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Towards a More Effective Ozone Treaty? Meeting of the Parties Will Seek to Curb Illegal Trade

Curbing illegal trade in ozone-depleting substances, improving the Protocol's non-compliance procedure and tightening the phase-out schedule for methyl bromide are among the issues that will spark debate at the Ninth Meeting of the Parties to the Montreal Protocol starting on 15 September.

Tightening Controls

The proposals most likely to revive North-South tension relate to phase-out schedules for methyl bromide, a powerful pesticide against a variety of insects, weeds, diseases and rodents. Widely used to fumigate grain storage facilities and flour mills, as well as trains and ships carrying agricultural commodities, methyl bromide is also an efficient soil fumigant with post-harvest uses in the treatment of fruit, vegetable, nuts, wood and wood products. Due to its range of action, methyl bromide cannot be replaced by a single product. Successful alternatives have been found for some uses but others are still at an experimental stage.

Scientific evidence indicates that bromide from this pesticide is at least 50 times more effective at destroying the ozone layer than chlorine from CFCs (chlorofluorocarbons) on a per molecule basis. Some ten percent of human-induced global ozone losses are thought to be caused by methyl bromide.

Under the current Montreal Protocol provisions, industrialised countries must phase out methyl bromide production and consumption by 2010, while most developing countries are committed to freeze production and consumption at their respective average levels between 1995 and 1998 by 2002. The Protocol's Article 5 grants longer terms of compliance to developing countries whose annual calculated level of CFC consumption is less than 0.3 kg per capita, whence the term 'Article 5 countries'.

The United States and Canada have tabled proposals to amend the Protocol for methyl bromide: the US proposes that the Ninth Meeting of the Parties agree to a total phase-out for all countries by 2001, while Canada is willing to concede a 10-year grace-period for Article 5 countries. The US bases its claim on the conclusion of the Protocol's Technical and Economic Assessment Panel that there are no technical or economic reasons why all countries could not pursue similar phase-out schedules.

Under the Canadian proposal, by the year 2002, Article 5 countries would freeze their methyl bromide consumption and production at the calculated annual average for the period of 1995 to 1997; achieve a 25% reduction from that level by 2005, and a total phase-out by 2011.

In preliminary talks, developing countries rejected an early phase-out date, pointing out the pesticide's importance to their agricultural sectors and the uncertainty surrounding the effectiveness of alternatives, as well as the concept of 'common but differentiated responsibilities' which they view as a fundamental principle underlying the Montreal Protocol.

The Group of 77 and China said they needed at least ten years longer than developed countries for the phase-out and that further control measures for Article 5 Parties should only be considered after the results of demonstration projects relating to alternatives to methyl bromide in those countries were available. They also noted the need for the transfer of appropriate technology and additional funds for voluntary measures taken to reduce methyl bromide use. US\$ 10 million have already been budgeted in the Protocol's Multilateral Fund for demonstration projects and the implementation of decisions of the Ninth Meeting of the Parties.

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Director: Ricardo Meléndez-Ortiz
Editor: Anja Halle

Address: 13, chemin des Anémones
1219 Châtelaine, Geneva
Switzerland
Tel: (41-22) 979-9492
Fax: (41-22) 979-9093
E-mail: ictsd@iprolink.ch
Web: <http://www.ictsd.org>

The phase-out would not apply to quarantine and pre-shipment uses of methyl bromide. A draft decision on 'critical uses' would also allow exemptions to avoid market disruption caused by the unavailability of methyl bromide when no 'technically or economically feasible alternatives or substitutes are available for the user'.

The Parties will also consider the gradual phasing out of trade in methyl bromide with non-Parties to the Protocol. Banning imports and exports of the substance itself has gained support, but views diverge on prohibiting trade in products containing, or made with methyl bromide. The provisions on trade with non-Parties have been a major catalyst for accession to the Protocol, currently ratified by 162 countries.

Preliminary reactions indicate that measures proposed by the EU and Switzerland to tighten phase-out schedules for HCFCs (hydrochlorofluorocarbons) are unlikely to be adopted.

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Illegal Trade

To curb illegal trade, the Ninth Meeting is likely to require Parties to establish mandatory import and export licensing systems for new, used, recycled and reclaimed CFCs, halons, carbon tetrachloride and methyl chloroform, and possibly for HCFCs and methyl bromide. Two provisions of the proposed licensing scheme have not yet gathered unanimous support: that imports from, and exports to, countries that have not established licensing systems be banned by other Parties; and that Parties issuing an export license must notify the country of destination. Australia has proposed an export ban on used, recycled and reclaimed controlled substances for countries which continue to produce new substances for domestic use after the phase-out date. Another draft decision recommends regulating exports to Article 5 countries of products and equipment that contain or are designed to use CFCs or halons.

Significant quantities of CFCs are smuggled to countries that under the Protocol have phased out consumption and production since 1996. The trade flourishes along the US-Mexican border because old air conditioners and refrigeration systems provide a lucrative black market for CFCs which Mexico, as an Article 5 country, is still allowed to produce. According to some estimates, profit margins for contraband CFCs are ten times greater per pound than those for smuggled cocaine. (In the largest CFC case so far, Refrigeration USA in late May pleaded guilty to 129 felony counts related to the smuggling of more than 4,000 tonnes of CFC-12. The corporation faces restitution and possible fines of up to \$500,000 on each count.)

Reports of illegal imports have also surfaced in Denmark, the United Kingdom, Hong Kong and Taiwan.

Improving Compliance

To enforce the Protocol, the parties currently rely on an 'indicative list of measures that might be taken by a meeting of Parties in respect of non-compliance with the Protocol'. These measures include assistance to help the country in question re-achieve compliance, issuing cautions and the suspension of specific rights and privileges under the Protocol. The Seventh Meeting of the Parties recommended (Decision VII/9) that the Parties consider establishing a mechanism to ensure that international trade would only take place between Parties which have reported data and demonstrated compliance with all the provisions of the Protocol. Last year's Decision VIII/26 invites the Parties to give further thought to the need to control exports of ozone-depleting substances from non-Article 5 countries found to be in non-compliance with their obligations to Article 5 countries.

During preparatory talks, Canada tabled proposals aimed at reinforcing the Protocol's non-compliance procedure. While the measures mentioned in the 'indicative list' should continue to apply, Canada proposed modifying the non-compliance procedure so that 'a persistent pattern of non-compliance with key provisions of the Protocol would lead to the consequence of the non-compliant Party being treated as a State non-Party to the Protocol under Article 4 and therefore subject to Article 4 trade measures for the substance for which the Party is in non-compliance'. The trade measures in question prohibit trade in controlled substances between Parties and non-Parties.

Although the proposal does not define what would constitute 'a persistent pattern' of non-compliance, it suggests that the following violations be considered as 'non-compliance with key provisions of the Protocol' and as such could lead to trade sanctions:

- non-compliance with the control measures set out in Articles 2A to 2B (phase-out schedules for controlled substances in industrialised countries) and the corresponding measures in Article 5 (developing country phase-out schedules);
- contravention of the reporting obligations that are necessary to determine compliance with the controls set out in Articles 2A to 2B and 5; and
- non-compliance with Article 4 (trade with non-Parties).

While most Parties have expressed support for a well-functioning non-compliance procedure, many have noted their concern that trade sanctions could have negative economic and social repercussions and would run counter to the spirit of the Protocol. They recommend that the compliance procedure focus on the factors responsible for the instances non-compliance and the methods of assistance the Parties could provide to help alleviate non-compliance. Canada is expected to come up with new proposals for the Ninth Meeting of the Parties.

An effective compliance regime and stricter controls over international trade in ozone-depleting substances are undoubtedly among key elements for a successful Protocol. However, the implementation of the Montreal Protocol, like that of other international environmental agreements, ultimately depends on the will and ability of governments to draft and enforce national legislation. Financial and technical assistance to developing countries will continue to be crucial while industry has an important role in developing and spreading the production of adequate substitutes for ozone-depleting substances.

Reconciling the Trade Provisions of the Montreal Protocol and the rules of the GATT

GATT Article I (the most favoured nation principle) requires that any trade advantage granted to one WTO Contracting Party be automatically extended to all Contracting Parties. Selective import bans and other measures (the Protocol's Articles 2 and 4) that may lead to trade restrictions against some Contracting Parties are therefore GATT-illegal. GATT Article III (the national treatment principle) requires Contracting Parties to treat imported goods the same way as 'like' or competing domestic goods. Under the Protocol, there will be periods before the final phase-out when controlled substances will still be produced, used and traded. The restrictions on imports which discriminate between 'like' domestic and imported products from non-Parties would therefore be contrary to Article III. The trade measures of the Protocol also contravene GATT Article XI which prohibits quantitative restrictions.

The Protocol's trade restrictions, however, are justified under the General Exceptions specified in GATT Article XX: they are 'necessary to protect human, animal or plant life or health' and 'relate to the conservation of exhaustible natural resources'.

Possible incompatibilities also exist between the WTO Agreements on Technical Barriers to Trade, on Intellectual Property Rights and on Subsidies and Countervailing Measures, this last concerning the financial and technical assistance available to developing countries under Article 10 to help them meet the 'agreed incremental costs' of compliance with the control measures of the Protocol.

Source: Protecting the Ozone Layer through Trade Measures: Reconciling the Trade Provisions of the Montreal Protocol and the rules of the GATT. UNEP Environment and Trade series Vol. 6.

Where is the Wind? APEC and the Environment

By Lyuba Zarsky



In early June, environment ministers from eighteen countries around the Pacific met in Toronto to sign Asia-Pacific's first 'regional action programme' for the environment. The action will focus on three key areas: encouraging the transfer and adoption of clean technology; conserving the marine environment; and promoting sustainable cities. Along with some 40-odd 'capacity building' projects, the programme is the fruit of a five-year effort to incorporate environmental concerns into Asia's premier multilateral organisation, the Asia Pacific Economic Co-operation forum (APEC).

