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APEC officials urge countries to avoid divergent trade deals

Businesses in developing countries like the Philippines are urged to enter into a multilateral trade agreement within the framework of the World Trade Organization (WTO) than create a “spaghetti bowl” of regional and bilateral free trade agreements with varying and even divergent rules. Ambassador Roberto R. Romulo, chairman of the Philippine chapter of the Asia Pacific Economic Cooperation (APEC) Business Advisory Council (ABAC), said the WTO is still the best option since this would ensure countries are competing in the global market using uniform rules.

Jagdish Bhagwati, university professor of economics and law at the Columbia University and a champion of the multilateral trading system, coined the phrase “spaghetti bowl.” Bhagwati was among the keynote speakers in the 10th Anniversary Conference of the ABAC, held in Cebu over the weekend.

Bhagwati noted that costs tend to run up for countries with many free trade agreements (FTAs) since consumers’ choices tend to be limited to products from countries enjoying preferential tariffs when there may be cheaper products from another country that could not penetrate the local market because of higher tariffs. “This may also lead to trade diversion,” he said, explaining that a country that is not party to a trade agreement may route its product through a member country to enjoy the preferential treatment.

Bhagwati said this will also push up costs since the product has to be routed through a third party instead of directly to the consuming country. “FTAs may be good for bringing down tariffs and raising trade volumes but they can also hurt you since it tends to limit one’s options,” he said adding that “not all trade is good since the source of growth may be diverted trade,” he said.

For his part, Romulo noted that more complex trading rules under regional and bilateral trade deals would be more costly to consumers, particularly if a particular commodity imported carried a higher duty as per the rules of a bilateral trade scheme. “Businessmen would have to pass on the added cost to consumers,” he said.

Victor Fung, chairman and president of Hong Kong-based distribution firm Li & Fung, agreed. He said the entry of one country into more regional and bilateral trade agreements would tend to increase the cost of manufacturing goods. “I am deeply concerned that the proliferation of bilateral agreements is forcing businesses to sub-optimize,” said Fung explaining that even large companies find it difficult to adjust each and every time a new bilateral deal by their own countries comes into for He stressed that uniform trading rules and tariff rates are important since the current trend in manufacturing involves the sourcing of components from different countries and inconsistent rules will complicate the process and add to costs. “That’s why the multilateral system is so important. It

defines rules of universal application. You need to understand only one guiding set of rules," he said.

Fung is particularly concerned about the impact of more regional and bilateral trade agreements on the so-called rules of origin. Since rules of origin have to be agreed upon prior to setting tariffs under a regional or bilateral trade scheme, these become more complex every time a country enters into numerous bilateral trade agreements. Fung said these complex rules would also tend to discourage small and medium exporting firms particularly if they find it hard to comply with them.

Source: Reuters, Mactan, Cebu 17 August 2006

WTO Suspension Plan, a Scapegoat

The trade tensions are on in Geneva, Switzerland making the world hold breath over suspension of the Doha Round of the WTO. Member countries from the least developed and developing parts of the world are crossing fingers to what they consider as "wastage of time decision" the WTO is yet to announce.

The suspension of the round would not only be the greatest setback in the WTO but also a colossal disappointment to developing countries in wasted efforts. "It is a sad moment but we cannot do anything much to reverse the situation," the Rwandan State Minister for Commerce, Vincent Karega told The New Times in a telephone interview on Saturday. "We are a small economy but we are prepared to fight our battle by strengthening alliance for our interests," Karega said.

On July 24, a decision was taken to indefinitely suspend the WTO's Doha negotiations across the board. The suspension was announced by several of the Ministers of the G6 (the United States, European Union, Brazil, India, Japan, Australia) and confirmed by WTO director general Pascal Lamy.

The immediate cause of the dramatic breakdown however was the inability of the United States to provide a hypothetical improvement on its offer on reduction of bound maximum level of trade-distorting domestic support in agriculture.

The G6 discussions were solely on agriculture, starting with the tariff-cutting formula, to sensitive products, Special Products (SPs), Special Safeguard Mechanism (SSM), rounding up on domestic support.

The G6 meeting of 23-24 July was to have been the first of a series of several meetings, out of which an agreement on the modalities on agriculture and non-agricultural market access (NAMA) was supposed to emerge.

Several of the G6 Ministers and each delegation except the US had forwarded possible "flexibilities" to be made if it was matched by new and adequate offers

by others. The US reportedly refused to say what it was able to offer, even hypothetically.

At the end of the meeting at the WTO, the US tried to fob off the blame to the EU and the developing countries, challenging the EU's claim that its offer would result in 800,000 more tons of beef imports into the EU.

The developing countries were also attacked for allegedly blocking 95-98% of their agricultural markets through Special Products (SPs).

Challenged to illustrate how the developing countries would block the US' market access, the negotiators reportedly failed to respond.

Despite the use of probabilities to defend their interests, US claimed not seeing any offers on market access from the others, a crunch time that led to a "no point continuing". And, subsequently the US and European Union immediately waded into a new "blame game".

The sudden flop of the Doha came as a shock to the WTO members because at this round there was an expectation that the G6 Ministers would revive the flagging talks after the G8 Summit at which the political leaders and five developing countries had pledged to show additional flexibilities.

In fact, there was no expectation that the first G6 talks would collapse so completely. Now, there are no plans for any more G6 talks for the time being, meaning the talks will thus hibernate, at least for several months or could last for years.

It had been announced that any formal decision to suspend the negotiations, and on when they are to resume, and what the WTO would do in the meanwhile, will have to be taken by the WTO General Council.

But, the council on July 27 did not take a formal decision. At the Council meeting, the proposed suspension of talks was the first issue but up to now the council itself is reticent. Several delegations expressed concern and called for a "bottom-up" approach to negotiations in future, including on how or when to resume the talks.

However, analysts say "this is the latest example of the way the so-called rules based WTO system functions without following rules of procedure."

