

Last November, the US suggested that participating developing countries might retain a certain tariff level (no figure proposed) while industrial countries would eliminate theirs entirely. The negotiated rates would be applied at a most-favoured-nation (MFN) basis so that even Members outside the initiative would benefit. One major concern in this regard is the identification of the “key countries that would need to participate in order for potential participants to be willing to go to the sectoral harmonisation rate (zero or other) without concerns about major free riders receiving the MFN benefits.” According to the US, Canada and Hong Kong, the following sectors would be of particular export interest to developing countries: chemicals, non-ferrous metals, electrical and non-electrical appliances, fish, leather goods, gems and jewellery.

The United Arab Emirates is one of the few developing countries to have expressed keen interest in the sectoral approach. On 21 April, it submitted a proposal suggesting the elimination of import duties on a number of specific four-digit tariff lines for raw materials, including several petroleum products, minerals, gems and metals.

Members have agreed in principle to aim at concluding a ‘first approximation’ of the NAMA negotiating modalities by next July. The next step would be the adoption of the full modalities with numbers at the Hong Kong Ministerial Conference next December. Considering the wide gaps in positions, these are ambitious goals.

ENDNOTE

¹ Para. 7 of the July Framework’s Annex B on Non-agricultural Market Access states: “We recognise that a sectoral tariff component, aiming at elimination or harmonisation is another key element to achieving the objectives of paragraph 16 of the Doha Ministerial Declaration with regard to the reduction or elimination of tariffs, in particular on products of export interest to developing countries. We recognise that participation by all participants will be important to that effect. We therefore instruct the Negotiating Group to pursue its discussions on such a component, with a view to defining product coverage, participation, and adequate provisions of flexibility for developing-country participants.”

No Solution Yet on Access to Medicines

After prolonged and heated debate, WTO Members failed to meet their 31 March 2005 deadline for adopting an amendment to the TRIPS Agreement allowing the export of generic medicines to countries that do not have the capacity to manufacture them locally.

The Doha Declaration on TRIPS and Public Health mandated Members to find, before the end of 2002, an ‘expeditious solution’ to the difficulties faced by countries with insufficient or no pharmaceutical manufacturing capacities in making effective use of compulsory licensing under the TRIPS Agreement. In August 2003, WTO Members finally agreed on a temporary waiver allowing the export of generics under compulsory license subject to stringent conditions, mostly intended to prevent the re-export of such drugs to developed country markets (Bridges Year 7, No. 6, page 9). After the latest deadline for turning this waiver into a permanent provision in the TRIPS Agreement was missed in March 2005, Members agreed to aim for the 26-27 May General Council session. However, the differences on this issue remain so profound that few expect a solution to emerge by then.

The latest impasse centres on the African Group’s December 2004 amendment proposal, which neither spells out the complex anti-diversion provisions of the waiver, nor makes any mention of the Chair’s statement associated with it (Bridges Year 8, No. 10, page 1). Many developing countries support the African position, while most developed countries, including the US, the EU, Korea, Canada, Japan and Switzerland, continue to insist that the amendment must contain both the waiver and the statement as presented in August 2003.

TRIPS and Biodiversity

In March, Members again considered the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD), but positions on this long-standing agenda item remain largely unchanged. A new submission from Brazil, Bolivia, Cuba, Ecuador, India, Pakistan, Peru, Thailand and Venezuela (IP/C/W/442) focused on the need to provide evidence of benefit-sharing in patent applications, complementing previous proposals on disclosure requirements and prior informed consent. With regard to the legal effects of non-compliance by a patent applicant with the obligation to provide such evidence, the latest submission distinguishes between the pre- and the post-grant phase. Failure to provide evidence before the grant of the patent should result in a discontinuation of the application procedure, combined with penalties, time limits and eventually the withdrawal of the application. Failure to provide evidence after the grant of the patent could result in the revocation of the patent and/or criminal and administrative sanctions, including punitive damages.

Several developing countries consider that the TRIPS Agreement should be amended to prevent the granting of patents involving undisclosed genetic material or traditional knowledge (TK), and to ensure that the communities that are custodians of such resources get a share of benefits arising from their commercialisation. The US, Canada, Australia and Japan remain unconvinced that the TRIPS Agreement needs amending, arguing that TRIPS and the CBD support each other and that both can be implemented consistently. These countries also tend to favour addressing questions related to intellectual property rights, genetic material and TK in the Intergovernmental Committee of the World Intellectual Property Organisation (WIPO).

Spirits and Wine Register

The Doha Declaration mandated Members to negotiate the establishment of a multilateral system of notification and registration of geographical indications (GIs) for wines and spirits by the WTO’s fifth Ministerial Conference. After the Cancun collapse, often heated – but so far futile – negotiations have continued on the issue. The debate is increasingly tied with fundamental differences between ‘old world’ and ‘new world’ countries on extending strong GI protection to other products other than spirits and wine in the TRIPS Council and on certain countries’ attempts to place the issue on the agricultural negotiating agenda. The next TRIPS Council meeting is scheduled for 14-15 June.