

# Focus on Trade

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## OUR WORLD IS NOT FOR SALE CAMPAIGN LAUNCHED IN GENEVA

AS Geneva slides into summer slumber, trade delegates are heading back to their capitals looking for instructions on how to handle the next phase of pre-Qatar negotiations. In his "reality check" report to the pre-recess WTO General Council, Director General Mike Moore painted a gloomy picture of progress, with bleak predictions that the failure to launch a round in Doha would lead many to "question the value of the WTO as a forum for negotiation." This is the equivalent of holding a gun to the heads of developing countries who have been convinced – rightly or wrongly – that the multilateral system is the only thing that stands between getting some "crumbs out of the system" and being picked off one-by-one in bilateral agreements. Moore made specific and repeated mention of implementation issues and the need to include the interests of developing countries in a new round, perhaps in an effort to persuade the QUAD that this is the time for some pragmatism. However, most developing countries don't want to

wait for a new round for their "interests" to be met, believing that there are outstanding demands which cannot continue to be rolled-over into the never-never.

In this issue of Focus on Trade, Aileen Kwa reports on developing countries' responses to the WTO's "reality check" while her other articles, on negotiations in agriculture and US threats to Thailand over drug patents, show clearly that one man's reality is another's trade advantage. Also in this issue, Shalmali Guttal reports on the Klong Daan community's struggle against the Asian Development Bank and Gerard Coffey looks at the winners and the losers in the incredibly slippery US-EU banana war.

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Focus-on-Trade is a regular electronic bulletin providing updates and analysis of trends in regional and world trade and finance, with an emphasis on analysis of these trends from an integrative, interdisciplinary viewpoint that is sensitive not only to economic issues, but also to ecological, political, gender and social issues. Your contributions and comments are welcome. Please contact us c/o CUSRI, Wisit Prachuabmoh Building, Chulalongkorn University, Bangkok 10330 Thailand. Tel: (66 2) 218 7363/7364/7365, Fax: (66 2) 255 9976, E-Mail: [admin@focusweb.org](mailto:admin@focusweb.org), Website: <http://focusweb.org>.

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## DEVELOPING COUNTRIES IN DESPAIR OVER WTO PREPARATIONS FOR DOHA

By Aileen Kwa\*

“There is a development deficit. The marginalisation of many developing countries in the global economy is an attestation to this fact. And this is a true reality check... It is clear we are in a state of impasse. We characterise the situation as discouraging, discomfoting, demoralising and in some instances, even depressing.”

This is the decidedly downbeat assessment of the Malaysian delegation in the statement to the WTO General Council Meeting in Preparation for Doha Ministerial Conference on 30 July 2001.

The World Trade Organisation conducted a ‘reality check’ to assess how close or far apart members were in agreeing on a common agenda for the Ministerial in Doha in November. In preparation for this assessment, a report on the current state of preparatory work for Doha was issued by the Chair of the General Council and WTO’s Director General (Job (01)/118).

Developing countries, angered by the biased process of consultations so far, the lack of progress in areas of interest to them, as well as the lack of accurate representation in the report on specific issues, used the opportunity of this reality check to voice their concerns.

Two main issues were highlighted by developing

countries. First, there has been no progress at all on implementation issues – any such report by the chair is being overly optimistic and ‘not factual’. And second there is no growing consensus on the new round – as the Chair and DG’s report seem to suggest.

In a private interview, a delegate from Africa said that the report “was not a reality check. We do not think it reflects what went on in the consultations. It is quite unbalanced in the way weight is given to one position over another.” In the WTO General Council, Pakistan’s Ambassador Akram said that the report, “reflects a sense of underlying optimism, which we believe, may not be justified by the realities on the ground.”

In short, developing countries’ assess the process as depressing, with no movement on implementation, no growing consensus on new round, no agreement on new issues and no internal transparency.

### DEVELOPING COUNTRIES FIND PREPARATORY PROCESS FOR DOHA ‘DEPRESSING’

In general, developing countries expressed frustration that there really has been no movement in the Doha preparation on issues of interest to them. The process so far has concentrated on trying to get agreement on new issues (pushed by the EU and now US) while implementation issues have been

subjected to a process of being increasingly watered down and marginalised.

Malaysia voiced these concerns in the following way:

‘By focussing mainly on the issues that are currently outside the scope of the WTO, we create the impression that these are the only main issues that would make or break the Doha Ministerial Conference... Clever drafting cannot resolve fundamental difficulties and this has to be recognised... It is clear we are in a state of impasse. We characterise the situation as discouraging, discomfoting, demoralising and in some instances, even depressing’.

India’s Ambassador Narayanan, in response to Mike Moore’s opening statement that the WTO would be rendered “irrelevant” without a new round, said:

‘I have to say that his argument is not particularly convincing... I am afraid the approach suggested by the Director General ignores past experience of developing countries, current realities of power equations and obvious future risk. It is a matter of some regret for me that the Director General who has been a close observer of the way the implementation issues are handled by the major trading partners for nearly two years now, should be advising developing countries to accept new asymmetries and imbalances in order to remove past asymmetries and imbalances.

In this context, my own assessment is that a new comprehensive round of negotiations, mainly aimed at removing even the limited policy space available to developing countries in area of crucial development interests to them, will only result in a net additionality to the existing asymmetries and imbalances.”

Pakistan Ambassador Akram’s remarks to the General Council were even more to the point: ‘Mr Chairman, we may have spent 35 plenary meetings in preparing for Doha. But I think if we are frank with each other, we should admit that we have not moved very far forward on the road to Doha.’

### NO MOVEMENT ON IMPLEMENTATION

Implementation issues are top of the agenda for developing countries at the WTO. ‘Implementation’ represents the broken promises and inequities which have emerged for the South as a result of the Uruguay Round package – for example in TRIMS, TRIPS, agriculture, textiles and anti-dumping. Since Seattle, much time has been spent on some topics under ‘implementation’ but with no results because the developed countries have been unwilling to yield.

Addressing the inherently biased nature of the WTO’s QUAD-and-Secretariat-driven negotiating process, Pakistan, criticising the Chair and DG’s report said:

“Particularly in the area of implementation, it is impossible to conclude that there are, I quote, ‘welcome advances’ or ‘positive developments’ or ‘some headway in the process’. On the contrary, there has been an obvious lack of political will on the part of our major trading partners even to engage in discussions and negotiations, much less to respond positively, to the concerns and proposals relating to implementation. In fact, virtually no consultations were even convened with regard to two of the major areas of implementation, i.e. textiles and anti-dumping.”

Akram then posed the questions: “Are the major trading partners politically incapable of responding positively to the main implementation concerns of the developing countries? Some of the news that we read may indicate that that may be the case. Alternatively, are they holding back their responses on implementation issues mainly for tactical reasons, in order to extract concessions from developing countries on their ambitions and objectives for Doha?”

India’s Ambassador Narayanan also remarked on the incredibly slow progress on implementation issues, saying “If you take into consideration the fact that most of the implementation proposals have been on the table for nearly three years now, the fact that these issues and concerns have to be addressed and resolved latest by the Doha Ministerial Conference which is barely three and a half months away, the fact that subsequent to December 2000 when only three decisions were taken,

no decision has been taken on any implementation-related proposal...”

In sum, India’s view was that ‘there is no significant change in the attitude of the major trading partners... I would say that the element in your report which indicates that the ‘progress at this stage in achieving concrete results has not been as rapid as might have been hoped’ is a gross under-statement.” Ambassador Narayanan went on to say that “we are terribly disappointed and distressed about the lack of progress in dealing meaningfully with implementation issues and concerns which have been on the table for a long time now.”

Zimbabwe, speaking on behalf of the African group, also said that on implementation issues, “we can all agree that more progress will be required before Doha... Quite frankly, the current situation is far from satisfactory and challenges us to intensify the search for urgent and meaningful solutions.”

Malaysia also commented that they were “very disappointed that there has not been any substantial outcome on any of the implementation related concerns, and we wish to remind Members of the General Council Decision to resolve these matters at the latest by the Fourth Ministerial Conference.”