The reason for arranging that the Council not take a formal decision was that it would be easier for rich countries to manoeuvre and resume talks when time is "ripe". The WTO flop awakens memories of how the Brussels Ministerial meeting collapsed midway through the Uruguay Round tasking GATT director general Arthur Dunkel to "pursue intensive consultations" which differences remain outstanding.

In this development that will cause a big definitive failure, a sense of sadness to the multilateral trading system and to world political stability, developing countries must stick to their positions.

They must be keen on Agriculture, Services, Market Access, Non-Agricultural Market Access (NAMA) among others not to be 'taken' by the new play game.

Completing the Doha Development Round is extremely important but equally important is the content of the Round. The content must demonstrate new opportunities for developing countries, primarily market access by developing countries into markets of developed countries.

Source: The New Times Kigali, Rwanda, 17 August 2006

Trade heavyweight China lacks WTO punch

Every month China's surging export numbers underscore its arrival as a trade colossus, yet as the free-trade framework supporting China's growth creaks amid deadlocked talks, Beijing has barely raised its voice.

The World Trade Organisation's Doha round of trade liberalisation negotiations could founder unless the main players offer fresh concessions in coming months. Rancorous talks broke up in July and WTO chief Pascal Lamy suspended the round, named after the Qatari capital where it started in 2001. As negotiators contemplate the potential economic and political wreckage of failure, Washington has pressed China to seek a breakthrough. U.S. Trade Representative Susan Schwab will go to Beijing later this month "to discuss China's role in helping restart the Doha Round", her office said on Wednesday.

But while China may be a trade heavyweight, it will probably stay a cautious middle-weight in the WTO negotiations, wary of throwing punches or taking hits, analysts say. "I have seen no sign to date that China will move from the background to the forefront," said Razeen Sally, an expert on Asian trade policy and the WTO at the London School of Economics. Chinese trade negotiators are held on a tight, sometimes tangled bureaucratic leash and are constrained by Beijing's reluctance to add to concessions it made on joining the WTO. "This is just not that high on the agenda of the Chinese leadership's priorities", said Margaret Pearson of the University of Maryland, who has studied China's role in the organisation. "Nor have the domestic mechanisms been developed to formulate a national trade agenda, especially over such complex negotiations."

When China joined the WTO in 2001, it agreed to cut tariffs to levels below those of many other developing countries. Since then China has been buffeted by EU and U.S. complaints that it dumps goods and holds the Yuan's exchange rate down to keep exports cheap. Despite the strains, Chinese trade has rocketed, even after Beijing started last year to let the Yuan rise gradually. Exports in July

rose 22.6 percent from a year earlier to \$80.34 billion, while imports rose 19.7 percent to \$65.72 billion.

During the Doha round, WTO members have been negotiating to liberalise agricultural trade by cutting tariffs and subsidies, to free up flows of services and manufactured goods, and to boost poor countries' exports. But Washington and Brussels have failed to agree how to lower barriers. Third World nations, meanwhile, have objected that rich economies are not offering enough and have rejected Western calls for a distinction between richer and poorer developing countries. China has promoted itself as a "bridge" between developed and poor countries, but unlike India and Brazil it has avoided putting itself at the heart of the torrid negotiations. Even when trade ministers gathered on Chinese territory, Hong Kong, in December for WTO talks, China's delegation lay low.

Chinese officials privately attribute their low profile to a lack of experience in multilateral horse-trading. But China has been mastering the organisation's procedures, and its delegation at the WTO's Geneva headquarters is savvy and often constructive in committee work, said Robert Lawrence, a trade expert at Harvard University's Kennedy School of Government. "It's about interests, not about competence," Lawrence said of China's low-key approach to Doha. "The Chinese view is that they already gave when they acceded."

China's negotiators are constrained by sometimes competing bureaucratic interests back in Beijing, where worries about foreign domination of the economy have been growing, bolstering resistance to fresh WTO offers, said Sally. Because Chinese tariffs on farm imports are already lower than in many other countries, agriculture officials are unwilling to lower them further, said Zheng Zhihai, secretary-general of the China Society for WTO Studies, a government think-tank. "They feel that China has already opened up enough and need not go further," he said of farm officials. China's tariffs on farm goods average about 15 percent. Some economists have warned that collapse of the Doha round could encourage protectionism and slow global growth, but Zheng was confident China's trade would continue to expand. "It won't have much direct effect on China," Zheng said of the prospect of failure. "We're already the world's number-three trade power, and trade in the first half kept growing."

Source: Reuters Beijing, China 17 August 2006.

Lives hang in the balance until Canada keeps its promises on AIDS drugs

Delegates at the XVI International AIDS Conference in Toronto heard this week about how Canada was on the leading edge in its attempts to provide much needed anti-retroviral medications to developing countries.

But they also heard that those attempts have failed miserably, and that signals the need for legislative change.

The introduction of anti-retroviral therapy has reduced deaths from AIDS by more than 70 per cent in developed countries. Yet the World Health Organization reports that in developing countries, only 24 per cent of the 6.8 million people who need the life-saving drugs receive them.

Consequently, in 2003, the World Trade Organization, in an attempt to "promote access to medicines for all," decided that generic drug manufacturers in WTO-member countries should be allowed to produce copies of drugs still under patent protection and export them to countries with serious public health problems.

In late 2003, Canada became the first WTO country to introduce a law reflecting that decision. Originally known as the Jean Chretien Pledge to Africa Act, but now better known as the Access to Medicines Regime, the law was enacted in 2004. Yet more than two years later, there has not been a single pill exported under the law.

There are many reasons for the law's failure to achieve its intended purpose, and the Canadian HIV/AIDS Legal Network provides a partial list. To begin with, manufacturers must navigate something of a Byzantine process in their attempts to get drugs approved for export.

Prior to proceeding with the manufacture of a drug, the generic pharmaceutical company must seek a voluntary licence from the patent-holder. If negotiations fail after 30 days, the generic company can apply to the commissioner of patents, who can then issue a "compulsory" licence, which allows the generic company to produce the drug. The patent-holder is then provided with a royalty which is determined based on a set formula.

