a total of 680.000 tonnes of wheat from India between July 2001 and May 2002, Vietnam 300.000 tonnes in 2002.

***The world market price of wheat illustrates these often unpredictable and partly speculative influences. The export subsidies of the EU play a limited role, also because production differentiation divides the markets: wheat from the EU, the US and Canada is of a better quality and can be mixed with wheat from other countries. The production costs in the large exporting countries are lower than in most developing countries.***

Price fluctuations on the world market are significant. The prices below only prove this in a limited way, because the yearly averages disguise the variations. The lowest monthly average over the same period is below 75 $/tonne, while the highest value amount to almost 300 $/tonne.
Table 12: Evolution of the world market price of wheat, in $/tonne (FOB Golf, source: Agrarwirtschaft) soft wheat durum wheat
1992/93 138 142**,** 1993/94 134 143**,** 1994/95 147 157**,** 1995/96 203 216**,** 1996/97 158 178**,** 1997/98 128 141**,** 1998/99 100 120**,** 1999/00 97 111**,** 2000/01 102 128

The European Commission expects that more production increases in North America, Australia and Argentina, especially due to higher yields (improved varieties) will put pressure on the world market price.

Because the agricultural reform of Agenda 2000 has reduced the intervention price for wheat with 15%, it also comes close to the world market price. In certain periods, such as in 1993-1997, the EU had to impose export levies: the world market price was higher than the internal EU price.

**4. Who benefits from this?**

***Many developing countries are interested in cheap food, especially countries that have a structural food shortage (the net food-importing developing countries, NFIDC's) but also countries that have to feed a growing but poor urban population.***

The NFIDC's, the net food-importing developing countries, comprise amongst others 19 large and medium-sized developing countries, such as countries from North Africa (Egypt, Tunisia, Morocco), Senegal, Ivory Coast, Kenya, Pakistan, Peru and Venezuela. They are mostly exporters of cash crops: cotton, cacao, and peanuts…

The same group includes about 20 smaller island states that are highly dependent (and therefore vulnerable) on the export of only one product, either sugar or bananas. They have preferential agreements with certain developed countries, such as for instance with the EU in the EU/ACP agreement.

As much as 43 African countries are net food-importing developing countries. For these countries, an increase of prices on the world market is not a favourable prospect, nor for developing countries that, though they are not net food-importers, have to feed the large (and poor) urban population.

Some expect that the food prices on the world market will increase because of the reduction of agricultural subsidies, others believe that this is only temporary and that the increase expected will be undone by the growing demand.

The 49 LDC's are all net food-importing countries. Their own agricultural production can be largely described as self-sufficiency agriculture. There is a lot of rural depopulation and a fast urbanisation.

These are mostly countries with heavy debts and they need their foreign exchange earnings to pay their imports of food.

***Excessive market segmentation and the creation of monopolies are common phenomena on almost all local, national and international markets for agricultural products. Especially producers in developing countries are very vulnerable to this. The market of cotton is a clear example of this.***

The distortion of the market forces by monopolies of exporting state enterprises and multinationals has already been mentioned. The problem goes even slightly deeper than just the conclusion that there are too few players on the agricultural markets. Furthermore, there is an enormous segmentation on that global market. In certain segments, there is clearly no competition anymore, but there are actual monopolies. We can find examples of this in almost all markets of tropical products: cotton, sugar, oilseeds… because the producers are depending on that one and single processing industry that is situated nearby, or because they can only supply to the trade monopoly of one enterprise, either or not controlled by the state.

The cotton prices for the producers of West Africa are and have always been particularly low. Data from the World Bank show that this is not related to the costs of production or transport, but to the extremely high taxes levied by the government. Research has shown that the abolition of these taxes would increase producer prices with 45% in Cameroon and with 87% in Burkina Faso. The national governments and the private partner that have the share ownership of the cotton monopoly in all West African countries are actually dividing this cake.

***A structural adjustment in developing countries, without the simultaneous implementation of an agricultural policy, is useless.***

The liberalisation of agriculture happens in different ways: freeing trade within trading blocs such as the EU and the NAFTA, international agreements within the WTO, the forced abolition of import levies on amongst others, agricultural products as a result of the Structural Adjustment Programmes (SAP's) of the World Bank and the IMF. The latter occurs when especially developing countries have problems with their balance of payments, a.o. because of very high indebtedness.

Mozambique for example was forced to abolish export levies on unprocessed cashew nuts as a part of the SAP. The local processing industry as well as the farmers – cashew is a cash crop for most farmers in Mozambique – were victims of this. The winners were the traders and the processing enterprises from India.

***Who produces sugar? Who produces bananas?***

In his comments on the "Everything but Arms" initiative, the IFAP Chairman Doornbos recently said:
*"As regards the so-called European interest in bananas, sugar and rice, we also have to realise that this has to do with the same wave of liberalisation. What would be the consequences if we do apply this on these products? Who benefits? Does the theory we adhere say it is better for these countries? Does it also lead to the fact that the yields finally end up with the people it is meant for?*

*Moreover, especially for these products (sugar, bananas,...) it is clear that there are still many questions left*."

***The WTO negotiations) deal with export subsidies, market access and internal support and ignore market distortion that is more and more caused by transnational organisations, also in developing countries. There is a need for more transparency and anti-trust measures.***

In these last few years, many developing countries have cut down on state intervention on the agricultural markets. Existing marketing boards, controlled by the state, have been shut down. During this phase of liberalisation, the role of the marketing boards was at first taken up by a whole set of smaller and bigger local traders, who were nevertheless fairly quickly replaced by international trade companies or their representatives (source: UNCTAD, 1999).

The EU subscribes to the need for a better control of the activities of transnational enterprises.. *"On competition, there is a need for more effective controls on global corporate activities including avoiding the abuse of dominant positions in vulnerable markets such as commodities"* (EUCommission, 17.04.02). The EU believes that a WTO competition arrangement might be the first step in giving the developing countries the possibility to fight against international anti-competitive practices.

***Concentration in the processing and trading of grains: multinational enterprises go from one market mechanism to another and determine to a great extent the prices paid to farmers.***

Five enterprises control 85-90 % of the world trade in grains: Cargill, Continental, Louis Dreyfus, André and Bunge. Each of these enterprises is active in a dozen of countries. Cargill works in 160 countries. Each of these enterprises tries to get stronger through take-overs of or joint ventures with smaller competitors. Each of these enterprises diversifies its interests to other sectors. This is why Cargill can also be found in the financial world, steel, cotton, seeds and fertilisers. Cargill is one of the three main producers of beefmeat in the US, and one of the major producers of poultrymeat.

The trade in grains between Canada, Mexico and the US within the NAFTA mostly increases within one single company. This goes from the division grains of Cargill in the US to the grain mills of Cargill in Mexico City or to the feedlot of Cargill in Alberta. There seems nothing wrong, except for the lack of market mechanisms between the players on each level. And who can still keep track of 20 the apportionment of costs and the ascertainment of margins on each level and between each link in this chain?

In the US, 60% of the grain circuit (facilities in harbours to trade grain) is in the hands of 4 companies: Cargill, Cenex Harvest States, ADM and General Mills). 61% of the capacity of the flourmills is property of ADM, Conagra, Cargill and General Mills. These companies, even if they are not well known by the general public, play a major role in our food system.

Contrary to the farmers, multinationals are not always interested in high prices for the basic product:

"The key to profitability in the grain trade is not the price itself but a host of other factors, including the variation of price levels for a commodity at any given point in time, the spread between cash and futures prices, interest rates, the state of the money markets and transportation costs... volume is essential to profitability." (M. Scoppola, 1995, "Multinationals and agricultural policy in the EC and USA", Food Policy, Vol. 20, n°. 1, p. 14).

Trade companies aim at large turnovers and volumes, because these companies have every interest in a well running trade (transport, handling costs in general). The lower the starting price to the farmer, the better. They oversee the whole of the chain, and from that starting point, new competitors can hardly compete. They control information and can foresee harvest results, policy changes in important production zones. It does not really matter to them in which country this happens and who is initially involved.

Their strength is also based on the access to financing that is indispensable for such a trade. Large capitals are needed for the insurance of such enormous trade streams and for the work on the futures market. Even large agricultural co-operatives cannot keep up here.

The companies in the grain trade are part of vertically integrated conglomerations, with very diverse financial interests. Grain is for them part of the cost of meat and processed products, where margins are much higher. Cargill is probably the largest exporter of grain in the world, but it is also the seventh largest producer of food and drinks. Thus, Cargill is the cause of the growing margin between prices to producers and prices to consumers.

***Consumers as well as producers realise more and more that the margins in the processing sector and in trade are no longer in relation to the real added value***

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Last year during a meeting of the IFAP, the Australian NFF (National Farmers Federation) pointed out: "*We slowly approach the point where the concentration in the world of supermarkets will be at the expense of the market forces, which is already the case in Great Britain and Australia. The farmer receives too little and the consumer pays too much".*

Nestor Osario, General Director of the International Coffee Organisation (ICO) says: "the turnover of the retail business of coffee has doubled over the last 10 years, while the income of the coffee farmers concerned has been reduced by half. Since the 90s, the liberalisation in the coffee sector benefits neither the consumer, nor the producers but the five multinationals that control more than half of the trade and processing of coffee."

