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EC TRADE REPORT

JANUARY - MARCH 2003

INCLUDED IN THIS ISSUE:

- WTO panel report on EC Anti-dumping duties on iron tube or pipe fittings from Brazil
- WTO appellate body report on U.S. Byrd Amendment offset payments
- Court of Justice for the first time sets aside a Council regulation imposing anti-dumping duties, as incompatible with WTO obligations
- Court of Justice and Court of First Instance judgments on Community liability under the banana import regime
- Court of Justice judgment on remission of import duties and compensatory interest

I. WTO

Panel Report: Argentine safeguard measures on imports of preserved peaches.

On February 14, a WTO Panel released its report on this dispute. The Panel was established on January 18, 2002, to consider a complaint by Chile regarding a definitive safeguard measure imposed by Argentina on imports of preserved peaches. The Panel found that the Argentine measures were inconsistent with Article XIX of GATT 1994 and with the WTO Agreement on Safeguards.

On August 6, 2001, the Argentine Ministry of Economy imposed a definitive safeguard measure on imports of preserved peaches in the form of minimum specific duties for three years effective, as of January 19, 2001. The minimum specific duty per net kilogram was set at U.S. $0.50 in the first year, U.S. $0.45 in the second year and U.S. $0.40 in the third year. The measure applied to imports from all countries other than Mercosur states and South Africa.

The Panel found that the safeguard measure was inconsistent with the GATT 1994 and WTO rules. First, Argentina failed to demonstrate the existence of unforeseen developments (as required by Article XIX:1(a) of GATT 1994). Second, Argentina failed to make a determination of increased imports in absolute or relative terms (as required by Article XIX:1(a) of GATT 1994 and Articles 2.1 and 4.2(a) of the Agreement on Safeguards). Finally, Argentina did not properly assess the threat of serious injury, as it failed to evaluate all the relevant factors having a bearing on the situation of domestic industry, failed to provide a reasoned and adequate explanation of how the facts supported their determination, and failed to find that serious injury was clearly imminent (as required by Article XIX:1(a) of GATT 1994 and Articles 2.1, 4.1(b) and 4.2(a) of the Agreement on Safeguards).

Panel Report: EC Anti-dumping duties on imports of iron tube or pipe fittings from Brazil.

On March 7, the Panel released its report on this dispute. The Panel was established on July 24, 2001, to consider a complaint by Brazil regarding an EC anti-dumping measure on the import of malleable cast iron tube or pipe fittings from Brazil. The Panel found that the EC measures were inconsistent with Articles 2.4.2 and 12.2 of the Anti-Dumping Agreement, and recommended that the Dispute Settlement Body request the European Communities to bring its measure into conformity with its obligations.

In particular, the Panel found that, in applying the practice of "zeroing"[1] to calculate the dumping margin, the EC had failed to consider the weighted average of "all comparable sales" (as required by Article 2.4.2). The Panel also held that the EC had failed to set forth, in sufficient detail, the findings and conclusions reached on all issues of fact and law considered material during the investigation (contrary to Article 12.2). This resulted from the EC's failure to illustrate how factors such as the ability to raise capital, productivity and return on investments, and cash flows and wages, impacted on injury (contrary to Article 3.4).

The Panel also concluded, however, that the EC had properly assessed the devaluation of the Brazilian Real, the circumstances facing Community industry following low-priced imports, and the causal link between the dumping and the injury caused (including the identification of other factors causing injury). Finally, the Panel found that the EC had appropriately explored constructive remedies and had recognized the special situation of an exporter from a developing country.

Appellate Body Report: U.S. payment of anti-dumping duties to affected domestic companies.
On January 16, the Appellate Body released its report on *United States – Continued Dumping and Subsidy Offset Act of 2000*.[2] The Appellate Body substantially upheld the Panel's findings that the Byrd Amendment was inconsistent with the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement) and the Anti-Dumping Agreement.

Background and Panel Report. The Byrd Amendment provides for disbursement (offset payments) of final anti-dumping and countervailing duties collected by U.S. Customs to the companies that have brought the relevant anti-dumping and countervailing cases. The Panel, established on August 23, 2001, pursuant to a request made by 11 WTO Members,[3] found that the Byrd Amendment constituted a non-permissible specific action against dumping and against a subsidy (contrary to Article 18.1 of the Anti-Dumping Agreement and Article 32.1 of the SCM Agreement).[4]

The Panel also found that, because the Byrd Amendment required beneficiaries of offset payments to have supported the anti-dumping or anti-subsidy petitions, it effectively mandated domestic producers to support the application, thereby rendering the domestic industry threshold tests in Article 5.4 of the Anti-Dumping Agreement and Article 11.4 of the SCM Agreement completely meaningless.