Many critics suggest the requirement to negotiate needlessly delays the process, since generic and patent-holding companies aren't likely to come to an agreement. It's unlikely, however, that negotiations hold up the process significantly, since the negotiation period lasts a maximum of 30 days.

That said, there is some validity to the critics' argument, especially because the patent-holder will receive a royalty in any case. And 30 days can make a big difference, given that thousands of people in Africa die every day from AIDS-related illnesses.

The regime also includes a list of drugs for which a compulsory licence can be obtained. (The WTO decision contained no such list.) So adding a new drug to the list requires the approval of the federal cabinet, which can significantly delay the process.

For example, many anti-retroviral pills involve combinations of several drugs (fixed-dose combinations). Yet even if the individual drugs in the combination are on the list, cabinet would have to approve adding the combination itself to the list.

Further, all drugs must first pass Health Canada approval as to their efficacy and safety. Normally, this is not particularly onerous, since generic manufacturers can simply provide evidence that their drug is equivalent to the brand-name drug already on the market. But since there are few fixed-dose combinations already approved, Health Canada typically has to perform a thorough review of the drug, which can take upwards of six months.

Source: Vancouver Sun, **Canada, 17August, 2006**

Canada wins WTO softwood ruling

The World Trade Organization handed Canada a legal victory on softwood lumber yesterday that could help bolster the forestry industry's opposition to a proposed softwood deal with the United States.

The WTO's appellate body said the controversial U.S. practice for calculating anti-dumping duties known as "zeroing" doesn't conform to international free-trade rules. In April, a WTO panel rejected a challenge brought by Canada against the U.S. use of zeroing. The anti-dumping duties have been applied to billions of dollars of Canadian softwood exported to the U.S. every year, part of a long-standing dispute between the two countries over the how the market should operate. The two neighbours initialled an agreement on July 1 that could, at least temporarily, end the trade battle.

The Ontario Forest Industries Association said the WTO ruling, the latest in a series of legal wins that have mostly gone Canada's way, is a big one. "This decision is right up there among the most important for Canada," said Jamie Lim, the association's president.

Lawrence Herman, a trade lawyer with Cassels Brock & Blackwell in Toronto, said however that the ruling will mean little if the proposed Canada-U.S. softwood deal is approved next week. The ruling's key significance, he said, may be that it could boost the confidence of those Canadian producers thinking about voting against the bilateral deal.

Zeroing is denying credit for non-dumped goods sold at a premium when calculating dumping charges. Critics say the U.S. has used zeroing to distort dumping margins.

Ontario producers say the WTO ruling means that zeroing will be a thing of the past. "The impact should be very long-lasting," said David Milton, president of the Ontario Lumber Manufacturers Association.

The ruling comes just six days before Canadian producers must tell the federal government if they are willing to support the deal with the United States.

International Trade Minister David Emerson has said he must know by Aug. 21 if there is enough support for the trade deal to go ahead, but most companies have been tight-lipped about their positions.

At stake are thousands of Canadian jobs in the forest industry and a possible end to a decades-long trade dispute between Canada and the United States, which has accused Canada of unfairly subsidizing the sector.

Under the proposed agreement, reached in April, the United States would return about \$4-billion (U.S.) of almost \$5.3-billion in punitive duties that it has collected from Canadian companies since May, 2002.

The deal has been criticized by some parts of the industry over a controversial termination clause and because its opponents think it gives Washington too much control over the Canadian industry.

Across Canada, about 361,000 people work directly in the forest industry and 555,000 jobs are indirectly linked to the sector. The sector accounted for about 3 per cent of Canada's gross domestic product last year and exports \$45-billion (Canadian) a year.

Prime Minister Stephen Harper has said Canada would abandon the deal if the industry didn't offer clear support for it within the next few weeks.

The federal government, meanwhile, wouldn't say yesterday how it intends to gauge the Canadian producers' views of the deal, possibly leaving the process open to be adjusted to fit a preferred result.

Robert Klager, a spokesman for Mr. Emerson, said he couldn't "speculate" on whether the views of softwood exporters will be weighted evenly, or whether they'll be weighted by export volumes. "Clearly, there is a legitimate process," Mr. Klager wrote in an e-mail

Source: Reuters Ottawa Canada, 17 august.--

Ex-WTO head urges APEC to push for revival of talks

The former Director General of the World Trade Organization is urging the 21-member Asia-Pacific Economic Cooperation (APEC) to push for revival of recently collapsed Doha round of talks at the WTO.

Supachai Panitchpakdi, now secretary general of the United Nations Conference on Trade and Development (UNCTAD), said APEC leaders should assess the group's contributions in developing multilateralism and realize the influence it had in international trade. "I remember the APEC meeting in when members agreed to use the so-called Swiss formula in tariff reduction for industrial products," Supachai said. "Soon after, the WTO adopted the Swiss cut for agricultural products."

Supachai, a former deputy prime minister of Thailand, took office at the UNCTAD after his three-year term at the WTO ended in 2005. He represented Thailand in the signing of the Uruguay Round of talks when it was concluded in 1994.

The Doha Round of WTO negotiations were declared suspended at a crucial meeting last month after leading economies failed to agree on removal of export subsidies and other contested matters. "APEC can help pick up the pieces of the WTO Doha Development Round by focusing on issues left over," he said at a meeting of the APEC Business Advisory Council in Cebu City.

Supachai said APEC needed to be recognized as a group in the WTO amid the many groupings, such as the "G6, G20, G77, all of which are pushing for particular interests. "You need to go to Geneva as a group -- a G-APEC -- that can represent trade liberalization in its totality," he told the APEC Business Advisory Council meeting. "The world cannot afford not to conclude the Doha Development Round," Supachai said. "What has been achieved so far is twice that of what we had in the Uruguay Round. "If we do not finish the DDR, it would take so many years -- maybe 10 years -- to start a new round," he said. "We can see from the past rounds that one has a life cycle of 20 years."