### NO AGREEMENT ON NEW ISSUES, NO CONSENSUS ON NEW ROUND

The LDCs, fresh from their Ministerial meeting in Zanzibar, reiterated the position taken there. Representing the LDCs, Tanzania said, “Ministers considered

the so-called Singapore issues that include investment, competition policy, environment, transparency in government procurement and trade facilitation. Given the fact that the issues are complex, and divergent views exist and that the new issues are yet to be fully understood, especially regarding their implications on LDCs’ development, the Ministers were of the view that the study process should continue in the working groups and that time is not ripe for LDCs to undertake negotiations for multilateral regimes on these areas.”

Pakistan, on the same subject said: ‘We note that considerable time has been spent on consultations relating to some of these issues, and some of the 35 meetings have been expended on this exercise; certainly more time on these issues than on the issues relating to textiles and anti-dumping. But, we see little prospect of bridging the gap and reaching consensus on a negotiating mandates for these issues.’

Malaysia also stated unambiguously that they were not interested in any of the new subjects – investment, competition or trade facilitation. In fact, on trade facilitation Malaysia said, “My delegation is unable to accept the report’s assertion that there seems to be some degree of acceptance that a negotiating mandate would probably be that as outlined in paragraph 25. It was clear from the consultations that apprehension remained as to whether new rules were needed.”

On behalf of the African

group, Zimbabwe in the meeting, commenting on the Chair and DG’s report on new issues said, “I must say with all frankness that we are disappointed by the way in which these differences have been portrayed... For example, on the relationship between trade and investment... your Report says some members want the work of the working group ‘prolonged’. This reflects a judgement on the timeframe. The issue here is for the Working Group to complete its task and fulfil its mandate, and not merely prolonging its existence.’

### INDIA’S ASSESSMENT OF CURRENT SITUATION

Ambassador Narayanan voiced many developing countries’ perceptions of the process so far. He said that India’s assessment was that

a) Without meaningful results on implementation issues and concerns, Doha Ministerial is unlikely to succeed

b) There is no great enthusiasm for a comprehensive round involving a wide variety of new subjects as proposed by some major trading partners; in fact, there is considerable amount of resistance;

c) The ‘all or nothing approach’ is risky in as much as it is likely to result in ‘nothing’ rather than ‘all’

### “GREEN ROOM” CONSULTATIONS CONTINUE

Mike Moore, referring to the issue of internal transparency in Doha preparations, said, “internal transparency and participation have been greatly improved.” He backed this statement by stating that 35 plenary meetings of the Council, formal and informal

devoted to the Doha process have been conducted.

Contrary to his assertion, however, Jamaica said that they were very disappointed that they have been left out of the informal consultations that have been going on.

The truth of the matter is that Green Room consultations still take place in proliferation. Many developing country delegates are not invited to the myriad “informals” organised each day on different topics. This lack of internal transparency makes it much easier for the big players in the WTO to split the ranks of developing countries when push comes to shove.

## LOOMING PITFALLS FOR THE SOUTH

While developing countries seem to be holding their ground for the time being, pressure is intensifying from all sides. According to an Asean delegate, pressure tactics from the EU and others will increase. Many African and Latin American countries do not want the launch of a new round. However, many rely on aid and trade preferences. “One call to your boss, to tell your man to cool off. That’s all it takes. We can expect this in the days to come.”

African countries in particular will be targeted with pressures of all forms in particular because their agreement is essential to legitimise further trade liberalisation – trade is good for the poor, after all! Indeed, the proponents of a new round have been using Egypt and South Africa to work on their African colleagues: a kind of north-south axis.

Kenya in the east and Gabon in the west complete the compass and have been targeted to change their positions and become ringleaders for a new round.

The battleground has shifted, from Geneva back to capitals. Unless trade ministers, already under pressure from the powerful countries, start feeling the heat from civil society resistance in the next two months, it is unlikely that they will be able to stand their ground. With meagre offerings of market openings, aid packages and more technical assistance, the Doha ministerial could launch a limited new trade round with a mandate that gets expanded as the round progresses.

One prominent NGO leader from the South, commenting on this possibility, said that if a new round were launched, Genoa might just be a daily reality in Geneva next year.

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## DYING FOR ‘FREE TRADE’: U.S. OR US?

By Aileen Kwa\*

‘Dying for Free Trade: U.S. Or Us’, read the banner held high by Thai NGOs and AIDS activists on the 28 June outside the US Embassy in Bangkok. They were supporting the January resolution passed by the Thai Food and Drug Administration (FDA) to allow the production of generic drugs within a shorter time lag after the release of the branded versions. They were also protesting the pressures Washington has been exerting on Bangkok.

Bi-lateral arm-twisting has intensified in the last few months, even as international pressures shamed the pharmaceutical companies into dropping the lawsuit against the South African government in April this year and the US into dropping the case against Brazil at the WTO. Yet because there has not been adequate publicity revealing the pressures US is exerting on the Thai administration, Washington continues to intimidate Bangkok through a variety of trade threats.

For eight years, since 1993, Washington was able to limit Thai production of generic drugs because of a bilateral programme between the two countries that effectively allowed medicines not patented in Thailand with exclusive

marketing rights for 5-6 years. That is, generic versions of these products were not put on the market during this time. The January resolution reduces this period of marketing exclusivity to three to four years. Furious, Washington has been on the heels of the Thai government.

## US STRONG-ARMS THAILAND INTO STRINGENT PATENT PROTECTION

According to a high level Thai government official, Washington has sent already sent three envoys to Bangkok this year to exert trade pressure. Pressure has also been put on the Thai delegation to the WTO in Geneva. (1) The political leverage of the US over Thailand is very significant. Sixty per cent of the Thai economy depends on exports. Of this, 25 per cent go to the US. That is, 15 per cent of the entire Thai economy depends on its exports to the US.

The history of US pressure on the Thai Administration to protect stringent patent rights to US pharmaceuticals goes back a long way. In 1986, the USTR pressured Bangkok to amend the Thai Patent Act which until then included only process patents (i.e., it allowed for the production of generic

versions through alternative processes). According to a disgruntled Thai government official, "this is the trick that they used. They applied bilateral pressure on countries to change their patent laws so that these countries would then support the TRIPS in the Uruguay Round negotiations." As a result, Bangkok amended the Thai Patent Act to include product patents in 1992 (well ahead of the conclusion of the TRIPS agreement). They also extended the length of their patent protection from 15 to 20 years.

However, the US was still not satisfied with the new 1992 Thai Patent Act. Products which had been given patents in the US prior to 1992 would not have patent protection in Thailand upon their release as drugs. USTR therefore continued the bilateral pressure on Bangkok. Finally, the Thai government submitted. In 1993, the 'Safety Monitoring Program' (SMP) was implemented whereby any new drug that has been patented abroad between 1986 and 1991 and sold in Thailand will have to be in the SMP for a minimum of two years. While the drug is on the SMP list, no other manufacturer is allowed to register a generic version, or conduct bio-equivalence tests on it. The SMP effectively gave companies an exclusive market. Often this period of exclusivity was extended from two years, to three to four years. In addition, to produce a generic version, a bio-equivalence study

would take at least one year and the registration of the generic product would take up to 5-6 months. Practically, that period of exclusivity would therefore be five to six years before the generic drug could be sold on the Thai market. The rationale for this time period is supposedly to allow the manufacturer to monitor the drug for any adverse effects.

### THAILAND'S AIDS CRISIS: EXACERBATED BY STRONG PATENT PROTECTION ON MEDICINES

Thailand currently has an HIV/AIDS problem of crisis proportions. With 750,000 people living with HIV, it is in fact one of the countries worse hit by the epidemic. 350,000 people have already died. Less than five per cent of the population have access to anti-retroviral medicines due to the high costs. HIV is in fact fast becoming the leading cause of death in the country, particularly amongst young people. By 1999 death rates had jumped by 16 per cent due to AIDS.

The government's health budget cannot cover the cost of treating the large numbers infected by HIV. It had been estimated that the cost of treatment would be as high as US\$9 billion in health expenses a year. (2) The Thai government's health budget for 2001 of US\$7.24 million remains only a fraction of the money required. World Bank estimates that this will provide treatment to only

2,100 sufferers. (3) The strong patent protection as well as the SMP programme has led to an escalation of medical expenditure and also to the decline of the local pharmaceutical industry.