Appellate Body Report. The Appellate Body agreed with the Panel that the Byrd Amendment was a non-permissible specific action, thereby nullifying or impairing the benefits accruing to the complainants. However, the Appellate Body did not agree with the Panel's conclusions as to the effect of the pre-requisite that beneficiaries support anti-dumping or anti-subsidy petitions. The Appellate Body recommended that the Dispute Settlement Body request the United States to bring the Byrd Amendment into conformity with its obligations under the WTO.

II. EU COMMERCIAL POLICY

A. CASE LAW

Petrotub SA and Republica SA v. Council.
On January 9, the Court of Justice set aside the judgment of the Court of First Instance and annulled Council Regulation 2320/97,[5] which had imposed definitive anti-dumping duties on certain imports of seamless tubes and pipes.[6] For the first time, the Court overturned a Community trade policy measure on the basis that it was incompatible with the Community's obligations

1 This practice consists of setting to zero negative margins of dumping when comparing export sales and domestic sales on a transaction-by-transaction basis. See EC Trade Reports October-December 2000, p. 3 and April-June 2002, p. 4.

2 WT/DS 217/AB/R and WT/DS 234/AB/R.

3 Australia, Brazil, Canada, Chile, the EC, India, Indonesia, Japan, Korea, Mexico and Thailand, supported by six other members joining as third parties: Argentina, Costa Rica, Hong Kong, China, Israel and Norway.

4 See EC Trade Report July-September 2002, p. 1.

5 Council Regulation 2320/97 of November 17, 1997 imposing definitive anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland, Russia, the Czech Republic, Romania and the Slovak Republic OJ 1997 L 322/1.

6 Case C-76/00 P *Petrotub SA and Republica SA v. Council of the European Communities* judgment of January 9, 2003, not yet published, overturning joined cases T-33/98 and T-34/98 1999 ECR II-3837.

under the GATT/WTO,[7] and held that WTO law must be taken into account when interpreting a Community law adopted specifically to implement the Community's obligations under the WTO.

The Court of Justice held that the Court of First Instance erred in law by not taking into account the WTO Anti-Dumping Agreement when assessing whether the Council had provided adequate reasons for its calculation of the dumping margin and its calculation of normal value.

Article 2(11) of the basic anti-dumping regulation (Regulation 384/96),[8] which incorporated into Community law Article 2.4.2 of the WTO Anti-Dumping Agreement, provides for three different methods of calculating the dumping margin: the first and second symmetrical methods and the asymmetrical method.[9] Article 2(11) requires the symmetrical methods to be used as the standard methods of calculating the dumping margin, and permits the asymmetrical method to be used only as an exception if there is a "pattern of export prices which differs significantly among different purchasers, regions or time periods" and if neither of the symmetrical methods would "reflect the full degree of dumping being practiced."

Article 2.4.2 of the WTO Anti-Dumping Agreement also requires that, before the asymmetrical method is applied, an explanation must be provided as to why the symmetrical methods cannot appropriately take into account the differences in export prices. The Court of Justice found that a similar obligation to provide reasons arose under Article 253 EC. The Court of Justice found, however, that the Council Regulation did not explain why the second symmetrical method was inadequate for calculating the dumping margin. Consequently, the Council Regulation was inconsistent with the Community's obligations under the WTO and under Article 253 EC, both of which required the Council to explain why the symmetrical methods of calculation could not be used.

The Court of Justice also found that, when calculating normal value, the Council had a duty to state reasons when determining whether it was necessary to take into account prices between undertakings that appear to have a compensatory arrangement in place.

Article 2(1)(3) of the basic anti-dumping regulation states that, as a general rule, prices between undertakings may not be taken into account where the undertakings have a compensatory arrangement in place. However, where the prices are unaffected by the compensatory arrangement, they may properly be taken into account. The Council had simply asserted that, because prices were "made in the ordinary course of trade," prices had not been affected by the compensatory arrangement. The Court found this to be an inadequate statement of reasons.

Eurocoton and Others v. Council.

In an opinion delivered on January 16, 2003, Advocate General Jacobs[10] suggested that the Court of Justice dismiss an action by Eurocoton as unfounded, and quash the judgment of the Court of First Instance[11] declaring the action inadmissible.