He added there would be a lot of backsliding from current achievements if there were no successful round that would take trading rules into a higher level of improvement. Source; Inquirer , INQ7.net, 17 August 2006

Revival of WTO negotiation: US seeks suggestion from Bangladesh

Bangladesh ambassador to Geneva has urged the WTO to implement the Hong Kong declaration relating to duty free and quota free market access of LDCs exports sidestepping the deadlock in reaching a final deal. The request was made recently by Ambassador Dr Taufique Ali to Secretary General Pascal Lamy, sources here said. The Bangladesh move was taken in view of the uncertainty now prevailing following the postponement of the negotiation last month as big players differed on major tariff issues.

If negotiation faces inordinate delay how long the LDCs can wait for better treatment of their exports to which they have attached big hopes. Bangladesh's proposal has exactly made this case at a time when its apparel export to the USA is poised to benefit enormously from it, the sources said. Meanwhile, US trade representative Schwab Susan has taken a separate move to bring the failed talks back to the track. Commerce Minister Hafizuddin Ahmed received a letter this week from her in which she has sought suggestions from the Bangladesh minister about how the abandoned talks may be revived. Susan has explained the background that led the talks to failure. It has created a dangerous retreat from realising an ambitious opening of free trade in the global scale, she pointed out in her letters to ministers and policymakers.

WTO secretary General Pascal Lamy in postponing the talks last month said the major negotiating partners - the developing and the developed countries - remained locked in big differences. They have failed to narrow the gap in agreeing cuts to agricultural tariff and non-agricultural market opening by reducing tariff and subsidies. He announced the postponement of the talks in an emergency general council meeting of the WTO and emphasised the need for a new political environment to drive the negotiations to a successful deal making. It appears that moves have been in place at different levels now to create political environment and goodwill, and the contact by the US trade representative with commerce ministers of different countries immensely speaks of it.

Meanwhile, the G-20 group has called for a meeting in Brazil on September 9 and 10 to discuss new negotiating strategies to avoid further deadlock in the talks. The Cairns group, to which countries like Australia, Pakistan, Indonesia and Canada belong, is also scheduled to meet in Sydney on September 20 to 22 to discuss new negotiating outlines.

Many such groups and moves are working worldwide and their purpose is to take the failed talks back on the track. The sources say, the talks cannot go indefinitely, contrary to it, there is a set timeframe when it should end. It was originally scheduled for December 2006, but later the timeline has been extended up to December 2008.

Source: DSS Dhaka, Bangladesh, 15 August 2006

The WTO Rules on Genetically Modified Organisms

A World Trade Organization (WTO) interim ruling on the regulation of genetically modified organisms (GMOs), EC-Measures Affecting the Approval and Marketing of Biotech Products will be of significant interest to companies operating in the food and agricultural sectors. The ruling arises from a dispute initiated in 2003 by the United States, Canada and Argentina against the European Community (EC) over its treatment of GMOs and products containing GMOs. These countries claimed that the EC approval system delayed the commercialization of GMOs, and that some European countries had effectively banned certain genetically modified crops.

The long-awaited ruling may have very broad implications, and not just for the agro-food sector. It signals a WTO preference for science rather than mere concern as a tool of justification of trade-restrictive measures designed to protect health or the environment. The fact that the Panel did not consider the provisions of the Cartagena Protocol on Biosafety in its analysis also raises far-reaching questions about the interplay between the WTO agreements and other international treaties. As the world's third largest grower and exporter of GMO crops, Canada no doubt stands to benefit from the Panel's decision.

Background

The case was considered controversial from the outset. At the heart of the dispute is the right of countries, in light of their international trade obligations, to control the introduction into their markets of GMOs. The United States, Canada and Argentina (the "Complaining Parties") were concerned that the EC's regulatory system for the approval of GMOs was being used to shut out imports of various GMO crops without any scientific basis. The dispute was viewed by some as a contest between the environmentalists' "precautionary principle" and the more traditional view that hard scientific support is needed to justify banning a product on the basis of health concerns.

The precautionary principle, manifested in the EC regulatory system for GMOs, provides that the mere possibility of harm to human health or the environment is enough to justify precautionary measures, even in the absence of scientific certainty or probability of harm.

The precautionary principle has been endorsed in several international treaties, including the recently concluded Cartagena Protocol on Biosafety, which specifically deals with "living modified organisms resulting from modern biotechnology". (The EC has ratified the Cartagena Protocol, while the United

States has not signed on to the treaty, and Canada and Argentina have not ratified it.)

The Measures in Dispute

The Complaining Parties challenged three EC regulatory measures: an alleged moratorium on GMO approvals, the alleged failure to consider new applications for GMO approvals; and GMO-specific bans or restrictions imposed by several European countries.

The Complaining Parties argued that these measures imposed barriers to trade, in breach of several WTO agreements including the Agreement on Agriculture, the GATT 1994, the Agreement on Technical Barriers to Trade, and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS). In the claims under the SPS Agreement, which deals with food safety and animal and plant health regulations, the measures were challenged as inconsistent with both the science-based requirements of the SPS and its procedural requirements.

The EC - Biotech Interim Decision

The WTO Panel narrowed its ruling to address only the claims brought under the SPS. The Panel also made it clear that it would not examine whether biotech products in general are safe or not, or whether they are "like" their conventional counterparts. The Panel also did not consider whether the EC has the right to require the pre-marketing approval of GMOs, as this was not raised by the Complaining Parties. Because the complaint was made prior to the implementation of the EC's traceability and labelling requirements for products that contain a minimum threshold amount of GMO content, the Panel also did not consider the WTO-legality of these measures.

Regarding the alleged moratorium on the approval of GMOs, the Panel found that the EC had applied a de facto moratorium between June 1999 and August 2003. As a legal matter, this moratorium was considered to be inconsistent with the EC's obligation under Annex C(1)(a) of the SPS, which requires parties to complete testing and approval procedures without undue delay. The Complaining Parties had argued that the moratorium was inconsistent with numerous other obligations under the SPS, but the Panel ruled against them on all points except that of "undue delay". Because the moratorium had ended after the establishment of the Panel, with the approval of several GMO products, the Panel did not make any recommendations on this point.