***Conclusion***

*Advocates of free trade, and also a number of NGO's, consider the agricultural policy and the agricultural subsidies of the OECD countries (and the rich North) as one of the main causes of poverty in the developing countries. As a conclusion we would like to consider following points:*

*1- The whole world is looking for solutions and for an agricultural policy that can handle the defective functioning of the free markets, with often recurring overproduction and strong*

*fluctuating prices on the world markets, that are mostly nothing more than "surplus markets". There are many indications that "supply management" should be part of a sustainable solution.*

2- *There are many very different agricultural systems in the world, from rich countries that produce and export on a large scale at very low prices (the US and the Cairns-group, i.e. Australia, New Zealand and a number of developing countries or even the richest part of those developing countries), to rich countries that prefer to preserve a rather small-scaled family agriculture while the countryside and the environment play an important role (Europe), to poor countries and large groups of poor farmers in rich developing countries for whom selfsufficiency and food security are essential. It seems excluded to formulate one agricultural policy that fits everywhere.*
3- *The EU agricultural policy is often wrongly seen as the big villain, a. o. with regard to the developing countries. The facts prove the opposite. Also with regard to the consumer (who only has to contribute 12% to food) and with regard to the taxpayer (the agricultural budget is not out of proportion), the balance of the CAP is more positive than expected. We ask for understanding: the agricultural sector has already paid the bill for that, in terms of job and income loss. Weakening the agricultural policy through the reduction of export subsidies without proposing a serious alternative, is playing with fire.*
4- *The context in which the world trade in agricultural products is evolving nowadays, makes sure that the further dismantling of the EU agricultural policy will not have an effect on the situation of the poor farmers in developing countries, such as many people believe.*

*This means*

- *that the EU, a. o. given the policy of self-sufficiency and, subsequently, production limitations, is no (longer) price leader for a number of products, such as sugar and grain, and less and less for dairy.*
- *that already now, the exporting countries, having very efficient production methods, compete with each other at very low prices, prices that cannot be competed with in some developing country because of the rising commercial agricultural sector, and this without any subsidies.*
- *that, no matter what, free markets regularly, or rather irregularly, lead to overproduction and the collapse of prices, as shown by the coffee market.*
- *that we should especially look at those who benefit. It is clearly not the case that poor farmers in developing countries (and they are concerned when talking about the fight against poverty) automatically participate in the possible "advantages" that a country receives. This is not only related to redistribution.*

*This has especially to do with the relation between the poor farmers and the state or private enterprises that process and trade agricultural products, and that operate more and more on world scale.*

*The real priorities, when talking about the fight against poverty and food supply, lie elsewhere. . It is important to draw up an agricultural policy and to bring it into practice, not to abolish export subsidies. Each country needs its own agricultural policy, determining the choices that fit that country best. Choices between cheap food in the cities and good prices for the farmers,*

*possibilities for the family and self-sufficiency agriculture. Low prices for farmers and levies for the treasury or margins for trade and processing companies…Farmers also are totally entitled to voice their views in that policy, and this is clearly not the case now. So it is logical that we consider the strengthening of the agricultural organisations in the South a priority as well.*

***Noël Devisch***
***President Boerenbond***

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## Education

- Bachelor of Arts Degree. June 15, 1980, with Honors. Interdisciplinary Degree (History, Political Science and Anthropology) Stanford University, Stanford, California.
- Masters Degree in Latin American Studies. June 1986

## Experience

- *Oct.1986-Apr.1988* Fulbright Scholar in Mexico. "The Effects of the Economic Crisis on Women in Mexico: the Case of the September 19th Seamstresses Union"
- *Jan.1987-Dec.1990* Community development worker, Equipo Pueblo, Mexican non-governmental organization. Areas: publications, women´s projects, international relations.
- Aug.1988-Aug. 1989 *Development consultant, Swiss Red Cross in Mexico. Follow-up on earthquake reconstruction projects*.
- Jan. 1990-Jan. 1991 *Staff writer, associate editor "Mexico Update", American Chamber of Commerce.*
- Jan.1991- May 1992 *Writer and editor, "Business Mexico", monthly magazine*
- May 1992 - 2003 *Freelance writer and researcher*
- Jan. 2000-Dec. 2000 *International Advisor to Mayor Rosario Robles, Mexico City Mayor´s Office*
- *Jan. 2001-April.2002* Coordinator, "Social and Environmental Impact of Economic Integration in Mexico"
- *Jan. 1998-present,* Researcher, Centro de Estudios para el Cambio en el Campo Mexicano (CECCAM)
- *March 2003-present* Director, IRC Americas Program-Mexico

## Publications:

**Numerous articles on Mexico in U.S. and Mexican publications**
Latin Trade, Foreign Policy in Focus, Business Mexico, Borderlines, Multinational Monitor, Dollars and Sense, América Economía, El Cotidiano, La Jornada, Chiapas, Hemispheres, NACLA, Institutional Investor Mexico Section, Panos, etc.

## Books and Book Chapters:

Co-Editor and contributor, Enfrentando la Globalización: Respuestas sociales a la integración económica en México, Carlsen, Wise & Salazar (eds.) Editorial Miguel Angel Porrua. 2003
De la crisis a la sustentabilidad: El café en Mexico, Centroamérica y el caribe, with Victor Perezgrovas, Edith Cervera, John Burstein and Luis Hernández. Coopcafé-CNOC-Oxfam Great Britain (2002).
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Environmental Institutions" with Hilda Salazar, in "Greening the Americas: NAFTA's Lessons for Hemispheric Trade" eds. Carloyn Deere and Daniel Esty, MIT Press, 2002.
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"Mexican labor and unions", "Native Peoples" in Mexico: A Country Guide, Ed. Tom Barry and "Non-governmental Organizations (with Luis Hernandez) 1992.

**Grants and awards**

* Foreign Language and Area Studies partial scholarship. Academic year 1985-1986.
* Haas Public Service Award. Stanford University. Summer 1986.
* Fulbright Collaborative Grant. *"Women and the Economic Crisis in Mexico: The Case of the Independent Seamstresses' Union '19 de Septiembre'".*
* Regent´s Scholarship, University of California, 1987 (declined)

# The Mexican Experience and Lessons for WTO Negotiations on the Agreement on Agriculture

**Laura Carlsen**
**Americas Progam/CECCAM**

1. The Doha Round mandated that special attention be given to the development needs of developing countries. Therefore, review of the Agreement on Agriculture must focus on the impact of liberalization to date and the potential impact of new rules.

2. Mexico has been called the laboratory of free trade, because the nation radically opened its borders beginning in 1986, with entry into GATT. Mexico's unilateral trade liberalization and structural adjustments accelerated in 1994, when the North American Free Trade Agreement (NAFTA) went into effect. We can now draw on nearly two decades of experience in agricultural free trade policies from the perspective of a developing country. The lessons are illuminating for the present WTO negotiations, and indicate the need to seriously question the focus on market access for developed countries, at the expense of food sovereignty, livelihoods and rural development in developing countries.

## The Mexican Experience: Displacement, poverty and food dependency

3. Under NAFTA Mexico agreed to total trade liberalization of all agricultural products by 2008. Although corn and beans, the nation's staple food crops, were given a fifteen-year adjustment period, in practice both were liberalized before the adjustment period by government decisions to permit tariff-free imports above quota. In effect, corn faced zero-tariffs less than three years into the agreement.

4. The asymmetries between Canada, the United States and Mexico in agricultural production were profound at the time of signing, and have deepened since. Twenty-one percent of the Mexican population depends on farming for their livelihood, compared to only 2.8% in the U.S. Three-fourths of Mexican producers work fewer than five hectares. Important asymmetries exist in subsidies (the U.S. Farm bill authorizes over $200 billion in the next decade), productivity, credit, natural resources, inputs and transportation.

5. Corn is Mexico's principal crop and the major source of sustenance. Mexico is the center of origin for corn and the country's history and culture revolve around maize. Since NAFTA, corn imports have nearly tripled, and the price has dropped 64% since 1985. Genetically modified corn imports have contaminated local varieties, leading to fears of loss of biodiversity and increasing dependency on transnational seed and chemical companies.

6. Other crops have fared even worse. Soybeans, wheat, poultry and beef imports have risen over 500%, displacing domestic production. Mexico has imported 78 billion dollars worth of foods since 1994.

7. The Mexican countryside lost 1.7 million jobs since NAFTA, with little employment generation in other sectors. Thousands of Mexicans migrated to the U.S., many to work in agriculture as undocumented workers without labor guarantees or benefits.

8. Promised compensation has not materialized. Exports have risen, especially in fruits and vegetables, but fail to compensate for imports. Agro-export crops cover only 8% of total cultivated land while seventy percent of Mexican farmland is used for basic grains and oilseeds, and worked by three million producers. Niche marketing, where the country is thought to have comparative advantages, has little room to grow due to supply-side constraints, lack of financing and narrow markets. Agriculture has received only 0.3% of direct foreign investment.

9. Mexico has registered a negative balance of trade in agriculture over the decade of trade liberalization. Moreover, the government has lost nearly three billion dollars in revenues by failing to apply tariffs permitted under NAFTA.

**Lessons for the WTO**

10. In sum, two decades of agricultural trade liberalization in Mexico have led to: an increase in rural poverty, malnutrition, and out-migration; increased workloads, particularly for women; increases in consumer prices; increased profits and market control by transnational traders and processors at the cost of smallholder farmers; lost national revenues; and severe risks to the environment and biodiversity.

11. By reflecting the market access priorities of developed countries that predominated in NAFTA, the Harbinson draft does nothing to revert the negative tendencies of trade liberalization seen above.

12. First, the Agreement on Agriculture fails to seriously take into account existing asymmetries when pursuing market access. It proposes "harmonizing", gradually or abruptly, market access on the foundation of enormous and unresolved asymmetries between nations, and between sectors within nations. "Special and Differential Treatment"—to the degree in which it has been defined—merely reduces tariff reduction requirements, often on the basis of already low tariff levels. The exemption of "Special Products" is limited since these would be determined by conflicting interests in the WTO rather than national rural policy. Instead of creating a level playing field, this approach leads to permanent disparities.

