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Ronald Labonte and Matthew Sanger

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## GLOSSARY

## Glossary of the World Trade Organisation and public health: part 1

Ronald Labonte, Matthew Sanger

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The relation between health and trade is not new. Disease and pestilence have long followed global trade routes, a pattern that continues into the 21st century. A Chinese trade ship was the source of Latin America's cholera outbreak in 1991, which resulted in 10 000 deaths.<sup>1</sup> Increased trade in tobacco products and processed foods high in sugar or fat contribute to rising chronic disease rates in poorer countries.<sup>2,3</sup>

Trade can also be good for health, improving peoples' lives through access to goods or technologies that cure disease or improve wellbeing. Proponents of trade liberalisation argue further that it can increase economic growth and wealth creation, both of which may reduce poverty<sup>4</sup> and allow for greater investments in health care, education, environmental protection, and other population health determinants.<sup>5</sup> Others maintain that the relation is subtler. Development economist, Ha-Joon Chang<sup>6</sup> points out that today's wealthy countries became so through a variety of policies—infant industry protection, export subsidisation, copying of foreign technologies, and strong state controls over foreign investment—that new trade liberalisation rules increasingly deny poorer countries.

Many of these trade rules came into existence with the creation of the World Trade Organisation (WTO) in 1995. The WTO's influence extends beyond commercial relations to affect health, social welfare, and culture. This two part glossary introduces the WTO trade treaties (the generic term for specific trade agreements) and explains the key principles and concepts of interest to policy makers and practitioners. It aims to explain the WTO through a public health lens that focuses on disease control and prevention, the reduction of a wide range of health risks, and a commitment to reducing health inequities. The public health implications of these agreements can be direct, as in the restrictions the *Agreement on Trade-Related Intellectual Property Rights\** (TRIPS) can place on access to essential medicines. They can also be indirect in two important ways:

- (1) the degree to which WTO agreements skew economic benefits and the health advantages these bring in favour of already wealthier/healthier nations and population groups; and
- (2) WTO expansion into trade related areas that have little to do with reducing border-barriers to imported goods, and that could restrict national governments' abilities to regulate in the interests of public health.

Part 1 of this glossary introduces the WTO and its origins as an institution, and summarises the WTO rules on trade in goods that are most relevant to public health. Part 2 considers rules specific to trade in services, intellectual property, investment, and government procurement.†

## THE WORLD TRADE ORGANISATION

Creation of the WTO in 1995 capped a set of negotiations known as the *Uruguay Round* after the country in which meetings began. The Uruguay Round, which began in 1986, extended trade treaties beyond goods to include services, intellectual property rights, and investment measures. All but two of these treaties (on government procurement and on trade in civil aircraft) are *multilateral trade agreements* to which all nations must accede as a condition of WTO membership.

Under the WTO, *trade rules*—the obligations laid out within trade agreements that are binding on member countries—also became enforceable. The WTO's predecessor, the *General Agreement on Tariffs and Trade (GATT)*, founded in 1947, relied on commercial diplomacy to settle differences between members. The WTO established a legal *dispute settlement* process that is ultimately enforceable by allowing aggrieved members to take retaliatory trade actions against the offending member country. This process makes the WTO one of the key institutions of global economic governance. Functioning as a forum for multilateral trade negotiations, the WTO has an influence far beyond what might be suggested by the size of its Secretariat, which is small relative to other multilateral institutions. Its membership has grown to 148 nations, and all but a very few of the remaining nations of the world are engaged in efforts to accede to the WTO. Ongoing negotiations at the WTO aim to extend further the reach of its trade rules, through creation of new agreements and by extending the coverage of existing ones.

The preamble of the *Marrakech Agreement*, the WTO's founding document, states that trade liberalisation is not an end in itself but a means "to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods

\* Italicised terms refer to glossary entries or other key terms defined within a particular glossary entry.