Regarding the complaint that the EC had failed to consider specific GMOs for approval, the Panel ruled that the EC had acted inconsistently with its obligation under Annex C(1)(a) to undertake and complete such procedures without undue delay with respect to numerous GMOs. Under the U.S. complaint, the Panel

found undue delay in the EC's consideration of 21 out of 25 specified GMOs. For Canada, the inconsistent treatment was found for all four GMOs identified. For those products that remained outstanding, the Panel recommended that the EC bring its product-specific measures into conformity with its SPS obligations, that is, to commence and complete the approvals process without undue delay.

Finally, regarding the individual European country bans on GMO products, the Panel ruled that bans were not based on risk assessments as required by Article 5.1 of the SPS Agreement, and were therefore inconsistent with the countries' WTO obligations. The conclusions reached in this aspect of the decision were the only ones in which the Panel found breaches of substantive, rather than merely procedural, provisions of the SPS Agreement. Significantly, the Panel found that the bans were not consistent with Article 5.7 of the SPS, which permits parties to adopt provisional measures (such as product bans) where there is insufficient scientific evidence to assess the risk of the product. The EC scientific committee and competent national authorities had carried out assessments of each of the products in question, and each was approved as safe. These assessments were deemed to be proper risk assessments as defined in the SPS Agreement. The studies relied upon by the individual countries for their bans were found not to constitute sufficient risk assessments and, because acceptable risk assessments were available, Article 5.7 could not be relied upon.

This in turn led the Panel to conclude that these country bans were also inconsistent with Articles 2.2 and 2.3 of the SPS, which prohibit a party from maintaining a restrictive measure without sufficient scientific evidence to justify it (Article 2.2), and from applying such measures in a way to constitute a disguised restriction on international trade (Article 2.3). The Panel recommended that the individual countries bring their safeguard measures into compliance, and remove the bans on the specified GMO products.

Reactions to the Decision

The European Union and the United States have reacted very differently to the ruling. In the United States, the reaction to the ruling was that it was an unequivocal victory, sending a strong signal to other countries that it is WTO-illegal to impose restrictions on the import of GMO products, and that it is a warning that the EC cannot now impose a new de facto ban on GMOs. In Europe, the consensus is that the ruling is primarily of "historical interest", as the de facto moratorium has since been lifted. Since new rules were adopted in 2004, the EC has approved nine GMO products for import and sale to Europe. Also, the ruling does not require the EC to alter its strict system for approving GMOs. The true consequences of the decision fall somewhere in the middle.

While the Panel did not pronounce on the validity of the EC's regulatory system for GMOs, it did rule that bans on GMO products that are not based on risk assessments, as defined in the SPS, are inconsistent with WTO rules. On the other hand, the Panel did not question the right of individual countries to impose bans if new risk assessments support such measures. Regarding the moratorium on

approvals of GMO products, the Panel did find that the 1999-2003 moratorium was inconsistent with the SPS Agreement, insofar as it had the effect of unduly delaying the results of the approvals process. The Panel did not suggest that future moratoria would necessarily also be inconsistent. If additional scientific evidence were brought to light that would justify restrictions, the EC would be permitted to impose them, provided decisions were made without undue delay.

Implications of the Decision

There are two potentially significant implications that arise from this decision. First, the decision may be used as precedent for the proposition that the precautionary principle is not a valid basis for measures relating to human and environmental health. Second, it may now be in doubt whether future WTO Panels have to balance WTO rules with obligations created by other international treaties.

The Panel dismissed the EC's argument that its regulatory procedures were consistent with the precautionary principle. The EC had argued that there was still scientific uncertainty as to the effects of GMOs on human health and environmental well-being and that, under Article 5.7 of the SPS, this permitted precautionary measure such as import restrictions until better evidence is available. The Panel had a different technical interpretation of Article 5.7 but, more importantly, it ruled that the precautionary principle was too controversial and unsettled a concept to be deemed a general principle of law. In this, the Panel relied on the earlier EC - Hormones Appellate Body decision, which also noted that it was unclear whether the precautionary principle had been widely accepted by WTO members as a principle of general or customary international law.

By so ruling, the Panel interpreted the obligations of the SPS agreement without reference to any precautionary principle and reaffirmed that a restrictive measure said to be based on health or environmental concerns will have to be justified by science, and not by mere concerns or desires to be prudent.

If taken as precedent, this position could affect the regulation of many other industries. For example, the EC has proposed draft rules for testing the effects of certain industrial chemicals for their public health consequences. If those rules incorporate the precautionary principle, any resulting restrictions could be challenged for not being based on hard scientific evidence.

The Panel took a firm and arguably inconsistent approach to the effect of other international treaties on its interpretation of WTO rules. The Panel ruled that it only had to rely on other treaties if it found them useful, and that it was under no circumstances obliged to do so. Despite the fact that the Cartagena Protocol, ratified by 132 countries (although, as noted above, not by the Complaining Parties), is a comprehensive agreement specifically addressing genetically modified organisms, the Panel found that it did not need to consider it in interpreting the SPS Agreement. As part of its reasoning, the Panel found that,

because the Complaining Parties were not parties to the Cartagena Protocol, the treaty was not applicable in their relations as WTO members.

A significant international legal debate exists regarding the relationship between the WTO and multilateral environmental agreements, such as the Cartagena Protocol. In previous WTO case law, such international agreements have been considered as part of the WTO-compliance analysis. The EC - Biotech ruling may signal that other treaties are only relevant when all parties to the dispute, or even possibly all WTO members, are parties to the other treaties. One strategy to minimize exposure to other countries' trade restrictions would therefore be to withdraw from, or not sign on to, treaties which contemplate trade-limiting obligations or powers.