In 1996, Eurocoton (the committee of the cotton and allied textile industry of the European Union) lodged a complaint with the Commission regarding the import of unbleached cotton fabrics. The Commission imposed provisional anti-dumping duties, although the Council failed to find majority support for the imposition of definitive duties. The Court of First Instance held that the Council's failure to reach agreement on the imposition of definitive duties was nothing more that the non-adoption of a regulation, and as such, did not constitute an act capable of judicial review. The Court of First Instance therefore dismissed the action as inadmissible.

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7 In two prior cases (Case 70/87 *FEDIOL v. Commission* 1989 ECR 1781 and Case C-69/89 *Nakajima v. Council* 1991 ECR I-2069), the Court exceptionally permitted plaintiffs to rely on the GATT but eventually held that the GATT rules had been complied with.

8 Council Regulation 384/96 of December 22, 1995, on protection against dumped imports from countries not member of the European Community, OJ 1996 L 56/1, as amended.

9 Advocate General Jacobs in his opinion pointed out that the second symmetrical method had never been applied within the Community. He also explained that the first symmetrical method and the asymmetrical method generally create the same results (unless the so-called "zeroing"-method is applied in the framework of the asymmetrical method, which then leads to higher dumping margins than the symmetrical method). See EC Trade Report April – June 2002, p. 5.

10 Case C-76/01 P *Eurocoton and others v. Council* opinion of January 16, 2003, not yet published.

11 Case T-213/97 *Eurocoton and others v. Council* 2000 ECR II-3727.

The Advocate General disagreed with the lower court, and expressed the opinion that a failure to agree should properly be regarded as a positive act capable of judicial review, because it withdrew the protection offered by the provisional duties, thereby producing negative legal effects. If the Council's failure to act could not be judicially reviewed, the complainants would have no other means available to re-instate the protection previously offered.

Notwithstanding this, the Advocate General also expressed the view that the action for annulment of the Council's 'decision' should be dismissed. He rejected the argument that the WTO Anti-Dumping Agreement could be used in support of the appellant's case; while he accepted that this agreement should be taken into account when interpreting the Community's basic anti-dumping law, that agreement did not impose obligations on members to impose anti-dumping duties, but merely limited the application of such duties.

The Advocate General explained that the Council enjoyed a wide discretion regarding the non-adoption of anti-dumping measures, particularly on the issue whether the imposition of duties is in the Community interest. In such circumstances, judicial review should be very limited, and the reasons given by the Council, namely, the failure to secure a majority in favor of imposing definitive duties, should be regarded as sufficient.

EC import regime for bananas.

On March 6, the Court of Justice and the Court of First Instance rendered three judgments on the EC import regime for bananas.

In *T.Port v. Commission,*[12] the Court of Justice dismissed an appeal lodged by T.Port, a traditional banana operator, against the judgment of the Court of First Instance of March 20, 2001,[13] which had dismissed T.Port's action for compensation following from the adoption of Regulation 2362/98[14] implementing Regulation 404/93 on the common organization of the market in bananas.[15]

The Court of First Instance held that the Community was not liable for any damages suffered, and upheld the approach taken by the Commission and the German customs authority to determine T.Port's reference quantity for the allocation of the import tariff quota. The reference quantities for banana imports are determined under Article 4 of Regulation 2362/98, based on the quantities of bananas actually imported during the reference period. According to Article 5(3), actual imports for these purposes are determined by presenting copies of the import licenses used or proof of payment of the customs duties due on the day on which customs import formalities were completed.

The German customs authority had calculated T.Port's reference quantity by excluding a certain quantity of bananas that T.Port had been authorized to import at the tariff quota duty rate, pursuant to an interim measure by the Hamburg fiscal court. These interim measures had subsequently been overturned by the federal fiscal court, with the result that T.Port was authorized to import the bananas only at the higher duty rate applicable to imports falling outside of the quota.

T.Port argued that, because it had paid the customs duties owing at the time of the interim measures, it had met the standard of proof required for actual imports under Article 5(3), and any subsequent amendments were immaterial. The Court of Justice disagreed, holding that the interim measure only granted a provisional authorization to import at the quota tariff, and that the payment of provisional duties did not constitute proof of payment of duties due on the day of completion of customs formalities, as required by Article 5(3).

In *Dole Fresh Fruit International*[16] and *Banan-Kompaniet*[17], the Court of First Instance again

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12 Case C-213/01 *T.Port GmbH & Co. KG v. Commission* judgment of March 6, 2003, not yet published.

