



ICTSD

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## Kyoto Climate Summit Emissions Trading, Other Key Issues Still Unresolved

No key issues were settled during the final preparatory session for binding greenhouse gas reduction targets held in Bonn from 20-31 October. The Conference of the Parties to the United Nations Framework Convention on Climate Change, scheduled to meet from 1-10 December in Kyoto, is expected to adopt a legally-binding protocol that specifies greenhouse gas reduction targets and timetables. This is a formidable challenge, considering that none of the future protocol's substantive elements have been agreed in spite of eight intergovernmental negotiation sessions in the last two years.

### Binding commitments for whom?

When the Parties to the Climate Convention agreed in 1995 in Berlin to negotiate a greenhouse gas reduction protocol, the mandate specified that it would only apply to the 37 so-called Annex I countries, i.e. OECD countries and Central and Eastern European states with economies in transition. These 37 countries are currently responsible for more than 50 percent of global greenhouse gas emissions, compared to the other 142 Parties to the Climate Convention who participate in the negotiations. Developing countries are adamant that the protocol bring them no new commitments until Annex I countries have actually started reducing their disproportionate emissions, particularly since the entire Framework Convention on Climate Change is based on the principle of 'common but differentiated responsibilities'. They are generally pushing for higher targets for Annex I countries than the latter are willing to consider. On the other hand, the United States' long-awaited global climate change proposal states that the US 'will not adopt binding obligations without developing country participation'.<sup>1</sup> Other Annex I countries have also indicated that Kyoto must at least begin a process towards non-Annex I countries' taking on binding commitments, if not in the protocol then as part of the review of the 'adequacy of existing commitments' under Article 4.1 of the Convention itself. Brazil has tabled a proposal where the largest developing country economies would commit to greenhouse gas reductions at a later stage if the implementation of the Kyoto Protocol by Annex I countries proves successful.

### Targets and timetables

Three substantially different proposals on 'quantified emission limitation and reduction objectives' have been forwarded to Kyoto: the EU proposes a 15% reduction from 1990 levels of a

'basket' of three gases – carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and nitrous oxide (N<sub>2</sub>O) – by 2010; Japan calls for a 'base reduction' of the same gases by 2008-2012, calculated for each country on the basis of its GDP/emissions ratio, emissions per capita and population growth; and the US advocates a stabilisation of all greenhouse gases – including hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF<sub>6</sub>) – at 1990 levels by 2008-2012, with unspecified reductions in the five-year period thereafter. All these proposals and variations thereof are still on the table at the start of the Kyoto conference.

The European Union, whose proposal is the most ambitious, plans to meet its targets through a burden-sharing arrangement between its member states, where the most advanced economies take on larger reduction commitments than the poorer nations, in order to reach a net reduction of EU emissions of the combination of three greenhouse gases. However, it has so far resisted extending this 'differentiated approach' to other countries (as proposed by Japan, for instance), insisting rather on a fixed 'flat rate' reduction across the board. The EU has also made clear that it will not undertake the 15% by 2010 reduction commitment if other countries opt for lower targets.

### Policies and measures

There is also considerable disagreement on ways to reach whatever targets are adopted. The EU is advocating that policies and measures be spelled out in the protocol while other countries would like to include them in an annex – or possibly not at all. Two alternative lists were forwarded to Kyoto, with a footnote specifying that G-77/China see the avoidance of adverse effects on developing countries regarding international trade and social, environmental and economic impacts linked to the establishment of 'a compensation fund and a clean development fund'.

The US reduction proposal (starting from 2008-2012) relies heavily on market mechanisms, particularly the establishment of an international emissions trading system and joint implementation<sup>2</sup>. There is no consensus on including either of these options in the protocol. Should a system of tradable permits be set up, further contention is in store on several issues, including whether countries/industries should be allowed to 'bank' reductions

### IN THIS ISSUE

Trade-Related Issues and the Climate Convention	2
High-Level Meeting Concludes on Optimistic Note	3
Climate Initiatives	4
Economic Constraints to Environmental	
Improvements in Latin America	5
WTO News/Dispute Settlement Corner	6-7
UNCTAD and ILO Board Meetings	8
MEA News	9
Fair Trade Works	11
Labour Standards, International Trade and	
Sustainable Development	13
ICTSD and Partner News	15
Meeting Calendar and Publications	16

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Continued on page 4

# Trade-Related Issues and the Post-Kyoto Framework Convention on Climate Change

By Lucas Assunção

As developed countries subscribe to more stringent climate change policies and measures to comply with the forthcoming Kyoto protocol, the relationship between the Framework Convention on Climate Change (FCCC, already ratified by 171 Parties) and the WTO (which currently has 134 members) is bound to intensify.

As its name implies, the FCCC is an international legal instrument under construction. Innovative in many ways, it is solidly based on Principle 7 of the Rio Declaration, which states that there is a 'common but differentiated responsibility' of states in resolving environmental problems of a global nature. FCCC Parties agreed that Annex I (OECD and East European) Parties are to 'take the lead' in introducing measures to combat climate change. At its first meeting in March 1995, the Conference of the Parties agreed that current commitments are not adequate to revert the trend in greenhouse gas (GHG) emissions. They set in motion the Berlin Mandate process with a view to reach agreement on the strengthening of commitments by Annex I Parties and the adoption of a protocol in Kyoto in December 1997. Trade-related issues have arisen throughout the protocol negotiations, making Parties increasingly aware that future mitigation measures could have significant trade impacts. In addition, experience with the Montreal Protocol and CITES has led some countries, including developing countries, to believe that trade restrictions might be employed, not only to limit GHG emissions, but also to prod non-compliant Parties to participate in the new protocol regime.

When this article went to the press, the likely outcome in Kyoto was expected to be an agreement on emission reduction targets and timetables for Annex I Parties, leaving them to choose how to achieve their targets individually. Many of the measures countries may adopt could have trade effects on non-Annex I Parties or on those countries that do not ratify the protocol. On the other hand, trade provisions could be adopted with certain measures in order to prevent adverse economic effects on third Parties and/or with a clear intent to bring more Parties on board.

The WTO Committee on Trade and Environment has addressed many complex trade-environment issues, some of which are of direct relevance to the future post-Kyoto FCCC. These would most notably include the question of how to deal within the WTO legal framework with various environmental taxes and, in particular, border tax adjustment for energy/carbon dioxide taxes; the compatibility of eco-labelling and certification schemes with WTO rules; how market-based environmental policies like tradeable emission permits could be made compatible with WTO rules; and environmental subsidies.

The analysis of the overall compatibility between legal obligations assumed by WTO members and their commitments under FCCC would become increasingly pressing if emission reduction targets are agreed upon under a Kyoto protocol. For example, what will the implications be if the FCCC follows the example of the Montreal Protocol and employs discriminatory trade measures against non-parties to the Kyoto protocol? Given that such an approach is in theory against the spirit of basic GATT law covering most favoured nation (MFN) and national treatment, how can potentially incompatible policy goals – further trade liberalisation commitments under the WTO on the one hand and the possible use of trade restrictions in an MEA on the other – be reconciled?

Are the well-established WTO rules likely to impair the adoption of effective measures to combat climate change? At a closer look, WTO provisions seem to provide a great deal of flexibility to members in the formulation and execution of national climate change policies. There are, however, constraints on governments imposing their domestic preferences in terms of environmental policies extra-territorially. This is where a careful consideration of possible trade effects of climate change measures comes into play: as these measures are adopted in a given country to meet its protocol commitments, it is pertinent to analyse the possible conflict situations in which WTO and post-Kyoto FCCC provisions may not be mutually supportive.

First, it would be important for any FCCC Party to learn what can legally be done in the WTO in the way of restricting imports from countries that are not listed in FCCC Annex I or that have opted not to ratify or to comply with a new protocol. In this connection, one could even claim that the WTO framework could serve as a sort of safety net system for non-Annex I Parties to the FCCC, particularly if Annex I Parties adopt mitigation measures which could have adverse effects on trade from developing countries.

It must be remembered that the WTO does not inhibit governments from protecting against damage to the environment resulting from the production and consumption of products produced within national boundaries. But, this flexibility only extends to regulation of *products produced domestically, imported products and domestic production processes*. It does not extend to the extraterritorial application of measures relating to production processes in exporting countries; the manner in which a foreign product is produced is not a basis on which WTO rules are established. One could easily argue that the manner in which a product is produced and disposed of is equally important, irrespective of where the production takes place. The WTO rationale, however, is that should any country wish to influence the manner in which products are produced abroad – however appropriate this may be thought to be by the importing country – this should not be translated into discriminatory trade measures. The relevance of this for FCCC is clear. If a product imported into a country has been produced by a process that emits more GHG than is acceptable according to standards established in the importing country, it cannot be treated differently from a like product produced domestically, solely because of the process employed to produce it. This has so far been the primary WTO consistency test.