13. For all but a handful of heavily subsidized, well-capitalized and often transnational agricultural interests, market access translates into market displacement. The food market is relatively inelastic. When the global market expands for nations and corporations with "comparative advantages", it expands through the conquest of markets wrested from farmers in developing countries. The consequence is displacement of national food production and destruction of subsistence production systems.

14. Second, the Agreement perpetuates dumping practices while denying defensive tools to developing countries. Export subsidies would be phased out instead of ended. Little is done to prevent indirect export subsides from being shifted to uncontrolled Green or Blue Box measures that wind up having the same net effect of encouraging overproduction and displacing developing country farmers.

15. Income support payments also contribute to dumping on world markets, but they have very different practical functions in developed and developing countries. In net food-exporting

countries, they serve primarily to subsidize traders by lowering the price they have to pay to producers, encouraging overproduction and enabling them to increase volumes sold abroad. In countries like Mexico, where over half of farms produce for family consumption, supports could mean the difference between a child starving or not.

**Free trade vs. national development**

16. The debate in developing countries is not at root a debate between free trade and protectionism. It is a debate between the imposition of free trade rules at the cost of national development and well-being. In the complex and difficult context of globalization that shows clear tendencies toward increasing inequity, and concentration and polarization of wealth, developing nations need to respond with policies that assure each citizen a basic standard of living. The Agreement on Agriculture, like NAFTA, binds national policy-making in a strait jacket just when developing countries must respond to new and dangerous challenges. At the same time, it exacerbates threats to food sovereignty, and eliminates important strategies of survival in the countryside that not only guarantee livelihood but also support cultural, agricultural and biological biodiversity.

17. The United Nations Development Program recently listed four principles of trade that have been largely forgotten in current debates: *1) Trade is a means to an end, not an end in itself; 2) Trade rules must allow for diverse national institutional standards; 3) Countries have the right to protect their institutions and development priorities; 4) Countries do not have the right to impose their institutional preferences on others.*

18. These simple rules imply a complete reorientation of the WTO, from trade promotion to a stronger focus on development and equity issues. Organizations of small farmers in developing countries have articulated recommendations that must be considered to address the basic inequities of international trade in agriculture and protect the many roles rural production plays in society, including employment, food sovereignty and security, foreign exchange and allocation of natural resources.

19. To end dumping, they call for an end to export subsidies in all forms, and the right to safeguard mechanisms or protective measures when deemed necessary. Mexican farmers associated with Via Campesina assert that this requires exempting food production and markets from the WTO to create new, more democratic mechanisms of regulation that respect food sovereignty and help rebuild local and regional markets. It also requires regulation of transnational trading oligopolies that create price distortion.

20. Other recommendations include:
    - Farm support and agrarian reform programs based on human needs, that incorporate the goals of gender equity, and respect for farmers' rights—
    - Legislation and enforcement of national environmental and health standards, even when set higher than international standards, or those of partner nations.
    - Impact studies based on real experience rather than theoretical modeling. Studies must take into account non-trade concerns and market failures due to concentration of transnational corporations.
    - Commitment to preserving the multifunctional character of agriculture in a real and global way. The EU commitment to multifunctionality so far has been restricted to permitting measures that support developed country agriculture. Although non-trade

concerns are even more vital in developing countries, no provisions have been made to support them where national government funds are insufficient. There is also no recognition of the impact of dumping on the ability of developing countries to maintain agricultural activities that ensure global values such as environmental conservation, employment and food security.

- Democratization of international trade regulation, including correction of the under-representation of the Least Developed Countries.

21. International trade rules should promote human well-being and minimize conflict. They should not impose a free-trade system, because there is no global consensus that this is the only, or best, road to development and equity. Rather, experiences like Mexico's indicate that it is a road fraught with perils and high human costs.

22. Even optimal international trade rules will not solve problems of rural development, due to the complexity of local and regional conditions. Only national integral development policies can do this. Domestic policy is a battle that must be fought on its own turf by the rural citizenry in the context of a responsive and democratic state. By tying the hands of national governments, the WTO Agreement on Agriculture will only exacerbate the crisis in the countryside and undermine democratic processes.

# The Price of Trade Liberalization in Agriculture: The Mexican Experience

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Mexico has been called the laboratory of free trade, because the nation radically opened its borders beginning in 1986, with entry into GATT. Mexico began unilateral liberalization and structural adjustments that accelerated under the Salinas administration from 1988-1994. The North American Free Trade Agreement (NAFTA) that went into effect in 1994 formalized the terms of liberalization and further accelerated tariff reduction schedules.

NAFTA is a regional free trade agreement that stipulated different terms and led to far different outcomes for the three nations involved (Canada, the United States and Mexico). Canada excluded sensitive agriculture sectors from the agreement whereas Mexico included even vital staple crops.[32]

We can now draw on nearly two decades of experience in agricultural free trade policies from the perspective of a developing country. The lessons are illuminating for the present WTO negotiations, though far from inspiring optimism. Mexico's experience with NAFTA has led policy analysts and small farmers' organizations to question many of the fundamental premises and promises of free trade.

## How "free" is "free trade"?

In Mexico, the reality of international agricultural trade deviates far from the logic of prices determined by the laws of supply and demand, where the product produced most cheaply and efficiently wins. Three major factors have created distorted market conditions made-to-order for the world's most powerful U.S.-based transnational corporations—and made to drive out small farmers south of the border.

1. *Subsidies and dumping.* The first distortion comes in the form of U.S. government farm subsidies. The 2002 Farm Bill authorizes $180 billion dollars over the next ten years, an 80% increase in subsidies. Some analysts state that the price tag will reach 248.6 billion dollars in farm supports.[33] Federal government subsidies now make up 40 percent of the U.S. farm income, some $30,000 in supports and $8,000 in net income. This is more money than a Mexican campesino is likely to see in a lifetime.

[32] Canada excluded poultry and dairy production. For an analysis of the relative impact on each of the three countries, see Fritscher, Magda. "Libre comercio e integración en Norteamérica: el caso de la agricultura", en Revista Mexicana de Sociología, Vol. 63, No. 4, Oct.-Dec., 2001. Instituto de Investigaciones Sociales, Mexico City, Mexico. Pp. 3-36.

[33] Mittal, Anuradha. "Giving away the Farm: the 2002 Farm Bill", Backgrounder, vol. 8, No. 3, Summer 2002, Institute for Food and Development Policy. San Francisco, California. 2002

While they ostensibly serve to keep family farmers afloat, actually the billions in subsidies flow disproportionately to corporate farmers. Along with export-import financing, they assure that huge food and agriculture transnationals increase their profits and their global reach since the U.S. exports nearly two-thirds of the value of its agricultural production.[34] Mark Ritchie of the Institute for Agriculture and Trade Policy (IATP) notes that U.S. export subsidies end up in the pockets of, primarily, Cargill and Archer Daniels Midland, the world's largest grain traders.[35]

What does this do to the Mexican market? A recent IATP analysis of the year 2001 reveals that corn cost an average $3.41 a bushel to produce in the U.S. and sold on the international market for $2.28 a bushel. Food First reports that California rice costs between $700 and $800 an acre to produce and receives $650 on the world market and U.S. wheat is exported at 46 percent below cost.[36]

There's a name for this—dumping-- and it´s supposed to be prohibited under both NAFTA and WTO rules. According to the above figures, the over five million tons of U.S. corn sold in Mexico in 2001 carried a dumping margin of 25%. Analyses from past years show dumping margins of over 30%.

Dumped U.S. surpluses erode producer prices; the value of Mexican corn dropped 64% between 1985 (when Mexico entered GATT) and 1999. They also leave local producers without a market. The United Nations Development Programs estimates that worldwide U.S farm subsidies cost poor countries about 50 billion dollars a year in lost agricultural exports.[37] In Mexico, the large importers and processors welcomed the opportunity to import the lower quality corn at bargain-basement prices, thus reducing input costs. Livestock farmers also pressed for access to the subsidized corn. Since 1994, corn imports have tripled, and become a major factor in Mexico's chronic agricultural balance of trade deficit (See graph).

Subsidized imports at dumping prices have also broken down vertical integration in growing agro-export sectors. Beer production, which represents 12% of agro-exports in Mexico, now imports 50% of its barley. Although the Mexican High plains region is well adapted to barley production and was well integrated in the past, faced with U.S.-subsidized barley the industry imports barley and malt inputs. The two companies that together represent 98% of the Mexican market (Grupo Modelo and FEMSA) are now 51% and 30% foreign-owned.

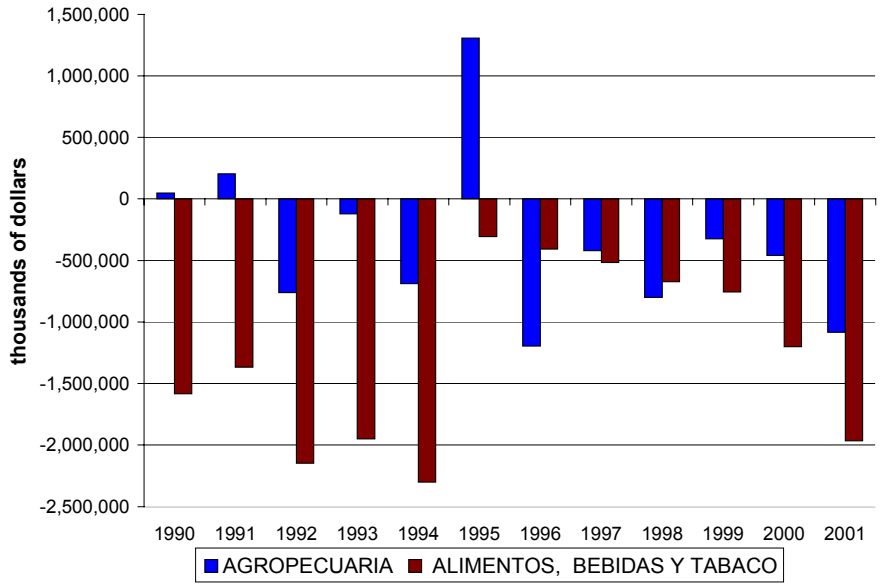
No matter *what* they do, Mexican farmers cannot and should not be forced to compete with grains sold at *below* U.S. production costs. They lack credit, economy of scale, fertilizers, chemical weed and pest controls, farm equipment and, most importantly, significant government supports. As U.S. support increases, Mexican government programs have followed IMF prescriptions and all but disappeared. During the period from 1990 to 1994, Mexican farmers received 33.2% of their yearly income from the government. For 1995 to 2001, that figure had

[34] Fritscher, Magda. "Libre comercio e integración en Norteamérica: el caso de la agricultura", en Revista Mexicana de Sociología, Vol. 63, No. 4, Oct.-Dec., 2001. Instituto de Investigaciones Sociales, México City, México. Pp. 3-36.

