

Little Progress in Environmental Goods Negotiations

Meeting in February 2006, WTO negotiators on trade and environment continued to differ on the criteria for environmental goods, as well as the scope and approach to take to liberalising trade in such products.

Paragraph 31 (iii) of the Doha Declaration mandated Members to negotiate on “the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.”

Parameters Proposed for Environmental Goods

Countries are now considering two sets of ‘indicative parameters’ for evaluating some of these products. The first set, which was proposed by the Chair of the negotiations, Ambassador Toufiq Ali of Bangladesh, asks whether the product has a clear and direct environmental end-use; what environmental products, categories of products or projects are of particular interest to developing country Members; and what other considerations may be taken into account when determining whether a product constitutes an environmental good. The second, more product-specific set was tabled by the US (TN/TE/W/64). It asks whether the product has a clear and direct environmental benefit; if any potential dual or multiple uses could be addressed by using a narrower product description at the national level; whether the product is “so central to the delivery of key environmental and developmental benefits... that its exclusion from liberalisation would reduce the intended environmental benefits” of the initiative; and if the product is sensitive or raised other concerns for delegations. The US also urged Members not to continue “the same kind of unstructured debate” as last year.

Multiple Use Products, Focus Categories Still Divisive

After consulting with several Members on the second day of negotiations, Chair Ali suggested discussing the merits of some proposed products in four categories – renewable energy, air pollution control, wastewater treatment and soil remediation – in a technical meeting during the next negotiating session in June. India, on behalf of a group of ten developing countries including Argentina, Brazil, China, Egypt, Mexico and South Africa, rejected that suggestion. Instead, it proposed that Members examine products in the categories of renewable energy and air pollution control, apply the criteria of single environmental end-use as a filter,

and examine the remaining products against cross-cutting issues such as special and differential treatment, related non-tariff barriers and technology transfer. The US expressed opposition to proceeding in such a manner, indicating that it would prefer to move quickly to the consideration of multiple use products, and to discuss other issues later. Cuba also raised some doubts about the practicality of applying the parameters first for single-use renewable energy and air pollution control products, and then restarting the whole exercise for multiple use products in the same categories.

As a result of these disagreements and the two different sets of parameters for evaluating products, the procedure to be adopted at the next meeting remained somewhat unclear. The Chair emphasised, however, that all proposals related to products within the categories of air pollution control and renewable energy tabled prior to the Hong Kong Ministerial would be discussed. The next negotiating session on trade and environment will be held on 14-15 June.

TRIPS Council: Old Divisions Persist on Disclosure, GIs

Developing countries have called for negotiations, starting in late April, on a new provision in the TRIPS Agreement that would require applicants to disclose the origin of any genetic resources or traditional knowledge used in the invention they seek to patent.

Disclosure has been a topic of debate and division in the TRIPS Council for years. Since the Doha Ministerial Conference in 2001, it has also been addressed as an ‘outstanding implementation issue’ in separate consultations – currently conducted by WTO Deputy Director-General Rufus Yerxa – aimed at clarifying the relationship between the TRIPS Agreement and the Convention of Biological Diversity (CBD, see related story on page 20).

The main proponents of disclosure are Brazil, India and Peru, supported by a number of other developing countries, as well as Norway. These countries argue that a disclosure requirement in the TRIPS Agreement would help reduce the number of ‘bad’ patents granted for inventions that misappropriate genetic resources and/or traditional knowledge and deprive the countries or communities at the origin of the resources of any share of profits arising from the invention’s commercialisation. They also seek an obligation for patent applicants to produce evidence of prior informed consent given by the source country to access the genetic resources/traditional knowledge involved in the invention.

At the mid-March session of the TRIPS Council, the amendment-seeking countries said their proposal to start text-based negotiations on a disclosure obligation was justified by paragraph

39 of the Hong Kong Declaration, which instructed Members take ‘any appropriate action’ on outstanding implementation issues by the end of July. They were emphatic that the discussions had matured to the point that launching negotiations would constitute the ‘appropriate action’ called for.

Predictably, the US and Australia rejected the proposal citing wide disagreement among the membership. Argentina also came out in opposition to a WTO disclosure requirement. The EU and Switzerland, which support national-level disclosure obligations, continue to reject the notion of a TRIPS obligation to do so.

Continued on page 12

This fundamental difference of views came out more clearly in Mr Yerxa's informal consultations, in which delegates responded to a set of questions that he had circulated in an attempt to focus the discussions. While Members agreed on the need to avoid erroneous patents and ensure equitable and fair benefit-sharing, they continued to disagree on the role of disclosure requirements in achieving it. The US believes that a simple and rapid 'challenge' process would be sufficient to prevent bad patents. India countered that patent challenge proceedings were expensive for developing countries, and that mandatory disclosure would reduce the chances of approval of erroneous patents.