13 Case T-52/99 *Port GmbH & Co. KG v. Commission* 2001 ECR II-981.

14 Commission Regulation 2362/98 of October 28, 1998 laying down detailed rules for the implementation of Council Regulation 404/93 of February 13, 1993 on the common organization of the market in bananas, OJ 1998 L 293/32.

15 Council Regulation 404/93 of February 13, 1993 on the common organization of the market in bananas, OJ 1993 L 47/1.

16 Case T-56/00 *Dole Fresh Fruit International Ltd v. Council and Commission* judgment of March 6, 2003, not yet reported.

17 Case T-57/00 *Banan-Kompaniet AB and Scandinaviska Bananimporten AB v. Council and Commission* judgment of March 6, 2003, not yet reported.

considered a claim against the Community for non-contractual liability arising from the Community's banana import regime[18] (already declared illegal by the WTO and the Court of Justice under both under WTO rules and EC law[19]). Importers of bananas from Colombia, Costa Rica, Nicaragua and Venezuela claimed that the import regime was discriminatory because it imposed on them an obligation to obtain a license, yet exempted other categories of operators. They claimed that such discrimination constituted a "sufficiently serious breach of a rule of law protecting individuals," thereby giving rise to non-contractual liability.

The Court of First Instance dismissed the application on the grounds that the applicants had failed to establish that there had been a "manifest and grave disregard of the limits of the discretion" that the defendant institutions enjoyed in this case. Under the established case law of the Court of Justice,[20] in areas where the Community institutions enjoy broad discretion (such as the introduction or amendment of a Community import scheme for bananas), non-contractual liability will not arise from the simple illegality of the measure adopted, but will only arise where an institution has manifestly and gravely disregarded the limits of its discretion. That will only be the case where there has been a "sufficiently serious breach of a rule of law protecting individuals."[21] No such finding was made in the present case. The Court went on to hold that, although the applicant claimed to have incurred costs in acquiring the licenses, it had failed to establish that it had suffered a corresponding loss, and that even if the alleged damage were to be established, such damage could not be viewed as going beyond the bounds of the economic risk inherent in the banana trade.

B. POLICY DEVELOPMENTS

New Council Regulation on the combined effect of an anti-dumping or an anti-subsidy measure with a safeguard measure.

On March 6, the Council adopted a new regulation which will enable the Council to balance the combined effects of anti-dumping/anti-subsidy measures with safeguard measures, to avoid placing an excessive burden on importers into the Community.[22]

Prior to the new regulation, imports were subject to both anti-dumping/anti-subsidy measures and safeguard measures. The new regulation will enable the Council to amend, suspend, or repeal anti-dumping or anti-subsidy measures, exempt imports from such measures, or adopt any other measure which it considers appropriate in the circumstances.

Proposed measures: rubber grade carbon black originating in Egypt and Russia.

On February 2, the Commission proposed that the Council impose definitive anti-dumping duties on imports of rubber grade carbon black originating in Egypt and Russia.[23] The Commission's investigations had revealed injurious dumping, although provisional measures were not imposed as certain aspects of causation and the determination of the Community interest required further examination. In the Commission's opinion, further findings confirmed the need to impose definitive anti-dumping duties. The Council, however, rejected the Commission's proposal, stating that a simple majority in favor of the proposal could not be found.[24]

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18 Council Decision 94/800 of December 22, 1994 concerning the conclusion on behalf of the European Communities, as regards matters within its competence, of the agreements reached in the Uruguay Round negotiations (1986-1994), OJ 1994 L 336/1. Commission Regulation 478/95 of March 1, 1995 on additional rules for the application of Council Regulation 404/93 as regards the tariff quota arrangements for imports of bananas into the Community and amending Regulation 1442/93, OJ1995 L 49/13.

19 See Case C-122/95 *Germany v. Council* 1998 ECR I-973, and Joined Cases C-364/95 and 365/95 *T.Port* 1998 ECR I-1023.

20 See Cases C-352/98 P. *Bergaderm et Goupil v. Commission* ECR 1998 I-5291 and T-210/00 *Biret v. Council* ECR 2002 II-47.

21 See ¶45.

22 Council Regulation 452/2003 of March 6, 2003 on measures that the Community may take in relation to the combined effect of anti-dumping or anti-subsidy measures with safeguard measures OJ 2003 L 69/8.