† A general glossary on trade terms, without specific reference to health, can be found on the web site of the World Trade Organisation; [http://www.wto.org/english/thewto\\_e/glossary\\_e/glossary\\_e.htm](http://www.wto.org/english/thewto_e/glossary_e/glossary_e.htm).

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**Table 1** WTO agreements with major public health implications

Agreement	Health impacts
GATT 1994	Reduced tariffs in many developing countries led to job losses in "uncompetitive" sectors, with subsequent impacts on poverty, and declines in net public revenue, decreasing the funds available for health, education, water/sanitation, and other key health determinants.
Agreement on Agriculture	Continuing export and producer subsidies by the USA, EU, Japan and Canada depress world prices and cost developing countries hundreds of millions of dollars in lost revenue that could be used to fund health, education, and other health promoting services. Subsidised food imports from wealthy countries undermine domestic growers' livelihoods. Market barriers to food products from developing countries persist and deny poorer countries trade related earnings.
Agreement on Sanitary and Phytosanitary Measures	Requires scientific risk assessments even when foreign goods are treated no differently than domestic goods (that is, there is no discrimination). Such assessments may be costly and imperfect.
Technical Barriers to Trade Agreement	Requires that any regulatory barrier to the free flow of goods be "least trade restrictive as possible." Many trade disputes over domestic health and safety regulations have invoked this agreement.
General Agreement on Trade in Services	Locks in privatisation levels in committed service sectors, several of which (health care, education, environmental services) are important to promoting public health, and frequently prone to market failure (that is, private provision often excludes access to the poor). Once a service sector is committed, there is no cost-free way to extend public provision of that service in the future.
Agreement on Trade Related Intellectual Property Rights	Extended patent protection can limit access to essential medicines. Higher resulting cost of drugs can consume public funding otherwise useful for primary health care or investing in other health determinants.
Agreement on Trade Related Investment Measures	Prohibits government's abilities to place domestic purchase requirements on foreign investment; such requirements can increase domestic employment, which can be important to improving population health.
Agreement on Government Procurement	Limits government's abilities to use its contracts or purchases for domestic economic development, regional equity, employment equity or other social goals with strong links to better population health. While currently a plurilateral (voluntary) agreement, there is negotiating pressure to make it a binding multilateral agreement.

and services...in accordance with the objective of sustainable development".<sup>7</sup> In practice, as the *WTO Secretariat* states, "the system's overriding purpose is to help trade flow as freely as possible".<sup>8</sup> Unlike trade rules, preambles to agreements are not enforceable. The key concern with enforceable trade rules is the extent to which liberalisation becomes the end in itself, to which health and human development goals are rendered secondary considerations.

## KEY "TRADE TALK" TERMS

### Measures

Trade rules apply only to government actions. In trade treaties these actions are called measures, a term that includes legislation, regulations, rules, procedures, decisions, and administrative actions. WTO rules for government measures span the entire field of public health, including inter alia:

- surveillance and control of infectious disease
- regulation of hazardous products
- control of environmental health risks
- provision of food security and nutrition
- regulation of the health risks of biotechnology and emerging technologies
- provision of access to health services and essential medicines
- measures to prevent chronic disease.

### Tariffs

Trade rules under the original GATT applied exclusively to tariffs, which are customs duties on imported goods generally used to protect domestic producers from foreign competition. Successive rounds of negotiations have reduced tariff levels of high income countries on industrial goods to around 4%, although tariffs on agricultural products of greater economic interest to developing countries remain much higher.<sup>9</sup>

Developing countries retain tariffs of 40% or more to protect their developing industries, although they are under strong pressure to commit to freezing tariff rates and begin to reduce them.

### Non-tariff barriers

The GATT 1994<sup>‡</sup> and other WTO agreements were extended to apply to a broader range of measures that may restrict trade. These include measures that have public health objectives as their primary purpose and may only incidentally restrict access of goods or services into a country, or impinge on the operations of foreign investors. Measures identified as non-tariff barriers in recent health related WTO trade disputes include regulation of advertising for tobacco products, standards to limit gasoline emissions, and a ban on artificial growth hormones in beef. By defining such measures as trade barriers, the concept of non-tariff barriers has helped to make modern trade treaties far more intrusive than their predecessors.