Given the political, economic and ecological diversity of its members - who span from the United States to Papua New Guinea, from China to Chile - the achievement of regional consensus on environmental co-operation is no small feat. Moreover, lodging environmental concerns within an organisation pre-eminently concerned with trade and investment holds promise for more sustainable paths of development.

On the other hand, the actual programmatic initiatives to date are meagre and there is little sign of coherent leadership or regional political passion. Dominated by overworked bureaucrats mostly from offices of foreign affairs - and predominantly from Western countries - APEC's environmental initiatives are too often only thinly connected to domestic politics and interests. Without stronger political winds, APEC's environmental agenda will be propelled more by drift than by steady progress on a charted course. Where the winds might come from is the central question for environmental policy-makers and activists alike.

APEC and the World Trading System

APEC's potential role in promoting sustainable development is linked to its particular character as a trade-oriented and as an Asian institution. Founded in 1989 at the initiative of Japan and Australia, APEC operates on two tracks. One track - indeed, the main highway - leads to the liberalisation of trade and investment throughout the APEC region. Another track, dubbed 'eco-tech,' leads to a deepening of the region's economic and technical co-operation, including on issues of environmental conservation and sustainable development. Over 300 projects have been developed in APEC's fourteen Working Groups along the eco-tech track, many of them languishing for lack of implementation.

With its founding focus on eco-tech, APEC initially compelled little interest in Washington. Political winds picked up in 1993, when US President Bill Clinton harnessed the interests of export-dependent APEC economies to shore up flagging global trade negotiations. Propelled by big gusts from Washington, APEC's ships of state in 1994 adopted a 'broad vision' of free trade and investment throughout the region by 2010 for the developed and 2020 for the developing countries.

To implement the 'broad vision,' APEC economies developed an Action Plan by which individual countries nominate their own

preferred products or sectors for liberalisation. To date, there have been few nominations which exceed commitments made under the GATT/WTO. In fact, on the trade track, APEC has operated primarily as a vehicle to help implement WTO commitments.

APEC, then, apparently follows rather than leads in the global trading system. In two fundamental ways, however, APEC and the WTO are very different institutions. First, unlike the WTO, APEC is not a negotiating body. There are no trade deals, treaties or agreements. Rather, APEC is more of a 'talk shop'. Second, following the lead of its Southeast Asian members, APEC operates on the principle of consensus. Any member can block an initiative or even discussion of an issue. While the WTO is often beset by shrill debate, discussions at APEC are skewed towards non-contentious issues. Moreover, APEC counts among its members nations, most notably China, which have not yet acceded to the WTO.

APEC's different style - and the fact that it incorporates some of the most pro-free trade countries in the world - mean that it can set the pace, if not the precise terms, of world trade policy. For example, President Clinton successfully used the November, 1996 APEC Leaders Meeting to gain support for an International Telecommunications Agreement ahead of the WTO ministerial conference in Singapore. Moreover, APEC's 'broad vision' goes much further toward global free trade than anything yet articulated by the WTO.

Nonetheless, lacking the adrenaline of high-stake trade negotiations, APEC has delivered little in the way of specific new commitments. The country-by-country liberalisation plans generally are thin on new initiatives or even text. On the other hand,

APEC has been important in some countries, especially in Southeast Asia, in strengthening domestic political support for open economic policies. Indeed, the real action of APEC is rooted as much in domestic political economy as it is in foreign relations.

A Regional Vision of Sustainable Development?

Like the push toward trade liberalisation, pressures to develop an environmental agenda have come from APEC's Western countries, especially the US and Canada. Since 1993, there have been three 'environment ministerials', two called and held by Canada and one, a 'sustainable development' ministerial, by the Philippines.

The first ministerial, held in 1994 in Vancouver, generated a set of Principles for Integrating the Economy and the Environment. The following year, all APEC Working Groups and Committees were directed to integrate environmental concerns into their activities, which aimed largely at promoting and facilitating freer trade and investment.

The directive to integrate the environment into the trade/economic work of APEC, rather than sideline it, was revolutionary. To date, however, most Working Groups have delivered little of substance. The primary focus has been on building capacities to build capacities, that is, on information exchange. One of the most active, the Regional

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Energy Co-operation Working Group, co-chaired by Japan and Australia, has focused largely on promoting coal exports and technologies. Even one of its potentially key environment-related activities - the harmonisation of energy

efficiency standards - is conceived more in terms of commercial needs than environmental objectives.

The regional action programme adopted in June, 1997, likewise has potential to be revolutionary. The clean technology initiative, which aims to harness the power of private markets, offers a glimpse of a new way to promote technology transfer in an era of shrinking aid budgets. The sustainable cities initiative points toward the creation of cross-cutting integrative policy frameworks to guide social and economic development. And the marine initiative could promote a sustainable utilisation regime for the Pacific Ocean.

The achievement of APEC's potential, however, is far from assured, primarily because these initiatives and, more broadly, the idea of environmental co-operation have not caught fire either among APEC governments or, in general, within APEC countries. There are several reasons.

First is the problem of lack of leadership. The agenda-dominating Western APEC-minders tend to construe the environmental issue as 'Asia has problems, we have solutions'. Happily for the West, the solutions typically involve commercial gain in the form of exports of environmental goods and services. Not only do environmental problems in the West get short shrift, but Asian governments feel little ownership of the agenda-setting process. Indeed, at worst, the environmental agenda is viewed by foreign affairs heavies, if not by environmental policy-makers, as part of the US push to open markets in Asia, an effort which not that long ago the US claimed it would accomplish 'by a crowbar' if necessary.

Lack of leadership is also evident in the lacklustre commitment of Western countries to environmental diplomacy at APEC. In the US, for example, APEC environmental work is greatly under-resourced and unintegrated with the trade track. While the official State Department view is that environmental co-operation promotes US security interests in Asia, there is little investment in understanding either the ecological issues or how best to conduct environmental diplomacy in the region. There is also no integrated foreign policy vision by which to understand the complementarities and trade-offs between US long term strategic and short term commercial interests.

A second problem is the fear of most Asian governments that rising environmental commitments will slow the pace of rapid growth. Echoing North-South debates in other fora, some of APEC's poor (and not-so-poor) members have called for a focus on 'development', meaning financial transfers or technology give-aways. The US and other Western countries are adamant that if there are to be transfers, they will be through commercial markets.

Concerns about possible adverse domestic economic consequences of environmental commitments are not confined to Asia. At the Toronto ministerial, the US pushed for APEC to support the Climate

Change framework, including binding emissions targets for developed countries and evolving obligations for developing countries. In a candid, behind-the-scenes discussion in Toronto, Chinese delegates told the US that they found it hard to move forward while the US itself had not embraced a commitment.¹

A third reason for the lack of passion in APEC's environment-related work is that those who are most knowledgeable and passionate - scientists and intellectuals, citizen groups, progressive policy-makers and business people - are not included in the discussion. Rather, environment-related initiatives have been crafted by longtime bureaucrats in foreign affairs or environmental departments. While many are highly committed, they lack both in-depth technical expertise and political weight.

Finally, momentum on environmental issues is constrained by the lack of coordinating and integrating institutions at APEC. The typical modus operandi at APEC, whether for Working Groups or governments, is 'find a niche and do your own thing'. As a result,

there has been a proliferation of initiatives, mostly studies and information-sharing, but no sense that they all add up to something. The June Ministerial Statement obliquely called for a 'coordinating mechanism' but there is no consensus about what it should be or how it should operate.

In short, despite the promise and rather extraordinary momentum of the past five years, co-operation for sustainable development at APEC is adrift. The fundamental problem is that there is little political demand at home for APEC to grapple seriously with creating a framework for sustainable trade and investment in the region. Without domestic demand and the political will it generates, APEC's initiatives will tend to be narrow and shallow and follow the dictates of its strongest members.

There are some bright spots. Asian governments themselves are beginning to conceive of a self-interest in regional

environmental co-operation. At the Toronto Ministerial, Asian countries, including China and Indonesia, for the first time presented some initiatives of their own. Even more promising is the emergence throughout Asia and the Pacific of groups and individuals, both in and out of government, who are seeking to identify and advocate a common interest approach to both development and environment in the region. Whether or not these groups can coalesce into a significant regional political voice is likely to be the single most important determinant of APEC's effectiveness in promoting sustainable development. APEC governments can themselves nurture such networks by providing opportunities and funding for collaborative research efforts and discussion. It is from such a quarter that a wind could blow.

Lyuba Zarsky is CoDirector of the Nautilus Institute for Security and Sustainable Development in Berkeley, California.

¹ At the latest round of negotiations for a protocol on binding targets and timetables for greenhouse gas reductions, the US again held off putting its proposals on the table. In early June, the Senate warned the administration against signing any protocol that could result to serious harm to the US economy. See separate story on page 12.

Beyond Article 27[3b]: Can the TRIPs Agreement Protect Biological and Cultural Diversity?

By Graham Dutfield

Frequently, discussions on the TRIPs Agreement as it relates to biological diversity and the interests of indigenous peoples and local communities focus on patents, in particular the highly emotive issue of patenting life and the availability of the so-called '*sui generis*' option for plant varieties (Article 27[3b]). Without denying the importance of patents, one must bear in mind that the Agreement's 73 articles provide a variety of intellectual property rights. Graham Dutfield examines the relevance of each of these to the conservation biodiversity and traditional knowledge in his study *Can the TRIPs Agreement Protect Biological and Cultural Diversity?* to be published in the Biopolicy Series of the African Centre of Technology Studies later this year. ICTSD has adapted the following excerpt focusing on three issues whose relationship with biological and cultural diversity needs further research: trademarks, geographical indications, and protection of undisclosed information.

Trademarks

A trademark is a marketing tool that is often used to support a company's claim that its products or services are authentic or distinctive compared with similar products or services from another trading entity. It usually consists of a distinctive design, word, or series of words, usually placed on the product label. Registered trademarks must be renewable indefinitely (Article 18). The trademark owner has the exclusive right to prevent third parties from using identical or similar marks in the sale of identical or similar goods or services where doing so would result in a likelihood of confusion (Article 16[1]).