According to an ASEAN workshop on TRIPS and pharmaceuticals held in May 2000, between 1979 and 1992, when only process patents were granted in Thailand, a generic version would be on the market between one and two years after the product was released on the market. Currently, it takes between five and fifteen years after the introduction of a patented product before a generic version is available, and five to six years for products (without a Thai patent) under the SMP. Due to the suppression of competition, the prices of original drugs are high. This has reduced access and also increased government expenditure.

Experts at this workshop estimated that after five years of SMP-market exclusivity in Thailand, medical expenditure increased by 2,000 million Baht (US\$50 million) for the top 25 products under the programme. They projected that this figure would increase ten-fold once the full impact of product patents is felt (by 2000). (4)

This level of stringent patent protection has also affected negatively the local generic drug industry. Previously imported drugs made up only 30 per cent

of the Thai pharmaceutical market and seventy per cent of the market was supplied by local production. Today fifty per cent of drugs are imported. The local industry has therefore significantly contracted.

### THAI GOVERNMENT ADDRESSES AIDS CRISIS: CHANGES TO THE SMP

In response to the AIDS crisis and the high costs of treatment an official from the Ministry of Health, in a private interview, said that the Ministry would like to see as many drugs as possible produced generically. This includes anti-retrovirals as well as other medicines needed for diseases which often accompany AIDS and the loss of immunity such as meningitis, pneumonia and fungal infections. The Thai experience with generic products has been that once they are out on the market, prices of the branded versions fall drastically, sometimes even to levels comparable with the generic ones.

Many of the new anti-retrovirals that are currently on the market would fall under the SMP category. That is, they would have obtained patents from abroad between 1986-1991 but not in Thailand as this was before the Thai Patent Act came into effect.

In the interest of providing more people with access to medicines, the Thai FDA amended the SMP in January 2001. The resolution included the

following elements:

1) Bangkok requested that pharmaceutical companies provide the Thai FDA, within 180 days, with names of products still in the pipeline but which they intend to register under the SMP in order to enjoy market exclusivity. Only those products that have been notified will be provided market exclusivity.

2) Thai companies will be able to start bio-equivalence studies (development and tests) before the expiry of the Safety Monitoring Programme for that product. This is so that the generic version can be released the moment the SMP expires. In practical terms, this means reducing market exclusivity from 5-6 years to 3-4 years.

3) The FDA also took a decision to exclude medicines under the SMP from being listed on the National List of Essential Medicines (NLED). (Note: All hospitals and clinics administered by the Ministry of Health are supposed to use no less than 80 per cent of their budget for medicines to buy drugs on the National List, though in practice, the percentage is 30-40 per cent.) (5)

### MINOR CHANGES FROM THAILAND DRAW MAJOR OPPOSITION FROM US

Minor changes from Thailand

The January resolution changes the SMP in only

minor ways. The programme, as promised in the 1993 bilateral agreement, is being maintained. In fact, in comparison to the intensity of the health crisis, these changes can be viewed to be rather timid.

#### Information on Pipeline Products

According to Thai government officials, they have only requested notification of the names of products still in the pipeline and the country where a patent was first registered. They have not asked for confidential information that would in any way compromise pharmaceutical companies' trade secrets.

#### Conducting Bio-equivalence Studies during SMP

Allowing for the development and testing of generic products by non-patent holders and without the permission of the patent holder before the expiry of the patent is in accordance to the TRIPS agreement. This is usually known as the Bolar Provision. Such a law was first incorporated in the US in 1984 and has since been used more widely in other countries. According to the WTO Secretariat, it is allowed under Article 8 of TRIPS. (6) In a case filed by the EU against Canada's Bolar Provisions and concluded in April 2000 (case title: Canada – Patent Protection for Pharmaceutical Products), the WTO's Dispute Settlement Body ruled that Canada was TRIPS-compliant.

From the perspective of Thailand, this small

change in the SMP should not be problematic since the SMP is already a TRIPS-plus concession which Thailand is offering the US (since it gives 'protection' to products patented before the Thai Patent Act and before TRIPS came about). Furthermore, it is also unreasonable for the US to demand that Thailand relinquish the right to conduct bio-equivalence tests when US legislation itself allows for this.

#### Exclude Drugs under SMP from the National List of Essential Drugs

As the name, Safety Monitoring Program (SMP) suggests, drugs under the scheme are being tested for their safety. In all fairness to Thailand, it is reasonable that until there is clear information on safety, these drugs should not be on the essential drug list.

#### Fiery Opposition from US

Washington was quick to make its opposition known to the Thai government. In the few months following the resolution, US envoys sent to meet Thai officials included Barbara Weisel, Deputy Assistant USTR for Bilateral Asian Affairs, high ranking officials from the US Embassy in Bangkok, as well as from the US Department of Health and Human Services.

Pressure on Thailand has not only been limited to the SMP, which the US finds 'unacceptable', but also on other issues – such as Thailand's draft Trade Secrets Law, and even Thai FDA's plans to label

genetically modified foods.

Thailand's Achilles' heel is their US\$8.7 billion worth of exports to the States. USTR is threatening to put Thailand on the Priority Watch List. Once on the list, unilateral trade sanctions against Thai exports could be taken under Section 301 of US' Trade Act as long as USTR determines that an act, policy or practice of Thailand "violates or is inconsistent with any trade agreement, denying the rights or benefits derived thereof to the United States, or is unjustifiable and burdens or restricts United States commerce."

When developing countries agreed to accept TRIPS in the multilateral trading system, they expected that such unilateral action by the US would be removed. However, this has not been the case. According to a Thai official, should they be put on the Priority Watch List the negative impact would be immediate. Export volumes would immediately fall because importers would already be anticipating that US could at any time slap on a high levy on products from the country.

A formal letter dated May 11 was sent by USTR to Dr Vichai Chokavivat, the Secretary General of the Food and Drug Administration. The points made in the letter included:

1) Washington's disapproval of the draft Thai Trade Secrets Law

The draft Thai Trade Secrets Law has been

through a first reading by the Senate. Section 7(2) of this law permits the disclosure of test data by a government agency to protect any 'public interest' not having commercial objectives. According to Washington's letter, "Such an exception to the protection against disclosure of test data is both overly broad and does not conform to the exception found in TRIPS Article 39.3... we respectfully request to see the most recent version of the draft law, and, as we offered to your delegation in Geneva, stand ready to assist you by suggesting adequate language to ensure a Trips-consistent law."

Washington also asserts that 'While it is our hope that the new Trade Secrets Act will provide a significant improvement over the 1993 SMP, should the new law provide less protection than that afforded by the 1993 SMP, the US government would have serious concerns'.

This interpretation by Washington seems unreasonable. TRIPS Article 39 (Protection of Undisclosed Information) supports 'public interest' objectives. Article 39.3 explicitly states that "Members shall protect such data against disclosure except where necessary to protect the public..."

## 2) Washington Denounces Changes in SMP

In response to the change in the SMP as announced by the Thai FDA, Washington responded as follows: "The Thai FDA requested that

the US unilaterally abandon benefits affording data protection for pharmaceuticals as established in the 1993 Bilateral Agreement. The US declines to relinquish such benefits.'

In retaliation to Thailand's request for the names of pipeline products and the country where a patent was first granted, Washington stated in their letter that:

'We have reviewed as well the T[hailand] FDA's new requirement that US pharmaceutical manufacturers submit lists of products qualifying for the SMP under the 1993 Agreement, or sacrifice the protection of the test data or such products should they be introduced to the Thai market in the future. The 1993 Agreement provides no such stipulation whereupon SMP protection is qualified based on a prior written submission listing the products that were granted foreign patents between 1986 and 1991. This requirement would effectively limit the extent of protection afforded under the 1993 Agreement.

"Furthermore, the release of such information discloses valuable indications of a company's potential marketing strategy, and threatens to compromise industry trade secrets. The US government requests the Royal Thai government withdraw this modification to its SMP policy."