However, the possibility of imposing WTO inconsistent measures is also envisaged in the WTO framework. If a product were to be treated differently at the border because of the way it was manufactured – because its production process emits too much carbon dioxide, say – an 'exception' could be sought from WTO obligations by invoking the general exceptions in GATT Article XX (b) and (g). These 'exceptional measures', however, should not be used as a means of arbitrary or unjustifiable discrimination between countries, or a disguised restriction on international trade. Further, that the measures must be *necessary* to protect the environment, meaning that other less trade restrictive options are not available. In fact, in the WTO reasoning these exceptions should only be considered if an attempt has already been made within a MEA (such as FCCC) to deal with the problem and the problem remains.

*Continued on page 12*

# High-Level Meeting Concludes on Optimistic Note

The High-Level Meeting on Integrated Initiatives on Least Developed Countries' Trade Development concluded on a rare note of near-unanimous appreciation on 28 October. Least-developed country trade ministers and WTO officials expressed their satisfaction regarding the outcome of the two-day meeting which sought to increase market access for the poorest WTO Members and developed integrated trade-related technical assistance strategies for a number of least-developed countries.

## Market access

Nineteen developed and developing countries announced new market access initiatives or described existing preferential schemes. The European Union said it would extend Lomé Convention privileges to all least-developed countries (LDCs). The convention covers trade and other forms of co-operation between the European Union and 71 former colonies in Africa, the Pacific and the Caribbean (ACP countries). Although many LDCs, particularly in Africa, already are Lomé members, the offer was seen as a significant boost to trade by such countries as Nepal or Bangladesh. (The EU in late October warned its ACP partners that trade preferences might be reduced in the next Lomé convention. Lomé IV expires in 2000 and talks for Lomé V are set to begin in September 1998.) The EU also said it was revising its rules-of-origin regime to allow more products from LDCs access to EU markets.

The United States highlighted its enhanced Generalised System of Preferences (GSP) scheme, saying 1734 items of particular export interest to LDCs had been added to it, but were insufficiently exploited. The US will intensify efforts to make the GSP better known through its consular services. It also said that, in the context of the Partnership for Growth and Prosperity in Sub-Saharan Africa initiative (launched last June), 'reforming countries' willing to reduce tariffs and take on 'meaningful obligations' in non-tariff barriers would qualify for duty-free access for additional products, and that debt reduction would be offered to the 'poorest of strong reformers'. Norway announced that it was removing all but one of the few tariffs still affecting LDC imports.

Neighbouring countries and regional markets are of paramount importance to least-developed country trade. Initiatives announced, among others, by Egypt, India, Korea, Malaysia, Mauritius, Morocco and Thailand were welcomed by LDC leaders. In the closing press conference, Tofail Ahmed, the Bangladeshi Minister for Commerce, thanked WTO Director-General Renato Ruggiero for his proposal to grant LDCs duty-free access to all WTO markets and said he looked forward to the next WTO Ministerial Conference in May 1998 endorsing the initiative. UNCTAD Director-General Rubens Ricupero highlighted the need to reduce tariff escalation and persistent 30-50 percent tariff peaks for LDC goods in many important export markets.

## Technical assistance

The meeting adopted an Integrated Framework for Trade-Related Technical Assistance, which spells out a more coherent way of responding to LDC needs ranging from infrastructure improvements to communications or understanding WTO agreements. Six international agencies – the WTO, UNCTAD, the International Trade Centre, the World Bank, the IMF and UNDP – will pool their

expertise to elaborate targeted assistance plans based on needs assessments conducted by LDC governments. Twelve roundtables were held during the conference to develop the first country-specific integrated technical assistance packages for Bangladesh, Chad, Djibouti, Guinea, Haiti, Madagascar, Mali, Nepal, Tanzania, Uganda, Vanuatu and Zambia. Other country-specific roundtables will be held whenever interested LDCs have completed their trade-related needs assessments. These will be evaluated by the participating agencies and corresponding technical assistance strategies developed in collaboration with the government in question. The agencies also envisage regular follow-up evaluations of the strategies.

Two thematic roundtables, one on building capacity to trade and the other on attracting investment to LDCs, developed recommendations for follow-up, addressed to governments as well as the governing bodies of the agencies participating in the integrated framework.

## Information technology

Renato Ruggiero highlighted the WTO/World Bank Information Technologies for Development project which aims to 'better enable decision makers in developing countries to understand and make use of the rules and mechanisms of the WTO'. The project seeks to guarantee developing country decision-makers permanent on-line access

to electronic training, education and information tools, as well as ensure ongoing electronic contact with the sponsors. According to Mr. Ruggiero, the WTO is committed to 'wiring' all its least-developed Members with computers and internet connections by end 1998. The WTO/World Bank project targets government officials, academics, journalists and leaders of business associations. The WTO will offer computer training as part of its regular trade policy courses to ensure, among other things, that the participants are able to maintain electronic contact with WTO documentation and other on-line resources.

## NGO Participation

Non-governmental participation in WTO activities and meetings remains limited. Nevertheless, for the first time, a set of 37 NGO recommendations were included in the official conference documentation (WT/LD/HL/16). The recommendations were developed during a WTO-sponsored NGO symposium prior to the High-Level Meeting. The co-chairs and rapporteur of the symposium were invited to participate and make statements at the thematic roundtable sessions. However, some WTO governments opposed wider NGO participation as initially envisaged (up to 40 NGOs were to be invited as observers). The thematic roundtable on investment recommended 'developing counterparts in the public, private and NGO sector' to 'shape the agenda' on encouraging investment.

NGOs particularly welcomed the Partners for Development initiative launched by UNCTAD's Rubens Ricupero on 23 October. The initiative aims at establishing a dialogue with the real 'actors of development' and creating a partnership with civil society (for more information, see page 8). In their recommendations, NGOs urged national governments to support the initiative as well as other efforts 'which assist NGOs in understanding and constructively interacting with trade policy-making bodies and multilateral trade institutions'.

The NGO recommendations are available from ICTSD and the WTO External Relations Division, tel: (41-22) 739-5848; fax: 739-5777.

### UNEP Insurance Industry Initiative for the Environment

More than 70 insurance companies from 25 countries have come together under the United Nations Environment Programme to constitute the UNEP Insurance Industry Initiative for the Environment. Among members are General Accident and N.P.I. (UK), Gerling-Konzern Global Reinsurance Company (Germany), Sumimoto Marine and Fire Insurance (Japan), Swiss Reinsurance Co. (Switzerland and Storebrand (Norway).

Natural disasters represent 85 percent of all insurance losses, and more than 50 percent of those losses have occurred since 1990. The Intergovernmental Panel on Climate Change, which consists of nearly 2000 scientists, has predicted that the global mean temperature will rise from 1 to 3 °C by the end of the next century. Although the precise effects of such a rise are hard to determine, many regions are expected to experience more climate-related disasters than they do now. Low-lying coastal regions are particularly at risk.

Insurers are concerned about the damage caused by more frequent and severe windstorms, floods and mud slides likely to result from significant global warming. A higher risk of extreme events due to climate change could lead to higher insurance premiums, or even restrictions or unavailability of property coverage in the most vulnerable areas. If unexpectedly severe events start bankrupting insurance companies, other economic sectors such as banking and public finances could feel the ripple effects. Climate change could also affect stock markets and investment activities as society adapts to the new climate regime. Because the insurance industry operates by managing long-term savings and investments prudently, it cannot ignore the possible effects of climate change and other environmental problems on long-term pension and life insurance portfolios.

At the Climate Convention's second Conference of the Parties in July 1996, insurers presented a position paper on Insurance and Climate Change, highlighting the industry's concern that, while the effect of climate change on the frequency or severity of extreme weather events remains unknown, it is clear that even small shifts in regional climate zones or storm patterns could lead to increased property damage. They called for early and substantial reductions in greenhouse gases. A second position paper will be released during the Kyoto meeting.

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### Policy Forum on Greenhouse Gas Emissions Trading

From 12-14 November, UNCTAD and the Earth Council hosted the second session of the Policy Forum on Greenhouse Gas Emissions Trading in Toronto. The Forum was launched in Chicago last June 'to provide timely institutional support to interested governments, corporations and non-governmental organisations (NGOs), for the development and implementation of the initial phase of an international greenhouse gas emissions market.' The launch of the emissions market is set for early 2000.

Forum participants include government authorities, corporate executives, intergovernmental organisations and environmental NGOs. The organisers hope that the Forum will contribute to sending a strong message of support to governments negotiating the Kyoto Protocol for the use of market-based instruments to deal with greenhouse gas emission reductions. The United States, for instance,

has been successful in lowering acid rain through the establishment of a 'cap' on emissions, and then issuing permits to companies allowing them to emit up to that capped level. Companies that succeed in holding their emissions below the legislated cap can sell the spare capacity allowed by their permits to other companies looking for cost-effective solutions.