In many countries, such as the United States, Canada, Australia, Peru and South Africa, traditional handicrafts and artworks are highly marketable products that can be a lucrative source of income for indigenous peoples and traditional communities. Some customers are attracted by the ethnic origins of such products and may be willing to pay extra when they are convinced of their authenticity. Therefore, trademarks could have a useful role to play, especially for groups and communities that are concerned about reproductions falsely attributed to them.

A kind of trademark that exists in the laws of some countries, and which TRIPs does not disallow, is the certification trademark. Certification marks can be used by small-scale producers to guarantee to customers that goods are genuine in some way or another, and perhaps to support production that is conducted in an environmentally-sustainable manner. Certification marks indicate that the claims made by the traders have been authenticated by an organisation independent of the individual or company making or selling the product. This is likely to be a regional trade association that has registered its own collective mark. Thus, in response to the claim that labels such as 'handmade', 'hand-crafted', and 'authentic' that are not authenticated by an independent body confuse buyers and compete with products made and sold by indigenous peoples, Canada has introduced official certification marks to authenticate indigenous peoples' work.² For example, Inuit soapstone carvings are labeled with a mark certified by the Department of Indian and Northern Affairs. A certification scheme is also being developed in Alaska to identify Native handicrafts using a symbol bearing the words 'Authentic Native Handicraft from Alaska'.

However, labeling has been unsuccessful in some US states in terms of promoting trade in indigenous peoples' products. This may be because customers are not aware of the marks or do not care whether the articles they purchase are genuine. They may also be confused by the labels. These problems illustrate the difficulties likely to arise from the use of certification and geographical indications for manufactured goods and artwork. Nevertheless, they can be successful marketing strategies, especially if traders have a clear understanding of why people wish to buy their articles.

Geographical indications

Geographical indications are similar in function to trademarks, except that they identify a product with a particular territory, whereas trademarks identify a product with a company or brand.³

Members are required to permit legal action enabling traders to prevent (a) the designation or presentation of a good (such as a trademark) that suggests, in a manner that misleads the public, that the good in question originates in a geographical area other than the true place of origin; and (b) any use which constitutes unfair competition (Article 22[2], [3]). Article 23 deals solely with wines and spirits, which is indicative of the influence of the major wine and spirit-exporting countries in negotiating TRIPs. The geographic indications provisions are to be reviewed periodically by the Council for TRIPs (Article 24).

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Could Basmati Rice be Protected by Geographical Indication?

Basmati rice is a long-grained aromatic variety of rice cultivated in Northern India and Pakistan. A company called Rice Tech in the United States has for several years been selling basmati rice in the US and the Middle East under the name 'TexBasmati', thus provoking anger among people in India although the germplasm apparently was freely and legally acquired by Rice Tech from the International Rice Research Institute in the Philippines. Until the Parties to the Convention on Biological Diversity resolve the issue of genetic resources in *ex situ* collections, no recourse is available under the Convention. Plant variety protection in countries where it is available is not possible because basmati is not a new variety. So, could India and Pakistan use the geographic indications section of TRIPs to force the United States to stop Rice Tech using the name TexBasmati?

For these countries to be successful, the WTO dispute settlement panel would have to accept the argument that basmati is a variety of rice made distinctive not only by its inherent qualities, but also by its geographical origin. The fact that basmati is not a geographical expression makes the association with a place less strong than, say, Darjeeling tea, whose producers are able to secure very good prices due to its high reputation. Nevertheless, India and Pakistan appear to have a strong case since basmati is not yet a generic term, i.e. it has not come to mean any long-grained fragrant rice. India could do much to enhance the reputation of basmati rice and facilitate international protection from competitors that would unfairly exploit this reputation by making available a system of either appellations of origin or certification trademarks. It should be noted that TRIPs does *not* require protection of geographical indications that are not protected in their country of origin (Article 24 [9]).

Beyond Article 27[3b], continued from page 5

Perhaps the best known type of geographical indication is the appellation of origin. The 'appellation d'origine' was originally a French geographical indication applying to products considered to be distinctive due to a combination traditional know-how and highly localised natural conditions.³ For example, wines from the Champagne region of France are protected this way; local producers acting collectively have prevented the use of the word 'champagne' on bottles of perfume, English wine and German shampoo. This type of intellectual property right might also provide protection for basmati rice grown in Northern India and Pakistan (see box on previous page).

Although so far the use of this method has been confined mainly to certain beverages and foodstuffs, the principles of geographical indications could guide laws to protect intangible expressions of folklore. Indeed, in 1985 the UN Educational, Scientific and Cultural Organization and the World Intellectual Property Organization developed a model law called the 'Model Provisions for National Laws on Protection of Expressions of Folklore against Illicit Exploitation and Other Prejudicial Actions'. In Section 6, prejudicial actions include failure to indicate the ethnic and geographic source of an expression of folklore in printed publications and other communications to the public, and deliberately deceiving the public about the ethnic source of a production. Although not explicitly stated in the document, a law to implement the model provisions *could* include traditional cultivars as 'expressions of folklore' to be protected if national law-making bodies felt it desirable to protect such resources.⁴

Protection of Undisclosed Information

The inclusion of this section in TRIPs was strongly opposed by developing countries who did not consider undisclosed information to be a form of IPR. However, Switzerland and the United States, who were concerned to safeguard trade secrets internationally, successfully persuaded other governments to accept their proposal for such protection.⁵ Because no previous convention provides for protection of undisclosed information, the strategy adopted by the two countries was to argue that such protection is a necessary measure for countries to fulfil their obligations to suppress unfair competition as required by Article 2 of TRIPs.⁶

Members must enable natural and legal persons to prevent 'information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices'.

The knowledge or know-how of an individual or a whole community might be protected as a trade secret as long as the information has commercial value and provides a competitive advantage, whether or not the community itself wishes to profit from it. If a company obtains such information by illicit means, legal action may be used to force the company share its profits.⁷ Conceivably, a considerable amount of indigenous peoples' knowledge could be protected as trade secrets. Restricting access to their territories and exchanging information with outsiders through agreements that secure confidentiality or economic benefits would be appropriate means to this end. It is very likely that knowledge shared by all members of a community may not qualify as a trade secret. However, 'if a shaman or other individual has exclusive

access to information because of his status in the group, that individual or the indigenous group together probably has a trade secret'.⁸

The InterAmerican Development Bank supports a project in Ecuador to enable indigenous peoples to benefit from bio-prospecting by transforming traditional knowledge into trade secrets.⁹ Knowledge from communities wishing to participate in the project will be catalogued and deposited in a restricted-access database in which each community will have its own file. Checks will be made to see whether the entries made are not already in the public domain and whether other communities share the knowledge. If communities with the same knowledge were to compete rather than collaborate, there would be a price war that would benefit only the corporate end-users. To overcome this

danger, the project envisages the creation of a cartel comprising the communities that bear the same trade secret. The trade secret can then be negotiated in a Material Transfer Agreement with the benefits shared between the government and the cartel members.

Graham Dutfield is the Co-ordinator of the Working Group on Traditional Resources Rights, Oxford Centre for the Environment, Ethics and Society, Mansfield College, Oxford University, UK; e-mail: wgtrr:ocees@mansfield.oxford.ac.uk

NOTES

¹ Blundell, V. 1993. Aboriginal empowerment and souvenir trade in Canada. *Annals of Tourism Research* 20, 64-87, at 69.

² Moran, W. 1993. Rural space as intellectual property. *Political Geography*, 12, 263-277, at 266.

³ Ibid.

⁴ For a commentary on the UNESCO/WIPO Model Provisions, see Posey, D.A. and Dutfield, G. 1996. *Beyond Intellectual Property: Towards Traditional Resource Rights for Indigenous Peoples and Local Communities*. Ottawa: International Development Research Centre.

⁵ Blakeney, M. 1996. *Trade Related Aspects of Intellectual Property Rights: A Concise Guide to the TRIPs Agreement*. London: Sweet and Maxwell, at 102.

⁶ Article 2 of TRIPs requires Members to comply, inter alia, with Article 10 (bis) of the Paris Convention for the Protection of Industrial Property, which does not limit legal action on the basis of unfair competition to goods already protected by trademark or other forms of legal protection.

⁷ Gollin, M. 1993. An intellectual property rights framework for biodiversity prospecting. In Reid, W. V., Laird, S. A., Gamez, R., Sittenfeld, A., Janzen, D. H., Gollin, M. A. and Juma, C. *Biodiversity Prospecting: Using Genetic Resources for Sustainable Development*. Washington DC: WRI, INBio, Rainforest Alliance, ACTS, 159-197.

⁸ Axt, J. R., Corn, M. L., Lee, M. and Ackerman, D.M. 1993. *Biotechnology, Indigenous Peoples and Intellectual Property Rights*. Congressional Research Service. The Library of Congress, Washington DC; Shiva, V. and Holla-Bhar. 1993. Intellectual piracy and the neem tree. *The Ecologist*, 23, 223-27.

⁹ Vogel, J.H. 1996. The successful use of economic instruments to foster sustainable use of biodiversity: six case studies from Latin America and the Caribbean. Draft report for the *Summit on Sustainable Development*, Bolivia, December 1996; Vogel, J.H. 1997. Know-how licenses: recognising indigenous rights over collective knowledge. *Bulletin of the Working Group on Traditional Resource Rights*, 4, 17-18.

LDC Trade Development: NGO Symposium and High-Level Meeting Update

Thirty-five non-governmental organisations, most from least-developed countries, have been invited to a joint WTO/UNCTAD NGO Symposium on Trade-Related Issues Affecting Least-Developed Countries (government representatives are not expected to attend). The meeting will take place in Geneva from 25-26 September, 1997, and its outcome will be made available as an informal report to the governments attending the High-Level Meeting on Integrated Initiatives on Least Developed Countries' Trade Development a month later.

The Symposium, to be run by the participants, will start with the election of two co-chairs and a rapporteur (ICTSD will facilitate an informal preparatory meeting for interested Symposium participants at 4 p.m. on 24 September). The Symposium themes will mirror those of the two thematic roundtables of the High-Level Meeting: building capacity to trade and encouraging investment in least-developed countries. Eight participants have submitted written contributions on these issues, as well as other subjects to be later discussed at the High-Level Meeting. See also related story on NGO participation on page 10.