On the exclusion of SMP products from Thailand's National List of Essential Drugs, Washington had this to say:

"The exclusion of SMP drugs from the NLED would effectively negate the original intent of the SMP and pose potentially harmful risk to public health... innovative products qualifying for the SMP will not be listed or stocked in most hospitals."

The letter goes on to state that "continuation of the original SMP is necessary to offer some form of data protection until a satisfactorily TRIPS-consistent Trade Secrets Law is passed, enacted, and successfully implemented. A gap in data protection coverage for US products would be unacceptable."

Finally, the statement concludes with a diplomatically veiled threat, that 'We were encouraged by our talks with your delegate in Geneva, and believe the successful implementation of a Trade Secrets Act in compliance with the TRIPS Agreement would greatly improve Thailand's attraction as a destination for foreign investment – not only for the research pharmaceutical industry – but for all manner of industries providing access to innovative products.'

## 3) Washington Pressures FDA Not to Label Genetically Modified (GM) Products

This final point was not included in the 11 May letter by USTR, but has been communicated by Dr

Vichai Chokavivat, Secretary General of the FDA, who says that Washington's pressures have not been limited to the SMP. In fact, he says, they have used the occasion of this dispute to raise other issues such as Thailand's intentions to label GM products. On 13 February 2001, in addition to expressing their disapproval of the SMP, the US envoy to the FDA threatened that trade sanctions under Section 301 would be imposed on Thailand should they go ahead with labelling. The Thai FDA had already resolved, in 1999, to have food products with GM concentration higher than three per cent carry a GM label. (7)

## WTO USED BY POWERFUL TO INSTITUTIONALISE THE LAW OF THE JUNGLE

According to WTO's Director General Mike Moore, the WTO benefits the poor because it is rules-based. The alternative, he warns repeatedly, would be the law of the jungle.

The situation between US and Thailand, the treatment developing countries receive at the WTO, and the treatment of members of civil society who dare to disagree, offers another view.

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(1) Letter dated 11 May 2001 by USTR to the Thai FDA says that 'US raised concerns regarding the changes to the SMP with your government's representative to the WTO in Geneva'. In the final section it also states that 'We were encouraged by our talks with your delegate in Geneva ...'

(2) Agence France Presse 1999, 'AIDS – Thailand – Asia: AIDS to cost Thailand nine billion dollars by 2000: experts', 2 November.

(3) World Bank 2000 'Social Monitor Thailand – Thailand's Response to AIDS', cited in Oxfam, March 2001, 'The Impact of Patent Rules on the Treatment of HIV / AIDS in Thailand'.

(4) WHO, Directorate General of Drug and Food Control (Indonesia), 2000, 'The TRIPS Agreement and Pharmaceuticals: Report of an ASEAN Workshop on the TRIPS Agreement and its Impact on Pharmaceuticals', Jakarta, 2-4 May.

(5) Oxfam 2001 'The Impact of Patent Rules on the Treatment of HIV / AIDS in Thailand', March.

(6) WTO Secretariat 2001 'TRIPS and Pharmaceutical Patents: Fact Sheet', April.

(7) Just-Food.com 2001 'USA/Thailand: US Threatened Trade Sanctions to Block GM Labels, says Thai FDA', 19 July, www.just-food.com

(8) USTR 2000 'WTO Decision Upholding Section 301 of the Trade Act', Press Release, 27 January.

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## ADB CHARGED WITH ENVIRONMENTAL CRIMES AND CORRUPTION

By Shalmali Guttal\*

On June 26, almost a thousand residents from Klong Dan, Song Klong and neighbouring communities cordoned-off the out-all pipe of the Samut Prakarn Wastewater Treatment Plant, declaring it an "environmental crime scene."

A flotilla of more than 100 boats, carrying residents and local and international activists, converged on the construction area where they planted flags with messages demanding an end to the project. Using the flags as posts, they then fenced the construction area with yellow hazard tape and declared it an environmental crime scene. According to Ms. Dawan Chantarahassadi from Klong Dan, the action was intended to remind the Thai and international public of the destructive impacts of the waste water plant on marine life and environment, the livelihoods of communities in the project area, and to future sources of seafood in Thailand.

Financed through loans by the Asian Development Bank (ADB) and the Japanese Bank for International Cooperation (JBIC), the Samut Prakarn Wastewater Treatment Plant is

one of the most controversial projects in recent years in Thailand. It is an example of some of the worst practices in environmental management, project assessment and design, governance, public participation and mitigation of negative impacts.

Located in Klong Dan village at the head of the Gulf of Thailand, the plant will treat wastewater from over 3,600 factories and many households in Samut Prakarn province that are located quite far away from the treatment plant. The plant will release toxic sludge and heavy water into the surrounding land, canals and the Gulf of Thailand, thus threatening the area with serious environmental contamination.

### DISASTER FROM DAY ONE

Project development has proceeded without local participation or focused site-specific environmental, social and economic impact assessments. Local residents and independent researchers have gathered considerable data to justify serious allegations of corruption, collusion, conflicts of interest and even malpractice in the project approval and development processes. The project was resited from an earlier

location (closer to the polluting industries) to its present location on the grounds that the new location was more appropriate. The relocation was accompanied by a change in project design and a doubling of the project budget from 13,612 million baht in October 1995 to 22,995 million baht in March 1997. Land for the project was purchased at the new location at a highly inflated price. Not surprisingly, a number of consulting firms, private contractors, realtors and brokers profited enormously from the project's overflowing coffers.

Not everyone in the area, however, is likely to benefit. For local residents, the project almost guarantees the destruction of the marine resource base on which their livelihoods depend, and threatens their air, land and freshwater with toxic contamination. Experts appointed by the ADB and the Thai Government insist that the Klong Dan area is already dirty and that the project will actually contribute towards environmental clean up. However, they seem to overlook the fact that there is a big difference between household waste and toxic pollution, and that the two cannot be treated in the same way. The local

environment in the Klong Dan area may have a waste management problem, but unlike the province's industrial areas, it is not contaminated with chemical pollutants and toxins.

Studies conducted by local residents and independent researchers including Greenpeace show that the dilution of industrial with domestic waste does not effectively address the problems of industrial waste disposal. The Samut Prakarn plant has no system to separate the different types of waste it will receive, or to separate toxic from non-toxic sludge. All it will do is move persistent chemical pollutants from their source—where they should be treated—to an ecologically diverse and abundant environment, which in turn will be threatened by the disposal of so-called treated waste. According to Tara Buakamsri from Greenpeace Southeast Asia, “Treated water does not mean clean or non-toxic water; the sludge, volatile emissions from the plant, everything will go everywhere.” A more sustainable and effective approach would be to encourage industries to invest in cleaner production technologies and treat waste and effluents at the locations where they are produced.

## DOUBLE STANDARDS AND CONTRADICTIONS

Despite its claims of greater transparency, public participation and responsiveness in decision making

about projects, the ADB has been particularly intractable on the Samut Prakarn Wastewater Plant. Senior Bank management and staff maintain that their own assessments show no long-term negative environmental, economic, or social impacts from the project. But the studies on which they base their decisions have not been publicly available, at least not to local residents. An ADB-appointed independent review team recently gave the project a green light, thus fuelling the Bank's assertions that the project would yield net benefits to the people of the province. According to locals, however, members of the review team did not visit the Klong Dan area even once during the review process and based their conclusions on studies already conducted by past ADB and Government appointed consultants. Also, the team leader refused to provide local residents with past studies, particulars of the consultants involved in these studies, or even the final terms of reference for their own work. Not surprisingly, residents have completely rejected the conclusions of the review process and have challenged the independence of a review team appointed and paid for by the project's proponents.

In the meantime, construction on the project continues without appropriate environmental, social and economic mitigation plans, or even buy-in from the industries whose waste the Plant is expected to

clean up. The next stage in the battle for truth will be an investigation by an Inspection Panel approved by the ADB's Board of Directors. Residents ask that all loan disbursements and construction be frozen during the Panel's investigation process, and that their inputs be fully incorporated into the Terms of Reference for the Inspection Panel's work. However, given the autocratic and inflexible nature of its institutional structures, the ADB is hardly likely to acquiesce to these requests.