Next Steps

The Panel is now receiving comments from the Parties, and is expected to issue its final decision in September. That decision may be appealed to the WTO's Appellate Body, which may uphold, modify or reverse the Panel's legal findings. If the EC fails to comply with the recommendations contained in a Panel or Appellate Body Report, the United States, Canada and Argentina may seek and obtain WTO authorization to impose trade sanctions against the EC until it complies with its WTO obligations.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Source: McCarthy Tétrault Legal Update, May 2, 2006

Anti-Democratic Policy-Making Procedures in WTO Exposes EU, US

In its quest to fight global poverty and tackle the injustices and inequity that causes it, Actionaid International has exposed the activities of the European Union and the United States of America.

It is uncovered how the two countries have through various means "used 'arm-twisting' and bullying tactics to get their way in the World Trade Organizations' negotiations".

In its Trade Justice Campaign, Actionaid cited those countries' continuous threat to cut countries' aid budgets, ending favourable trade agreements with poor countries and personal attacks against WTO delegates from developing countries as typical examples of their activities.

According to the group, the EU and US's offensive interests in opening up markets for their multinational companies are helped by the WTO's anti-democratic policy-making procedures and the EU and US's strong-arm negotiating tactics.

This, it says, ensures that WTO negotiations are stacked in favour of its most powerful members.

It noted, "Important decisions made at the WTO continue to be taken in exclusive, secretive and informal meetings", which indicated they are open to a small and selected number of WTO members only, and frequently dominated by rich countries.

Meanwhile, many of the WTO's poorest members have very few or no representatives stationed at the organization's headquarters in Geneva, with many other developing country officials based in Geneva having to represent their governments at several international organizations simultaneously.

The EU and the United States by contrast say they have respectively 43 and 25 officials working specifically on WTO issues based in Geneva, who are supported by large teams of lawyers, special advisers and academic consultants regularly flying into the city for key meetings.

At the Hong Kong ministerial meeting, the highest-level decision-making body in the WTO, the EU included over 800 people in its delegation, while the United States brought over 350 delegates.

This compares to the three negotiators in Burundi's Hong Kong delegation, two in Gambia's and the other one in Djibouti's delegation. The US Business Roundtable and the European Roundtable of Industrialist are both said to be active on WTO issues.

These influential Chief Executive Officers-driven pressure groups are made up of elite band of CEO's from some of the world's biggest corporations including Archer Daniels Midland, Bechtel, Caterpillar, DuPont, Exxon Mobil and Pfizer in the Business Roundtable and BP, British American Tobacco, Nestle, Unilever, Royal Dutch Shell and Rio Tinto in the European Roundtable.

These groups are believed to be having access to the highest levels of government and play an agenda-setting role rather than lobbying on the finer details of policy-making.

According to a report by the European Parliament, the creation of forums such as the European Roundtable, "suggested the development of an inner core of policy-makers and the institutionalization of big business in the EU policy process".

But perhaps the most influential business groups that lobby the WTO are trade associations that represent companies with a particular expertise; lobby groups that represent companies' in particular economic sector; and lobby groups that advocate for companies across sectors.

More often than not, policy-makers approach corporate lobby groups first to sound out the 'common view of business'. Consequently, they are often the most powerful private sector lobbies of all, commanding an all-encompassing authority that they do not always deserve, according to a recent research.

Procedures for consulting members within lobby groups are often informal and lack transparency, and consensus is often achieved by adopting the 'lowest common denominator' position.

Representatives of members' interests are therefore often patchy and incomplete, making them unreliable guides to national interest.

Source: Ghanaian Chronicle (Accra, Ghana, Pan Africa, 16 August 2006).

Speech: New Zealand Government, Hon Phil Goff Minister of Trade; The Current State of Trade Negotiations.

I have been asked to give you some reflections on the current state of trade negotiations. New Zealand's multi-pronged trade strategy incorporates multilateral, regional and bilateral approaches, and I want to touch on each of these today.

The importance of trade to New Zealand is obvious. The returns from the sale of our goods and services are a key component in ensuring New Zealand's ongoing economic prosperity. Our ability to trade profitably hinges on maintaining and improving access in key overseas markets. That means reducing the subsidies and tariff barriers that stand in the way of getting the returns we deserve.

Multilateral

Trade negotiations through the World Trade Organisation have long been the Government's priority. The WTO process offers the best hope of reducing distortions to trade at the global level. Some issues like subsidies can only be effectively disciplined at the multilateral level.

Suspension of the Doha negotiations is extremely serious for New Zealand's commercial interests and for wider systemic reasons. The health of the WTO system of global trade rules is vital for a small country like New Zealand.

If we cannot complete the Round, there will be economic costs for both developed and developing countries. Trade liberalisation is not a zero-sum game. There are net welfare benefits, which would add \$290 billion a year to the world economy according to the World Bank, if all tariffs and subsidies were removed. All countries will miss out on the gains to be made from freer global trade. The credibility of the whole global trading system could also be undermined. As WTO Director-General Pascal Lamy has pointed out, we are all losers if the Round does not reach a conclusion.

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The political will to achieve an outcome was missing three weeks ago in Geneva. It is clear that, first and foremost, the “engine room” of the negotiations – the European Union, United States, and large developing countries India and Brazil – will need to show courage and leadership in getting the show back on the road. But the commitment ultimately needs to come from all WTO Members.

I’ll be keeping in close contact with other WTO Ministers over the next few weeks to get their assessment and see what needs to be done to help get the process re-started after the Northern Hemisphere summer break.

I have contacted by phone a number of key players, including USTR Susan Schwab, EC Trade Commissioner Peter Mandelson, and Brazilian Foreign Minister Celso Amorim, as well as Pascal Lamy. I’m meeting with ASEAN Ministers in Malaysia next week. In mid-September I’m heading to Australia for the Cairns Group ministerial, which Susan Schwab and Pascal Lamy will also attend. And I will be discussing the WTO situation with APEC Ministers in Vietnam in November. All countries have a powerful underlying interest in ensuring the multilateral trading system remains in good health.