The High-Level Meeting will also be held in Geneva, from 27-28 October, 1997. A limited number of NGO representatives, along with members of the business community, will be invited to participate in the plenary sessions as observers. All WTO and UNCTAD member governments have been invited to attend the meeting, which aims at better coordinating the trade-related technical assistance programmes of several international agencies, as well as enhancing market access for least-developed country exports.

The meeting will start with a brief plenary session and then split into two parallel streams of roundtables; one focusing on the trade-

related technical assistance needs of eight to twelve least-developed countries (LDCs), and the other concentrating on issues of importance to all least developed countries.

At the time of this writing, the countries for the country-specific roundtables had not yet been selected, but more than 20 of the 48 least-developed countries had indicated that they were preparing their needs assessments, i.e. comprehensive surveys of their trade-related technical assistance needs. At the roundtable sessions, six major international agencies will elaborate country-specific response strategies tailored to the needs of the each of the LDCs in question. These agencies include the WTO, UNCTAD, the International Trade Centre, the World Bank and its private sector arm, the International Finance Corporation, the International Monetary Fund and the United Nations Development Programme. The High-Level Meeting will be followed by other roundtable sessions as more countries complete their needs assessments.

Parallel to the country-specific roundtables, another series of roundtables will focus on two main themes: building 'capacity to trade' and encouraging investment in least-developed countries. These thematic roundtables will be attended by government delegates and staff of the agencies involved, as well as 'a small number of eminent business leaders and investors from developing and industrialised countries' invited 'as resource persons to participate in the Meeting in their personal capacity and to contribute their practical experience, insights and ideas'.

Contact: Peter Pedersen at the WTO, tel: (41-22) 739-5848, fax: 739-5777, e-mail: peter.pedersen@wto.org
or: Jo Elizabeth Butler at UNCTAD, tel: (41-22) 917-5048, fax: 907-0043, e-mail: Jo.Butler@UNCTAD.org

Is Market Access the Issue?

Conventional wisdom has it that LDC exports go duty free into markets of their interest. It is also widely argued that implementation of the WTO agreements is eroding preferential margins for LDCs. The issue is complex given the diversity of LDCs' export bases and their intensive use of and dependence on natural resources. In addition, high tariffs, crippling tariff escalation, inadequate rules of origin and quantitative restrictions are still in place for agricultural products, textiles and clothing, and other critically important LDC exports. Also, LDC exports to countries with no preferential schemes are of great importance as shown in the table below. Whether to enhance current access conditions through discriminatory preferential schemes or on an MFN basis is a question that needs to be looked at with a long-term perspective.

		1995	1994
	Country	Value (US\$1000)	
1	E.C.	9,100,085.000	7,247,880.000
2	USA	4,980,627.100	4,631,351.900
3	Japan	1,579,440.200	1,258,509.950
4	Thailand	938,685.100	706,220.658
5	China	861,522.000	483,397.000
6	Korea	691,289.760	811,553.930
7	Singapore	671,578.390	511,552.993
8	India	635,155.000	441,881.000
9	SACU*	487,828.510	252,098.355
10	Chinese Taipei	391,000.000	248,000.000

*SACU - South African Customs Union

Source: WTO

High-Level Meeting Documents Available from the WTO

- Update on Preparations for the High-Level Meeting on Least-Developed Countries (WT/COMTD/W/28/Add.1).
- the integrated framework for technical assistance including for human and institutional capacity-building to support LDCs in trade and trade-related activities (LDC/HL/2). In its final form, this document is expected to be one of the meeting's major results;
- a review of market access opportunities for LDCs in their main export markets, and of the trade barriers they continue to face (LDC/HL/3);
- the context of the High-Level Meeting (LDC/HL/4);
- an inventory of trade-related technical cooperation activities conducted with the least-developed countries by the six intergovernmental organisations involved in the preparation of the High-Level Meeting (LDC/HL/9); and
- the role of information technology in enhancing trade opportunities for LDCs and ways to facilitate its use by LDCs (LDC/HL/11).

Other background documents being prepared by one or other of the secretariats of the various agencies involved, include:

- a review of the international and domestic economic policy context within which LDCs are operating (LDC/HL/5);
- a business perspective on principal bottlenecks to international business development and related technical cooperation needs in LDCs (LDC/HL/6);
- a sustainable business strategy in LDCs (LDC/HL/7); and
- the role of investment in LDCs (LDC/HL/8).

Committee on Agriculture

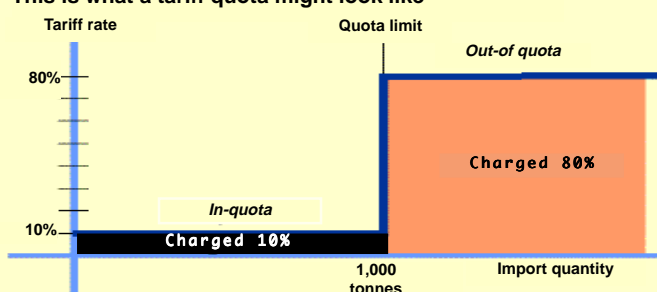
The system of customs duty rates known as tariff quotas, which are applied to imports of a number of agricultural products, was again the subject of extensive questioning in the Agriculture Committee's second meeting of 1997, from 25-26 June.

Under the system, countries are committed to applying a low import tariff to a certain quantity of a given product, but can apply a higher rate to imports in excess of the quota. Concern was expressed about the various methods of implementing tariff quota commitments, which in some cases prevent imports from filling the quotas. Issues raised included: auctioning tariff quota licenses, limited validity of licenses, allocations made late in the marketing year, limitations on the reallocation of unused licenses, minimal license quantities, end-use restrictions, domestic purchasing requirements, and the allocation of tariff quota licenses to state trading enterprises or to domestic producer organisations.

A tariff quota

This is what a tariff quota might look like

Source: WTO



Imports entering under the tariff quota (up to 1,000 tonnes) are charged 10%. Imports entering outside the tariff quota are charged 80%. Under the Uruguay Round agreement, the 1,000 tonnes would generally be based on actual imports in the base period or an arranged 'minimum access' formula.

Tariff quotas are also called 'tariff-rate' quotas.

A number of countries said that counting within the lower-duty quota preferential-rate imports under regional arrangements such as free trade agreements could violate the GATT.

Some exporting countries criticised the use of special safeguard measures even when domestic producers were not suffering. Under the Agriculture Agreement, 37 countries have the right to apply special safeguard restrictions on imports if low import prices or surges in import quantities meet certain criteria. One exporting country said that the way some importing countries were applying the special agricultural safeguard provisions was a misuse of the provisions: safeguards were becoming a device for trade harassment. The countries concerned countered that the actions they took were fully justified under the Agreement.

The Committee also discussed export subsidies, including a revenue-pooling scheme for milk and milk products, which involves sales at lower prices to exporters and to processors facing import competition. The country concerned denied that the scheme entails export subsidies as defined by the Agreement. Several countries have expressed concern about the scheme in three meetings of the Committee. One country said it was considering making a formal complaint under the WTO's dispute settlement procedure.

A new inward processing programme for processed cheese exports also came under scrutiny. The programme enables subsidised inputs (such as milk fat and powders) produced in the Member concerned

to be 'exported' to an export processing zone where they are made into processed cheese and sold to other countries. The Member concerned counts the subsidised inputs under its commitments to limit its export subsidies on these products but not against its export subsidy reduction commitments on cheese. Critics called the programme a device for the exporting Member to get round its export subsidy commitments on cheese, in a way that conflicts with the Agriculture Agreement.

The next formal meeting is scheduled for 25-26 September.

Contact: Paul Shanahan, WTO Agriculture and Commodities Division, tel: (41-22) 739-5095, fax: 739-5760.

Council for TRIPs

Meeting on 15 July, the Council for Trade-Related Aspects of Intellectual Property Rights focused on the so-called 'geographical indications' or designations of origin that function like trademarks, such as champagne, Darjeeling tea or Roquefort cheese. The TRIPs Agreement requires WTO Members to prevent any misleading use of geographical indications. So far, most geographical indications have concerned wines, but at the Council meeting Switzerland proposed to considerably widen their application to other foodstuffs, agricultural and industrial products, as well as handicrafts. Wider interpretation of geographical indications could offer protection to small-scale production of goods based on traditional know-how and highly localised natural conditions. (See related article on page 5.)

Preparation for negotiations on creating a multilateral system for notifying and registering geographical indications for wines will start at the next Council meeting on 19 September. TRIPs Article 27[3b], which has the most significance for the protection of biological diversity and traditional knowledge, is up for revision in 1999.

Contact: Matthijs Geuze, WTO Intellectual Property and Investment Division, tel: (41-22) 739-5418, fax: 739-5790.

Committee on Sanitary and Phytosanitary Measures

The measures adopted by some countries to prevent the spread of 'mad cow disease' or BSE, and the question of whether non-binding international health standards for food might turn out to be binding under the WTO, were among the topics discussed by the Committee on Sanitary and Phytosanitary Measures at its meeting from 1-2 July.

On the BSE issue, the Committee focused on different assessments of the scientific knowledge currently available, including the questions of how scientific evidence is considered within bureaucracies, whether enough is known to enable any area to be declared free of BSE, and why some measures still have not been reported to the WTO. In general, Members have progressed slowly on notifying their SPS standards.

The SPS Committee decided to study the implications of the different types of standards, codes and guidelines of the WHO/FAO Codex Alimentarius. The study was proposed because some WTO Members were uncertain about the extent to which Codex guidelines were binding under the WTO.

At its next meeting in mid-October, the Committee will start preparations for the first review of the SPS Agreement, due to be conducted in 1998.

Contact: Gretchen Stanton, WTO Agriculture and Commodities Division, tel: (41-22) 739-5086, fax: 739-5760.