The Samut Prakarn project is a testimony to the contradictions and double standards of the ADB as both a bank, and as a development institution. Despite volumes of rhetoric on good governance, the ADB has not addressed the conflicts of interest and collusion surrounding decision making about the project, from appraisal to procurement to budgeting. Locals have shown that the project violates at least 15 of the Bank's own policies regarding such diverse issues as the environment, fisheries, incorporation of social dimensions in the Bank's operations, anti-corruption, etc. They have asked for honest dialogue with the Bank's leadership about the project, but have instead been rewarded with lies and counter-attacks by both Bank, and government staff.

But, as this latest action shows, locals are undaunted and will continue to oppose the project on

grounds that cannot be substantively or ethically challenged by project proponents.

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# WTO AGRICULTURE NEGOTIATIONS: A Sorry Tale of American Arrogance, European Hypocrisy and Developing Countries in Disarray

By Aileen Kwa\*

As someone who has been watching closely the agricultural negotiations at the WTO for some time, I am still horrified at the arrogance of the United States and the hypocrisy of the European Union, as well as deeply frustrated at the huge power imbalances between the big players and the South. But more than even that, I am angry at the apathy of developing country governments, who in fact realise that 15 years of structural adjustment and WTO has brought greater poverty and destruction to their people, but continue to take only small and timid steps at the WTO to assert their rights. They remain blinded by the neo-liberal doctrine preached daily to them, and paralysed by the tight negotiating space they lock themselves into as a result of trying to ensure that they do not 'anger the gods' and put at risk any preferential trading arrangements and other 'favours' such as food aid, technical assistance or support in the political / security arena. For all these reasons, developing countries open themselves up to being bullied into compromises or submission.

Of course there have been some successes in the past two years – at Seattle, at Libreville, even at the

Least Developed Countries (LDC) conference in Brussels, where developing countries continued to state a resounding 'no' to a new round. But scratch the surface and for many countries this resistance is not in fact as strong as it appears – and certainly needs — to be. The crises in developing countries – of poverty, food insecurity, precarious livelihoods and, with these, the loss of human dignity, deserves a NO a hundred times the strength of what is being muttered by governments in Geneva.

## POSITIONS TAKEN IN THE MAY AGRICULTURE SPECIAL SESSION

In the latest agricultural talks at the WTO from 21-23 of May, three topics were on the table – tariffs, tariff rate quotas and the 'Amber Box'.

All three areas are deeply problematic. The commitments undertaken by developing countries in these areas are antithetical to the needs of an increasingly impoverished agricultural sector. At the same time, the loopholes in these areas which are used (and abused) by the developed countries must be challenged and stopped, otherwise the rules of

agricultural trade will continue to bestow special treatment to the developed rather than developing countries.

To make matters worse, the US and the EU act only on the narrow interests of their agribusiness corporations. In effect, they preach liberalisation to developing countries but continue heavy protection of their own markets.

Take the US. In this meeting, the US had the gall to make the following proposals: First, that the domestic supports provided to developing countries in the Agreement on Agriculture on input and investment subsidies (Article 6.2) should be tightened. Article 6.2 states that developing country members can provide 'agricultural input subsidies generally available to low-income or resource-poor producers...' The US wants to ensure that developing countries' use of such subsidies are strictly targeted at low-income, resource-poor producers.

And second, they asked that tariff rates in these negotiations be cut from the applied rates rather than from the bound rates. Taking the Agreement in this direction would further

narrow the rights accorded to developing countries. At the same time, the US displays its arrogance by asking for expansion of the Green Box of domestic supports (which they use and which are not subject to any limits).

The EU is also taking a position that would allow it to continue its huge trade-distorting subsidies. Although the EU is saying that it will reduce its export subsidies, it is fighting for these to be reduced only slowly. At the same time, it is retaining other types of domestic supports which contribute to dumping, such as the Blue Box (production limiting programmes) and the Green Box.

Japan took a tough though sensible negotiating position on the issue of tariffs. It asserted that countries should have the space to determine their tariff levels according to their internal problems and needs. This position is in accordance to their policy of protecting rice farmers to retain at least some level of self-sufficiency in rice, although domestic rice production is extremely expensive. Too many countries today are made subservient to the US and EU because of their food needs. The Japanese know

this too well and are wisely refusing to trade their political sovereignty in return for rice.

On the issue of tariffs, many developing countries such as India, as well as the ASEAN countries, took the position that until subsidies of the OECD countries are reduced, they would not like to commit themselves to lowering of tariffs.

Other suggestions were also made on how to deal more fairly in the areas of tariff rate quotas and the Amber Box. For example, some members of the Like Minded Group (an informal grouping of developing countries which includes India, Pakistan, Dominican Republic, Cuba and Uganda) highlighted the many problems and loopholes used to circumvent commitments in the Amber Box and the need for these to be redressed.

While these are good suggestions, they do not go far enough in terms of comprehensively addressing the way the industrialised countries are abusing the system of subsidy 'boxes' in the Agreement. (Some countries last year had put forward a further position calling for all subsidy boxes to be collapsed into a single box and for support levels to be brought down to a common maximum percentage).

The voices of developing countries also continue to be subdued, in comparison to their developed country counterparts, as well as subdued in compari-

son with the urgency of the agricultural crises in so many developing countries today. While Australia, EC and Japan put papers on the table during (actually, 'non-papers' as the meeting had taken place in informal mode), there were no papers from developing countries on specific issues and only one general paper on Special and Differential Treatment. Inputs were made only orally. This was disappointing given that no records will be made of this informal meeting apart from the non-papers presented.

Even this informal negotiating process needs to be questioned. The session last May, the coming July Special Session as well as part of the September session will operate in informal mode. The practice of informal sessions is not new to the WTO, and the reason given is that it allows countries to have discussions 'off the record'.

On the side, however, a couple of government delegates have questioned the wisdom of this. As one delegate succinctly put it, there were no records of the Uruguay Round negotiations. This has led to problems today, with dispute panels taking it upon themselves to interpret ambiguities, often to developing countries' disadvantage. It would therefore be in the interest of developing countries to have these sessions on record.

**US: ARROGANT  
BULLY IN NEGOTIA-**

**TIONS**

The audacity of the US's position on tightening domestic supports falling under Special and Differential Treatment is clearly illustrated when one looks at current levels of support to the US farm sector and the billions that are being set aside to continue this support right through the coming decade. Direct payments to US farmers have jumped from 4.6 billion in 1996, to over 32.3 billion in the 2001 (Fischler, Speech at Congressional Dinner, 17 May 2001). The bulk of these payments fall under the Green Box which is not limited and which the US wants expanded. The pretext is that these payments are non-trade distorting since they are not tied to production levels.

This is not all. An additional 79 billion has been allocated for 2001-2011 to compensate farmers in the form of counter-cyclical programmes (that is, when farm prices collapse), conservation, as well as export promotion programmes (Inside US Trade, 25 May 2001). The Agreement on Agriculture rules contain so many loopholes that, according to the US House Agriculture Committee which is developing the new farm bill, these payments will be tailored to fit the present rules of the Agreement on Agriculture.

In contrast, developing countries have little or no financial resources to support farmers. In fact, the agricultural sector in developing countries is

taxed rather than subsidised. Food prices are often kept low in order to subsidise the industrial sector and appease the urban population.

Sixty-one out of 71 developing countries in 1996 notified that they provided no domestic supports which are subject to reduction (Amber Box supports). And only thirteen of 71 developing countries notified that they provided investment and input supports that fall under Article 6.2 which the US is now asking to be tightened. And for all thirteen members, the level of these supports is between 0-5 per cent of their agricultural production (WTO, 1996, G/AG/AGST/Vols 1-3).

The corridor talk in Geneva is that the US is putting pressure on some developing countries. For those that currently provide input subsidies, it is not always administratively possible for them to ensure that the subsidies only go to small farmers and it is likely that a very small percentage goes to the bigger farms. The US is querying this and wants developing countries' input subsidies to be notified as Amber Box payments if they are not to be accurately targeted.

US subsidises up to 25 – 30 per cent of its agricultural production and the OECD estimates US' Producer Support Estimate to be 26 per cent of production in 2000. Developing countries' subsidies are unlikely to even reach 5 per cent of

their production value, yet the US is preaching to developing countries about following the Agreement on Agriculture rules more strictly.