### Trade liberalisation

This is the process of reducing tariff levels and of making other government measures less trade restrictive. Classic economists view increased trade as beneficial to all participants because it generates higher levels of income and consequently better health. Who benefits from multilateral trade liberalisation, however, is determined significantly by the institutions and rules that govern WTO negotiations. Through procedural rules, informal alliances, and the ability to afford a large number of negotiators at the WTO, the most powerful countries have dominated WTO trade negotiations.<sup>10</sup> Many observers believe that multinational corporations and their shareholders have been the main beneficiaries of the resulting form of trade liberalisation. Alliances of .....

<sup>‡</sup>The GATT refers to both a trade treaty (revised in 1994) and the institution that served as a forum for multilateral trade negotiations before the creation of the WTO.

smaller and developing countries and civil society organisations are increasingly demanding that other interests be better represented at the WTO.

### Trade treaty commitments

Reduction of tariffs and liberalisation of other measures affecting trade is achieved either through commitments made in trade negotiations or unilaterally by national governments. WTO negotiations take place within the framework of its different specific agreements, with the intent of “progressive liberalisation” through ongoing reduction in tariff and non-tariff barriers to trade. These negotiations are increasingly multilateral, in which all members attempt to agree on a formula for reducing such barriers. They can also proceed on a request-offer basis, in which each member country identifies the measures of other countries it seeks to change, and then responds to the requests of other countries by offering commitments to liberalise measures that other countries have identified. These bilateral negotiations result in liberalised trade for all WTO members because commitments made in the request-offer process are subject to the *most-favoured nation* rule that stipulates that any advantage provided to one WTO member must be provided to all (see below).

### Trade negotiations

Multilateral trade negotiations entail concurrent talks on several agreements. While consensus is more easily reached on some issues than others, no negotiating round is concluded until there is consensus on all agreements. Described as a “single undertaking”, this approach is an “all or nothing” rule, an innovation of the Uruguay Round that requires consensus on all of the agreements under negotiation. The Tokyo Round of GATT negotiations (1973–79) was the first to introduce a number of sub-agreements on non-tariff measures, but member countries could pick and choose which of these they would sign and implement. Wealthier countries believed this gave too much benefit to developing nations, few of which signed these sub-agreements. Many analysts now believe the Uruguay Round’s single undertaking, in which these voluntary sub-agreements became obligatory WTO treaties, tipped trade agreements too strongly in favour of developed nations.<sup>11</sup> Each negotiating round is concluded at a Ministerial Conference at which the international trade ministers of each member nation preside. The most intractable issues are referred to the trade ministers, and may be negotiated under intense pressure in a Ministerial Conference as they near a negotiating deadline.

The Uruguay Round negotiations were the eighth round of multilateral trade negotiations since the creation of GATT. An effort to start a ninth, the Millennium Round, failed at a 1999 Ministerial Conference in Seattle, USA, over differences between wealthy and developing nations and under intense pressure from critics of trade liberalisation. A subsequent Ministerial Conference in Doha, Qatar in 2001, a location chosen to guard against protests, succeeded in launching a new set of negotiations, dubbed the *Doha Development Round*.

### Doha development round

Key agenda items of the Doha Ministerial Conference included:

- (1) Developing countries’ insistence that the next round of negotiations be a development round focused primarily on issues like improving access to markets in the industrialised world;
- (2) Developed countries’ (unsuccessful) insistence to include the *Singapore Issues* in the new round of negotiations (named for the earlier Ministerial Conference in Singapore where they were first discussed, these refer

to proposed agreements on competition, investment, transparency in government procurement, and trade facilitation);

- (3) Controversy about the conflict between TRIPs and efforts in low income countries to provide access to essential medicines.