UNCTAD believes that using a similar approach to address greenhouse gas emissions globally could produce 'win-win' outcomes for interested parties: international greenhouse gas emissions trading could substantially cut abatement costs while opening up new economic, financial, and business opportunities for developing countries and countries in transition. UNCTAD has been working on the design and implementation of an international greenhouse gas emissions trading system since 1991 and has published extensive studies on the issue.

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#### *Kyoto Climate Summit, continued from page 1*

achieved before the system starts functioning. It is also unclear in which country's emissions budget the 'credits' would be counted in cases where reductions happen in foreign subsidiaries of firms. Joint implementation faces similar 'accounting' problems, as well as considerable resistance from developing countries which view it as an easy way for Annex I countries to meet their commitments by shifting their reduction burdens to developing country partners through the back door. (See also related story on page 2 and pointers for Kyoto on page 14.)

Informal meetings were being held practically daily around the world after the last preparatory session in order to break the deadlock before the Kyoto conference. According to government spokespersons, a gathering of key governments on 8 and 10 November produced encouraging signs. The UK's Deputy Minister for the Environment, John Prescott, said the negotiations were starting to move 'in a small way, but definitely in the right direction. We are now all seriously looking at what might constitute agreement.' Behind the scenes discussions were also rumoured on possible future commitments of developing countries to binding targets and timetables. Such commitments, however, would not be part of the Kyoto protocol.

#### NOTES

<sup>1</sup> According to the US climate change proposal, '[a] ton of carbon emitted in Argentina has just as much effect on the global climate as a ton of carbon emitted in the United States – and within the next few decades, emissions from developing countries are expected to exceed those from developed countries'.

<sup>2</sup> The Clinton Administration defines an international emissions trading regime as one where 'a country (or firm) would be able to meet its emissions reduction target by reducing pollution itself, purchasing reductions from another country (or firm) that was able to achieve excess gains, or some combination of both'. Joint implementation is defined as a system under which 'a company in the United States invests in a project which reduces emissions in another country and uses those reductions as a less expensive means of meeting its own target'.

# Economic Constraints to Environmental Improvements in Latin America

By Marianne Schaper

Mainstream economists increasingly recognise that it is necessary to integrate environmental issues into macro-economic and sectoral policy formulation. Indeed, benefits threaten to be short-lived if the environmental consequences of policies are not adequately considered. Latin American governments are also aware of this concern and most of the countries in the region have undergone considerable environmental reforms over the past years, both in terms of legislation and institutions.

In reality, however, a number of factors seem to pose real constraints to the effective implementation of these reforms, and environmental policies often seem to conflict with short-term growth efforts or commonly held views which attach low priority to the environment. Therefore, despite efforts and increased environmental awareness, it appears that in most of the Latin American countries there still remains an enormous gap between intentions expressed in formal declarations and the effective enforcement of sound environmental practices.

In the search for the underlying economic and policy causes rather than just the symptoms<sup>1</sup> responsible for the gap, a combination of various explanations comes to mind:

First, with the opening up of the economies and the liberalisation policies committed to free markets and free trade, resources were reallocated according to comparative advantages, which in the case of many Latin American countries favoured investment, production and exports in natural resource-based activities. As a consequence, these resources have undergone enormous environmental pressures, particularly as liberalisation processes were intensified and were accompanied by rapid growth and increased demand. Furthermore, the need to generate greater export volumes has meant that in many cases priorities have emphasised short-term productivity expansion in natural resource intensive sectors, without due concern for environmental criteria.

Second, in many cases the prevalence of natural resources in the export basket has tended to generate rent-seeking behaviour. Given the relative ease brought about by the natural resource rent, this has not only weakened the drive towards change and innovation in terms of anticipating and incorporating international tendencies of environmental protection, but it has probably also allowed for more inefficient production structures.

Third, despite the increasing recognition that sectoral or macro-economic policies may be expected to have profound environmental implications, in practice environmental consequences have traditionally not been taken into account in policy formulation, nor have existing economic policies been subjected to environmental evaluation.

Instead, the main focus of environmental policy has rather been on micro-level resource allocation, subjecting projects to environmental impact assessment or monitoring innumerable individual productive activities which, although important, is often not a cost-effective nor feasible procedure and is clearly not sufficient to seriously address the pervasive nature of environmental problems. Although fiscal,

exchange rate, energy, agriculture, land tenure and industrial policies are not directed explicitly towards influencing the quality of the environment, they are – combined with a complex mix of social and political factors – definitely not neutral to the environment. Thus, complementing the micro-level approach with a better understanding of the underlying macro and sectoral policies is of primary importance for identifying and capturing the necessary policy reforms which also yield environmental benefits.

For example, the fixing of high market rates of interest as an aggregate demand restricting mechanism in a number of Latin American countries within the recent economic stabilisation schemes, has tended to generate a logic in support of natural resource extraction. As the rate of interest links the present to the future, it becomes a parameter with important implications for resource allocation. The higher the interest rate (or discount rate), the higher the cost of waiting, and thus, the faster the rate of resource depletion and the lower the investment in resource conservation. In other words, the more heavily future benefits are discounted, the less attractive they are. The interest rate might therefore become a key component of the environmental degradation process of a country, although it is not explicitly directed to do so.

Fourth, in contrast to the past, when environmental degradation was mainly caused by distortionary policies<sup>2</sup>, today it is mainly generated as a by-product of the growth process itself. The argument that environmental sustainability promotes growth seems to be valid only when degradation is due to policy distortions, but not really for the highly endowed countries of Latin America whose growth depends mainly on natural resource extraction and harvesting.

Even if some margin for profitability in environmentally friendly activities related to natural resources does exist in some particular and unique sites for eco-tourism, non-timber forest extraction or genetic prospecting, it is unlikely that governments will be truly interested in promoting and supporting them at large. Clearly, the revenue a country hopes to raise through these activities is generally far below the financial returns that can be expected in the usual resource extraction processes. Moreover, as environmentally friendly activities are in most cases not privately profitable, they are not attractive for private economic agents and maybe not even for the public sector.

Fifth, the conventional system of national accounts, by excluding from its national income estimation the depreciation or appreciation of the stock of natural resources, does not really contribute to reflect the urgency of the need to integrate environmental considerations into policy formulation. It might well turn out that if the true depreciation of the stock of natural assets used up in the productive processes were incorporated in national income measurements, countries would be bound to get a very different and lower reading of income and growth and would certainly be more aware of environmental and economic weaknesses that need urgent attention.

However, the national income being an indicator that is used by the general public for judging the economic performance of a country, there is no real political incentive for governments to endorse a

**With economic policies committed to free markets and free trade, many Latin American countries have reallocated resources according to their comparative advantages. This has favoured investment in natural resource-based activities without due concern for environmental criteria.**

*Continued on page 10*

### **Committee on Regional Trade Agreements**

The Committee on Regional Agreements, currently chaired by Ambassador John Weekes of Canada, was set up nearly two years ago to examine the many regional trade pacts currently in force (see below) and to assess whether they were consistent with WTO rules. The Committee is also examining how regional arrangements might affect the multilateral trading system, and what the relationship between regional and multilateral arrangements might be.

Delegates started by exchanging views on their interpretations of Article XIV of GATT 1994, which states that if a free trade area or customs union is created, duties and other trade barriers should be reduced or removed on substantially all sectors of trade in the group. Non-members should not find trade with the group any more restrictive, either through duties or 'other regulation of commerce' than before the group was set up. The Committee has particularly focused on clarifying the term 'other regulation of commerce'.

The Committee has also spent time in developing guidelines for the examination of regional trade agreements. Some twenty such examinations have been carried out and the conclusions are currently at a drafting stage.

One of the Committee's assignments is to periodically report on developments in regional agreements, a difficult task considering the large number of such agreements and the often slow pace of notifications. Improving information flows from the regional blocks is therefore a regular item on the Committee's agenda.

The Committee on Regional Trade Agreements is mandated to report to the General Council, but it has no deadline for definite recommendations. According to some Members, it is unlikely to make drastic recommendations or to conclude that any of the agreements are inconsistent with WTO rules because of the powerful economic interests regional blocks represent for many WTO Members.

The next meeting of the Committee takes place from 4-5 December.

#### **Ruggiero Warns on Dangers of Regionalisation**

Speaking at a Conference of the Transatlantic Business Dialogue on 7 November, WTO Director-General Renato Ruggiero highlighted his concern over the proliferation of regional trade agreements: of the nearly 100 currently operational agreements, more than three quarters have entered into force in the last four years. He was particularly concerned about large commercial alliances radiating outwards from the EU (talks with MERCOSUR and North African countries) or from the US (the Free Trade Area for the Americas and APEC). Mr Ruggiero said that in some cases these initiatives were 'less about advancing regional economic efficiency or co-operation and more about securing regional preferences, even regional spheres of influence, in a world marked by growing competition for markets, for investment and for technology.' He also said that the proliferation of new trading agreements centred around the United States or the European Union could encourage other regions to form preferential groups of their own and lead to re-opening the North-South divide as least-developed countries were the only ones 'presently excluded from the expanding web of regional arrangements'. Mr Ruggiero said that he regarded such further marginalisation as 'one of the most tragic outcomes of all since globalisation's greatest promise is its potential to erase the barriers between previously separate worlds'.