[35] Ritchie, Mark "Where the sun never shines", see www.iatp.org, in Spanish December 14, 2002 La Jornada. Ritchie cites a study by the University of Missouri showing that 82% of U.S. corn exports are from these two, along with Zen Noh, a much smaller Japanese firm.

[36] Mittal, op cit.

[37] Ibid.




dropped to 13.2%.[38] Subsidies to producers in Mexico fell 54% between 91-93 base period and 1998.[39] In 1999, the average U.S. farmer received $21,000 in subsidies a year, compared to only $1,000 in Mexico.[40]

What subsidies do exist in Mexico have been progressively concentrated in the hands of wealthier, "more competitive" farmers, thus undermining the viability of smallholders. Eighty-five percent of subsidies go to only 15% of farmers.[41] Over 80% of marketing support subsidies go to grain producers in only three states: Sonora, Sinaloa and Tamaulipas.[42] Meanwhile, poor farmers utilize the little support they receive to cover basic needs, not improvements in production or marketing.[43] It is therefore a poverty alleviation subsidy rather than an agricultural subsidy and does nothing to increase productivity, technical capacity or marketing options. The result is even greater polarity between what some have called "the two Mexicos" in the countryside.[44] The richest 10% of producers generate 34% of total farm income, the poorest 10% only 2%. Monthly income for richest 10% of farm families is 34,545 pesos (2000) and only 2,159 poorest 10%.[45]

Although explanations of why vary, analysts agree that world agricultural prices are grossly distorted. A growing number of studies relate dumping--with an emphasis on the role of trading oligopolies of transnationals[46]--to artificially low prices on the international market. Others blame trade barriers. The consensus is that significant market failure exists in world agricultural markets. A World Bank study on commodities notes that in the case of sugar "world market prices are so distorted that virtually no country can supply on the world market without some form of subsidy (e.g., Thailand and Brazil are the among the most competitive sugar producers but provide some form of subsidies to their sugar industry)."[47] U.S. corn producers, the most

[38] Hernández Navarro, Luis. Ojarasca January 2003
[39] OECD 1999 and 2000
[40] OECD, "Agricultural Policies in OECD Countries, Monitoring and Evaluation, (2000). Paris.
[41] Luhnow, David, "U.S. Farm Bill is Behind Mexican Domino Chain, March 5, 2003 Wall Street Journal
[42] Fritscher, op.cit.
[43] In particular, the government Procampo Program of supports per hectare.
[44] Interview with Ricardo Celma, U.S. Trade Council, March 1997
[45] ASERCA "Descripción de los sectores agroalimentario y pesquero y características del medio rural" SAGARPA, August 2002
[46] Murphy, Sophia "Managing the Invisible Hand" http://www.tradeobservatory.org
[47] Beghin, John and Ataman Aksoy, "Agricultural Trade and the Doha round. Lessons from Commodity Studies". Paper prepared for the Annual World Bank Conference on Development Economics-Europe, Paris May 2003.

competitive in the world, rely on supports due to the low prices offered by trading transnationals that control storage and marketing.

2. *Export credits*. In addition to subsidized prices, cheap and ready access to U.S. financing has played a key role in the glut of grain imports to Mexico that has devastated domestic prices. In 1996 the international price of corn rocketed due to fears of shortages. Despite the high price, that was the year Mexico more than doubled imports at an unprecedented cost.

The Center for the Study of Rural Change in Mexico (CECCAM) reports that an overriding incentive for importers in 1996 and other years has been financial. U.S. exporters and government export financing organisms, particularly the Commodity Credit Corporation (CCC), offers low-cost loans to import U.S. grains. Although rates have decreased in recent years, credit rates in Mexico at the time were over 30 percent[48] while the CCC offered between 7 and 8 percent. For Mexico-based companies this was like rain in a drought. Importing U.S. agricultural products, particularly grains, allowed companies to finance through cheap CCC loans.

The Mexican government, facing the same tight money problem following the 1995 devaluation crisis, looked to the same solution. The 100 billion-dollar bail-out orchestrated by the Clinton administration in response to the crisis included a one billion dollar credit that obligated Mexico to purchase corn directly through the CCC program.[49] In the single year between 1995 and 1996, corn imports rose 120%--double the quota stipulated under NAFTA, and all tariff-free. Mexican importers assumed over $1.5 billion dollars in CCC credits that year[50] and Mexican producers were sold down the river.

3. *Concentration.* Finally, free trade cannot exist in the context of global oligopolies. While the World Bank reports that 73 percent of Mexico's rural population lives in poverty[51] (a significant increase over the pre-NAFTA period), under the auspices of the free trade model the major agribusiness transnationals have grown by leaps and bounds. As international traders with both export and import activities, many receive a triple subsidy under NAFTA: first in the below-cost price of U.S. farm products; second, in direct export subsidies and third, as Mexican importers. They also receive Mexican subsidies, for example, Cargill receives the lion's share of subsidies in the state of Sinaloa—Mexico's most heavily subsidized agricultural state.[52] Couple that with the added advantage of wiping competition off the map through below-cost prices and the deal is complete.

**Displacement and resistance**

None of these factors has anything to do with farmers' productivity-- the culprit in the failure of farmers to compete according to Secretary of Agriculture Javier Usabiaga. Instead they converge to stack the deck against Mexico's small farmers.

In the face of all these negative tendencies, planners predicted that the majority of Mexican corn farmers would have left the sector by now. They were wrong. Figures for the year 2001 show

[48] Nominal interest rate (28-day commercial paper) 1996 Mexico 36.8% SEIJAL.
[49] Lustig, Nora
[50] Carlsen, Laura. "The Corn Conundrum: Corn import debacle plays up weaknesses in agricultural policy". Business Mexico, July 1997
[51] World Bank "Country Assistance Strategy: Mexico" made public October 18, 2002 and reported in La Jornada. October 20, 2002 "El campo mexicano no está listo para competir en el TLC".
[52] Hernandez, Luis. "Cargill, amigou" La Jornada, February 4, 2003

that national corn production actually *grew* 10% since 1994. Nearly 3 million Mexican farmers throughout the country still grow corn. How, and even more important *why*, do these farmers persevere against the global-market odds?

The answer is that in spite of all that's been said, the Mexican farming sector is indeed highly subsidized. But not by a government concerned with assuring the viability of agriculture and the security of its food supply. Mexican farmers themselves, and particularly southern farmers living in poverty, are subsidizing national corn production. The subsidies come from unpaid family labor, small-scale commercial activities and, significantly, from the over 9 billion dollars in remittances sent home by Mexicans working in the U.S.

The remittances serve a double purpose: on the one hand, the money sustains agricultural activities that have been deemed non-viable by the international market but that serve multiple purposes: family consumption, cultural survival, ecological conservation, supplemental income, etc. On the other, by sending money home migrants not only seek to assure a decent standard of living for their families but also to maintain the campesino identity and community belonging that continue to define them in economic exile. Their money, whether individual or organized, subsidizes rural infrastructure, farm equipment, inputs and labor and conserves cultural identity.

Three main factors—remittances, cultural commitment to corn production and the feminization of agriculture--account for the otherwise unaccountable growth in corn production in Mexico. Despite the overwhelming "comparative disadvantages" of a distorted international market, Mexican farmers persevere against all odds. What the planners failed to realize is that small-scale corn production is the millennia-old safety net of all of Mesoamerica. While the trade liberalization in Mexico has led to a reduction in cultivated acreage for the supposedly more competitive irrigated commercial farms, subsistence seasonal corn production holds steady. Especially in areas of high emigration, women have taken over running many family farms. They typically apply remittances from relatives in the U.S. to make up for the loss in income resulting from the poor prices they receive for their marketed surplus. The perseverance of corn farmers reflects a deep cultural resistance to the dislocation and denial inherent in the free trade model.