Two important official documents released at the conference’s conclusion, the Doha Ministerial Declaration and the Declaration on TRIPs and Public Health,<sup>12 13</sup> showed an intention to place developing countries’ interests “at the heart” of the WTO work programme. Some observers, however, argue that the actual Doha work programme was “totally set by the major developed countries guided by their own economic interests”.<sup>14</sup> In any case, developing countries, led by an informal coalition of low and middle income nations and frustrated by the intransigence of high income countries in areas of interest to them (agricultural subsidies, special and differential treatment and implementation issues, defined below), forced the early termination of the next ministerial in Cancún, Mexico, in September 2003. After a period of disarray, a deal to restart negotiations was brokered by five key members (Australia, Brazil, the EU, India, and the USA) and a revised deadline of the end of 2006 was set for completing negotiations, although many contentious issues remain.

## CORE PRINCIPLES OF WTO TREATIES

### Most favoured nation (MFN) and national treatment (NT) rules

Non-discrimination on the basis of nationality is the golden rule of the international trading system. Trade treaties include two distinct rules that apply the principle of non-discrimination to government measures.

The *most favoured nation (MFN)* rule requires that governments extend the best treatment given to any foreign goods, investments, or services to all like foreign goods, investments, or services. In simple terms, a government must provide equal treatment to similar goods imported from any WTO member nation, apart from exceptions permitted under the *Generalised System of Preferences* (defined under Exceptions, Limitations and Exclusions, below). The implications of the MFN are more far reaching and complex when applied to services. For instance, a provider of diagnostic services over the internet could be entitled to the same level of treatment as similar services provided by a foreign owned laboratory actually operating in the country.

The *national treatment rule* requires that governments give foreigners the best treatment provided to like domestic goods, investments, or services. Governments cannot discriminate against foreign investors or businesses on the basis of their nationality. International trade law has established a high standard of non-discrimination. Measures that are not explicitly discriminatory may yet violate the MFN and national treatment rules if they adversely affect the “equality of competitive opportunities” of foreign investors or businesses. Since the mid-1990s the principle of non-discrimination has been extended beyond trade in goods to apply to investment and trade in services, raising new concerns for regulating health care systems.

### Dispute settlement

The Dispute Settlement Understanding (DSU)<sup>§</sup> is probably the most significant innovation of the WTO. Trade disputes under the WTO are overseen by a standing *Dispute Settlement*

<sup>§</sup> Its proper title is: “Understanding on Rules and Procedures Governing the Settlement of Disputes,” but it is most commonly referred to as the Dispute Settlement Understanding or DSU.

*Body (DSB)* that has the power to establish panels to resolve conflicts, monitor adherence to dispute decisions, and implement penalties for non-compliance. If initial consultations cannot resolve a dispute, the matter is referred to a three member panel that, like a judicial body, hears submissions from the parties in dispute (and in some cases third parties) and issues a binding report. A panel report can be appealed, within a limited period, to the standing *Appellate Body (AB)* that can uphold, modify, or overturn a decision. The AB is composed of seven trade and legal experts appointed for four year terms. This institutional framework provides for a degree of consistency that was absent before the WTO, and has begun to generate a body of jurisprudence on the settlement of international trade disputes. DSB rulings, however, do not set binding precedents for future disputes.<sup>15</sup>

Proceedings of the dispute panels and appellate body are confidential. Only other WTO members with a material interest in a conflict can apply to make submission as a third party. There is no provision for interventions by public interest bodies or other NGOs. While these procedures are consistent with those for the settlement of private commercial disputes, their application to far reaching WTO trade rules means that disputes with important public interest implications are shrouded in secrecy.

If a government measure is found in violation of a trade obligation, it is required to repeal or modify the offending measure. *Trade retaliation* is the ultimate sanction against a government that refuses to change a measure found to be in violation of its WTO trade commitments. The WTO permits the complainant governments to impose high tariffs or other trade sanctions against imports of the offending country. These sanctions, which do not have to affect the same kinds of goods involved in the trade dispute, are often designed to have maximum political impact.