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### **Committee on Agriculture**

Heated discussion continues in the Committee on Agriculture regarding whether countries are allowed to transfer unused export subsidies from one year to the next during the six-year implementation period of their commitments under the Agreement on Agriculture. Countries which heavily subsidise their agricultural exports argue that Article 9.2(b) of the agreement allows them to do just that, while other countries regard this as contrary to the agreement's letter or spirit, or both. According to the Secretariat, the debate has arisen because in 1995 and 1996 agricultural prices on world markets were fairly high, especially for cereals. Many countries with export subsidy commitments were therefore able to export without using the full amount of subsidies available to them.

Meeting on 25 September, Committee Members also asked nearly 90 questions about information notified by about 25 countries on their export subsidies, domestic support programmes and market access policies, particularly tariff quotas. Dispute settlement proceedings have been initiated on two long-standing Committee topics: the EU's 'inward processing arrangement' for processed cheese and Canada's revenue-pooling scheme for dairy products (for more information, see next page).

The last meeting of the Committee was to be held from 20-21 November. A report will be included in the next issue of this review.

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### **Committee on Financial Services**

After the WTO Committee on Financial Services met on 12 and 14 November, the WTO Secretariat announced that since the Committee began its negotiations on 10 April 1997, thirty-two offers had been received from 46 countries, counting the European Union as 15:

Australia, Bahrain, Canada, Costa Rica, the Czech Republic, Ecuador, Egypt, the European Communities, Hong Kong, Hungary, Iceland, Israel, Japan, Kenya, Korea, Macao, Mauritius, New Zealand, Nigeria, Norway, Peru, the Philippines, Singapore, the Slovak Republic, Slovenia, South Africa, Switzerland, Tunisia, Turkey, Venezuela, the United States and Uruguay.

However, several key countries, particularly in Asia have not yet tabled offers. The region is experiencing severe financial turmoil and negotiators from these countries are cautious about opening their financial services sectors to further foreign influence. Thailand, Indonesia and Malaysia have said they would table offers before the December 12 deadline. However, Thailand, whose economy has been the hardest hit by the present currency crisis, has warned that its fiscal position may prevent it from offering significant changes in access to its financial markets. According to press reports, Malaysia may be ready to offer 51 percent foreign ownership of insurance firms, one of the main requirements of the US and the European Union. Keen to extend their banking and insurance operations to key emerging markets in Asia and Latin America, the latter are the main promoters of further liberalisation of the financial services sector.

The Committee is scheduled to meet from on 8 and 12 December to conclude the new financial services protocol.

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## Dispute Settlement Corner

**EU Appeals Beef Hormone Report**

The European Union in early November presented its case to the WTO Appellate Body concerning a July dispute settlement panel ruling which found – in favour of the US – that the EU's eight-year import ban on beef treated with growth hormones was not warranted on scientific grounds. The EU's appeal argues that the panel ruling threatens states' rights to set the health-protection standards they deem necessary, a right specifically provided for under the Agreement on Sanitary and Phytosanitary Measures. It further contends that the panel only considered a majority view of the five scientists it consulted, ignoring some scientific evidence supporting the ban. The original US complaint said the Codex Alimentarius, recognised by the WTO as an international standard-setting body in food safety, had set standards for five of the six hormones in question, and that for only two Maximum Residue Limits were considered necessary. The trace hormones appear in much lower quantities in US-raised beef. The EU countered that setting the standards had been controversial and WTO Members did not have an obligation to always follow Codex standards. Furthermore, a standard was lacking on the sixth growth hormone (MGA).

**Panel Established on India's Import Restrictions**

According to WTO practice, a dispute settlement panel was established on 18 November, when the United States repeated its request for a panel ruling on India's quantitative import restrictions on more than 2,700 agricultural, industrial and textile products. Australia, Canada, the European Union, New Zealand and Switzerland and the US each requested consultations with India in mid-July after discussions on lifting the import restrictions had reached a dead end in the WTO Balance of Payments (BoP) Committee. The complainants evoked violations of GATT Articles XI:1 and XVIII:11, Article 4.2 of the Agreement on Agriculture and Article 3 of the Agreement on Import Licensing Procedures.

At issue is the time-frame for removing the quotas: at the BoP negotiations, the complainants were pushing for two-to-three-year deadline, while the most India was willing to concede was seven years. India has consistently evoked balance of payment difficulties to justify the restrictions, but the International Monetary Fund claims that India's balance of payments situation is healthy and that the country has foreign exchange reserves worth some US\$23 billion.

On 3 November, India reached an agreement on the phase-out of the restrictions with the European Union and Australia: quotas will be lifted on 177 priority items by 2000, on another 288 products by 2002, and the rest of the restrictions will be removed in 2003. Negotiations continue with the other complainants. The US, however, will go ahead with the panel process because it is still dissatisfied with the Indian offer, which it says back-loads too many priority items to the end of the phase-out schedule.

**Japan to Defend Quarantine Measures on Apples**

A panel was set up to examine Japan's quarantine practices regarding apples from the United States. The US alleges that Japan prohibits the importation of each variety of a product requiring quarantine treatment until the quarantine treatment has been tested for that variety, even if the treatment has proved to be effective for other varieties of the same product. The US alleges violations of Articles 2, 5 and 8 of the Agreement on Sanitary and Phytosanitary Measures, Article XI of GATT 1994 and Article 4 of the Agreement on Agriculture.

**Korea Requests Panels on Semiconductors and TVs**

Korea made two panel requests against the United States at the 18 November DSB session, both concerning anti-dumping duties levied by the US on Korean technology. Korea contends that despite evidence that it has stopped dumping dynamic random access memory semiconductors (DRAMs) or colour television receivers, and has no intention of doing so in the future, the US has not lifted the anti-dumping duties it imposes on the products. Regarding colour TVs, Korea cites violations of Articles VI:1 and VI.6(a) of the GATT, as well as eleven provisions of the Anti-Dumping Agreement. For DRAMs, Korea contends that the US duties violate Articles 6 and 11 of the Anti-Dumping Agreement. Although United States opposed the panels, they will be established if Korea repeats its requests at a subsequent DSB meeting.

**US Initiates Three Agricultural Consultation Processes**

In early October, the United States requested consultations with three trading partners over import restrictions concerning agricultural products. The US contends that Philippine implementation of its tariff-rate quotas for pork and poultry is inconsistent with its obligations under GATT Articles III, X and XI, Article 4 of the Agreement on Agriculture, Articles 1 and 13 of the Import Licensing Agreement and Articles 2 and 5 of the TRIMs Agreement.

Violations of Article II of GATT, Articles 8 and 10 of the Agreement on Agriculture, Article 3 of the Subsidies and Countervailing Measures Agreement and Articles 1 and 3 of the Import Licensing Agreement are alleged in a complaint regarding Canada's national and provincial pricing arrangements for milk and other dairy products, which the US claims provide export subsidies in excess of Canada's commitments on subsidy reduction. In addition, the US claims that the measures distort markets for dairy products and adversely affect US exports.

The US has also asked consultations with the EU, contending that the latter provides export subsidies through its inward processing arrangement for processed cheese. The complaint is based on the same grounds as the US-Canada dispute above.

**Arbitration Requested for EU Compliance with Banana Ruling**

The European Union has announced that it will 'honor its international obligations' by 1 January 1999 regarding the WTO Appellate Body report that ruled several aspects of the European Union's banana import and import licensing regimes inconsistent with WTO rules. The EU, however, has not given details on the steps it plans to take to make its banana import regime conform with the Appellate Body's recommendations. The complainants in the case, Ecuador, Guatemala, Honduras and the United States, have requested that an arbitrator be appointed to determine when the EU should implement the ruling. The current regime favours bananas from 71 former colonies and four Latin American countries over those from other exporters.

On 24 October, Panama requested dispute settlement consultations with the EU, again concerning the European Communities' 'regime for the importation, sale and distribution of bananas'. Panama explained at the 18 November DSB meeting that it was not interested in re-opening the case, but had asked for consultations in order to seek maximum protection for its own commercial interests in the banana market.