23 COM 2003/80.

24 In light of the recent case law, it appears unlikely that the Council's decision not to adopt any such measures could be successfully challenged in the Community courts. See above p. 3 of this EC Trade Report.

III. EU CUSTOMS POLICY

A. CASE LAW

Commission v. Germany.

On February 27, 2003,[25] the Court of Justice held that, by subjecting shipments of waste to other Member States to a mandatory contribution to a solidarity fund for the return of waste, Germany failed to fulfill its obligations under Articles 23 and 25 of the EC Treaty.

By decision adopted on September 30, 1994, Germany had established a solidarity fund for the return of waste and had imposed on all exporters of waste, including those exporting to other Member States, the obligation to contribute to that fund. The Commission claimed that the obligation imposed by this legislative measure was partially incompatible with Community law. It argued that, since the contribution had to be paid when the waste was shipped to other Member States, it constituted a charge having effects equivalent to an export customs duty, as prohibited by Articles 23 and 25 EC. The Commission therefore brought an action under Article 226 EC for a declaration that Germany, by enacting this obligation, had failed to fulfill its obligations under Articles 23 and 25 EC.

The Court of Justice confirmed its earlier case law concerning charges having an equivalent effect to a customs duty, within the meaning of Articles 23 and 25 EC.[26] Any pecuniary charge, whatever its designation and mode of application, that is imposed unilaterally on goods by reason of the fact that they cross a frontier (and that is not a customs duty in the strict sense), constitutes a charge having an equivalent effect to a customs duty. The Court also noted, however, that such a charge would not be contrary to Articles 23 and 25 if: (i) it relates to a general system of internal dues applied systematically and in accordance with the same criteria to domestic and imported products and constitutes payment for a service rendered to the economic operator; or (ii) it relates to inspections carried out to fulfill an obligation imposed by Community law.

In the present case, the Court held that the measure imposed by the German Government constituted a charge having an equivalent effect to a customs duty, and did not fall into one of the exceptions listed above.

The Netherlands v. Commission.

On March 13, 2003,[27] the Court of Justice decided to annul in part a Commission decision that had held as inadmissible an application by a Dutch importer for remission of import duties and compensatory interests.

Cargill BV, a Dutch producer of starch and glucose syrup, benefited from an inward-processing authorization for the use of corn in the production of glucose syrup.[28] After investigation, the Dutch authorities discovered that between 1992 and 1994 the compensating products exported by Cargill had been manufactured from a 25%/75% mix of non-Community corn and Community wheat. As a result of Cargill's substitution of wheat for corn, the Dutch authorities claimed a customs debt of approximately f18 million (approximately € 8 million), including both import duties and compensatory interests.

The Commission held that Cargill's application for remission of import duties was partly inadmissible and partly unjustified. According to the Dutch authorities, the Commission had violated the Community Customs Code and implementing regulation,[29] because the Commission had (i) considered inadmissible the part of Cargill's request dealing with the remission of compensatory interest; (ii) found that Cargill should have been aware of the fact that it could not replace corn with wheat under its inward–processing authorization; and (iii) examined the legality of the communication of the customs debt made to Cargill by declaring Cargill's request inadmissible because

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25 Case C-389/00 *Commission v. Germany* judgment of February 27, 2003 not yet published.

26 See *inter alia* Case 150/82 *Commission v. Denmark* 1983 ECR 3572, Case 18/87 *Commission v. Germany* 1988 ECR 5427, and Case C-111/89 *Bakker Hillegom* 1990 ECR I-1734.

27 Case C-156/00 *Netherlands v. Commission* judgment of March13, 2003 not yet published.

28 Article 114 of the Community Customs Code permits the duty-free import of non-Community goods used in processing operations before being re-exported in the form of compensating products. See Regulation 2913/92 of October 12, 1992 OJ 1992 L 302/1. See EC Trade Report July-September 2002, p. 6.

29 Commission Regulation 2454/93 of July 2, 1993 laying down provisions for the implementation of Council Regulation 2913/92 establishing the Commission Customs Code OJ 1993 L 253/1.

the import duties from before December 3, 1993, had expired.

On the first issue, the Court ruled that the Commission was right to consider as inadmissible that part of Cargill's request that dealt with the remission of compensatory interests. The Court upheld the Commission's reasoning, and held that under Article 905 of the implementing regulation, the Commission is only competent to make a decision on the remission of the import duties, and may not rule on compensatory interests.