### Exceptions, limitations, and exclusions

Certain measures that are inconsistent with WTO rules can be maintained if the government responsible shows that they meet the terms of an exception, limitation, or exclusion in a WTO treaty.

Exceptions are conditions that apply to all countries. The GATT 1994 and GATS include very similar *exceptions* concerning measures “necessary to protect human, animal or plant life and health” (GATT article XX(b), GATS XIV(b)).¶ While these exceptions are often claimed adequate to protect public health measures, their effect has been limited to date. Dispute panels apply a stringent *necessity test* that assesses the various measures available to achieve a public health objective. It further requires that the government in question use only the measure least burdensome to trade. In almost 50 years of GATT and 10 years of WTO disputes, only one dispute panel (on Canada’s attempts to overturn a French ban on asbestos imports) has upheld an otherwise inconsistent measure on the basis of this exception.\*\*

Another *exception* is provided by the *Generalised System of Preferences (GSP)*, “a relaxation of the MFN [most favoured nation] clause”<sup>16</sup> that allows wealthy countries to offer preferential tariffs to low income nations of their choosing.

¶ The GATS, or General Agreement on Trade in Services, is a complex treaty covering liberalisation of trade in services. Detail on GATS is provided in part 2 of this glossary.

\*\* The panel found that the French ban did discriminate against Canadian asbestos, as it was “like” the glass fibres used for French insulation. The Appellate Body, however, considered the huge body of evidence of health risks associated with asbestos sufficient to justify the ban.

This exception allows the European Union’s “Everything but Arms” initiative that eliminates tariffs on all imports from least developed countries except weapons; and the USA’s African Growth and Opportunities Act (AGOA) that gives preference to imports from African countries that meet certain conditions. The GSP can improve health if the preferential treatment given to eligible countries leads to poverty reduction through wealth creation. But the GSP has also been criticised for excluding items of particular importance to poor countries; favouring raw goods over manufactured products; linking preferences to other conditions such as intellectual property rights or, in Latin America, the “war on drugs”; and being used as leverage in WTO negotiations to gain developing country acceptance of positions favoured by, and favouring, wealthy member nations.<sup>17 18</sup>

*Limitations* (or specific exceptions) refer to conditions stipulated by individual countries concerning their commitments in a trade treaty. These conditions qualify how the trade rules concerning specific goods or services apply to measures of that country only. WTO negotiations aim to limit and eventually eliminate all such country specific limitations.

*Exclusions* are measures, goods, or services that are entirely outside the scope of a WTO trade agreement. The GATS “governmental authority” exclusion, for example, provides some protection for certain public health and other measures, but its significance is subject to interpretation and has not been tested in a dispute. (Detail on GATS is provided in part 2 of this glossary.)

### Special and differential treatment

While not an exception in a strict sense, special and differential treatment (SDT) has been a feature of the world trading system since the beginning of the GATT. SDT affords a lower level of obligation to trade agreements for developing nations. With the birth of the WTO, SDT suffered a “massive dilution”.<sup>19</sup> Rather than SDT meaning a lower degree of obligation, it now means only a longer time frame to adjust to, and fulfil, all obligations of most agreements. This may be good for global economic growth, but is unlikely to benefit global equity; as the recent World Commission on the Social Dimensions of Globalisation noted, “Uniform rules for unequal partners can only produce unequal outcomes”.<sup>20</sup>

Many SDT provisions are written in “best endeavour” language that “calls on,” but does not require, members to take the development needs of poorer countries into account.<sup>21 22</sup> Intense developing country lobbying led to inclusion in the Doha Ministerial Declaration<sup>23</sup> of a commitment to review “all Special and Differential provisions...with a view to strengthening them and making them more precise, effective and operational”. WTO members, however, disagree over what “strengthening” means. Developing countries want to modify many agreements to make them more supportive of health and development objectives, partly by granting them more policy flexibility.<sup>11</sup> Most developed countries oppose this.<sup>24</sup> Even though the Doha Ministerial mandated members to identify “best endeavour” SDT measures and “to consider the legal and practical implications ... of converting them into mandatory provisions”,<sup>25</sup> no progress was made by the July 2002 deadline, and little progress since.<sup>9</sup>

From a public health vantage, trade treaties should revert to the pre-WTO principle of non-reciprocity (in which negotiations do not assume equality in liberalisation commitments from developing countries); and health and development goals should be a screen before a trade challenge entailing a developing country goes to a dispute panel (that is, trade obligations could be violated if the clear intent is to achieve such goals).