**UNCTAD Board Stresses Debt Relief**

Meeting from 13-24 October, UNCTAD's Trade and Development Board called for greater consideration for the capacity of developing countries to meet the challenges of globalisation and competition. With the WTO High-Level Meeting on LDC Trade (see page 3) starting right after the UNCTAD Board meeting, delegates paid particular attention to international and national action required for least-developed countries. The Board agreed on the need for a forum that would look at the larger picture of integrating LDCs' in the world economy than the market access and technical assistance angles examined at the WTO meeting. The UNCTAD Board recommended that a third UN Conference on the LDCs be held at the end of the century, focusing on three broad areas of concern:

- assessment of the UN Programme of Action for the LDCs in the 1990s;
- review of implementation of international support measures, particularly regarding official development assistance, debt, investment and trade; and
- consideration of appropriate international and national policies and measures for the sustainable development of LDCs and their integration to the world economy.

Agriculture, the delegates agreed, was a priority area for LDCs, as it provided the most effective way to raise economic growth rates, expand and diversify exports, ensure food security and reduce poverty. Small scale farmers in particular needed support, such as agricultural extension services, improved rural infrastructure and easier access to credit, and the development of more efficient markets in rural areas.

Norway and China announced contributions to the UNCTAD Trust Fund for Least-Developed Countries, which now stands at US\$2.9 million, or some 60 percent of the original target of US\$5 million. Technical co-operation activities undertaken under the Trust Fund focus on strengthening export supply capacities through the development of integrated country-level programmes.

The Board largely agreed with the conclusions of a new UNCTAD report on 'African Economic Performance, Prospects and Policy Issues', which call for:

- increased public investment in physical and human infrastructure;
- export promotion in non-traditional sectors through increased competitiveness and exchange rate stability; and
- a balance between food self-sufficiency, surplus extraction, price incentives and income security for producers.

UNCTAD Director-General Rubens Ricupero launched the Partners for Development initiative on 23 October. The initiative aims to establish a dialogue with the real 'actors of development' and to create a partnership with civil society. Mr. Ricupero described the integration of civil society in the work of UNCTAD as a 'key element in the reform of the organisation' and a 'strengthening of the foundations' on which the 'new UNCTAD' is being built.

The first Partners for Development meeting will take place from 9-13 November 1998 on the theme 'Markets and Development'. According to UNCTAD, the meeting will bring together several hundreds of representatives of governments, the private sector, international and non-governmental organisations, and research institutes in Lyons, France.

For more information contact: Carine Richard-Van Maele, Press Officer, UNCTAD; tel: (41-22) 917-5816/28; fax: (41-22) 907-0043; e-mail: [press@unctad.org](mailto:press@unctad.org)

**ILO: The Social Clause Revisited**

The governing body of the International Labour Organization (ILO) was meeting when this issue went to press. Under discussion were proposals aimed at ensuring wider adherence to, and compliance with, the seven ILO core labour standards (see also related article on page 13). The WTO Ministerial Conference in December 1996 refused to bring consideration of labour issues to the world trading body, which could have led to the development of the so-called 'social clause' linking market access to respect for core labour standards. Instead, the ministers affirmed that ILO was the appropriate forum for discussion and enforcement of labour standards. The International Labour Conference in June 1997 explored ways to reinforce respect for core labour standards in an effort 'bring about a certain parallelism between social progress and economic progress resulting from the liberalisation of trade'. The meeting agreed on the need to strengthen fundamental social rights, and identified the development of 'solemn declaration' on such rights as one way of reaching that goal.

The governing body, meeting from 6-20 November, was to decide whether to place consideration and adoption of such a declaration, including a follow-up mechanism, on the agenda of the next International Labour Conference, to be held in 1999. The declaration would reaffirm the commitment of ILO members to fundamental rights (as enshrined in the core conventions). A follow-up mechanism would allow verification that those rights were actually respected and applied by member countries.

The governing body was also to decide whether to continue debate on the controversial proposal to create a 'social label', launched by ILO Director-General at the June 1997 conference. Such a label would be created by a free-standing ILO convention that countries could ratify if they were willing to meet the demands of fundamental rights and agree to have on-site spot inspections that would guarantee that those rights were upheld.

Another trade-related issue on the governing body's agenda was the review of the debates and activities of the Working Party on the Social Dimensions of the Liberalization of International Trade.

For more information contact: Official Relations Branch, ILO; tel: (41-22) 799-7732; fax: (41-22) 799-8944, e-mail: [RELOFF@ilo.org](mailto:RELOFF@ilo.org), Internet: <http://www.ilo.org>.

**CELSO FURTADO PRIZE ANNOUNCED**

The Third World Network of Scientific Organizations (TWNISO) has announced the establishment of the Celso Furtado Prize for outstanding contributions aimed at the socio-economic development of Third World countries. The US\$10,000 prize is funded by the Brazilian government in honour of Celso Furtado, a leading Brazilian economist and social thinker.

TWNISO invites nominations of individuals 'whose work has made a fundamental contribution to the understanding and promotion of the socio-economic development of the countries in the South in the global context'. The nominations, accepted until 1 March 1998, will be judged by an international jury of experts and the first Celso Furtado Prize awarded later next year.

Contact: Ms. Helen Martin, TWNSO Secretariat, P.O. Box 5867, 34100 Trieste, Italy; tel: (39-40) 224-0386; fax: (39-40) 224-559; e-mail: [twas@ictp.trieste.it](mailto:twas@ictp.trieste.it); internet: <http://www.ictp.trieste.it/~twas/TWNSO.html>



## **Biosafety Protocol: Trouble over Trade Measures**

Government negotiators met in Montreal from 13-17 October to continue working towards a protocol on biosafety. Wide differences of opinion still persist between countries regarding the future protocol's scope. Discussions have barely started on such key issues as liability and compensation, trade with non-Parties and illegal traffic. Positions are polarised on the inclusion of socio-economic considerations in the protocol, as well as provisions dealing with non-discrimination in line with the WTO principles of most favoured nation treatment and national treatment.

The biosafety protocol is being negotiated in the context of the Convention on Biological Diversity (ratified by 169 governments). The mandate of the working group is to 'develop a protocol on the safe transfer, handling and use of living modified organisms, specifically focusing on transboundary movements of any living modified organism that may have an adverse effect on biological diversity and human health, setting out appropriate procedures for advance informed agreement'. The negotiation process, started in July 1996, is expected to conclude in December 1998.

Because of its focus on transboundary movements of living modified organisms (LMOs, usually called 'genetically modified organisms' or GMOs), as well as the tremendous scope for international trade in biotechnology products, the biosafety protocol can almost be regarded as a trade agreement rather than an environmental agreement. Many of the most contentious issues arise from the difficulty of effectively limiting risks and providing compensation for damage caused by cross-border movements of LMOs without hampering the growth of trade in biotechnology products.

### **Socio-economic considerations and liability**

Developing countries generally favour the inclusion of references to socio-economic considerations in the protocol while developed countries hold a variety of views on the question. This is reflected in the text that will serve as a basis for the next round of negotiations - the draft offers the following options for addressing socio-economic considerations: in the preamble, in articles or annexes on advanced informed agreement or risk assessment and management, as an exception to non-discrimination provisions, on a bilateral basis, in national legislation, or not at all.

Disagreement also persists over whether liability and compensation provisions should be written into the protocol or whether these issues should be left to the national legislation of the country where the damage occurs. The EU in particular favours using national liability and compensation legislation. The African group is pushing for a strong liability regime under the protocol, generally holding the exporter liable for compensation unless negligence can be proved on the part of the importer. Many developed countries reportedly fear that along with socio-economic provisions, liability and compensation clauses could be used as justification for protectionist trade measures.

### **Trade with non-Parties and non-discrimination**

North-South divisions are blurred regarding trade measures. For instance, Japan, Haiti, the EU, Ethiopia, Zimbabwe, Australia, Colombia and New Zealand are in favour of addressing trade with non-Parties in the protocol. (Many MEAs contain clauses that restrict or prohibit trade with non-Parties. In view of the fast-growing importance of cross-border trade in LMOs such restrictions could provide a compelling reason for countries to join the biosafety protocol.) Other countries, however, seem to fear the loss of lucrative

markets that could result from severe trade restrictions between Parties and non-Parties. These include countries with already strong biotechnology exports, such as the US, and countries with nascent biotechnology industries such as Malaysia. Negotiators have not agreed on how to deal with illegal traffic, although a slight majority seems to be emerging in favour of national level regulation.

Another WTO sensitivity, non-discrimination, also promises to be controversial. Some countries, including Malaysia and Ethiopia, are against including non-discrimination provisions in the protocol, maintaining that governments should be free to decide the transfer, handling and use of LMOs. Others, including India, consider discrimination allowable if socio-economic concerns warrant it. Countries with strong biotechnology industries advocate strong non-discrimination provisions in line with the WTO's 'most favoured nation' and 'national treatment' principles. The US, for instance, proposes that non-discrimination be addressed only in the context of Advance Informed Agreement, and should guarantee that foreign LMOs are not discriminated against in favour of domestic LMOs.