**Can "comparative advantages" save agriculture?**

The U.S Grains Council estimates that in Mexico only 1.7 to 2 million hectares have the capacity to produce close to the U.S. standard of 8 tons of corn a hectare. The strong implication is that farmers on the remaining 6.5 million hectares currently in corn production should look for other work.[53]

The Mexican government counted on shock treatment to rapidly "rationalize" this uncompetitive corn sector. Instead of the fifteen-year adjustment period allotted for corn under NAFTA terms, corn faced total *de facto* liberalization after only 34 months.[54]

But although the countryside did enter into shock, as noted corn producers did not all abandon their land in search of greener pastures. The first reason why these marginal corn producers still have not become factory workers or mango growers is that they can´t. The idea that Mexican agriculture can be restructured to exploit comparative advantages on the international market is a pipe dream. The characteristics of Mexico's land and climate limit regions where fruits and vegetables—the NAFTA "winners"—can be grown. Production and investment is concentrated

[53] Celma, op.cit.
[54] Schwentesius, Rita. ""

in a very few regions in the north. The upshot is that the comparative advantage model in Mexican agriculture exacerbates regional polarization and southern exclusion. Moreover, foreign investment needed to convert crops and develop export industries has failed to arrive. Over the NAFTA period, only 0.3% of all foreign direct investment went to agriculture—a dismal showing by all accounts.[55]

Mexico has increased agro-exports during the NAFTA period. But the "winners" have been a handful of already privileged farmers, particularly in fruits and vegetables, who work only 8% of total cultivated land. Meanwhile over three million producers of basic grains and oilseeds on 70% of cultivated farmland have been devastated by the market and abandoned by the government.[56] Agricultural niche-marketing, where the country is thought to have comparative advantages, has little room to grow due to supply-side constraints, narrow markets and lack of financing.

The few sectors already favored by natural resources, capital, proximity to the U.S. market and infrastructure that have grown during NAFTA also provide limited and unstable rural employment. Human rights and labor organizations, as well as environmentalists, have watched the growth of the agro-export model with trepidation. Export agriculture employs some of the most socially and environmentally harmful methods of production in the countryside, including the intensive use of migrant family labor, application of chemical inputs with severe short and long-term health and environmental effects and documented discrimination against women, exploitation of child labor, and violation of human rights.[57]

Mexico's agro-export sector has repeatedly faced trade barriers in the U.S. Counter-seasonal tomato growers in Sinaloa have fought a permanent battle with their counterparts in Florida, who have succeeded many times in closing the border to protect their interests. Often under the pretext of sanitary rules, the same protectionist measures have been applied against Michoacan avocado growers.

Despite the limitations of the model, free marketers insist that Mexican agriculture merely requires a temporary social "safety net" of government programs to assist while the changes are made. But no matter how difficult conditions become, smallholder maize producers are likely to hold on and are unlikely to find adequate viable alternatives. Trying to fit this maize-centered campesino economy-- based on cultural preservation, subsistence and small-scale sustainable agriculture-- into the free trade model of comparative advantages is like trying to cram a square peg into a round hole.

When Mexican farmers demand new rural policies and a new pact between the state and rural society, they are demanding that the non-market contributions of the campesino economy be recognized as essential to national sovereignty[58], cultural diversity and rural employment. Market policies that do not take these factors into account are doomed to fail.

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[55] Subsecretary of Industrial and Foreign Trade Norms and Services/General Direction of Foreign Investment, Sec. of the Economy, "Inversion extranjera directa en agricultura, ganadería, caza, silvicultura y pesca" Dec. 2001

[56] Fritscher, op.cit.

[57] See, for example, Kirsten Appendini, Blanca Suárez and María de la Luz Macías "¿Responsables o Gobernables? Las trabajadoras en la agroindustria de exportación" El Colegio de México, México City 1997.

1. [58] **Food sovereignty: "the right of each nation and peoples to maintain and develop their own capacity to produce foods respecting the productive and cultural diversity. A pre-condition for genuine food security." Via Campesina**

**Can free trade supplant national rural development policy?**
Since the "lost decade" of the eighties and the polarization of wealth in the nineties, the "trickle-down" theory has fallen into disrepute. But today's neoliberals still insist that the poor will eventually benefit from the model, and all that's needed is for the laggards to catch up, convert, modernize, integrate etc. Entering its tenth year of NAFTA and with over twenty of economic integration, Mexican agriculture has steadily *lost* ground: statistics show 1,750,000 people displaced, and increases in poverty, malnutrition and school desertion. While President Fox and his cabinet cite six billion pesos in agro-export earnings, farmers point out that that money went into the pockets of less than 7 percent of farmers.

A major premise of NAFTA and the proposed Free Trade Agreement of the Americas is that if a nation stays on the yellow brick road of IMF prescriptions and economic integration, it will reach the Emerald City of U.S. prosperity. They offer no alternative routes, no other destinations. Today Mexican farmers are saying not only that they *can't* compete with the U.S. agricultural model, but that they don't want to. And they present a long list of reasons why.

The first relates to social concerns. The U.S. model decimates rural employment (2.8% of the U.S population make a living farming compared to 21% of the Mexican population); and it increases social inequities by concentrating land holdings. As mentioned above, land and subsistence farming continue to be the social security of most of rural Mexico.

The second relates to environmental concerns: the U.S. agricultural model is not environmentally sustainable due to the large amount of chemical pesticides, herbicides and fertilizers applied and mono-cropping techniques. It also destroys biological, agricultural and cultural diversity. Sowing GM corn is prohibited in Mexico since the country is the world center of origin for maize and home of over 300 local varieties, adapted over the years to local ecosystems and cultures. Due to the massive importation of U.S. GN corn, widespread genetic maize contamination has been detected in Mexico, threatening valuable varieties and farmers' livelihoods.

The third reason has to do with national sovereignty and dependency issues: the free-trade model creates food dependency through imports. Mexico now obtains 40% of its food from abroad and has spent 72 billion dollars on food since 1994. It also links the rural sector up to the needs of transnational capital instead of to the nation's consumers and producers, strangles local and regional markets and encourages dependency on transnational seed and chemical conglomerates.

Farmers have also begun to recognize consumer issues: the U.S. model erodes food quality to the consumer by encouraging junk food imports and chemical use and genetically modified foods, and it destroys culinary diversity and ethnic-based food traditions that have high cultural and health value.

The Mexican farmers' movement is not asking for a little time and money to attain U.S. stature. When they ask to recognize asymmetries and call for compensatory funds, they don´t aim merely to correct macroeconomic gaps and promote structural reforms (in fact, an important source of support from labor and civil society is shared opposition to privatization of land, oil and the electrical sector) but to develop a sensible and sensitive national development program. They recognize that the United States is well advanced along paths that Mexico dare not tread if the goal is sustainable development, social equity and a decent quality of living for all. The

"new state-urban society-rural society pact" called for seeks to incorporate a basic principle: for a nation that has not yet assured a decent standard of living to its inhabitants, the first moral and political obligation is to place this objective before all others by developing national policies that respond to national needs. This includes public policies to ensure long-term viability to small farmers rather than negotiate their demise; to recognize the environmental, cultural and social contributions of agriculture; and to actively defend food security and food quality.

**Is free trade really a fail-proof policy?**

While Mexican farmers call to renegotiate the agricultural chapter of NAFTA, the Fox government insists that free trade is not the source of their woes. Faced with debacle in Argentina and rising criticisms worldwide, neoliberal planners have systematically refused to acknowledge any responsibility for the model's failures. This denial of accountability, vital to the ideological defense of free trade, is being challenged directly by farmers' demands to renegotiate parts of NAFTA. In response, government leaders from all three countries have announced their determination to give the text a moral authority tantamount to that of the Bible and refuse to discuss modifications, although the law clearly allows it.

Confronted by the negative results of NAFTA in Mexican agriculture, the Fox administration has waffled even more than usual. Defendants of rural policy have been forced to fall back on weak pleas to avoid 'throwing the baby out with the bathwater', or admonitions of the need to surge forward with structural reforms (*it´s not too much free trade, it´s too little*).

The U.S. Embassy has played an unusually active role. On December 12th Embassy staff came out in force to personally lobby senators, narrowly averting a Senate vote to freeze tariffs at 2002 levels. The office has issued several press releases and official statements urging Mexico to tow the line. A report circulated by the U.S. Embassy to justify the poor results of NAFTA is characteristic of the current defense. The report refers to the "Big-Events-Little-Time problem" and the authors argue that intervening events (mainly the Zapatista uprising and the December 1994 devaluation) and the short nine years of NAFTA make it difficult to ascertain cause and effect. On closer examination, the "Big-Events-Little-Time problem" and similar dodges serve to mask a far larger problem that has vexed free trade architects for years: the "Data-Contradicts-the-Model problem."

Luis Tellez, who participated in NAFTA negotiations as sub-secretary of Agriculture under Salinas, expressed this problem succinctly in a January forum: "It´s not that NAFTA failed, it´s just that reality didn't turn out the way we planned it."

Many other promises of free trade simply have not materialized. Consumer prices have risen instead of dropped. The price of the tortilla, Mexico's most basic food, has gone up 500%. The basic food basket has risen 257%.

**Policies based on people**

If the free market doesn't exist, and if the model is impoverishing the vast majority of rural producers, should it continue to be considered the foremost and exclusive organizing principle for developing country agriculture? The Mexican farmers' movement is saying it´s time to discard the myths, and permit more human values to play a role in agricultural policy.

Mexican farmers not only reject an asymmetrical trade agreement that destroys their livelihoods and their communities. They also reject being railroaded onto a one-way street. To compete with the U.S. means to adopt the U.S.-transnational dominated model of agriculture. Competing in these terms—the only ones understood by a market that functions on prices—could unravel Mexican society. It means buying into the corporate myth of *our way or not at all*. It means losing for all time nine thousand years of culture, domesticated agriculture, biological and agricultural diversity.

The month of January 1994 opened with a North American Free Trade Agreement that was to be the paradigm of a neoliberal future, and closed with an armed rebellion that galvanized national and international support for a "world of many worlds". January of 2003 opened with NAFTA tariff eliminations to enforce the free trade model and closed with 100,000 people in the streets calling for immediate renegotiation of NAFTA, food sovereignty and a national rural development pact. The two are not isolated events but the bookends of a period of disputed definitions in Mexico. Recently even the U.S. Congress recognized that failure to resolve Mexico's agricultural crisis would increase migration and complicate relations between the two nations.