## PUBLIC HEALTH IMPLICATIONS OF AGREEMENTS COVERING TRADE IN GOODS

### GATT 1994††

The GATT 1994 is the overarching treaty on trade in goods and includes all WTO members' commitments to further reduce tariffs on imported goods. This can yield health benefits if it results in cheaper prices for food, clothing, and other health essentials, or reduces the prevalence of poverty by lowering their preliberalisation prices. But these benefits so far have been globally asymmetrical, with greater gains in developed nations because of their greater purchasing power. They are also often nationally asymmetrical, with job losses in the manufacturing sectors of developed countries, as production moves to Latin America, Asia, and especially China; and increased rural/urban inequalities in developing countries, as export led industrialisation creates growth related wealth for a minority in the urban centres.<sup>26</sup> Together with liberalisation in capital markets, which makes foreign investment easier, tariff reduction has led to the growth of "global production chains". These chains allow multinational enterprises to locate labour intensive operations in low wage countries (often in exclusive export processing zones), carry out research and development in countries with high levels of publicly funded education and investment in research, and declare most of their profits in low tax countries. The result is global tax competition and lower corporate tax revenues in all countries.<sup>27 28</sup>

Tariff reductions can also have powerful indirect health impacts, particularly for developing countries, including:

- Reduced funding for public health services: tariffs have been an important source of public revenue in poorer countries, which have less domestic wealth and income that can be taxed. Few developing countries have been able to replace revenues lost from tariff reduction with other forms of taxation.<sup>35</sup> Consequently, less public funding is available for health care, education, water and sanitation, and gender empowerment programmes; or for enforcement of occupational, environmental, or labour rights and standards.
- Unemployment and precarious employment: tariffs are a more significant form of industrial support for poorer countries, which are less capable than wealthy countries to subsidise their domestic industries. Reduced tariff levels have forced the closure of some companies that are no longer able to compete against more technologically advanced or more highly subsidised competitors. This can lead to increased unemployment and precarious employment (both with negative health effects) and further reductions in government revenue.

### Agreement on agriculture

All countries provide support to their domestic farming sectors in the form of subsidies, quotas, price supports, import controls, or other means. These measures have various public policy objectives, sometimes referred to as *multi-functionality*, such as securing a stable domestic food supply, ensuring that marginalised groups or regions have equitable access to nutrition, or maintaining distinctive rural cultures and ways of life. A consequence of these measures may also include restricting agricultural imports.

Trade in agricultural goods was excluded from multilateral trading rules before the WTO. This changed with the Agreement on Agriculture (AoA), which was negotiated during the Uruguay Round primarily as a means to resolve

†† The full legal text of this, and all other WTO agreements, can be found on the WTO web site: <http://wto.org>.

## Trade liberalisation, poverty, inequalities, and health

It is hard to generalise the relation (positive or negative) between trade liberalisation, poverty, and health. Much depends on pre-existing conditions in particular countries. Goods produced in countries with weaker economies, poorer infrastructures, less educated and unhealthier people, and little technological advancement generally cannot compete with the goods produced in countries where the opposite conditions prevail. This has been particularly the case with many African countries. Other developing nations have fared better. Economic growth and poverty reduction in China and India are the commonly cited examples. There is fierce debate, however, over how extensive this poverty reduction has been,<sup>29 30</sup> although there is little disagreement that inequalities have risen sharply in both nations. Moreover, import liberalisation in both countries only began after both countries experienced significant export led growth. Labour conditions in China's export processing zones, the "engines" of this growth, have been routinely cited as arduous, unsafe, and unhealthy.<sup>31</sup>

Most high income nations, in turn, have experienced significant changes in their labour markets, and not just in their manufacturing sectors. "Precarious employment", characterised by shorter working hours, fewer benefits and lack of union protection, has grown in many, though not all, countries.<sup>32 33</sup> Even high technology jobs are moving from high wage high income countries to low wage middle income countries that have a growing educated workforce.