### **Advance informed agreement**

Negotiators are working on an Advanced Informed Agreement (AIA) procedure, i.e. a system of notifications on LMO exports and imports. At present, the mechanics of this procedure are far from agreed: the draft text contains twelve elements for the procedure with options listed under each. The scope of application of the AIA procedure is also still under intense discussion. Options include: all LMOs subject to AIA; all first time transboundary movements of LMOs; all LMOs except those (explicitly excluded) (identified in an annex as low risk) subject to AIA; importer state decides whether exporter should apply national regulations or the protocol; LMOs included based on criteria listed in an annex; and LMOs intended for field testing.

The next meeting of the Ad Hoc Working Group on Biosafety will be held in Montreal from 9-18 February 1998. Another meeting is planned for late July. The last negotiating session, followed by an adoption ceremony is tentatively scheduled for early December 1998.

Contact: CBD Secretariat, World Trade Centre, 393 St. Jacques Street, Montreal, Quebec, Canada H2Y 1N9; tel: (1-514) 288-2220; fax: 288-6588; e-mail: [chm@biodiv.org](mailto:chm@biodiv.org); Internet: <http://www.biodiv.org>

## **Pesticide Trade Treaty Inches Forward**

The fourth meeting of the intergovernmental negotiating committee preparing an international convention on the 'prior informed consent' (PIC) procedure for trade in hazardous chemicals and pesticides, was held in Rome from 20-24 October. The treaty would make the currently voluntary PIC procedure legally-binding. Under the procedure, in practice in 154 countries, exports of twenty-two hazardous chemicals and pesticides - banned or severely restricted in a number of countries - need to be notified in advance to authorities in importing countries. Participating countries must also notify their decisions to ban or severely restrict chemicals domestically (it should be noted that such substances often continue to be manufactured for export). The binding instrument in-the-making aims to clearly spell out the notification obligations of both exporters and importers, establish a liability regime and determine criteria for inclusion of chemicals or pesticides in the 'PIC list'. The current list consists of 17 pesticides and five industrial chemicals, including PCBs, Lindane, Aldrin, Dieldrin and other highly harmful pesticides such as Monocrotophos and Parathion. Shipments of these can only proceed once the importing country has indicated its 'prior informed consent' to receiving them.

*Continued on page 10*

*Pesticide Treaty, continued from page 9*

Negotiations for the convention were to conclude by the end of 1997, but in view of the many unresolved issues, at least one more session will be necessary. Major outstanding clauses include requirements for export notifications, financial resources and mechanisms, the definition of 'acutely' hazardous pesticide formulations, compliance and liability regimes, dispute settlement, as well as the future convention's relationship with the multilateral trading system. The export notification requirements, which form the corner stone of the PIC procedure, are difficult to agree upon as mainly importing countries favour frequent and detailed communications, while major exporters resist too cumbersome notification procedures and divulging information that could be regarded as trade secrets.

Regarding international trade (draft Article 4.5), there is disagreement on whether the convention should explicitly state that measures taken under the convention should be 'in accordance with WTO rules' or whether such measures should only avoid creating 'unnecessary obstacles to, and/or [...] arbitrary or unjustifiable discrimination or disguised restrictions on, international trade'.

Another not yet agreed article (9.7), paraphrases the GATT's most favoured nation and national treatment principles by stating that when a country bans or restricts chemicals, it must 'simultaneously prohibit or make subject to the same conditions the importation of the chemical concerned from any country as well as its domestically produced chemicals'. Moreover, draft Article 12.2 requires Parties to ensure that chemicals exported from their territories are subject to no less stringent classification, packaging and labelling requirements than those destined for domestic use.

Finally, delegates are still discussing the appropriate form for draft Article 19 bis – the so-called 'GATT-saving clause'. It currently reads as follows, square brackets indicating lack of consensus: 'The provisions of this Convention shall not affect the rights and obligations of any Party deriving from any [existing] international agreement [, except where the exercise of those rights or those obligations would cause serious damage or threat to human health or the environment].'

Delegates agreed in Rome to delete a proposed provision on trade with non-Parties.

The report of the fourth session of the intergovernmental negotiating committee is available as document UNEP/FAO/PIC/INC.4/L.1 and Add. 1 and Add. 2. The Committee's next meeting is tentatively scheduled for 12-16 January 1998 (or possibly 16-20 February) in Brussels. The diplomatic conference for the adoption of the International Legally-Binding Instrument for the Application of the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade has been postponed to March or April. It may be preceded by a short final negotiation session.

Contact: UNEP Chemicals (IRPTC), 15 chemin des Anémones, Case postale 356, 1219 Châtelaine, Geneva, Switzerland; tel: (41-22) 979-9111, fax: (41-22) 797-3460, e-mail: [IRTPC@unep.ch](mailto:IRTPC@unep.ch); or Michael Williams, IUC, tel: (41-22) 979-9242; fax: 979-3464.

Detailed summaries of the biosafety and PIC negotiations are available in electronic format from the International Institute for Sustainable Development (IISD) at <http://www.iisd.ca/linkages/> or as hard copy from IISD, 161 Portage Avenue East, 6th Floor, Winnipeg, Manitoba, Canada, R3B 0Y4; tel: (1-204) 958-7700; fax: 958-7710; e-mail: [reception@iisdpost.iisd.ca](mailto:reception@iisdpost.iisd.ca)

*Economic Constraints, continued from page 5*

downward adjustment of national income, even though the failure to do so may not only misguide economic policy but also progressively erode the basis for future productive activities and prosperity.

Furthermore, from the point of view of a narrowly defined national interest of a government, the opportunity cost of leaving natural resources unexploited is under present conditions very high. Even if resources are exploited at rates which are not sustainable in the long run, it might be vital for satisfying short-term urgencies and the need to grow. Besides, the environmental impacts resulting from an intensive exploitation of natural resources are often not perceived immediately, and in many cases they become visible only after a number of years.

Sixth, poverty and income inequalities create major barriers to stricter implementation of environmental policies, mainly due to the uncertainty surrounding their outcomes and particularly, when the consequence on different income groups is unknown or when environmental policies addressing certain labour intensive activities are perceived as constituting a threat to employment. Moreover, the political acceptability of increasing prices for basic necessities in order to incorporate environmental costs will always be a problem.

Finally, there has also been a change in the orientation of foreign direct investment flows to Latin America. While in the eighties these went primarily to manufacturing sectors, in the nineties foreign direct investment has mostly been directed to services and natural resource sectors (mining and petroleum), at the expense of the manufacturing industry<sup>3</sup>. The impact on the levels of productivity and competitiveness in the sectors of destination of these investments has undoubtedly also contributed to typifying the profile of the present productive and export structure in the region. Hence, foreign direct investment has probably become an additional factor contributing to the environmental impacts related to natural resource extraction and harvesting.

However, in view of the current priority attached by most governments of the region to the need to attract foreign investment, as expressed by the removal of most restrictions and regulations to their entry, it appears that governments will not be very interested in imposing strict environmental regulations, particularly if these are perceived, as is often the case, as a possible entrance barrier or as a drain on the economy.

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## NOTES

<sup>1</sup>Symptoms of environmental degradation, like the level of deforestation or specific industrial processes that pollute the air are relatively easy to identify, not so the underlying causes, which are often difficult to capture or are not well understood.

<sup>2</sup>For instance policies that contribute to underpricing or subsidising environmentally harmful activities, low stumpage fees for timber or subsidies on fertilizers and pesticides. In a context of liberalising policies committed to free markets, Latin American countries have removed major policy distortions and dismantled most market interventions in recent years.

<sup>3</sup>Cepal (1997), *La inversión extranjera en América Latina y el Caribe*, Informe 1996, Santiago de Chile

# Fair Trade Works: Better Deals for Disadvantaged Producers

By Martin Kunz

## What is 'fair trade'?

Fair trade is a voluntary scheme where consumers choose to pay more in order to ensure that disadvantaged producers in poor countries get not just a living income but something more: a fair trade premium. The purpose of this voluntary extra income is to give the producers some breathing space beyond the simple recovery of the cost of production, allowing them, for instance, to pay school fees for their children, improve the quality of their production, strengthen their co-operatives or pay for environmental certification. Because of this characteristic 'extra', fair trade goes beyond the voluntary verification of minimum social standards such as those promoted by the ILO: in many cases it reaches producers who can barely dream of the right to organise. For them, survival is at stake. In such situations fair trade can be a means of reaching those minimum standards.

A second major principle is that producers decide as far as possible how to use the fair trade premium. The decisions should, however, be taken jointly to guarantee benefits for the entire community rather than just the individual producer. Due to this characteristic, fair trade is worlds apart from 'cause-related' marketing schemes where producers add something over a product's ordinary retail price 'for a good purpose'. The existence of a charity bonus does not in itself guarantee that the product has been manufactured under fair conditions.