## ON CUTTING TARIFFS FROM THE APPLIED RATES

The US position on tariffs is that tariff levels in the coming negotiations should be cut from the applied tariff rates, rather than the bound rates. (At the end of the Uruguay Round, members had to fix or bind their tariff levels in agricultural products. However, in practice, developing countries, often due to pressures by World Bank or IMF conditionalities, have used tariff rates that are much lower than the levels bound in the WTO. These are the applied rates.)

According to one developing country delegate, never in the history of the GATT / WTO have tariff rates been cut from the applied levels.

FAO studies on the effect of the Agreement on Agriculture in developing countries have shown that imports have surged into developing country markets due to the lower tariff levels resulting from both structural adjustment and WTO policies. While exports have increased, the amounts have been too small to compensate for the flood of imports. The result has been that poverty has been on the rise in the rural sector as small farmers are displaced.

Developing countries who either voluntarily chose to, or are under pressure by the big players to keep their tariffs way below the bound levels, see that in these negotiations reduction of tariffs from the higher bound level is, as a government delegate says, 'the only real bargaining chip we have. The US is clearly bent on diluting this'.

According to observers in Geneva, Washington's main area of interest in the present WTO negotiations are centred on securing more market access in agriculture. The agribusiness lobbyists are currently amongst the loudest in Washington. This is one of the reasons why the US remains unenthusiastic about the inclusion of new issues such as competition and investment. Agriculture is already in the built-in agenda and will be negotiated regardless of whether or not a new round is launched. Furthermore, to have new issues, they may have to address the current imbalances in the WTO package of agreements - this could also include the agriculture agreement - when they are more interested in maintaining a strong offensive position in this area.

## EU'S MUTATED MULTIFUNCTIONALITY

While the US is infamous for its arrogance, the EU is more sophisticated and indirect. EU feigns concern for developing countries as well as plays up to its own domestic constituency by singing

the multifunctionality anthem. In reality, there is nothing environmentally sustainable about the Common Agricultural Policy (CAP). Environmental programmes are like window-dressing for the overall CAP. On a recent visit to a farm in the Netherlands, I learnt that Dutch farmers are given some additional payments for the number of flowers they have on the farm, as well as the number of birds or birds nests. They are also compensated when they have 'natural' features on their property (such as man-made ponds). Yet these EU subsidies go to farmers who farm industrially (even as they include 'natural' features). There continues to be high usage of pesticides and chemical fertilisers and while subsidy payments encourage crop variety, monoculture farm methods are nevertheless employed. There is no expectation that this will change. Farms in the EU are becoming more like US farms. They are highly mechanised due to their size, which makes it impossible for the EU to engage in farming that is truly environmentally sustainable and which uses multi-cropping methods rather than monocultures.

In the end, EU multifunctional agriculture continues to be environmentally damaging internally. Externally, it has the effect of dumping food at lower costs in developing countries, displacing small farmers, thus destroying developing countries' multifunctionality. For the EU, agriculture production,

even at high costs, is necessary to keep their politically powerful farm lobby appeased. But in addition, it makes EU food self-sufficient, and hence independent. It furthermore gives the EU political leverage over countries dependent on them for food aid or cheap food.

Indeed, the EU is so bent on maintaining their domestic supports and even export subsidies that in a recent address, EU Agriculture Commissioner Fischler stated that 'tariffs are the most trade-distorting feature in agriculture, followed by internal domestic support, and then export subsidies' (Inside US Trade 1 June 2001)!

## JAPAN'S CONTROVERSIAL POSITION

In the recent agricultural discussions, Japan has been paraded as the chief recalcitrant – a trophy that used to belong to the EU. Japan's position on protecting their agricultural sector (especially rice) through tariffs and their stubborn insistence on continuing their high levels of support has raised the ire of many. As a result, countries, such as those promoting liberalisation in the Cairns group, feel that, in comparison, the EU's more tempered position is much more palatable.

It is ironic that Japan's position has been seen as so threatening since Japan itself does not export agricultural products. Apart from protecting their internal market, their subsidies do not bring

about the undesirable effect of undercutting other producers in the world market.

Unfortunately, the broader picture is that Japan is closely allied with the EU – both in agriculture as well as their twin partnership in pushing for a broad round of negotiations. The Japanese position on the continuation of subsidies has the effect of lending weight to the EU's position, which contributes to dumping. As one delegate puts it, the 'EU's work is being done by Japan, while the EU just sits back'.

### DEVELOPING COUNTRIES' WEAKNESSES

In and of itself, however, the Japanese position on tariffs should in fact be widely encouraged. Countries should, as Japan promotes, have the sovereign right to determine what comes into their borders and not subordinate or enslave their national objectives and interests to trade objectives.

However, the Japanese position on subsidies is flawed in that they do not make a distinction between supports that increase domestic production for domestic consumption, and supports that directly or indirectly subsidise exports. (The present Green Box criteria, that supports should be 'non-trade distorting' is much too vague.) US and EU subsidies should be viewed differently from Japan's since they are big exporters.

Why are developing countries, unlike Japan, hesitant to protect their markets despite the dismal results of agricultural liberalisation through structural adjustment and WTO?

### DEVELOPING COUNTRIES THINK THEY HAVE DIFFERENT INTERESTS

Developing countries are divided. Some belong to the Cairns Group of exporting countries (although the Philippines, for example, is in the group but has been a net importer since 1996). Others fall under the net food importing camp, and others, such as the Like Minded Group, are attempting to level the playing field through promoting stronger special and differential treatment.

The process of agricultural liberalisation in developing countries, though, for all groups has been alike, and the problems too, which have earlier been spelt out, are almost identical. Indeed, the number of developing countries informally joining the ranks of net-food importers is increasing. Even the big producers, like Argentina and Brazil are unable to deal with the surplus labour displaced from the agricultural sector.

There are broadly two interrelated reasons why developing countries positions have been so weak.

First, most developing countries have bought the promises of market access. Converting small, sustainable subsistence farms to larger export oriented farms seems to be an attractive notion, and a step towards a western constructed version of 'growth' and 'development'.

Second, they have already or are currently being forced to liberalise. This could be through World Bank and IMF, through conditionalities in the African Growth Opportunity Act with the US, even through the HIPC Initiative (World Bank's debt reduction programme which was declared by ECLAC Secretary general Jose Antonio Ocampo 'the most conditional programme in history'). Take a small country like Bolivia, for example. It is no accident that although it has a rural crisis on its hands due to cheap agricultural imports, the country is one of the loudest proponents of liberalisation. Its bound tariff rates are 40 per cent. But their applied rates, thanks to the IMF and World Bank, are only 10 per cent and they provide no domestic supports to their farmers. Given this situation, they are now using their free market status to attempt to exert pressure on the big players to also liberalise, in the hope that some benefits will begin to flow.

Other developing countries may not have liberalised as much as Bolivia. Nevertheless,

through dependence – politically, or economically – on the US or EU or both, they fight, but in a subdued way. As former President Clinton said, the key is to find out the biggest fear of the country you are negotiating with. Washington does not hesitate to maximise their leverage and play on developing countries' fears and dependence to get what they want.

### IS THERE ANY HOPE?

Maybe. But certainly not before developing country governments realise a few things:

1) The market access bait is a sham. If all countries (including the US and the EU) are looking to get more market access, it is impossible, given the limited markets available, that all parties will get what they want. There will be winners and losers, and more losers than winners. Some developing countries may get some additional access, but in return, they give away more than they receive in terms of their own domestic markets. It seems that in the mad scramble for 'market access', developing country governments have forgotten that they also have internal markets which they will have to trade off if they want more liberalisation.

2) Our thinking about economic development needs to be deconstructed and reconstructed. The largely Western-constructed idea of development, that is obsessed with GDP levels, increasing

consumption and a fetish for exports, is inherently unsustainable. Export oriented economic growth depends on extracting and often depleting limited resources – environmental or human – converting these to products or services to be sold. In an increasingly competitive economic environment, these products are usually sold far below their real costs. For example, export oriented agriculture is turning once environmentally sustainable small farms to large industrial farms which rely on monocultures and heavy doses of chemical inputs. The output is sold off cheaply. However, in its wake, many countries are left with depleted farmlands that are no longer productive, as well as disastrous climatic conditions.