Dispute Settlement Corner

India's Import Restrictions Brought to DSB

Australia, Canada, the European Union, New Zealand, Switzerland and the United States have requested WTO consultations with India concerning the 'quantitative restrictions maintained by India on imports of a large number of agricultural, textile and industrial products'. Talks between India and its main trading partners collapsed in early July when the WTO Balance of Payment Committee rejected India's offer to shorten its tariff phase-out period from nine to seven years. Its trading partners were hoping to see a two- to three-year timeframe.

India contends that since opening up its economy in 1992, its trade deficit has deepened, as imports have doubled and exports have not kept pace, but an IMF report released in January claims that India's balance of payments is healthy and that the country has foreign exchange reserves of about \$23 billion. Should the WTO consultations fail, the complainants are likely to ask for the establishment of a dispute settlement panel to rule on the case. Most complainants allege violations of Articles XI:1 and XVIII:11 of GATT 1994, Article 4.2 of the Agreement on Agriculture, and Article 3 of the Import Licensing Agreement. The European Union also cites violations of several provisions of the Sanitary and Phytosanitary Agreement.

Panel Established on Indonesian National Car Provisions

At its meeting on 12 June, the Dispute Settlement Body established a panel, requested by Japan and the European Union, to examine whether certain provisions of Indonesia's 'national car programme' are compatible with WTO provisions. The United States joined the other complainants on 30 July. The complainants cite violations of the Trade-Related Investment Measures Agreement as well as several other WTO provisions. Indonesia has thus far justified the trade measures as 'infant industry protection' allowed by the world trading body. The panel report is expected in early 1998.

Appellate Body Rules Against Canada

The WTO Appellate Body has confirmed an earlier panel finding that measures prohibiting or restricting the importation into Canada of foreign magazines containing advertising directed at Canadian consumers, as well as the imposition of an 80% tax on the advertisement revenue of Canadian editions of 'split-run' magazines are inconsistent with Canada's WTO obligations (split-run magazines are periodicals sold both in Canada and abroad in which

the Canadian edition contains advertisement directed at a Canadian audience. Particularly, the Appellate Body found that the 80% excise tax violated Canada's national treatment obligations under GATT Article III:2 as it drew an artificial distinction between *like products* (split-run and non-split-run magazines), and applied the tax only to split-run magazines.

EU Appeals Panel Report on Hormone Beef Ban

The European Union is appealing a dispute panel ruling which found that the EU's import ban on hormone-treated beef was not sufficiently backed by science to be acceptable under WTO provisions. The case was brought by the US and Canada. The EU stated in early July that the panel had not respected WTO Member countries' right to decide the appropriate level of protection for their citizens. The appeal will largely be based on Article XX of GATT 1994, which contains the treaty's exceptions. The Article - often used to justify trade-related environmental measures - states, inter alia, that restrictive measures may be taken in certain cases if they are 'necessary to protect human, animal or plant life or health'.

Chile Wants Consultations on Subsidies Investigation

On 7 August, Chile asked for dispute settlement consultations with the United States regarding a Department of Commerce subsidies investigation against its salmon imports to the US (WT/DS97/1). The complainant contends that the decision to initiate a subsidies investigation was taken in the absence of sufficient evidence concerning the subsidies investigated and the injury they cause, contrary to Articles 11.2 and 11.3 of the Subsidies and Countervailing Measures Agreement (SCM). Chile further contends that the US decision is inconsistent with Article 11.4 of the SCM Agreement, which requires investigations to be brought 'by or on behalf of domestic industry', meaning in practice that a majority of domestic 'like product' producers must express their support for the investigation application.

Burma Law

Consultations with the United States have been requested by the European Union and Japan regarding the State of Massachusetts' Act Regulating State Contracts with Companies Doing Business with or in Myanmar, often called the 'Burma law'. The complainants deem the Act contrary to the WTO Agreement on Government Procurement.

Trade in Financial Services: U.S. Intent on Opening Emerging Markets

The United States will insist on key emerging markets' committing to 'full liberalisation by a certain date' in the WTO financial services negotiations, US Deputy Secretary of the Treasury Lawrence Summers said in a speech to the Congressional Economic Leadership Institute on 12 August. According to Mr Summers, the US goals in the financial services talks are based on 'four core principles of liberalisation'. First, firms must be allowed to establish branches and operate 'in the form of their choice' in other countries. Second, the right to maintain majority ownership must be guaranteed. The future protocol must also bind existing levels of market access in key emerging markets and provide for the right to 'participate fully throughout the market on the basis of substantially full national treatment'.

The financial services sector covers a vast array of banking and insurance services, including life and non-life insurance, re-insurance, consumer and mortgage credits, trading in money market instruments and asset management (portfolios and pension funds).

The negotiations, due to conclude on 12 December with the adoption of a Protocol on Trade in Financial Services, were interrupted in 1995 because the US considered the offers submitted by many of its trading partners inadequate. The present round of talks started in April. Initial offers were due in mid-July, and countries have until 1 December to submit final offers on opening their financial services sectors to international competition. The first drafting session for the protocol is scheduled on 6 October.

LDC Trade Meeting: A Call for Genuine Participation

By Debapriya Bhattacharya

The preparatory activities for the High-Level Meeting on Integrated Initiatives on Least Developed Countries' Trade Development are increasingly gathering momentum at both national and international levels. The WTO, in collaboration with UNCTAD and the International Trade Centre, is hosting the ministerial convocation in late October in Geneva. In addition, the WTO and UNCTAD Secretariats will organise a symposium for NGOs prior to the Meeting from 25-26 September (see related story on page 7).

The Context

It may be recalled that the forthcoming Meeting is being held pursuant to the Marrakesh Declaration in Favour of Least-Developed Countries (LDCs), embodied in the Final Act of the Uruguay Round. The

To ensure representative views and encourage accountability, invited organisations should involve other national-level NGOs in the preparatory process. A global task force, with support from national NGO networks should be set up to monitor the implementation of the meeting resolutions.

Declaration contains the provision, inter alia, that 'least developed countries shall be accorded substantially increased technical assistance in the development, strengthening and diversification of their production and export bases including those of services, as well as in trade promotion, to enable them to maximise the benefits from liberalised access to markets'. In this context, the Singapore Ministerial Conference, held in last December, in its joint declaration directed the WTO to organise a meeting this year to foster an integrated

approach to assisting LDCs in enhancing their trading opportunities. Forty-eight countries are currently listed as least-developed - representing one quarter of world population, but only 0.4% of world trade.

To some extent, the High-Level Meeting addresses the contentions of least-developed countries by urging trade-related 'positive measures' in support of LDCs. Indeed, the outcome of the Meeting is supposed to signal a new beginning towards the creation of a 'level playing/trading field' for LDCs.

The Focus

The Meeting will provide an opportunity to reflect on developments in the global trading scene since the Singapore conclave, particularly in light of the risk of further marginalisation of low-income WTO Members. Issues relating to improvements in market access for products of particular interest to least-developed countries will undoubtedly be one of the main concerns of the High-Level Meeting. However, it seems that the distinguishing feature of the Meeting will be its focus on *building the capacity to trade and attract investment*. In this connection, LDCs have been invited to prepare comprehensive assessments of their trade-related technical co-operation needs. These country position papers are supposed to serve as the basis for developing an integrated package of technical assistance with the involvement of the concerned intergovernmental agencies. It has been reported that the WTO has mobilised a fund of some US\$5 million to support the envisaged technical assistance programme.

Given this focus on capacity building and technical assistance, LDC civil society groups concerned with the operation of the international

trade regime and the role of the multilateral institutions therein need to provide inputs that will prove useful in shaping and implementing the Meeting's outcome.

Public Participation

For the civil society of least-developed countries to effectively contribute in the process, it is necessary to ensure its participation in the run-up to the Meeting, in the Meeting itself and in any follow-up initiatives. It seems that at least two components of civil society - the private sector and NGOs - will have a certain level of direct participation in the activities relating to the Meeting. Representatives of the business community as well as NGOs will be able to attend the formal sessions of the High-Level Meeting as observers in non-speaking capacity - essentially following the 'Singapore rules'. The Director-General of the WTO has also invited a small number of eminent entrepreneurs to participate in the Meeting in their personal capacity to share their insights and ideas.

Non-governmental organisations' opinions relating to the Meeting will mostly be canvassed during the up-coming NGO Symposium at the WTO. In addition to organisations from developing countries, relevant NGOs from the North have been also invited. One may, however, question the appropriateness of the Symposium's title as some of the participating groups represent business interests. Under the circumstances, it would have been only fair to include other important interest groups, such as trade unions, in the consultation and redesignate the event as a Civil Society Meet.

Whatever the format of the Symposium, it will not allow direct participation of more than a handful of organisations. Since the WTO has only recently embarked upon the process of establishing a working relationship with the NGO community, it may not be aware of the full breadth of the civil society from which the invited organisations are drawn. Accordingly, there is a rationale for broadening the base for NGO participation in the entire process, not only the Symposium.

Broadening the Base of NGO Participation

Enlarging the base and the mode of participation of NGOs, particularly from least-developed countries, may be approached in a number of ways. First, the position papers which NGOs from LDCs are going to present at the Symposium could be prepared through a participatory process involving other national-level organisations. This would contribute towards a proper articulation of the country-specific concerns of the NGO community, as well as enhance the accountability of the organisation participating in the Symposium to its community. The consultation process could continue at the national level after the Symposium through debriefing sessions where follow-up actions would be formulated.

Second, the network of NGOs constituted in the above mentioned process might also provide a platform where the national delegation to the High-Level Meeting could be encouraged to share their views and experiences both before and after the Meeting. This would obviously invest the trade policy-making process with some degree of transparency at the national level.