Fair trade is also different from 'single issue' campaigns, such as those aiming at eliminating child labour. Since in most instances child labour is a symptom of poverty (children have to contribute to the family income), fair trade tries to tackle the root of the problem by ensuring parents a good enough income to allow them to send their children to school instead of sending them to work.

In other words, fair trade seeks to ensure that the actual producers – the people who shape a product with their own hands – can earn their livelihood in dignity. Other fair trade criteria aim to complement and safeguard the primary aims; for instance, prefinancing ensures that producers do not fall into a debt trap until the bills are paid, and long-term purchasing schedules provide reliability and security rather than short-term windfall profits.

## How does it work?

Fair trade started about 30 years ago in the Netherlands and has now spread practically all over Europe (with small outposts in Northern America and Japan). It has traditionally been organised through 'alternative trade organisations' (ATOs). Most of these are non-profit import companies set up by church groups and development NGOs. They usually supply special networks of 'Worldshops', often staffed by volunteers who, by providing free time, help keep prices of products competitive in spite of producers' receiving a bigger share of the end price. This way of marketing, however, is changing: ATOs are increasingly supplying ordinary food outlets and catering enterprises (e.g. the German parliament is supplied by the German ATO gepa, which also sells in 2,000 supermarket outlets). Moreover, many Worldshops are now professionally run by salaried employees.

The second level of fair trade companies consists of the so-called labelling initiatives, again started in the Netherlands. When the International Coffee Organization collapsed at the end of the eighties (coffee is the second most important commodity after oil), pressure

from coffee producers on ATOs to sell at fair prices increased dramatically: the commercial market at times paid less than 50 percent of the cost of production. In response, labelling initiatives started to promote consumer recognition of fair trade labels, i.e. visual identities very much like ecolabels, which indicate to shoppers irrespective of brand or outlet that the product has been fairly traded (i.e. in line with the criteria outlined above. Fifteen labelling initiatives recently formed an umbrella association in order to ensure matching criteria for fair trade seals in different countries).

Labelling initiatives offer fair trade seals to conventional traders willing to apply these criteria on part or all of their output in order to approach the segment of consumers ready to pay more for fairly traded products. After all, particularly in commodity markets such as coffee, the price war has become so ferocious that any additional marketing argument is quite attractive.

Members of the ATO umbrella association, the European Fair Trade Association (EFTA), remain the major fair traders volume-wise, with at least a 50-percent share of the fair trade market. It has been calculated that fair trade in Europe grossed 200 Mio ECU (retail value) in 1994. ATOs do not limit their activities to labelled commodities (coffee, tea, cocoa, sugar, honey, and bananas from a total 300 suppliers from 30 countries, with an estimated 200 licensed importers/roasters/packers); they also buy hundreds of non-food items, including clothing and handicrafts, as well as 'small' food articles such as spices, from scores of suitable suppliers too small to participate in mainstream or labelled market segments.

**Experience shows that up to five percent of consumers will pay a higher price to benefit poor producers provided the conditions are right.**

## Reaching consumers

Thirty years of experience, as well as market research show that up to five percent of consumers not only say (when asked the usual questions) that they would pay a higher price to benefit poor producers, but will actually do so provided the conditions are right. The main factors are:

- The quality of the product has to match the consumer's expectations exactly. 'Good' or 'bad' do not exist as absolutes, they only exist in the perception of individual consumer's tastes.
- The product has to be easily available: with consumers having less and less time to shop, it is vital that a product is within easy reach (at the usual points of sale, or at least within regular shopping hours or mail order).
- Consumers want an independent guarantee that if they volunteer to pay more, producers actually benefit. This is why ATOs and fair trade labelling organisations go to great lengths to establish independent monitoring based on consultants in the countries of origin. In the importing countries, it is crucial that ATOs (brands) and labelling initiatives are backed by well-known church groups, environmental and development organisations, trade unions, etc. (TransFair Germany, the biggest labelling initiative, has more than 35 NGO members which jointly provide it unequalled respectability).

Switzerland offers the best example of fair trade working if the above conditions are met. There, the two largest retail chains carry products under a fair trade label (in their case: Max Havelaar). The brand and

*Continued on page 14*

*Trade-Related Issues and Climate Change, continued from page 2*

Since post-Kyoto Annex I Parties would be free to choose measures to reduce national emissions, the role of voluntary [emission] standards, mandatory regulations and conformity assessment procedures becomes important. In these cases, the WTO Technical Barriers to Trade (TBT) Agreement accommodates some flexibility, provided that such standards, regulations and assessment procedures do not restrict trade. The TBT encourages the adoption of international standards and harmonisation of technical regulations in order to facilitate trade, while specifically recognising that environmental priorities differ among countries. Hence, WTO members could adopt different standards and regulations – including on the amount of energy used and GHG emitted in the production of a good within their borders – provided that this is done in a transparent and non-discriminatory manner and it does not restrict trade more than is necessary to achieve the [climate change] policy objective.

Finally, an FCCC Party may wish to subsidise a production process to facilitate, say, the adoption of less carbon-intensive or methane-emitting technology, or it could be competing in the world market with another country which has already adopted such technologies. The WTO Subsidies Agreement provides for additional flexibility here. While this agreement prohibits countries from subsidising domestic industries to unfairly improve their competitive position, it also identifies certain non-actionable subsidies. These include assistance to promote the adaptation of existing plants to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burdens on firms.

Discussions at the CTE have recurrently echoed that MEAs are the best way of co-ordinating action to tackle global and transboundary environmental problems co-operatively. Nevertheless, the WTO remains concerned with measures adopted pursuant to MEAs which could affect WTO members' rights and obligations, particularly as some MEAs are potentially important in commercial and political terms. Even though the FCCC does not presently have trade provisions and, so far, no GATT or WTO trade dispute has arisen over the use of trade measures applied pursuant to an MEA, there is no guarantee that real problems will not arise in the relationship between MEAs and the WTO. It may therefore be important to adopt a preventive attitude and provide greater certainty as concern grows about the collective impact of individual economies on the global commons.

It seems reasonable to adopt the premise that trade measures, and in particular discriminatory trade measures against non-parties to MEAs and their protocols, are not an appropriate way to pursue international environmental objectives and should not be used to coerce countries to become signatories to an MEA. Trade measures are only one of the alternatives in the package of instruments that can be used to achieve MEA objectives. In line with Agenda 21 commitments that trade and environmental policies should be mutually supportive, discussions in Kyoto should ideally focus on the use and enforcement of positive measures as a means to engage countries' participation before discriminatory trade measures are considered.

Irrespective of what emerges from negotiations in Kyoto, what is important and indeed expected is that countries – primarily Annex I Parties – will have to adopt measures to strengthen their Convention commitments and revert the current trend in GHG emission levels. If domestic measures, such as energy efficiency standards or carbon/energy taxes do not apply to imports, they could provide foreign competitors with an economic advantage. Therefore, it is very likely that as countries develop their national response strategies, trade measures will play an increasingly important role.

More broadly speaking, of the likely menu of measures – standards and regulatory practices, CO<sub>2</sub> and energy taxes, tradeable emission permits, joint implementation and subsidies for emission reductions and sink enhancement – which, if any, face potential consistency problems with WTO rules? Additionally, where would trade disputes be settled if FCCC Parties do not stipulate *ex ante* that they intend trade disputes arising out of implementation of their commitments to be settled under the Convention provisions? It would be reasonable to expect that such disputes would normally be settled under a FCCC dispute settlement mechanism. However, the pace of negotiations on the establishment of such mechanism under FCCC Article 13 may indicate that, depending on the stakes at play, trade disputes could quickly end up at WTO.

One basic underlying problem in the discussion of the complex relationship between possible climate change measures and WTO obligations is the fact that due to the transboundary nature of the climate change problem, the production process is in the exporting country and the externality is experienced globally, hence both inside and outside the borders of the producing country. This is particularly relevant because in case the general exceptions of GATT Article XX were invoked, it would appear that a discriminatory measure could only be justified if taken to protect life or health within the boundaries of the country taking the action. This could well exclude using these exceptions to justify unilateral trade measures for climate change purposes.

With respect to border tax adjustments, WTO rules clearly state that indirect taxes levied on products because of the energy consumed or the carbon dioxide emitted in their production should not be used to provide a competitive advantage for domestic products. This means that taxes on imported goods should not be in excess of taxes on like products manufactured and sold domestically. Things become more complicated in the case of discriminatory taxes applied to like products according to the production processes employed. The CTE has not yet reached an understanding on how to address indirect taxes applied on process and production methods.

Another open question which is directly relevant to possible future climate change measures refers to the use of labelling and certification to convey to consumers information on product energy efficiency levels. The question here is not the use of eco-labelling and certification schemes which cover product and performance standards – already introduced in some Annex I Parties – but labels which could be introduced to convey how much GHG was emitted in making the product.