But instead of heeding calls for renegotiation of NAFTA, the U.S. and other developed country governments are pushing to impose NAFTA-type liberalization on the global level. Mexico's experience could soon be replicated throughout the developing world, leading to even worse outcomes in many more vulnerable nations.

**The Agreement on Agriculture**

Two decades of agricultural trade liberalization in Mexico have led to: an increase in rural poverty, malnutrition, out-migration and instability; increased workloads, particularly for women; no decrease in consumer prices; increased profits and market control by transnational traders and processors at the cost of smallholder farmers; lost national revenues that could have been applied to development programs; and severe risks to the environment and biodiversity.

Yet the Agreement on Agriculture and the Harbinson draft echo the market access priorities of developed countries that predominated in NAFTA and will have the same devastating impact on developing countries as we have seen there.

First, because it fails to take into account asymmetries. The AoA proposes "harmonizing"—gradually or abruptly—market access on the foundation of enormous and unresolved asymmetries between nations and between sectors within nations. The idea of Special and Differential Treatment –to the degree in which it has been defined—merely reduces tariff reduction requirements for developing countries, often on the basis of already low tariff levels. While considered inadequate by many underdeveloped nations, the U.S. considers it excessive. Another mechanism designed to address asymmetries is the ability to exempt certain crops as Special or Strategic Products. But this mechanism is also limited by the fact that they would be determined by conflicting interests within the WTO rather than national rural development policies.

Instead of creating a level playing field, this approach leads to the establishment of permanent disparities. As in geological erosion, evidence from developing countries indicates that economic integration only deepens the valleys: Mexico for example, has seen a constant erosion

of small holders livelihoods; environmental quality; biological, cultural and agricultural diversity and consumer rights.

Second, it perpetuates dumping practices while denying defensive tools to developing countries.[59] Export subsidies would be phased out instead of ended. Little is done to prevent indirect export subsidies from being shifted to uncontrolled Green or Blue Box measures. These often wind up having the same net effect of encouraging overproduction and displacing developing country farmers in their own market. Domestic agricultural support in OECD countries has actually grown under the AoA, from 280 billion dollars in 1997 to 360 for 2002.[60]

Equity in international agricultural trade cannot begin until dumping is prohibited. This must include eliminating export credits and subsidies in developed countries. It also requires regulation of transnational trading oligopolies that create price distortion.

Income support payments also contribute to dumping on world markets, but they have very different practical functions in developed and developing countries. The net food-exporting nations, they serve primarily to subsidize traders buy lowering the price they have to pay to producers, encouraging overproduction and enabling them to increase volumes sold abroad. In countries like Mexico where over half of farms produce for family consumption, supports could mean the difference between a child starving or not.

## Free trade vs. national development

The debate in developing countries is not at root a debate between free trade and protectionism. It is a debate between the imposition of free trade rules at the cost of national development and well-being. In the complex and difficult context of a globalization that shows clear tendencies toward increasing inequity, and concentration and polarization of wealth, developing nations need to respond with policies that assure each citizen a basic standard of living. The Agreement on Agriculture, like NAFTA, binds national policy-making in a strait jacket just when developing countries must respond to new and dangerous challenges. At the same time, it exacerbates threats to food sovereignty, and eliminates important strategies of survival in the countryside that not only guarantee livelihoods but also support cultural, agricultural and biological biodiversity.

For all but a handful of heavily subsidized, well-capitalized and often transnational agricultural interests, market access translates into market displacement. The food market is always relatively inelastic and in times of economic stagnation or slow growth, like now, it is closer to a zero-sum system than an ever-broadening horizon. That means that when the global market is expanded for nations and corporations with "comparative advantages" the new markets have been wrested from developing countries' farmers. The consequence is displacement of national food production and destruction of subsistence production systems. The agricultural balance of trade deficit--massive imports and declining national production--, unemployment, out-migration and increased rural poverty are all indicators of displacement.

[59] The Uruguay Round stipulated 20% Amber Box reductions developed and 13.3% developing on high US and EU baseline. 36% average reduction in tariffs over 5 years. LDCs tariffication but exempt from reduction.

[60] Glipo, Arze. "An Analysis of the WTO-AoA Review from the Perspective of Rural Women in Asia", Paper presented at the International Workshop on the review of the WTO-AOA, February 19-21, 2003, Geneva, Switzerland.

The United Nations Development Program recently listed four principles of trade that have been largely forgotten in current debates on market access: 1) Trade is a means to an end, not an end in itself; 2) Trade rules must allow for diverse national institutional standards; 3) Countries have the right to protect their institutions and development priorities; 4) Countries do not have the right to impose their institutional preferences on others.

These simple rules imply a complete reorientation of the WTO, from trade promotion to a stronger focus on development and equity issues. Organizations of small farmers in developing countries have articulated a broad range of recommendations that must be considered to address the basic inequities of international trade in agriculture and protect the many roles rural production plays in society, including employment, food sovereignty and security, foreign exchange generation, cultural preservation (particularly for indigenous cultures) and allocation of natural resources.

To end dumping, the call for an end to export subsidies in all forms, and the right to safeguard mechanisms or protective measures when deemed necessary. Mexican farmers associated with Via Campesina assert that this requires exempting food production and markets from the WTO to create new, more democratic mechanisms of regulation that respect food sovereignty and rebuild local and regional markets. Other groups have proposed a "development box" of "food security box" for developing country products and measures to base tariff reduction on socioeconomic indicators rather than arbitrary time frames with broad provisions for exempting sensitive products.

Other recommendations include:

- Farm support programs based on human needs, that incorporate the goals of gender equity, and respect for farmers' rights—above all the right to farm, the right to a decent standard of living and the primacy of food security and sovereignty in national policy.
- The right to legislation and enforce national environmental and health standards, even when set higher than international standards, or those of partner nations. While GM corn contamination erodes biodiversity, forcing GM crops on sovereign nations erodes democracy as a non-democratic, non-elected international trade organization—the WTO—attempts to impose the lowest consumer standards on citizens of democratically elected governments. We must not permit either type of erosion. On this point, it is very important to Mexico and other centers of origin that the EU stand up to the United States in the challenge to the GM crop moratorium.
- Impact studies based on real experience. Models designed to measure the impact of trade liberalization on agriculture have proven wrong in their predictions of increased commodity prices, reduced developed country exports and improved agricultural trade balances. Among other aspects they have ignored market failures due to concentration of transnational traders. Studies must include this aspect as well as integrating non-trade concerns.
- Commitment to preserving the multifunctional character of agriculture in a real and global way. The EU commitment to multifunctionality so far has been restricted to permitting measures that support developed country agriculture. Although non-trade concerns are even more vital in developing countries, no provisions have been made to support them where national government funds are insufficient. Even more importantly, there is no recognition of the impact of dumping on the ability of these countries to maintain agricultural activities that ensure global values such as environmental conservation, employment and food security.

- Democratization of international trade regulation, including correction of the under-representation of the Least Developed Countries, in most cases the most reliant on agriculture.

The recommendations present a fundamental challenge to the logic of free trade:
International trade rules should promote human well-being and minimize conflict. They should not impose a free-trade system, because there is no global consensus that this is the only, or best, road to development and equity. Rather, experiences like Mexico's indicate that it is a road fraught with perils and high human costs.

Even optimal international trade rules will not solve problems of rural development due to the complexity of local and regional conditions and non-trade concerns. Only national integral development policies can turn back tendencies Domestic policy is a battle that must be fought on its own turf by the rural citizenry in the context of a responsive and democratic state. By tying the hands of national governments, the WTO will only exacerbate the crisis in the countryside and undermine democratic processes.

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# HIS EXCELLENCY EDWIN P.J. LAURENT

## CURRICULUM VITAE

### Personal Details

| | | |
|---|---|---|
| Name | : | Edwin P.J Laurent |
| Date of Birth | : | 19th November, 1951 |
| Nationality | : | Saint Lucian |
| Gender | : | Male |
| Marital Status | : | Married |
| No. of Children | : | Two (2) |
| Languages | : | English and French |

### Employment Record

| | | |
|---|---|---|
| 1993 - present | : | Ambassador for the Eastern Caribbean States to the Kingdom of Belgium and to the European Union. |
| 1996 - present | : | Ambassador of Saint Lucia to the Federal Republic of Germany. |
| 1995 - present | : | Ambassador of Saint Lucia to France |
| 1993 - present | : | Permanent Representative of Saint Lucia to the World Trade Organisation, Geneva. |
| 1992 - present | : | Permanent Representative of Saint Lucia to the Food and Agriculture Organisation, Rome. |
| 1989 - 1993 | : | Minister Counsellor and Deputy High Commissioner, Eastern Caribbean States High Commission, London. |
| 1976 - 1989 | : | Permanent Secretary, Ministry of Trade, Industry and Tourism, Saint Lucia. (Chairman or member at various times of a number of Statutory bodies, including the Saint Lucia Tourist Board, Project Appraisal Committee, Prices Commission, Work Permits Committee, and Trade Licences Board, among others). |
| 1983 | : | International Trade Consultant - Organisation of the Eastern Caribbean States, Antigua and Barbuda. |
| 1976 | : | Principal Assistant Secretary, Ministry of Finance, Saint Lucia. |
| 1975 - 1976 | : | Assistant Secretary, Ministry of Finance, Saint Lucia |
| 1973 - 1975 | : | Administrative Cadet, Ministry of Finance, Saint Lucia |

**Education**

| | | |
|---|---|---|
| 1982 | : | Masters in International Public Policy, School of Advanced International Studies, John Hopkins University, USA |
| 1976 | : | Diploma in Public Finance, University of Manchester, |
| 1975 | : | Certificate in Public Administration, Barbados. |
| 1973 | : | Bachelor of Arts in Economics and Sociology, University of the West Indies. |