Developing countries need to come up with their own constructions of development and face up squarely to the fact that 15 years of structural adjustment, five years of WTO, and recklessly enforced liberalisation has brought destruction and huge inequity, rather than equitable growth for their people.

3) It is true that our world is increasingly integrated and interdependent. We cannot halt the progress of information and communication technologies. However, developing countries need to be smart about the terms of engagement. Overdependence on bigger powers for food or other favours is unlikely to put a

country in a strategically strong position. This means developing and strengthening our own internal economies rather than expecting an outward-oriented economic policy to lead us to economic growth. Strategic engagement essentially means that we engage only when we have attained a sufficient level of competitiveness to survive opening our markets.

Building and strengthening our internal domestic economies – both in agriculture as well as in the industrial sectors — would place developing countries in a much stronger negotiating position at the WTO. It is a long and hard road but the alternative is what we have today — the increasing poverty-concentration and wealth-concentration — except in larger doses.

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## ECUADOR, THE WTO, AND THE BIG BANANA

Ecuador learns the hard way that the WTO doesn't work the way they say it does.

By Gerard Coffey\*

Back in the heady days of 2000, Ecuador, the world's biggest banana exporter, felt that it had played its cards well. First, by winning a case in the World Trade Organisation (WTO) against the European Union's banana importation scheme, and then by backing the EU against the US, its ally in the WTO case, it had come out a winner in the European's new "first come, first served" importation scheme which promised greater exports to the favoured European market which pays more per box than most importing countries.

But the champagne cork got stuck in the bottle, and things didn't turn out as well as the exporters and the government had hoped.

Despite the favourable ruling of a WTO dispute panel, Ecuador ended up on the losing end of the dispute, when the EU and the US (which isn't a producer) decided to settle the case between them. The winners were the big transnational distributors, above all Chiquita, whose connections, and big donations to the Republican Party (more than \$1 million in 1999-2000 alone) paid off. Also on the losing end of the dispute is the already tarnished credibility of the WTO which, despite

rhetoric to the contrary, does not provide a level playing field for its members (even if such a thing were desirable) or an unbiased method of dispute resolution. Evidently, the WTO follows the rules of the jungle where the strong battle the strong, and the weak, if they don't find some friends or get out of the way, get hurt.

It wasn't supposed to be this way. According to the WTO's first director general (and now Italy's foreign minister) Renato Ruggiero, the WTO would put an end to the arbitrary nature of trade disputes and would be a rules-based organisation where power was controlled, not flaunted. The second director general (and former New Zealand prime minister) Mike Moore recently took up the same theme expounding the virtues of the WTO and painting a bleak picture of a wild and wicked world without the benevolent equanimity of his organisation.

However, these lofty ideals are in sorry contrast to the reality, as the banana case shows. Here is a brief history.

When the European Union changed its rules on

banana importation in 1993, introducing a country quota scheme in order to favour its small suppliers from Africa and the Caribbean, the big producers, such as Ecuador and, more importantly, the big distributors Dole and Chiquita (the latter almost ending up bankrupt) weren't at all happy with the idea. A case was launched by Ecuador under the GATT, which it won in 1994. Again in 1996 a demand was made at the WTO, together with the US and others, on the grounds that the import licenses and quotas required by the EU contravened GATT/WTO rules. The implication being that they were anti "free trade".

Ecuador, the US and its allies won their case in 1997. The EU was asked to change the rules to make them consistent with the WTO's free trade principles. Ecuador and the US also won the right to impose sanctions on the EU (\$190 and \$200 million respectively). After a number of appeals and delays, the Europeans appeared to have found the right formula when, in October 2000, it announced its "first come, first served" scheme which, while reserving a portion of the market for its small producers, would in theory have given everyone the possibility to ship what they wanted. Of course, the other side of the coin was that a ship might have only half its load accepted. But it was, more or less, "free trade".

## SMALL PRODUCERS SIDELINED

The idea was ruled acceptable by the WTO, and by the Ecuadorians, at least some of whom were happy, given that the scheme appeared to offer the possibility of increased sales based on the elimination of the ceilings imposed by the country quotas and on a more "competitive" product. Those that weren't so happy were the smaller independent Ecuadorian producers, who fought for an increased country quota and shied away from a form of competitiveness based on extremely low, some might call starvation, production costs. These producers depend on the exporters and intermediaries and are often not paid even half the legally stipulated minimum price per box, which in turn is generally around 1/3 to 1/2 the price paid, for example, to Costa Rican producers. It's almost redundant to say that, due to the need to be "competitive", the standard of living of workers in the industry hasn't improved in 50 years.

In fact, during the process of the negotiations between the producer countries (and the US), the Costa Ricans threatened actions against the Ecuadorians for "dumping" their product. At the same time Alberto Serrano, the President of the small producers in the Ecuadorian Province of El Oro, stated that the small producers had not seen even one cent of the better prices paid by the European Union.

The US, its companies, in particular Chiquita, and a majority of the other producing countries were also not happy. Caught between the "competitive" production costs in Ecuador, which they found difficult to undercut, and the free trade doctrine, Chiquita and the new US administration decided in favour of what suited them best, to opt out of "free trade" and settle for the old style quotas and licences.

So as it stood on 10 April 2001, Ecuador was isolated in its position of support for the apparently firm, and WTO consistent, EU position. While the rest, once again, took the battle to the Europeans.

Surprisingly, at least to the Ecuadorians, whose ambassador to the EU made an embarrassing speech about the benefits of the "new" first come first served system the same day that US Trade Representative Robert Zoellick and the EU's Pascal Lamy announced their own version of the "new" importation scheme, the expected battle didn't last long.

## "NEW" SYSTEM FAVOURS THE "OLD BOYS"

On 11 April, the EU and the US announced a "mutual" settlement, exchanging \$190 million of US rotating sanctions on European luxury goods for a political and economic favour to Chiquita, and its president Robert Lindner. The "new" system reverted to the "old" system, quotas,

but with a new twist, this time handing them out to distributors instead of countries. And, of course, on favourable terms.

The "traditional" distributors (determined based on 1992 participation) getting 87 per cent of the market, while the rest of the "newcomers" (which include the majority of the Ecuadorians) were left to fight over the remaining 13 per cent. Chiquita came out on top, getting what amounts to 40 per cent of the market, based on their sales between 1994-6, a period which particularly favoured them and not the Ecuadorians, whose market participation increased dramatically after 1996.

On examination it appears that no matter what new package the deal is wrapped in, the new/old system is basically what Ecuador and the US, and all the rest, battled to defeat in the second half of the 1990s. Some would call it ironic, but apart from the fact that reality has its ironic side, the decision is in keeping with the nature of the WTO, the other multilateral institutions, and the present state of power relations in the world. Despite the obvious contradiction, in such cases the WTO is not prone to concern itself about the details, and being extremely cognizant of where the power lies, the agency consented to be violated. A spokesperson announced WTO's blessing for the deal, stating that not going all the way down the conflict solution road "is in accordance with the

criteria expressed by the Director General (Mike Moore) in the sense that arrangements between countries are the most positive thing for the countries involved.”

Of course, the EU has promised that in 2002 it will begin the negotiations that will determine the possibility of an agreement, on the possibility of a “free trade” system of tariffs, possibly to be put in place for 2006. Possibly, possibly. Based on past experience at the WTO, and without Chiquita or the US government pushing hard, no one should be fool enough to hold their breath. Not even the Ecuadorian Minister of External Affairs, and free trade promoter, Heinz Moeller, who still contends that the Europeans have signed a legally binding “convention” to move toward “free trade”. Meanwhile, Chiquita has shown that what really matters is neither conventions nor the WTO’s “rules based system” but pure financial and political clout in Washington. According to ex US commercial negotiator C. Christopher Parlin, who served under four presidents “it’s the typical example that money gets it all.”