The broadly stated facts are these: The post-second world war period (1950–1980) witnessed high rates of global economic growth, the development of welfare systems in most high income nations and the independence of former colonies. Income and health inequalities within and between nations declined during this period. Subsequent to the rise in neoliberal economic policies, including liberalisation in trade and financial markets, health and income inequalities within and between nations began to rise (with the exception of Western Europe), and sharply so since the early 1990s.<sup>34</sup> To some observers, these inequalities are the short term pain that must be paid for the longer term benefits promised by a fully integrated global market. To others, they show a critical failure in national and global policies that need immediate rectification.

the trade war between the USA and EU over international food and agricultural markets. It commits WTO members to reduce tariffs and to phase out subsidies to farmers and to food exporters. The agreement gave WTO members a 10 year implementation period (which ended 31 December 2004) during which agricultural supports were exempt from trade actions under the GATT 1994 rules on subsidies, tariffs, and dumping.‡‡

How the AoA affects public health depends not only on the wealth of a country and whether it is a net food importer or exporter, but also on the significance of agricultural trade and domestic policies for specific populations. Developing country

‡‡ "Dumping" refers to exports that enter markets at less than "normal" prices. Another WTO agreement covers this practice, allowing members to impose countervailing measures, such as tariffs, if they believe dumping is occurring. This provision has often been used by wealthier countries to reduce imports of goods from developing countries where labour costs are substantially cheaper. Dispute panels eventually and generally rule in favour of developing countries, but not before substantial damage is done to their export industries.

negotiators charge that continuing USA, EU, and Japanese agricultural import tariffs and production subsidies hinder trade related growth and poverty reduction in developing countries. Estimates of these annual losses for developing countries range between US\$20 and \$60 billion.<sup>36</sup> A July 2004 WTO “framework agreement” to begin phasing out subsidies may remedy this impasse, but details are still subject to negotiation and the USA has stated it will not begin to negotiate such reductions until after developing countries lower their agricultural tariffs.<sup>37</sup> The August 2004 agreement also allows the USA to retain a US\$180 billion increase in domestic farm subsidies announced in 2002, as long as it can show that they do not affect current levels of agricultural production.<sup>38</sup> In the lead up to the expiry of the AoA 10 year implementation period, Brazil successfully challenged USA cotton and EU sugar subsidies under the AoA<sup>38</sup>; a flurry of further challenges to agricultural subsidies is expected. Intense negotiations over agriculture at the 2005 Hong Kong ministerial meeting led to agreement on a 2013 date for phasing out all export subsidies. Developed country export subsidies for cotton will be eliminated in 2006. Difficult issues related to domestic supports for agriculture, including cotton and sugar, have yet to be resolved.

While gaining market access for agricultural exports would be of some economic benefit to exporting countries, trade liberalisation in food products may hurt public health through additional environmental stresses, notably in already water scarce regions in Africa<sup>39</sup> and decreased food security as production is skewed to export products rather than domestic needs.<sup>40-41</sup> It can also increase women’s labour time in household food production<sup>42</sup> and benefit primarily men who dominate the agricultural export sector in most developing countries. The agricultural supports targeted for removal by the AoA also benefit public health for certain groups. Many poor food importing countries benefit by lower world prices caused by subsidies. Many rich countries use quotas or other means to regulate supply of certain agricultural products to promote domestic food security, and to support regional development and rural economies. These measures are vulnerable to challenge under the AoA.