On the second issue, the Court considered that Cargill's experience in the customs field and the relative simplicity of the applicable customs legislation supported the Commission's conclusion that Cargill had been negligent and was not entitled to seek the remission of the duties.

On the third issue, however, the Court decided to annul the Commission's decision in part. The Court explained that the competence to examine the legality of individual decisions on import duties resides principally with the Member States and their customs authorities. As a result, the Commission could not reject a request based on its own opinion that the relevant import duties had expired.

B. POLICY DEVELOPMENTS

Commission's new Customs Information System.
On March 24,[30] the Commission inaugurated the new Customs Information System (CIS). The new system should reinforce communication and cooperation between national customs and law enforcement agencies, as it creates a central European database to which all Member State authorities have access. The database will include sensitive shared data, particularly in the field of the fight against fraud. The CIS is still in its initial stages, with only 2,500 of the contemplated 15,000 authorities having access to it. It is expected, however, to be further implemented in the course of this year in the existing Member States, and later in the new Member States.

30 Commission Press Release IP/03/427 of March 24, 2003.

IV. EU EXTERNAL RELATIONS

A. ACP

Entry into force of the Cotonou Agreement.
The Cotonou Agreement between the EU and 77 African, Caribbean and Pacific (ACP) States[31] entered into force on April 1, 2003.[32] The Agreement, which has been partially applied on a provisional basis since August 2000,[33] sets out a new framework for trade, aid and political cooperation between the EU and the ACP countries. The Agreement has been concluded for 20 years, with the objectives of reducing and eventually eradicating poverty, and gradually integrating the ACP States into the world economy, while at the same time respecting the principles of sustainable development.

The partnership is based on five interdependent pillars: (i) a comprehensive political dimension; (ii) the promotion of participatory approaches; (iii) development strategies, with priority given to the reduction in poverty; (iv) establishment of a new framework for economic and trade cooperation; and (v) reform of financial cooperation. The Agreement, which replaces the fourth Lomé Convention, aims to strengthen the political dimension, provide flexibility and entrust ACP States with greater responsibilities.

B. WTO

EU proposal on access to affordable medicines.
On January 7,[34] EU Trade Commissioner Pascal Lamy proposed a multilateral solution to break the current WTO deadlock concerning developing countries' access to affordable medicines. At the Doha Ministerial Conference in November 2001, the WTO members agreed that countries would have the right to grant compulsory licenses to manufacture medicines to combat diseases such as HIV/AIDS, tuberculosis, malaria and other

31 Council Decision 2003/159 of December 19, 2002 concerning the conclusion of the Partnership Agreement between the African Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on June 23, 2000 OJ 2003 L 65/27.

32 OJ 2003 L 83/69.

33 See EC Trade Report April-June 2000, p. 7.

34 Commission Press Release IP/03/24 of January 9, 2003.

epidemics. The Doha Conference could not agree, however, on the mechanism to be used where developing countries lack manufacturing capabilities and therefore cannot take advantage of the compulsory license system. Although there is broad support for a system allowing exporting countries to grant a compulsory license for the production of generic medicines, which may then be exported to countries lacking manufacturing facilities, there is so far no consensus on what diseases should be covered by that system. In particular, the United States refused to accept a compromise proposal of December 2002, and took the view that the system should cover only certain identified infectious epidemics, such as HIV/AIDS, tuberculosis, and malaria.

In order to retain flexibility and take into account the varying needs of the different developing countries, Commissioner Lamy has proposed, in a letter sent to all WTO Trade Ministers, a multilateral agreement with a non-exhaustive list of diseases covered by the system. For diseases not specifically mentioned in the agreement, Commissioner Lamy has proposed that the World Health Organization be entrusted with the task of assessing the occurrence of other public health problems in importing countries. According to Commissioner Lamy, such a system would, on the one hand, focus on the major diseases threatening the developing world but would, at the same time, provide flexibility in responding to other health problems, should they arise.

Commissioner Lamy has indicated that, before a solution is found, the EU will refrain from challenging any WTO Members that wish to grant compulsory licenses for the export of medicines on the terms set forth in the December 2002 proposal. That proposal covers products from the pharmaceutical sector, which in the EU's view also include vaccines. In line with the Doha declaration, the system may be used to combat public health problems afflicting many developing and least-developed countries, especially those resulting from HIV/AIDS, tuberculosis, and malaria.

If you are interested in more detailed information concerning any items in this report, please contact any of the following individuals at the Brussels office: George L. Bustin, Till Müller-Ibold, Axelle Arbonnier.

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