### FREE TRADE FAIRY TALE TAKES A REALITY CHECK

As for the Ecuadorian government, which had swallowed the whole free trade fairy tale, the result was a rude and extremely embarrassing awakening. Perhaps what it had failed

to note was that WTO rules are only for use by the strong against the weak. When the big boys start to battle it’s a different story, then it’s the “agreement between countries” that counts. The decision that Ecuador won at the WTO and the some US\$200 million in damages that were subsequently awarded to it amounted to a Pyrrhic victory. The country was never able to convert the award panel damages into anything concrete. Not even in exchange for social programs, as was at one time mooted. In fact, the European government creditors continue to insist on the IMF’s approval and IMF sponsored (demanded) tax changes at the national level before any debt swap will be considered. Not that the amounts proposed are even significant.

What the Ecuadorians had also perhaps failed to notice was that the way is being cleared for a second attempt to launch both a new round of negotiations at the WTO, and to solidify the imposition of the Free Trade Area of the Americas. In these cases there appears to be a pattern of attempting to tie up whatever loose ends are possible before trying to convince the doubters about the benefits of free trade or the WTO.

With regard to the WTO and the new round, on a scale of one to ten, the banana dispute was much easier to solve than other outstanding disputes. For the Europeans, the decision involved no losses to national production and

the removal of the sanctions was a relief to many exporters. Other problems may not be so easy to put out of the way. For example, the unprecedented outcry over (and rejection of) GMOs by Europeans in many countries, something which goes to the heart of control of agricultural policy and ironically, food self sufficiency, which both the EU and the US have been supporting through massive subsidies for many decades.

### So what are the lessons to be drawn from this?

The first is that the trade in bananas, or anything else for that matter, is controlled by the big players, in particular the US and the EU, and that in these countries, particularly the US, money and influence controls much of the political decision-making.

The second is that, rhetoric to the contrary, the WTO isn’t a level playing field. The idea that mutually “agreed” rules would provide the small economies a degree of protection from the bigger players, is fine in principal but suffers from two major flaws. On the one hand, it ignores the fact that even though in many Third World countries the state has become so small as to be almost totally irrelevant, there still exist many large and powerful states in the world and they generally act in their own interests. In many cases of “national interest” the strong only

concern themselves with the rules when it suits them, or when another big player forces them to. This is especially true with a US administration that, according to Condoleezza Rice, the National Security Advisor, shouldn’t be afraid to use its power and act in its own interest, something that “will create the conditions necessary for promoting liberty, markets, and peace.”

In this regard it is interesting to note that one of the negotiating strategies of the office of the US Trade Representative is to “...devise policy options regarding continued US participation in the WTO and areas where further negotiations will yield benefits for US interests - in terms of commercial interests as well as the promotion of American values abroad.”

The WTO, or any other institution, is not likely to change this. In fact, it will probably make things worse given how dependent these institutions are on the US, the legal nature of its contracts, and how things actually work in practice

### AND THE STRONG WILL PUNISH THE WEAK...

The WTO, and other asymmetrical commercial agreements, give the strong a legal basis for punishing the weak when they can extract some benefit from doing so. As the failure of Ecuador to impose authorised sanctions on the EU makes plain, in the

reverse situation this simply isn't an issue.

It is also absurd, not to put too fine a point on it, that states such as Ecuador and Jamaica should be bound by the same commercial rules as the US or the EU. The WTO is a monolithic institution in a diverse world. Evidently not all countries are alike, have the same needs or capacities. In this sense the brave new world of the WTO is much worse than the supposed chaos of its predecessor, the GATT, where countries at least enjoyed some leeway to design and control their own future. Binding all countries together under the same rules is little more than absurd, unless of course, the real objective is to institutionalise control of the majority by the minority. But even in this case, sooner or later, the differences and instability caused by exclusionary centralised decision making processes are bound to make themselves felt.

Finally, this is just another example that "free Trade" only works in the laboratory. The Ecuadorian workers who produce the "competitive" product haven't benefited at all, and the only thing that increased exports is likely to do is increase pesticide use (and related illnesses); give the exporters more money to spend in Miami, Houston or New York; and possibly create starvation wage jobs, at the expense of better paid workers in other exporting countries. So, it's not difficult to see exactly who wins and losses

with free trade, or the fact that we need something better.

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## OUR WORLD IS NOT FOR SALE

Citizens' Groups and Movements launch Global Campaign on the WTO and Corporate Globalisation.

GENEVA, 6 July - On the occasion of the World Trade Organisation's (WTO) first symposium with non-governmental organisations since the collapse of WTO talks in Seattle in 1999, citizens' groups and movements from around the globe will today launch a global campaign opposing the WTO's support for corporate globalisation. The campaign 'Our World Is Not For Sale' already involves over 100 groups from 20 countries.

The World Trade Organisation (WTO) has invited representatives from governments, non-governmental organisations, the media, think tanks and universities to a two-day symposium in Geneva, 6-7 July 2001. According to the WTO's Secretariat the symposium will discuss "critical issues confronting the world trading system." However, given that the biased Secretariat clearly supports the European Union's proposal - now apparently supported by the United States - to launch a new trade round at its Qatar Ministerial in November (opposed by key developing countries and many citizens' groups) and is also publishing campaign materials attacking civil society critiques of WTO,

the outcome of such a meeting is clearly in doubt.

Representatives from many civil society groups around the world, deeply concerned about the severe, widespread social and environmental impacts of past, current and proposed WTO negotiations, view this symposium as a public relations tactic rather than a real attempt to discuss 'critical issues'. The symposium could enable the WTO to create an illusion of transparency and accessibility, when for many millions of marginalised peoples and even governments participating in current negotiations, nothing could be further from the truth. Post-Seattle proposals to shake up the WTO's internal processes and procedures, for example, seem to have been abandoned.

Leading up to Seattle, almost 1500 groups from 89 countries rallied under the campaign "WTO: No New Round - Turn Around", demanding a moratorium on further negotiations within the built-in agenda and opposing the introduction of new issues like investment and competition policy in the WTO. After the Seattle Ministerial, these same groups devel-

oped a joint proposal setting out steps to reduce the power and scope of the WTO. To date, however, these views, expressed by groups representing millions of people around the world, have not been addressed by the WTO.

“The WTO has been ‘institutionally’ deaf to the concerns of the South. Implementation issues (righting existing imbalances) have been uppermost on developing countries’ agenda since long before Seattle. To date, despite promises, no progress has been made. Furthermore, Green Room meetings held in secret continue. The majority of developing countries are left out of this process. With the unequal power relations in the organisation, a new round would exacerbate, not alleviate inequities for the South.” said Aileen Kwa from Focus on the Global South based in Thailand.

“If the WTO Secretariat were sincere about discussing critical issues, it would stop dismissing developing nations and NGO’s fundamental questions about the appropriate scope of WTO rules and the appropriate role of the WTO. Instead, the WTO staff is leading the push for a new WTO Round and is launching meetings like this with much fanfare, but no real intention of changing the agenda,” added Tony Tujan from the IBON Foundation in the Philippines.

Many civil society groups are angry that their

concerns about the WTO’s corporate globalisation agenda are being ignored. A number of these groups - including Focus on the Global South, Friends of the Earth International, the NGO Forum on Indonesian Development and Public Services International - will attend the WTO’s symposium to express their shared views.

“The upcoming Ministerial in Qatar represents a critical opportunity to turn around the current corporate-driven trade agenda. This is not the time to increase the WTO’s power by introducing yet more issues. What we need right now is a moratorium on on-going negotiations and an assessment of the environmental and social impacts of existing rules and regulations. Nothing else will do.” said Ronnie Hall, from Friends of the Earth International.

“Via Campesina feels that the first step must be taking the WTO out of agriculture,” said Paul Nicholson, from Via Campesina, an international movement of farm organisations. “Millions of farmers around the world - in the South and the North - are being devastated by rules which prioritise trade over all other concerns, including hunger, the health of rural economies, the environment and food safety. A different set of rules, outside the WTO, is needed and needed now.”

The “Our World is Not For Sale” campaign will continue up to and beyond

the next WTO Ministerial, gathering pace and support as new groups join the coalition.

“Activists and organisations all over the world will be campaigning against a New Round and against further liberalisation in the months leading up to the Qatar ministerial” said Alice Carl from Public Services International.

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