Third, NGOs in least developed countries should make a special effort to provide inputs into the technical assistance programme which is being designed in connection with the High-Level Meeting. This

Continued on page 14

Dispute Settlement: Food for Thought for the CTE

By Ernst-Ulrich Petersmann

The WTO's Committee on Trade and Environment (CTE) will meet from 22-24 September to consider the relationship between multilateral environmental agreements and WTO provisions. As an introduction to the debate, ICTSD has slightly abridged the section entitled *Some problems of applying multilateral environmental agreements in WTO dispute settlement proceedings* from Ernst-Ulrich Petersmann's recently-published work on the GATT/WTO dispute settlement system.¹

Compared to the general framework rules of most multilateral environmental agreements (MEAs), the WTO Agreement encompasses more specific, and better enforceable, contractual rights and obligations. The mandatory WTO dispute settlement system grants each member country - in addition to the political methods of dispute settlement - a right to submit disputes to panels and to the WTO Appellate Body, leading to legally binding rulings within specified time limits. However, the WTO Dispute Settlement Understanding (DSU) is limited to "disputes brought pursuant to the consultation and dispute settlement provisions of the ... covered agreements" referred to in Article 1 of the DSU. According to Article 3:2 of the DSU:

(t)he dispute settlement system of the WTO ... serves to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law. Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements.

The limited jurisdiction of WTO dispute settlement bodies is reflected in the standard terms of reference of dispute settlement panels

to examine, in the light of the relevant provisions of the covered agreements cited by the parties to the dispute, the matter referred to the DSB by ... and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements (cf. Article 7 DSU).

As a result of the limited jurisdiction of both the WTO dispute settlement system and of the respective MEA dispute settlement systems, legal and jurisdictional conflicts may arise especially in the following three situations:

Disputes between WTO members over the WTO consistency of trade measures based on MEAs accepted by both parties to the dispute

Disputes under an MEA among parties to that agreement should be pursued under the MEA if the dispute involves only the provisions of that agreement. But the MEA concerned might explicitly provide for the jurisdiction of the GATT/WTO dispute settlement system in case of disputes over trade measures, as for example in Article 151 of the 1982 Law of the Sea Convention dealing with disputes over "unfair economic practices" (such as subsidies) in connection with production policies in the international seabed. Or the less stringent dispute settlement procedures in MEAs, which sometimes explicitly state (e.g. in the 1992 Convention on Biological Diversity) that they do not affect the rights and obligations under earlier treaties, may prompt the complaining country to challenge the legality of trade restrictions under the WTO Agreement and its dispute settlement procedures. A

WTO panel would then have to be established pursuant to Article 6 of the DSU. The panel would be given the standard terms of reference defined in Article 7 of the DSU unless the parties agree on special terms of reference, which could explicitly authorize the panel to take into account also the MEA provisions invoked as applicable law. The panel proceeding could then give rise to a number of controversial legal and procedural issues such as the following:

- What is the legal relationship between WTO rules and trade rules in MEAs concluded before or after the entry into force of the WTO Agreement? Are two or more WTO member countries entitled to modify WTO rules as between themselves through subsequently concluded MEAs, and under what conditions (cf. Article 41 of the Vienna Convention on the Law of Treaties)?
- Do the customary rules of international treaty interpretation, as codified in Article 31 of the Vienna Convention on the Law of Treaties, require WTO dispute settlement panels to take the trade provisions in subsequently concluded MEAs into account in the application of WTO rules (e.g. in the interpretation of the necessity requirements and of the "human, animal, or plant life or health" objectives in GATT Article XX) among parties to the MEA? Should there be a legal presumption that countries, which are a party to both the WTO Agreement and to an MEA, construe their treaty obligations in a mutually consistent manner?
- May a panel with standard terms of reference conclude that WTO member countries, which have accepted e.g. trade restrictions based on process and production methods as a means of achieving the environmental objectives of an MEA, have waived their GATT/WTO rights in this respect? To what extent may the panel review whether GATT-inconsistent trade restrictions are actually authorized by an MEA? What if the trade restrictions are not explicitly provided for in the MEA itself but are recommended by an MEA body such as the CITES Standing Committee? Should the panel take into account the declared intention (e.g. of the drafters of the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer) that the trade provisions in an MEA were considered to be GATT-consistent?
- Is there a need for additional rules on whether a dispute should be settled under the WTO or under an MEA (e.g. formal procedural linkages between WTO and MEA dispute settlement procedures, such as a general requirement to exhaust MEA dispute settlement procedures before submitting disputes over trade-related environmental measures (TREMS) to the WTO, or other MEA provisions specifying their relationship to the WTO dispute settlement procedures)? Or should the choice of the forum be left to the complaining country and to case-by-case decisions of the dispute settlement body invoked?
- Are the existing DSU provisions on the right of panels to seek expert information and consult experts (e.g. on scientific and environmental matters) sufficient? Or is there a need for additional guidelines on seeking environmental expertise (e.g. by the MEA bodies concerned) to judge trade and environmental disputes?

Disputes between WTO members over the WTO consistency of TREMS provided for in MEAs accepted by only one party to the dispute

The problems of forum shopping and of coexisting and possibly overlapping jurisdictions may be even more difficult in case of disputes between an MEA member and an MEA non-member which is a WTO member. For example:

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Dispute Settlement, continued from page 11

- Can an MEA be legally relevant for the interpretation of WTO rules (e.g. the legitimacy of extraterritorial environmental objectives and of the necessity requirement in GATT Article XX) in disputes involving a non-member of the MEA?
- May a WTO dispute settlement panel with standard terms of reference apply MEA provisions, or universally accepted UNCED resolutions on TREMS, as evidence of general international law rules which are to be taken into account in the interpretation of WTO law pursuant to the customary rules of international treaty interpretation (cf. Article 31:3 of the Vienna Convention on the Law of Treaties)? Were the refusal of e.g. the 1987 GATT panel on US Taxes on Petroleum to construe GATT's border adjustment rules in the light of an OECD resolution on the polluter pays principle, or the reluctance of the 1994 GATT panel on US Import Restrictions on Tuna to construe GATT rules in the light of MEAs negotiated outside the GATT framework, legally justified?
- Does the obligation of WTO members in Article 23 of the DSU to submit disputes over WTO rights and obligations to the WTO dispute settlement procedure, and the prohibition in Article 23 of the DSU of unilateral reprisals, imply the renunciation of any previous rights under MEAs to use trade sanctions unless they are covered by WTO exceptions?

Disputes between WTO members over trade-related environmental measures not specifically regulated in MEAs

There seems to be broad agreement that, even if TREMS are not specifically regulated in MEAs or the parties to the WTO dispute settlement proceedings are not parties to an MEA which addresses the environmental problems concerned, the WTO dispute settlement process would benefit if panels sought expert advice on environmental matters relevant for the legal examination of the WTO consistency of TREMS, as authorized under Article 13 of the DSU. Opinions continue to differ on whether guidelines should be developed to define situations in which such environmental expertise should have to be sought, whether existing MEAs provide an adequate legal basis for MEA bodies to assist WTO panels through environmental expertise and legal opinions on the interpretation of international environmental law, and how the WTO might provide legal advice on the interpretation of WTO law so as to assist MEA dispute settlement bodies. In all three categories of disputes over TREMS, the jurisdiction of the WTO dispute settlement system is limited to the rights and obligations under WTO law; it does not cover authoritative interpretations of MEA provisions and legal findings on environmental measures that cannot impair rights and obligations under WTO law.

The brief survey of the GATT/WTO case law on TREMS in this chapter has shown that the panels and the Appellate Body have progressively clarified the legal meaning of the relevant GATT rules and, even where the panel reports were not formally adopted, could effectively contribute to the mutually agreed settlement of the tuna/dolphin dispute among the parties involved. Yet, the case law has also shown that many interpretative legal questions remain to be clarified through the work of the WTO Committee on Trade and Environment and, in all likelihood, also through future WTO dispute settlement proceedings on TREMS.

Ernst-Ulrich Petersmann is Professor of Law at the University of Geneva and at the Geneva Graduate Institute of International Studies in Geneva, Switzerland. He served as a legal advisor to the GATT and the WTO from 1981 to 1996.

¹ Excerpted from *The GATT/WTO Dispute Settlement System: International Law, International Organizations and Dispute Settlement* (pp. 131-134, Chapter 3.14) by Ernst-Ulrich Petersmann. © Kluwer Law International 1997. Abridged with the kind permission of Kluwer Law International and the author.

No Targets on CO₂ Reductions

Negotiators made little headway at the seventh meeting of the Ad Hoc Working Group on the Berlin Mandate (AGBM), held in Bonn from 28 July to 7 August. The 'Berlin Mandate' refers to a 1995 decision of the Conference of the Parties to the Climate Change Convention to come up with appropriate climate change mitigation action beyond the year 2000, and to strengthen industrialised countries' commitments through a binding protocol for greenhouse gas reductions.

The negotiating group remained sharply divided on several key aspects of the future protocol. Of the 36 countries to be bound by the treaty, only the European Union has proposed concrete greenhouse gas reduction targets and timetables: a 7.5% reduction from 1990 levels by the year 2005 of a 'basket' of gases consisting of carbon dioxide, methane and nitrous oxide, and a 15% cut by 2015. Hydrofluorocarbons, perfluorocarbons and sulphur hexachloride would be added to the basket by the year 2000 at the latest. Other major developed countries, the only ones to be bound by the protocol, did not come forward with proposals for reduction targets or timetables. AOSIS, a grouping of small island states especially vulnerable to the effects of global warming, proposed that the protocol's objective should be to ensure a less than 20 cm sea-level rise from the 1990 level and a maximum temperature rise of 2°C.

In many countries, greenhouse gas reduction goals have not been set because environment departments are reportedly at odds with trade and industry ministries as well as business lobbies. In the United States, the Senate issued a non-binding resolution in early June warning the administration not to sign any protocol unless the instrument also mandated 'scheduled commitments to limit greenhouse gas emissions for developing country Parties within the same compliance period', and did not result 'in serious harm to the economy of the United States'. Developing countries are stiffly resisting all attempts to change the original Berlin Mandate by including them in the protocol under negotiation. In Japan, the powerful Ministry of International Trade and Industry is reportedly unwilling to agree to significant cuts, thus putting Japan in an uncomfortable position as the organiser of the next meeting of the Conference of the Parties.