The WTO offers a robust rules-based framework to manage global trading relationships. It offers a chance to integrate the weakest and most vulnerable developing countries into the global trading system. The prospects for lifting millions of people out of poverty have been diminished by the suspension. More than a billion people live on US\$1 a day, while OECD countries between them spend close to US\$1 billion per day on agriculture support. That fact is unlikely to change, unless we make an effort to resume the Doha talks.

And the WTO offers all Members, including countries like New Zealand who face real impediments from protectionist trade policies, the best opportunity to reduce tariffs at the global level and eliminate damaging government subsidies. All of that adds up to a powerful incentive to keep Doha alive. And New Zealand will continue to put effort into the Round – no matter how long it takes.

Regional and Bilateral

As always when a multilateral trade round is in trouble, we would expect countries to be giving thought to alternatives. Regionalism and FTAs are likely to come more to the fore.

New Zealand has never put all its eggs in one basket and has always maintained an active regional and bilateral agenda, parallel to the WTO. In current circumstances, that is likely to intensify. The Asia-Pacific region is one of the most dynamic regions in the world. Intra-regional trade has been shown as a particularly effective mechanism for growth, so the benefits of enhanced regional integration are obvious. New Zealand has sought deliberately to involve itself actively inside regional processes in the Asia-Pacific.

While we are geographically located in Asia-Pacific, we cannot take our position for granted. We must work hard to be seen as a valued and contributing partner in the region.

Our multi-pronged approach of pursuing integration involves, for instance, APEC, the East Asia Summit process, our ongoing FTA negotiations with the giant in the region – China, as well as Malaysia and ASEAN. And we will continue to seek to deepen our relationship with Australia.

This is supplemented by an intensification of effort around trade and investment promotion, and leveraging the gains from trade so that they contribute to productivity growth in New Zealand in a substantial and sustained way.

APEC

APEC's role in this process is well known to PECC, which continues to make a valuable contribution to its discussions as an observer.

In recent years, APEC has had a strong focus on trade facilitation, with two successive work programmes to reduce transaction costs by a total of 10 percent by 2010 in areas like customs administration, standards harmonisation and e-commerce. APEC is also getting more involved in "behind-the-border" issues, such as the work programmes on business regulation and structural reform in which New Zealand is playing a leading role. This widening of APEC's agenda reflects the fact that, as tariffs fall, reduced transaction costs and improved domestic policy settings are assessed to have an increasingly significant impact on trade and investment flows.

APEC's agenda is widening in other ways too, particularly its work stream on human security issues including health, counter-terrorism and energy, which can have highly disruptive effects on the trade and business environment.

What, then, can APEC contribute to our push for greater trade liberalisation? From New Zealand's perspective there are two aspects to this.

First, APEC has given, and will continue to give, support to the WTO system in general and the Doha Round in particular. In 1993 at the tail end of the Uruguay Round APEC was one of the key catalysts that helped secure progress and closure. Whether it is through Ministerial statements urging progress in the Doha Round (such as the one Trade Ministers issued in Viet Nam in June), or practical capacity building projects with a WTO focus, APEC's activities in support of the WTO remain valuable.

Second, APEC has a role to play in the FTA equation in the region.

In recent years APEC has responded to the emerging "noodle bowl" of FTAs in the Asia-Pacific with a work stream that promotes high quality, comprehensive FTAs, and greater consistency between agreements.

The main vehicle for this at present is work, in which New Zealand is closely involved, to draft "model measures" for FTA chapters. There is potentially a much bigger picture role for APEC in FTA work. You will be familiar with proposals by the APEC Business Advisory Council (ABAC) for an FTA covering

the whole APEC region. I know that PECC is currently involved in assessing those ideas for ABAC's report to leaders at the end of the year. While New Zealand and some other APEC members support the idea of an Asia-Pacific FTA, it will take a new level of commitment from the major economies in the region for it to become a viable proposition. There is a need to clarify the issues involved in an agreement and to continue to make the case for it. This would include pragmatic ways to put in place building blocks to an agreement such as expansion of our own P4 agreement with Brunei, Chile and Singapore. PECC can play a valuable role in this ongoing research and analysis.

Both APEC and PECC were built on the ideals of open regionalism and "free and open trade and investment" as embodied in the Bogor Goals.

The Bogor Goals and their associated timeframes remain as key commitments encouraging economies to continue on the trade liberalisation path.

We need to ensure that FTA policy as far as possible continues to serve those objectives.

East Asia Summit

APEC is of course not the only regional forum covering the East Asian region these days. Last year, New Zealand became a member of the newly-formed East Asia Summit, and participated in the inaugural meeting in Kuala Lumpur. Participation in the EAS is very significant for New Zealand, as it's the first addition to regional architecture – and to the region's capacity to manage increasingly complex political, economic and security issues – since the establishment of ASEAN + 3 in 1997.

Next week I will be attending a meeting of EAS economic ministers in Malaysia. It's early days for the EAS but potentially it could provide a valuable vehicle for regional economic integration and trade liberalisation. Japan recently proposed an ASEAN plus 6 EAS-wide 'comprehensive economic partnership'. It's a very interesting idea, which may be discussed more in Kuala Lumpur. There are big challenges that would face such a proposal, but the objective is one New Zealand fully embraces and we will support moves to progress the concept.

Let me add that I see an EAS economic agreement being very much complementary to what we are seeking to do in APEC. We don't have to decide between the two. They are at different stages of evolution and involve a different set of economies. The EAS brings together the major economy of India with the ASEAN countries and China, Korea and Japan, as well as New Zealand and Australia. APEC, of course, spans the Pacific and includes within it the Americas. The Indians have separately floated the idea of a 'Pan-Asia Free Trade Area' and again this is an initiative that we will want to follow closely. In addition to these key existing fora and existing FTA negotiations which are underway, we continue to talk to major trading partners about the possibility of

strengthening our trade and economic relationships. A key focus, in this regard, remains Japan and Korea.