Other training included :
- Training for London based Diplomats (LSE),
- Government of Saint Lucia in-service training for diplomats

UNCTAD
- GATT Multilateral Trade Negotiations
- Restrictive business practices

ACP
- Trade Expansion
- Export Credit Insurance

**Selected topics of relevant publications and presentations**

- "Le traitment spécial et differencé dans les negotiations commerciales internationales" - (Laurent and Dorel), Université des Antilles et de la Guyanne - May 2003.
- "World Trade Organisation - Threat or opportunity?" The Eastern Caribbean Banker - July 2002
- "Towards solutions - Action by partners and the WTO" - (Small Economies) Geneva, October 2000
- "Socio Economic change in ACP States: Limiting factors and potential" - London, July 1998
- "Who is helping whom" (An examination of the case for trade and aid assistance to developing countries) - PES Summer University, London, 1997
- "WTO and Developing Countries" - EU Parliament, May 1997
- "ACP Interests in the EPA Negotiations" - Utrecht, March 2003
- "The need for co-operation between the DOM/TOM and the ACP - Mise en place de la Politique Europeen dans les regions ultra peripheriques, Strasbourg, January 2001
- "The OECS in a Successor Arrangement to Lomé" - 1997
- "Bananas - Time for tough decisions" (Article published in various newspapers in the Windward Islands) August 2001
- "The 11th April 2001 deal which ended the banana war" - Commonwealth Hot Topics, Issue No. 2, 2001
- "The Banana Dispute - The last chapter" Caribbean Investor, Vol. 1, No. 3
- "Caribbean responses to the challenges to the EU Banana Import Regime" - May 1997
- "Beyond EU Bananarama 1993 - Is Borrel right?" - Brussels, August 1996

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## European Parliament Hearing on "WTO: Agriculture, Trips, Singapore issues"

# THE ACP IN THE WTO NEGOTIATIONS

It is quite true that Agriculture holds the key in the Doha negotiations since progress in other areas is very much dependent on what happens here. However, only the most ideological advocate of liberalisation would support progress at any cost. Change in the rules governing acceptable domestic practice and international trade can only be warranted if all countries benefit. Reform of Agriculture must not be just to suit some countries because they are competitive and powerful.

Recently, I came across a paper by Aileen Kwa who wrote, "*Agriculture liberalization has contributed significantly to the silent crises in the south of hunger, malnutrition, poverty and rural unemployment. Unfortunately, the current negotiations at the WTO are not only ignoring this crisis in the developing world but look set to aggravate it*".

Of course, this is a gloomy outlook but it seems quite realistic and will materialise unless the participants in the negotiations ensure that there is a change in the direction and conduct of the talks. We have already looked today at the interests of some other parties in these negotiations and we will next be getting the position of the Commission as presented by Commissioner Lamy. I think that it would be for me to address the issues from the perspectives of an ACP Member State. I must confess of course that we in the ACP do not have a joint position on everything. The current agriculture negotiations in the WTO have been ruthless in exposing the fault lines within traditional groupings. No longer is there a clear north-south divide or unity among developing countries. The reason is that Agriculture is of overriding importance, not only in international trade but as the foundation of so many of the economies of poor countries, hence countries' interests and their negotiating positions are largely framed by their particular economic circumstances. Of course, there are several common features among the members of the ACP Group which make for congruence in our negotiating goals. One is that generally the countries are all poor, in most cases the rural sector is dominant and the economies rely very heavily upon agricultural production and the export of a limited number of commodities to a few developed country markets, often on a preferential basis. ACP countries are as a result often among the most marginal and vulnerable participants in international agricultural trade and can expect to be disproportionately affected by any changes which take place.

Certain clear concerns of ACP countries can be identified in the negotiations.

**Market Access** - We place great emphasis on safeguarding market access on a viable basis and the preservation of the integrity and value of preferences.

**Tariff reductions** - We support use of the Uruguay Round Formula.

**Tariff Rate Quotas (TRQ)** - effective preferential access is to be maintained despite the TRQs e.g., through quota allocations to preferential suppliers and the retention of in-quota tariffs.

**Food Aid** - should not damage domestic production and internal marketing structures but changes to the rules should not detract from the effectiveness and value of such international humanitarian support to countries in crisis. Commercial considerations cannot be permitted to override the necessity to aid the starving.

**Domestic support** - our countries subscribe to the objective of "reductions in trade distorting subsidies with a view to phasing out, all forms of export subsidies, and substantial reductions in trade distorting domestic support". (More on that later).

**Special and Differential treatment** - This is key for us who have been marginalized and not benefited from liberalisation. We cannot be required to make more concessions without commensurate gain. Further contributions should take account of our circumstances and development needs.

The preferences which the ACP enjoy are critical for safeguarding market access and a lot of negotiating capital has therefore been devoted both directly and indirectly to safeguarding the value of these preferences. These preferences are manifested principally through the actual tariffs where our exports are able to enter developed country markets at zero duty or below the MFN rate, thereby giving them the possibility of being able to compete. Also the management of tariff rate quotas can be an essential means of providing preferences. In this latter case, one of the key possibilities for ensuring that preferential access is safeguarded under tariff rate quota systems is for an assured share of the TRQ to be granted to preferential suppliers.

The issue of farm subsidies whether in the form of domestic production support or export subsidies is evidently a contentious one which I will not deal with in any depth here. Suffice to say that what is most unfortunate is that countries on both sides of the debate unfortunately often use the advancing of poor countries concerns as the case for promoting particular arguments in line with their own interests. For instance, it is sometimes claimed that if a particular arrangement is introduced or removed, then the poorest will gain. Often in reality, whilst it might well be that some poor countries might obtain some benefit from the introduction or elimination of some particular measure, it is often the more advanced and competitive developing countries or even developed countries which will be the main beneficiaries. We need to be careful before accepting at face value politically correct and pious claims made by participants in the negotiations that this or that measure is being advanced to help poor farmers in Africa or in other developing countries. Look deeper and question a bit, find out who really will be gaining more, whether it might not principally be these countries themselves and maybe their own farmers.

At the Paris Summit with African leaders in February, President Chirac offered to end export subsidies on agricultural products exported to Sub-Saharan Africa from the EU where they would compete with local production. The plan was subsequently endorsed by the Commission. Its restriction to products which are also locally produced is quite appropriate, for instance, if a country regularly imports wheat, which it does not produce, eliminating the export subsidy merely increases the import price. For poor and NFIDCS countries the size of the food import food bill is of key concern. As with all such measures, their application needs to be carefully considered to avoid any inadvertent consequences.

Many pundits dismissed the recent G8 Summit as a failure. Though of course I am in no position to presume to judge the overall success or otherwise of this gathering, what particularly impressed me with it was its action plan on trade. Call me a naïve optimist but I prefer to take the leaders of those countries at their word when they said that they will pay particular attention to the interests of developing countries in the agricultural and non-agricultural negotiations which they insist are to benefit our economic growth, trade and employment. On his return to South Africa from Evian, President Mbeki announced that the G8 had exceeded expectations. Certainly a most innovative and courageous portion of the action plan for trade was the recognition by the G8, that preference programmes for poor countries such as ours have an important role to play in bringing about our transition to effective participation within the global trading system. What our countries knew all along is finally being accepted by the leaders of the 8 leading industrial nations. In the ACP, we welcome their agreement to improve our preferential trading arrangements so as to ensure that the rules and procedures underpinning trading arrangements do not in themselves constitute barriers to the enjoyment of preferential benefits. This recognition could not be coming at a more opportune time because we are in the throes of trade negotiations with officials of many of these same countries whose leaders have now spoken clearly. What we have been told was that preferences are passé, they do not contribute to our growth and development and the sooner we could be rid of them the better. The February summit of African leaders in Paris was instrumental in enhancing understanding of our needs as developing countries on which the decision by the G8 has been able to build. Preferences for developing countries are now to be enshrined and it is important, whether in the WTO, the ACP-EU Economic Partnership or the FTAA negotiations between the more advanced and the vulnerable developing countries, that these principles are adequately reflected.

The challenge is on both sides. We as developing countries will insist that our developed country partners work with us to realize the promise of Evian; as a first step translating its principles into operational modalities in the current DDA so that the reforms which will be generated will make trade negotiations more equitable and permit them more genuinely to contribute to growth and development of poor countries.

**H.E. Mr. Edwin Laurent**
**Brussels, 11 June 2003**

# COMMISSIONER PASCAL LAMY

## Remarques liminaires de Pascal Lamy, Commissaire européen au commerce, lors de l'audition de la commission ITRE du PE sur l'Agenda de Doha

- Je voudrais féliciter la commission ITRE pour l'initiative des auditions publiques sur les sujets de Cancun.

- Toujours difficile d'intervenir à la fin d'une longue journée de débats auxquels on n'a pas pu assister (même si j'ai eu quelques échos de vos délibérations).

- Vous avez choisi de vous concentrer sur 3 sujets de l'agenda de Doha: agriculture, propriété intellectuelle, sujets dits "de Singapore". Avant d'expliciter comment je vois les choses se développer sur chacun des trois sujets, permettez-moi de les situer dans le contexte global des nos objectifs dans ce cycle de négociations.

- Notre politique commerciale vise essentiellement - vous le savez - la poursuite d'une ouverture commerciale régulée par un ensemble de règles multilatérales. L'Union en tant que première puissance commerciale mondiale - on l'oublie souvent - a certes un intérêt offensif à cette ouverture, qu'il s'agisse de l'accès aux marchés des produits ou à ceux des services, bien plus prometteurs encore. Mais elle a aussi des responsabilités vis à vis de ses citoyens et envers ses partenaires.