Among other controversial issues, some countries are calling for at least some mandatory policies and measures that Parties to the protocol must adopt while others think the entire policies and measures section should be deleted. Views diverge in particular on the joint implementation of climate mitigation strategies between the developed Annex I and the developing non-Annex I countries, and internationally tradeable emissions permits. The policies and measures section is the one that - if it emerges in the protocol - will contain the most implications for international trade, particularly if it allows the creation of an international 'carbon market'.

Contact: Michael Williams, Information Unit for Conventions; tel: (41-22) 979-9242/44, fax: 797-3464, e-mail: mwilliams@unep.ch. Please note that official documents and other materials are available in on the Internet at <http://www.unfccc.de>. Comprehensive meeting summaries are available from the International Institute for Sustainable Development at <http://www.iisd.ca/linkages/>

Upcoming Climate Change Convention Negotiation Sessions

20-31 October Bonn	Eighth Meeting of the Ad Hoc Working Group on the Berlin Mandate
1-12 December Kyoto	Third Meeting of the Conference of the Parties to the U.N. Framework Convention on Climate Change

The Shrimp-Turtle Dispute : A Brief Legal Analysis

By Hiranya Fernando Senadhira

The United States' import ban on shrimp and shrimp products is based on Section 609 of its Endangered Species Act, which states that all shrimp imported into the US must be caught with methods that protect marine turtles from incidental drowning in shrimp trawling nets.¹ Particularly, the law requires the US government to certify that (a) the importing country has comparable laws to the US regulations on incidental taking of sea turtles, and (b) the average rate of incidental taking is comparable to the US.

Malaysia, Thailand, India and Pakistan argue that this law violates WTO rules. This paper describes the main arguments of the parties to the dispute, and provides a brief analysis in light of interpretation and practice of previous GATT/WTO panels with respect to Articles I, XI, XIII and, in particular, Article XX (b) and (g) of the GATT 1994.

Articles XI, XIII and I

- Article XI provides for the general elimination of quantitative import restrictions (quotas and embargoes), while tariffs (duties, taxes and charges) may be applied. The complainants and many of the third parties hold that as the shrimp embargo is not a *duty, tax or charge*, it is inconsistent with Article XI.

In both Tuna-Dolphin cases, the US embargoes on the importation of tuna from Mexico and the EEC were found to be import restrictions against Article XI because they were not duties, taxes, or charges.² The US has not presented to the panel any counter argument to the claim regarding Article XI. Note that if the panel finds the US ban to be a violation of Article XI, it may not deem necessary to make a finding on whether it is also inconsistent with Article XIII.³

- Article XIII states that any legitimate quantitative restriction must be administered in a non-discriminatory manner to like products of all contracting parties. The four complainants argue that there is no difference between shrimp harvested using turtle excluder devices (TEDs) and shrimp harvested by other methods, making them *like products*. Hence, the differential treatment of *like products* from 'certified' and 'non-certified' countries is contrary to the requirements of Article XIII.
- Article I (most favoured nation clause) states, inter alia, that when a contracting party grants any advantage, favour, privilege or immunity to a product of another country, then it must accord the same to the like product originating in all other contracting parties' territory. The complainants argue that Section 609 is inconsistent with Article I because it does not grant the same advantage or privilege to *like products* originating from different contracting parties. The importation of shrimp and shrimp products from certain contracting parties is allowed, while prohibited from others.

Treatment of imports can differ if the characteristics of the goods themselves are different, but differences in treatment cannot be based on differences in the characteristics of exporting nations which do not result in differences in the goods themselves.⁴ WTO rules do not permit discrimination on the basis of methods of production, and it has been explicitly held that the method of harvest does not affect the nature of the product.⁵ Article I and Article XIII call for the comparison of imported shrimp *as a product* from certain countries with that of shrimp *as a product* from other countries; regulations governing the incidental taking of turtles during shrimp trawls could

not possibly affect shrimp as a product. The US therefore is obliged to accord the same treatment to shrimp from all countries. Justification of discrimination based on whether or not the importing country has similar regulations on the incidental taking of turtles as the US is likely to be held irrelevant.

Article XX

- Article XX of the GATT provides an exception to the principle of non-discrimination by allowing certain trade-restrictive measures to be taken if they are '*necessary* to protect human, animal or plant life or health' or '*relating to* the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption'. However, the preamble to Article XX bears a qualification: such measures must not be applied in a manner which would constitute an *arbitrary discrimination* or a *disguised restriction* on international trade.

According to the submissions of three of the complainants, the measure for which the exception is being invoked is not *necessary* to fulfil the United States' policy objectives because there are alternatives, such as multilateral or bilateral agreements, available to the United States to protect the life and health of sea turtles.

They also submit that the measure does not conform to the requirements of the preamble of Article XX because it is a *disguised restriction* on international trade designed to protect the US domestic fishing industry from a competitive disadvantage. Moreover, that it constitutes *arbitrary discrimination* among countries because importation of shrimp was suddenly prohibited from certain nations unless they met standards that the US and other countries were given years to meet. Finally, they submit that Article XX exceptions cannot be invoked to justify a measure which applies to animals, plants and natural resources, *located beyond the jurisdiction* of the country enacting the measure.

The United States bases its defence on the exceptions found in Article XX.⁶ Section 609(a) calls for the ultimate negotiation of bilateral and multilateral agreements for the protection and conservation of sea turtles. However, while awaiting this process, the US claims its measures are *necessary* because: a) all species of sea turtles are threatened with extinction, and b) without the use of TEDs, other measures to protect sea turtles are not sufficient to allow sea turtles to recover from the brink of extinction. It further argues that sea turtles are an *exhaustible natural resource* and Section 609 clearly involves measures *related to* the conservation of sea turtles, as accidental drowning in shrimp trawl nets accounts for the greatest number of human-induced sea turtle deaths.

According to the United States, Section 609 also meets the requirements of the preamble of Article XX. Its measures are not an *arbitrary discrimination* because Section 609 is applied in a manner that carefully ties the criteria for certification to the particular conditions of each country exporting shrimp to the United States. Nor is it a *disguised restriction* on trade because there is an international consensus regarding sea turtle conservation and mandatory use of TEDs, which belies any claim that the US measures are a disguised restriction on trade.

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On the question of jurisdiction, the US considers sea turtles as a *shared global resource* which does not fall exclusively within the complainants' respective jurisdictions. It submits that Article XX unambiguously covers all animals and natural resources, without any limitation as to their location; and that the Montreal Protocol provides a good example of nations seeking to protect life and health of humans, animals and plants *without regard to their location*.

Article XX(b) requires the following three-step analysis: that the policy in respect of which the exception is invoked falls within policies to protect human, animal or plant life; that it is *necessary*; and that it is in conformity with the requirements of the preamble.⁷ A measure is necessary if *no alternative measure less inconsistent* with WTO rules is available.⁸ Thus a key question is: was the US measure 'necessary' to fulfil its conservation policy objectives because there was no less inconsistent viable alternative given the rapid decrease of sea turtles, or was it unnecessary because the US did indeed have less inconsistent alternatives such as international agreements?

Regarding the requirement '*relating to conservation of*' of Article XX(g), the original test was that if a measure was *primarily aimed at* conservation, it was related to conservation.⁹ This has recently been modified to mean, more broadly, that if a measure has a *substantial relationship* to conservation it qualifies.¹⁰ While under the narrower test, the US restrictions on tuna imports were held to be illegitimate, under the broader test, US restrictions on Venezuelan gasoline were held to meet the 'related to' criterion. Whether the present US embargo satisfies the 'related to' criterion will largely depend on which test the panel uses.

Extra-territorial application of Article XX has generally been strictly limited by WTO panels. It has been held that Article XX(b) and (g) were intended to allow contracting parties to impose trade restrictive measures inconsistent with the GATT to pursue overriding public policy goals to the extent that such inconsistencies were unavoidable.¹¹ It was not intended to allow the extension of domestic laws and standards beyond national borders through unilateral trade measures. In both Tuna-Dolphin cases, US legislation protecting marine mammals (similar to Section 609) was held to be inconsistent with GATT rules as it amounted to a requirement that US environmental standards be applied to other countries' fishing activities. Panels have explicitly stated that too broad an interpretation of Article XX would mean that each contracting party could unilaterally determine the life and health protection policies from which other contracting parties could not deviate without jeopardising their rights under the GATT.

However, the original blanket prohibition on measures with extra-jurisdictional effect in Tuna-Dolphin I has been diluted by several factors since. Panels are, for the first time, pointing towards the possibility of taking into account treaties and other international norms extraneous to GATT law. In Tuna-Dolphin II, there was a reference to Article 31 and Article 32 of the Vienna Convention on the Law of Treaties.¹² Recently, the Appellate Body in *US - Standards on Gasoline* noted that it had 'overlooked a fundamental rule of treaty interpretation' found in Article 31 of the Vienna Convention.

Some analysts think these precedents may lead to a broader interpretation of Article XX, thus finally legitimising extra-jurisdictional conservation measures. However, the latter is not necessarily a corollary of the former. True, the WTO appears to be moving towards a more open and accountable system which recognises its place within a greater system of international rules and norms. But this will not automatically lead to an advantage for countries wanting/claiming to protect the environment in the face of such complaints; rather it will

provide fresh ground for the arguments and justifications of *both* sides. For instance, in this case the US argues that the use of TEDs has become a multilateral environmental standard, and refers to various international agreements and red lists of endangered species as evidence.¹³ In response, the complainants refer to the customary international law principle of sovereignty over one's own natural resources and the international rules which only permit conservation of shared natural resources on a cooperative as opposed to a unilateral basis.¹⁴

The WTO panel heard the complainants and the defence, as well as the positions of third parties on 19-20 June. The final panel report is expected in December.

Hiranya Fernando Senadhira is Junior Legal Officer at the International Centre for Trade and Sustainable Development in Geneva, Switzerland.

NOTES

¹ Public Law 101-162, Title VI, Sec. 609, Nov. 21, 1989, 103 Stat. 1037-1038.