Impasse Continues in GI Talks

Positions remain largely unchanged in the TRIPS Council Special Session, where Members are discussing the creation of a multilateral register for the protection of geographical indications (GIs) for wines and spirits, as well as in a separate set of consultations run by Mr Yerxa on whether the higher level of GI protection currently accorded to wines and spirits should be extended to other products (GI extension).

The faultline regarding GI extension lies between 'old world' countries that seek to protect denominations of products associated with a particular geographic provenance or traditional manufacturing method and 'new world' nations that consider many denominations as generic and favour strong protection for registered trademarks instead. During consultations held in March, both camps sought to support their positions by referring to the positive or negative impact of enhanced GI protection would on developing country economies. While opponents, such as Argentina, Brazil, Canada and Chile, reiterated concern about its high implementation costs, supporters like the EU, India and Sri Lanka pointed to the improved opportunities it would offer developing country producers to gain price premiums in export markets.

WTO Members' views also remain unchanged in the formal negotiations on establishing a multilateral register for wines and spirits mandated in the 2001 Doha Ministerial Declaration. The EU, supported by Switzerland and partly by Turkey, fa-

vours a system where registered terms would be protected in all WTO Member countries apart from those that have challenged them. In contrast, 'new world' countries such as Argentina, Australia, Canada, Chile, the Dominican Republic, Ecuador, Mexico, New Zealand, Taiwan and the US, want the register to be a simple notification system that countries may consult in order to decide whether or not to protect a denomination. Under Hong Kong's compromise proposal (TN/IP/W/8), registered GIs would enjoy a more modest degree of protection, and that only in those countries willing to participate in the system. At the March meeting on the issue, even some developing countries that support GI extension thought that the cost of implementing the EU's approach to a register would be unacceptably high.

The next TRIPS sessions are scheduled for mid-June 2006.

Disputes in Brief

On 30 March, both the EU and the US requested dispute settlement consultations on China's tariffs for car parts, which they alleged to exceed the country's accession commitments, as well as violate several WTO agreements. According to the complainants, last year, China increased tariffs from 10-15 percent to 28 percent for specific combinations of parts used in cars made in China, or for imports that make up more than 60 percent of the value of a Chinese-made automobile. The US consultation request argues that "to the extent China may be viewed as imposing a lesser tariff on imported auto parts if the final assembled vehicle contains specified amounts of local content, it would be forgoing revenue otherwise due, and China would appear to be providing a subsidy contingent upon the use of domestic rather than imported goods." Both complainants maintain that the tariff hikes are designed to promote China's domestic car part industry. If the consultations fail to resolve the issue, the EU and the US can request the establishment of a panel in May.

The Caribbean island state of Antigua and Barbuda is considering retaliatory action against the US due to the latter's non-compliance with the 2005 WTO ruling on US restrictions with regard to Internet gambling. The Appellate Body found that the US could in fact ban such services to protect 'public morals' even if it had not exempted gambling when it agreed to open up recreational services to foreign competition. However, AB ruled that the US implemented its gambling restrictions in a discriminatory fashion because on-line interstate betting was – and is – still allowed under the 1978 Interstate Horse Racing Act (a new legislative initiative that would prohibit all forms Internet gambling is currently pending). The gambling case highlights the difficulty that a small economy such as Antigua (population 67,000) faces when trying to bring a large trading partner into compliance with WTO rulings. Mark Mendel, a legal counsel to the Antiguan government, said that if compensation negotiations between the two parties failed, Antigua would request the right to impose trade sanctions on the US 'in a timely manner', although he acknowledged that Antigua would need to be "a bit creative to motivate the Americans [...] in the direction of compliance."

Colombia has threatened to resort to trade retaliation as of 1 June unless the EU concludes a 'compensation' deal on bananas before then (G/C/W/545, 21 March 2006). At issue is compensation for the higher banana tariffs adopted by the ten new EU member countries when they joined the Union in 2004. Negotiations must take place under GATT Article XXIV.6, which calls for 'compensatory adjustment' to trading partners when a Member increases its tariff beyond the level bound at the WTO upon joining a customs union or a free trade area. Colombia complains that the EU has negotiated compensation for the US and others but, in the case of Colombia, has unilaterally bundled compensation for banana tariff changes resulting from enlargement with the separate issue of the new EU banana import regime, which entered into force at the beginning of this year (Bridges Year 10 No.1, page 14). Colombia is likely to target luxury cars such as BMWs in order to pressure Germany to take a proactive position in the compensation negotiations.