- - *Responsabilité envers ses citoyens* : Qu'il s'agisse de service public, d'environnement, de qualité alimentaire, de diversité culturelle, la mondialisation ouvre véritablement la politique commerciale aux questions de société. L'un des objectifs de l'Union lors de la ministérielle de l'OMC à Doha était d'élargir l'ordre du jour du nouveau cycle de négociations à ces nouveaux enjeux.

- *Responsabilité envers nos partenaires* : Celle-ci s'exprime dans la priorité accordée par l'UE au multilatéralisme et à la règle de droit dans les relations commerciales internationales. S'y ajoute l'impératif d'intégration des pays en développement dans le système des échanges mondiaux.

- La conclusion des négociations à l'OMC à la fin de 2004 reste notre priorité. Pour cela, l'échéance fondamentale est la 5ème Conférence ministérielle de l'OMC en septembre à Cancun. Nous en attendons une nouvelle impulsion politique. En effet si les membres de l'OMC ont beaucoup travaillé depuis Doha, il est nécessaire maintenant d'accélérer le rythme des négociations.

- Il est vrai que plusieurs échéances ont été ratées ces dernières semaines. En décembre dernier, les Etats-Unis ont bloqué la décision sur le dossier des médicaments, malgré le consensus qui se dessinait, préservant un équilibre entre les intérêts des laboratoires pharmaceutiques et la lutte contre les grandes maladies dans les pays en développement. L'UE pousse à ce qu'une décision soit prise avant Cancun pour rassurer les pays en

développement.

- Sur l'agriculture, l'échéance du 31 mars a été dépassée pour l'accord sur ce qu'on appelle les modalités ou paramètres des négociations. C'est aussi le cas pour l'échéance du 31 mai pour les modalités dans le domaine industriel. C'est regrettable, mais ce n'est pas un drame : l'importance des échéances est qu'elles structurent et concentrent les débats. Ceci est le cas : dans l'agriculture comme dans l'accès au marché industriel, les membres de l'OMC restent engagés, nous avons fait des progrès réels ces derniers mois et les discussions continuent à progresser.

- Qu'est-ce que l'Union européenne attend donc de Cancun ? L'UE poussera une déclaration politique à Cancun, qui inclura tous les aspects de la négociation suivant le principe de **"l'engagement unique"**, selon lequel rien n'est convenu jusqu'à ce que tout soit convenu. Les Ministres à Cancun devront démontrer que l'ADD tient ses promesses en matière de développement, en s'engageant à conclure le cycle à la date prévue de fin 2004 et en faire un vrai progrès pour le développement.

- **Sur l'agriculture**, les ministres devraient confirmer un ensemble complet de modalités et une date pour la soumission des offres. Permettez-moi une parenthèse sur l'agriculture pour clarifier les choses : Par un hasard –malheureux – du calendrier, le débat sur la réforme interne de la PAC tombe en même temps que celui sur les négociations commerciales internationales, dont l'agriculture fait partie. L'examen à mi-parcours, qui aurait dû être terminée bien avant, est un choix politique interne, dont nous avons besoin dans l'intérêt de nos agriculteurs**.** Certes, elle augmentera aussi notre marge de manœuvre à l'OMC – mais ce n'est pas le facteur décisif pour cette réforme.

- Les défis auxquels l'agriculture européenne fait face se sont accrus. La réforme de la PAC offre à l'Union l'occasion de reconsidérer sa politique agricole pour veiller à ce qu'elle réponde mieux aux préoccupations croissantes du public concernant la sécurité alimentaire et la protection de l'environnement rural, et aussi pour permettre une meilleure utilisation des ressources financières. La réforme donnera aux agriculteurs de l'Union une orientation politique claire en rapport avec le cadre financier valable jusqu'en 2013 pour les dépenses agricoles, comme en ont décidé les chefs d'État et de gouvernement à Bruxelles. Elle rend également l'agriculture européenne plus compétitive et plus axée sur le marché, soutient une simplification substantielle de la PAC, facilite le processus d'élargissement.

- La mise en œuvre de la réforme aurait pour effet d'éliminer les incitations qui, dans la politique actuelle, ont un impact négatif sur l'environnement et favoriserait davantage encore les modes d'exploitation agricole durables. Ces adaptations sont nécessaires si l'on veut que l'Union soit en mesure d'offrir un cadre viable et prévisible pour le modèle européen d'agriculture pour les années à venir. Ces modifications sont rendues encore plus urgentes par le nouveau cadre budgétaire. L'Union pourra ainsi assurer une distribution plus transparente et plus équitable des aides aux revenus des agriculteurs et mieux répondre aux souhaits des consommateurs et des contribuables.

- Pour atteindre ces objectifs, il est important de rompre le lien entre la production et les aides directes (**découplage**), de subordonner ces aides au respect de normes en matière d'environnement, de sécurité des aliments, de bien-être des animaux, de santé et de sécurité sur le lieu de travail (**conditionnalité)**, et d'augmenter le soutien communautaire au développement rural par une **modulation** des aides directes (dont les petits agriculteurs seraient exemptés); d'introduire **de nouvelles mesures de développement rural** pour

améliorer la qualité de la production, la sécurité des aliments, le bien-être des animaux.

- A l'OMC, la réforme renforcerait la position de l'Union européenne au sein de l'Organisation mondiale du commerce (OMC) puisque le découplage changerait le statut au regard de l'OMC des aides directes. Elles ne seraient plus classées dans la «boîte bleue» (blue box) mais dans la «boîte verte» (green box). Cette dernière («green box») comprend les formes d'aide intérieure qui ne faussent pas ou qui ne faussent guère les échanges. Cela augmenterait substantiellement les chances de les soustraire aux engagements de réduction à convenir dans le cadre du cycle de Doha.

- Dans les négociations agricoles, nous devons prêter l'attention à cela et à **nos autres intérêts offensifs** tels qu'un engagement pour achever les travaux sur les crédits à l'exportation, ou la protection des dénominations géographiques. Les questions de sécurité alimentaire et d'étiquetage sont également de véritables préoccupations politiques dans l' Union pour les consommateurs et ONGs. Nous devons résoudre le problème sans rouvrir pour autant l'accord SPS. Pour les pays en développement, nous travaillons dur pour trouver des moyens de répondre à leurs préoccupations. L'UE a déjà pris les mesures importantes dans l'ouverture de ses propres marchés aux produits des PMA sans droits ni quota. Si les États-Unis (avec d'autres marchés importants) faisaient de même, cela serait un élément très positif pour les négociations en cours. Leurs propositions agressives au sein de la commission de l'agriculture de l'OMC ne tiennent aucun compte des pays en développement.

- TRIPS/médicaments: ceci, je le rappelle, ne fait pas partie de l'engagement unique mais est un "left-over" de Doha. Notre crédo sur la question est simple: Doha, rien que Doha; le texte de Perez Motta, rien que Perez Motta. Tous les membres l'avaient accepté, sauf un. C'est aux Américains de faire preuve de flexibilité. L'idée lancée par certaines ONG de repartir à zéro est irréaliste et inutile: aucun membre de l'OMC a fait une telle demande.

- TRIPs/biodiversité: l'UE est le seul pays industrialisé à avoir pris une position qui répond aux préoccupations des PED. Les PED veulent pouvoir contrôler l'utilisation de leurs ressources biologiques et partager les bénéfices liés aux inventions biotechnologiques. Nous partageons ce point de vue. L'UE a fait plusieurs propositions en octobre dernier dans cet esprit, afin d'harmoniser la mise en œuvre de l'ADPIC et de la Convention sur la Biodiversité. L'ADPIC est suffisamment flexible pour permettre à chaque membre de l'OMC d'adapter son régime de protection des inventions biotechnologiques à ses objectifs politiques et économiques. Nous sommes aussi en faveur d'une interprétation de l'ADPIC qui permettrait aux petits paysans des pays en développement d'utiliser et échanger librement des semences protégées (farmer's right)

- Sujets de Singapour: font partie de l'engagement unique du DDA. L'UE y tient, pour deux raisons principales: parce que nous y avons un intérêt économique, en tant qu'exportateur des investissements, et parce que c'est la partie règles qui soutiennent et encadrent l'accès au marché - c'est une question de gouvernance. Des règles sur investissement, concurrence, facilitation des échanges et la transparence des marchés publics fournissent aux pays des moyens pour mieux maîtriser leur intégration dans l'économie mondiale et protègent les faibles contre les plus forts. Ce sont donc des sujets d'intérêts à la fois économies et systémiques. La voie multilatérale est la voie la plus efficace pour arriver à des résultats là-dessus (mieux vaut-il concentrer ses ressources limitées sur la négociation des règles multilatérales que des traités bilatéraux, ex; investissement)

- Notre objectif pour Cancun: décision sur les modalités des négociations qui se concentrent

sur trois aspects: les questions de procédure (nombre de réunions, calendrier, échéances, etc.); sur le fonds (= texte de Doha: il ne faut pas préjuger le résultat des négociations); traitement spécial et différencié: différenciation entre niveaux d'engagements des membres, périodes de mise en oeuvre, assistance.

# CONCLUSION

**MR JAIME VALDIVIELSO DE CUÉ**
**COMMITTEE VICE-CHAIRMAN**

[2] "Communication by the European Communities and their Member States to the TRIPs Council on the review of Article 27.3(b) of the TRIPs Agreement, and the relationship between the TRIPs Agreement and the Convention on Biological Diversity (CBD) and the protection of traditional knowledge and folklore - A Concept Paper", Directorate-General for Trade, Brussels, 12 September 2002.

[3] GRAIN, *'TRIPS-PLUS' must stop: The European Union caught in blatant contradictions,* March 2003. Available in English and Spanish at http://www.grain.org.