² US - Restrictions on Imports of Tuna (1991) and US - Restrictions on Imports of Tuna (1994)

³ US - Tuna (1991)

⁴ Belgian Family Allowances Case (1952)

⁵ US - Tuna (1991)

⁶ United States First Submission, 9 June 1997

⁷ US - Tuna (1994), confirmed in the US - Standards for Gasoline (1996) Appellate Body Report

⁸ US - Restrictions on Thai Cigarettes (1990), confirmed in US - Gasoline (1996) Panel Report

⁹ Canada - Unprocessed Herring and Salmon (1988)

¹⁰ US - Gasoline (1996) Appellate Body Report

¹¹ US - Thai Cigarettes (1990)

¹² Article 31 provides that in the interpretation of a treaty, *subsequent agreement* and/or *subsequent practice* between the parties, should be taken into account. Article 32 provides that *supplementary* means such as "the preparatory work of the treaty and the circumstances of its conclusion" may be relevant.

¹³ US Submission, 8. Refers to CITES, the UNCLOS Convention and the Marine Conservation Strategy of the World Conservation Union.

¹⁴ One complainant's submission refers to the Declaration on Permanent Sovereignty, the Charter of Economic Rights, and United Nations General Assembly Resolutions.

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would provide an opportunity for non-governmental groups to go beyond lobbying and to act as sources for specialised knowledge and expertise in trade-related issues. Involvement in shaping the technical assistance programme would also make the task of keeping track of progress after the Meeting easier for NGOs.

Need for a Monitoring Mechanism

Unfortunately, many former experiences provide reasons to be cynical about the real consequences of these global high profile meetings. Whatever policy pronouncements will be made at the forthcoming Meeting, they will need to be translated into concrete actions. There is also a need to ensure the most efficient use of allocated resources under the umbrella of the Meeting. This calls for setting up a mechanism - perhaps a Task Force - on behalf of the global civil society (with support from national NGO networks) for monitoring the implementation of the resolutions of the Meeting.

Dr Debapriya Bhattacharya is a Research Fellow at the Bangladesh Institute of Development Studies. He is currently advising the Government of Bangladesh on preparation for the High-Level Meeting.

This month marks the first year of operations of the International Centre for Trade and Sustainable Development. From the start, we have attempted to serve the needs of a varied constituency by building bridges between trade, development and environmental issues and communities. In our publications and dialogues programme, we have focused on communicating and synthesising the views brought by different constituencies to the fundamentally inter-disciplinary task of making the multilateral trade system and the concept of sustainable development mutually supportive.

We could not have done this alone: the support and guidance of the ICTSD Executive Board, Programme Advisory Board and Trade Advisory Council have been essential, as has the goodwill extended to the Centre by the WTO Secretariat. This month, we would like to present you with a fuller picture of the Centre's work by focusing on two other groups of collaborators without whose support ICTSD could not survive: our funders and our staff.

ICTSD has been generously funded during its first year of operations by non-governmental organisations, private foundations and governments. It has received donations in-kind, as well as financial contributions and goodwill, all of which have been essential for an effective startup. We gratefully acknowledge the support of:

NOVIB (The Netherlands)
Christian Aid (UK)
OXFAM (UK)
MISEREOR (Germany)
National Wildlife Federation (US)
Fundacion Futuro Latinoamericano (Ecuador)
International Institute for Sustainable Development (Canada)
IUCN-The World Conservation Union

C. S. Mott Foundation (US)

The Government of Denmark
The Government of Sweden
The Government of Switzerland
Le Canton et l'Etat de Genève

ICTSD was conceived as a small organisation and will remain so for the foreseeable future. Although permanent staff are few, the Centre has been fortunate in securing enthusiastic and dedicated assistance from its interns and collaborating organisations. ICTSD is also grateful for the goodwill contributions offered by many other highly-skilled and committed individuals from a variety of disciplines.

Current staff

Ricardo Meléndez-Ortiz (Executive Director)
Andrew Crosby (Programmes Director)
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Hiranya Fernando (Junior Legal Officer)
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ICTSD's work has also been enriched by the contributions of

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P.J. Simon (Consultant - Discussion Paper series)
Nathalie Tanner (Assistant - Administration)

News from ICTD's Partner Organisations

CUTS and SDCO Lead Campaign on Ozone-Friendly Ecofrig

The Consumer Unity and Trust Society of India (CUTS) and the Swiss Coalition of Development Organisations (SCDO) are launching a campaign involving leading consumer and environmental groups from 23 countries to promote environmentally friendly refrigerators. The campaign, to be launched in October, will highlight the advantages of using hydrocarbon (HC) technology over that of hydrochloro-fluorocarbons (such as HFC 134a). As a non-patented and cheaper option, HC technology has clear advantages over its rival in the race to replace ozone-depleting chlorofluorocarbons (CFCs, to be phased out world-wide by 2010 - see cover story). In addition, HCs do not have the high global warming potential of HCFs, nor does the technology require a high degree of technical proficiency in handling. The campaign organisers stress the importance of making HC technology available to developing countries. Although HCs are flammable, experts are categorical that the risks of the technology are negligible.

Contact: CUTS, tel: (91-141) 383-767, fax: 368-418, e-mail: cuts@lwbs.com; or: SCDO, tel: 41-31) 381-1716, fax: 381-1718, e-mail: scoalition@igc.apc.org

Briefs Submitted (and Rejected) in Shrimp-Turtle Case

The WTO Secretariat has rejected an amicus brief submitted to the WTO dispute settlement panel on the US shrimp import ban by the Center for International Environmental Law (CIEL) and the Center for Marine Conservation. The Secretariat noted that WTO disputes were open to 'Members only' and that 'non-governmental organisations may not submit materials to a dispute settlement panel (except at the panel's invitation)'. The panel held its second meeting from 4-5 September. The interim report will be issued to the Parties in the dispute on 27 October. The final report will be released on 1 December and circulated to all WTO Members on 22 December.

IUCN-The World Conservation Union, whose Species Survival Commission groups the world's leading experts on marine turtle biology and conservation, offered in May to provide the panel with technical and scientific information on a number of issues relating to sea turtle conservation. So far, there has been no response.

Contact: CIEL, e-mail: cielbvd@igc.apc.org; or IUCN; e-mail: MAH@hq.iucn.org.

All WTO meetings take place in Geneva. Dates are subject to change, please contact the WTO for confirmation.
All WTO phone and fax numbers start with (41-22) 739. Only extensions are provided in this list. Internet: <http://www.wto.org>

September 8-9	WTO Textiles Monitoring Body Contact: J.-P. Lapalme, tel: 5223, fax: 5765
September 15	WTO Committee on TRIMs Contact: Mark Koulen, tel: 5224, fax: 5790
September 15-16	WTO Trade Policy Review Body (Benin) Contact: Peter Tulloch, tel: 5089, fax: 5765
September 15-17	Meeting of the Parties to the Montreal Protocol Contact: UNEP, tel: (254-2) 621-234, fax: 521-930, e-mail: ozoneinfo@unep.org
September 16-17	WTO Working Group on the Interaction between Trade and Competition Policy Contact: Mark Koulen, tel: 5224, fax: 5790
September 18	WTO Committee on Trade in Financial Services Contact: Masamichi Kono, tel: 5590, fax: 5771
September 15	WTO Council for TRIPs Contact: Matthijs Geuze, tel: 5418, fax: 5790
September 22-24	WTO Committee on Trade and Environment Contact: Sabrina Shaw, tel: 5482, fax: 5620
September 23-24	WTO Trade Policy Review Body (Chile) Contact: Peter Tulloch, tel: 5089, fax: 5765
September 25	WTO Dispute Settlement Body Contact: Paulo Barthel-Rosa, tel: 5191, fax: 5761
September 25-26	WTO Committee on Agriculture Contact: Paul Shanahan, tel: 5095, fax: 5760
September 25-26	WTO/UNCTAD NGO Symposium on Trade- Related Issues Affecting Least Developed Countries Contact: Peter Pedersen, WTO, tel: 5848, fax: 5777 or: A. Whitley, UNCTAD, tel: (41-22) 917-5809, fax: 907-0057
September 26	WTO Committee on Trade and Development Contact: Richard Eglin, tel: 5148, fax: 5774
September 29	WTO Committee on Market Access Contact: Yvette Davel, tel: 5113, fax: 5770
September 29-30	OECD International Meeting on Greenhouse Gas Paris Emission Trading Contact: OECD, tel: (33-1) 4524-8200, fax: 4524- 8500, e-mail: news.contact@oecd.org
October 3	WTO Committee on Technical Barriers to Trade Contact: Vivien Liu, tel: 5455, fax: 56520
October 6-10	Fourth Meeting of the Conference of the Parties Kuala Lumpur to the Basel Convention on Hazardous Wastes Contact: Basel Convention Secretariat, tel: (41- 22) 979-9213, fax: 797-3453, e-mail: sbc@unep.ch

October 13-24	UNCTAD 44th Trade and Development Board Geneva Contact: Carine Richard-Van Maele, tel: (41-22) 917-5816, fax: 907-0043, e-mail: press@unctad.org
October 20-24	INC-4 for a Legal Instrument on the Prior Informed Brussels Consent Procedure for Hazardous Chemicals in International Trade Contact: UNEP IRTPC, tel: (41-22) 979-9111, fax: 797-3460, e-mail: IRTPC@unep.ch
October 27-28	High-Level Meeting on Integrated Initiatives on Geneva Least Developed Countries' Trade Development Contact: Alain Frank, WTO, tel: 5152, fax: 5777 or: Jo Butler, UNCTAD, tel: (41-22) 917-5048, fax: 907-0043

PUBLICATIONS/RESOURCES

Austin, Duncan and Repetto, Robert. 1997. The Costs of Climate Protection: A Guide for the Perplexed. Washington, DC: World Resources Institute

Jha, Veena, Hewison, Grant and Underhill, Maree, eds. 1997. Trade, Environment and Sustainable Development: A South Asian Perspective. London: Macmillan Press/New York: St. Martin's Press

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UNCTAD. 1997. Trade and Development Report 1997. Geneva: United Nations Publications

The WTO Trade and Environment Bulletin issues 18 and 19 contain summaries of the 21-22 May meeting of the Trade and Environment Committee and the NGO Symposium on Trade, Environment and Sustainable Development held from 20-21 May.