Resolving these dilemmas requires, at a minimum, substantial special and differential treatment (SDT) for developing countries, where agriculture is closely tied to livelihood and sustenance.<sup>16</sup> Developing countries are still permitted some exemptions under the AoA, but these are limited and current negotiations bind all WTO members to begin reducing agricultural tariffs. Developing countries argue for a “development box” that would allow them to retain or reinstate tariffs for rural development, food security, and poverty alleviation purposes,<sup>43</sup> a premise readily defensible on public health grounds.

### Agreement on the application of sanitary and phytosanitary measures (SPS)

The SPS agreement sets out rules for public health measures to ensure food safety and to control plant or animal carried diseases. It is not a health agreement; rather it limits health regulations that may affect trade in agricultural goods. Examples of measures that could be affected by the SPS include limits on pesticide residues in food, inspection of products for contaminants, requirements for decontamination treatments, and bans on animals or animal products from areas in which a disease outbreak has occurred. The SPS defines the conditions under which these public health

<sup>38</sup> As many commentators pointed out, the 2002 US subsidy programme also ran counter to its commitment made in Doha in November 2001 to “reductions, with a view to phasing out, all forms of [agricultural] export subsidies; and substantial reductions in trade-distorting domestic support” [our emphasis].<sup>12</sup>

measures can restrict trade without violating trade rules. They are more stringent than the GATT rules, requiring additional conditions that even non-discriminatory measures must meet.

Proponents argue that the SPS does not limit a government’s ability to enact public health measures, but only requires that they conform to defensible, scientific criteria to ensure that they are not a disguised restriction on trade. WTO dispute panels, however, have interpreted and applied these rules to the benefit of exporters, effectively determining the scientific merits of competing studies without necessarily the scientific expertise to evaluate the evidence. All three SPS cases decided at the WTO to date have gone against the government that used the health measure.

The best known SPS case was an EU ban on foreign beef that contains artificial growth hormones banned in the Europe because they may be carcinogenic. The dispute panel ruled against the EC ban partly because international standards had been set for five of the six hormones in question.<sup>44</sup> The SPS (III.1) prefers government regulations to be based on international standards, specifically those of the Codex Alimentarius Commission (*Codex*). The Codex is a joint FAO/WHO Food Standards Programme.<sup>45</sup> What the dispute panel ignored is that the Codex adopted a “safe” level of hormone use by a very narrow vote of 33 to 29, with seven abstentions<sup>46</sup>; and that Codex itself has been criticised for having an overwhelming majority of corporate scientists with very limited participation by civil society organisations. Standards setting and risk assessments are not simply “scientific;” they are also political and contested, particularly in the case of uncertainty. The Appellate Body, while acknowledging that there could be a health risk, found against the EU because it had failed to conduct a proper risk assessment of the misuse of the beef hormones as required by the SPS. In 1999, the WTO sanctioned trade retaliation by the USA and Canada against the EU, which refused to lift the ban. In adhering narrowly to the requirement for a risk assessment, this decision placed the burden of proof on the EU to show that beef imports were unsafe, rather than on the USA and Canada to show that they were safe. The European Commission in November 2004 filed its own complaint against the continuing trade sanctions, arguing that its growth hormone legislation is now based on a full scientific risk assessment and no longer violates the SPS agreement.<sup>45</sup>

## PART 2 OF GLOSSARY

This concludes part 1 of our glossary. Part 2 will focus on agreements covering services, intellectual property rights, investment and government procurement, and conclude with a commentary on the public health implications of the explosive growth of bilateral and regional liberalisation agreements.

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<sup>44</sup> The use of international standards can have mixed public health implications. On the one hand, it can limit national sovereignty in setting standards higher than those that might be scientifically defensible at any given time. On the other, it can impose a higher level of safety than that presently found in many developing countries that lack the resources to attain such standards. This restricts their export earning capacity, with its potential poverty reducing effects.

<sup>45</sup> While the Codex uses technical committees to develop standards, only governments have formal voting power.

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