China

Our largest commitment, however, on the bilateral front at present is the FTA negotiation with China, with whom we have just concluded the eighth round of bilateral talks in Beijing. New Zealand is the first OECD country to have commenced negotiations for an FTA with China, though Australia is following quite closely behind us. The challenge is to negotiate a fully comprehensive agreement, which covers goods and services as well as issues such as investment, government procurement, competition policy and rules of origin.

This goes beyond what China has agreed to with other countries, but was given a boost during Premier Wen's visit to New Zealand last year accompanied by his Trade and Foreign Ministers, during which he spoke in favour of a "comprehensive agreement which was of high quality, balanced and acceptable to both sides." The most recent talks in China took place over a full week early this month. We continue to make progress across the range of issues under discussion. We are now getting into actual negotiation over crunch issues such as market access on goods and services. As you would expect, at this point the talks become tougher as parties consider what is being asked of them.

While progress is being made, we still have a lot of work to do to get an agreement, which is consistent with the instructions set by our political leaders.

On goods, New Zealand's goal is to see the elimination of tariffs, albeit achieved through phasing out over a number of years. On services, we would like to see as much progress on liberalisation as possible backed by agreement to Most Favoured Nation status so that improvements in subsequent agreements with third parties also apply to partners in this agreement.

Beyond the Asia-Pacific

We also need to look for and cement opportunities beyond our own backyard – to our big trading partners in the Northern Hemisphere, the Middle East and so on – to ensure that New Zealand has not only a seat at the table but also a full smorgasbord of trade and economic options available to it.

New Zealand has made a proposal, for instance, to the Gulf Cooperation Council (GCC), expressing our interest in negotiating a high quality FTA. The GCC area – encompassing Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates – is a major regional trading partner for New Zealand, representing an important market for our exports of dairy, sheep meat and beef in particular. Exports to GCC member countries were worth a total of \$656 million in 2005. So this is a market that matters and has potential in terms of services and investment.

In conclusion, New Zealand remains committed to seeing the WTO Round through to a successful conclusion. This remains our best hope for benefiting

New Zealand by getting rid of protectionism, for growing the global economy, and for helping developing countries. But we also have to pursue other opportunities actively. I've talked about some of the FTAs we have on-the-go and our prospects for enhancing our regional economic architecture. These are also central focuses our trade policy agenda.

In terms of regional integration agreements, such as the APEC and EAS proposals, it is still very early days, and we will have to be innovative and proactive in order to try and ensure that we are a player in these initiatives as they continue to evolve.

The main message I want to leave you with is that we will need to be active, engaged and committed at all levels of the international and regional trade environment.

Source: Speech: New Zealand Government, Hon Phil Goff Minister of Trade, at the Multilateral and Preferential New Zealand Committee of the Pacific Economic Cooperation Council (NZPECC), Wellington 16 August 2006.

Russia threatens to end US import preferences if no WTO deal

Russia said it would cut preferences given to US meat imports if it was unable to reach an agreement with the US over its accession to the World Trade Organization (WTO) by October. "In case of unsuccessful October consultations in Geneva, Russia will be forced to return to the positions that it held before agreements were reached on the trade of meat until Russia joins the WTO," a statement from the ministry of economic development and trade said Thursday, citing a letter Economic Development and Trade Minister German Gref sent to US authorities. Russia is one the largest importers of US poultry, importing 742,390 tons of broiler chickens in 2005, a nine percent rise over 2004, business daily Kommersant said, citing the US Department of Agriculture.

The United States is one of the only countries holding up Russia's accession to the 149-member WTO and import terms for US agricultural products, particularly meat, have been one of the key issues during negotiations. When a flurry of WTO talks last month failed to produce a highly anticipated agreement, Gref cited Russian concerns over sanitary conditions at US pork and beef processing plants as a sticking point.

On the sidelines of the Group of Eight summit in mid-July, US President George W. Bush and Russian President Vladimir Putin set a target date of October to

reach an agreement. In the meantime, Russian inspectors were to visit US meat processing plants. "Under these conditions, the government can hardly continue to refuse Russian farmers' demands to revisit meat quotas" granting preferences to US importers, Thursday's statement said.

Source: AFT Moscow, Turkish Press, 17 August 2006

Bananas: WTO procedure Colombia not averted by Borell visit Costa Rica negotiates with president of European Parliament Borell

In spite of the intermediation by Norway and in spite of efforts of the EU to reach an agreement by a diplomatic course, the Colombian government has decided to continue its campaign to claim determination of the European banana import tariff through WTO arbitration, according to the local radio. The European attempts on the preparation of an agreement were unsatisfactory to the Colombian opinion. According to Eurostat figures, the Colombian banana exports to Europe have decreased with 9% during the first five months of the year. Others estimates from the sector put this level on 3,4%. The Colombian market share in Europe decreased with 4% during this period. At the same time, the exports of ACP countries increased with 18% and also the market share increased with 18%, as production increased to a point beyond the level that was necessary, to profit from the European preferential import conditions. The prices during that period have decreased with 48% from € 14,5 to € 7,5 according to the French Cirad. According to a survey by the Australian CIA, Latin America will lose 1 mln. MT of banana exports and an annual income of \$ 569 mln. In the case of Colombia this surmounts to \$ 80 mln. per year. Colombia relies on the European market for 60% of its exports. Because of the low prices in Europe, the US is presently the strongest market. From a report in the Ecuadorian local press, it can be concluded that no more than 21% of Ecuadorian banana exports are presently sold in the US, however.

Costa Rica negotiates with president of European Parliament Borell

The Costa Rican government is taking advantage of the opportunity offered by the visit of the president of the European Parliament Josep Borell, to share their vision on the banana import tariff and WTO negotiations. This way, the Costa Rican objections to the preferential treatment of ACP countries by Europe can be motivated first hand. Costa Rica supports a gradual reduction of the import tariff towards a situation which is more similar to the position of ACP countries at present.

Source: Tholen Columbia, 17 August 2006-