There is no doubt that the post-Kyoto regime will raise interesting questions on the compatibility of WTO and FCCC provisions. Moreover, it may bring WTO and FCCC negotiators closer. They may soon have a genuine interest to co-ordinate policies to move positively towards lower GHG emission levels, while safeguarding the rules that pave the way for free and fair trade. Similarly, for countries that may feel threatened by climate change measures and possible adverse effects on their exports the important question is what protection do WTO disciplines provide.

One could envisage a scenario in which the CTE would dedicate an increasing amount of time to revisiting key WTO provisions to reassure countries that post-Kyoto FCCC commitments do not impair free trade, and that WTO rules do not prevent the pursuit of solutions to global environmental problems such as climate change, especially if such solutions privilege co-ordination over discrimination.

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# Labour Standards, International Trade and Sustainable Development

By Maryke Dessing

## Core labour standards

Core labour standards, as enshrined in ILO Conventions, are considered enabling human rights; they set standards concerning *processes*. They seek to realise the conditions reflected in the very strong assumptions underlying neo-classical economic models, namely freedom of choice, equal bargaining power and full information. When these conditions are not fulfilled, labour standards cannot be viewed as representing a social choice. Substantive labour standards, on the other hand, set standards concerning *outcomes* (e.g., actual wage levels or the specific content of health and safety standards). Unlike substantive labour standards, core standards do not bear much on production costs (with the exception of forced labour and slavery). Their impact on countries' relative comparative advantages appears limited.

Nearly all states have endorsed core labour standards, at least on paper, either by ratifying relevant ILO Conventions or the International Covenant on Economic, Social and Cultural Rights of the United Nations (1966). Yet, an important implementation gap remains.

Labour standards make economic sense, although this case can be difficult to defend because costs immediately appear on firms' balance sheet whereas benefits are often delayed, non-local, hidden, intangible and extend beyond the firm. Labour standards in general can become the source of competitiveness and economic dynamism as they transform the production process.

Labour standards aim at correcting market failures, internalising social externalities associated with firms' activities, and thus improve factor allocation consistent with the general good. It follows that bad standards would not drive out good ones. Nor do labour standards as such create distortions or impede economic growth, except when their design and implementation is inadequate. Moreover, they may provide valuable mechanisms for 'greening' production and ensuring more equity, consistent with sustainable development. Core labour standards in particular, as human rights which set the 'right tone', would be a prerequisite to embark on a *sustainable* growth process from the start, while some substantive labour standards would follow in the wake of economic development.

Non-enforcement of labour standards, on the other hand, may entail staggering costs to society at large as well as to neighbouring countries, because of the links between labour standards, working poverty, social problems, public health and displacement of people; or poverty, environmental degradation and displacement of people; or lax enforcement of labour standards, major industrial accidents, and social and environmental spill-overs. Sustainable development demands that we account for such interdependencies and adopt a holistic approach.

Lax enforcement of labour standards is therefore not merely a moral concern, but first and foremost an economic one, including for the international community. This provides a justification to press for more aid in the form of technical assistance, training and financial assistance to raise labour standards in general. Such assistance would be a first step in the implementation of social clauses, sanctions remaining measures of last resort. Granting trade preferences might also be considered in this context, although there is no guarantee labour will benefit from such measures.

## The Social Clause

Social clauses restricted to trade (i.e. linking respect for core labour standards to market access) will have a limited impact on labour standards in general. Moreover, trade sanctions might backfire: fear of sanctions might encourage firms to extend informalisation of employment, outsourcing and subcontracting in order to circumvent labour regulations. Bad labour practices might be driven further underground safe from scrutiny and sanctions. Therefore, the real issue would be to ensure universal coverage for core labour standards in particular, reaching informal sector workers, homeworkers, and technically 'self-employed' outworkers and subcontractors.

Universal coverage and effective implementation of labour standards, however, challenge unions to adopt new strategies and programs, or to create new institutions extending beyond their current focus on defending pay, working conditions, and jobs. The scope of unions' activities is too narrow for several reasons: because of blurring boundaries between labour and management; to meet the challenge of industrial restructuring and labour redeployment; to embrace the wide variety of work arrangements, including self-employment, family labour and interlocking transactions; and to reach the informal sector. Capacity building of, and coordination with, other informal and traditional institutions to build a broad coalition might offer an effective

avenue for extending coverage to the informal sector, or rather, to harmonise 'formal' and 'informal' labour standards. NGOs might act as relays in two-tier arrangements to help bridge this gap.

Where violations of core labour standards coincide with non-respect of other human rights (as can be expected), more targeted pressures than trade sanctions might be more suitable. The UN would therefore seem to be a more appropriate forum to assess the situation, in coordination with other agencies if necessary. In principle, and not withstanding some reforms, the UN could adopt a broader range of sanctions than the WTO. The issue would no longer be trade liberalisation, nor labour standards strictly speaking, but violation of human rights and good governance at large.

Emphasising the human rights nature of core labour standards, in accordance with the terms of the International Covenant on Economic, Social and Cultural Rights, would imply that these fundamental rights should take precedence over WTO trade rules. Prior amendment of trade rules should not be necessary to apply this principle, consistent with the need for coherence among international instruments.

However, under current WTO trade rules, it would be difficult to apply trade sanctions even if breaches in (core) labour standards could be taken into consideration. Except in the case of forced labour, it is unlikely that margins of dumping could be calculated. To do so, 'normal' wages must be available to estimate what 'normal' production costs would have been in the absence of 'social dumping'. Therefore, importing countries would not be able to assess material injury, even less to calculate commensurate anti-dumping duties, in order to apply sanctions. In the case of forced labour, one might wonder whether the appropriate response would be levying anti-

*Continued on page 14*

*Fair Trade, continued from page 11*

the voluntary sector are behind the idea, the media supports it and the products are available. Together, these factors have generated an unparalleled level of consumer recognition and led to eight percent of all coffee sold in one chain being fairly traded. Cases like this underpin the tremendous success of labelling initiatives, particularly in the field of publicity.

### Challenges for the future

Over the years, the two forms of fair trade (i.e. 'classical ATOs' and fair trade labelling initiatives) have demonstrated that fair trade principles can be successfully implemented for small self-help groups, farmers' co-operatives and plantations.

The newest challenge is whether fair trade can actually make an impact on established, mainstream type production and export processes. These are mainly (semi)industrial in nature, and therefore the (voluntary) observance of the five minimum social standards identified by the ILO comes much more strongly into play (freedom of association and collective bargaining, no forced labour, no child labour, no discrimination). One test case being discussed and worked on within fair trade circles is footballs from Pakistan. The challenge is not the eradication of child labour – such attempts could drive children into less visible but probably worse working conditions. Instead, the aim is to help move the stitching process (which essentially is still a cottage industry) to a more formal level, where minimum standards can apply and actually be implemented, because consumers are willing to pay US\$1 more. As little as that is needed above present football prices in order to pay the stitchers a decent wage, promote minimum social standards and provide extra benefits to the community.

*Martin Kunz was Executive Secretary of Fair Trade Labelling Organizations until July 1997 and is now working for Fair Trade e.V. in Germany.*

### Pointers for Kyoto

The draft protocol text emerging from the October session gives a clearer picture of the options than that resulting from the previous round of negotiations in August.

With the definition of the US position, all the main cards are on the table. The parameters of a deal among developed countries on a target and timetable for reducing greenhouse gas emissions are set. The key political unknown is whether the target will be uniform or differentiated.

The content of the basket of greenhouse gases to be controlled has not been defined. Some countries would like add three new gases to the basic three (CO<sub>2</sub>, methane and nitrous oxide). The treatment of carbon sequestration by sinks is also still open. These factors have important and different effects on the level of effort involved for different countries in reaching a given reduction target.

While a five-year budget is emerging as the agreed means of describing a target, discussion continues on the means of achieving targets (policies and measures, banking and borrowing, credits from joint implementation projects, emission trading).

The developing country angle is covered by: an article that will describe in greater detail how developing countries can fulfil their existing commitments under the Convention, a provision for individual countries to sign up to voluntary targets that they define for themselves and a provision for the periodical review of commitments.

*Labor Standards and International Trade, continued from page 13*

dumping duties which under WTO trade rules should only seek to remove injury to domestic industries of importing countries.

More generally, trade liberalisation causes problems to poorer countries and at times negatively affects wages and working conditions, partly because WTO trade rules and practices do not account sufficiently for their specific circumstances. Social clauses and trade sanctions will not redress these structural imbalances. More comprehensive measures are called for in collaboration with other international agencies.

### Multinationals and labour standards

The strongest case for social clauses probably arises with respect to multinational enterprises (MNEs), which determine most trade. Their production strategies have become global. Their revenues exceed the GNP of some countries. They begin to escape state control and, as a result, their private interests are no longer subsidiary to the general good. States scramble to attract MNEs, probably engaging at times in excessive competitive bidding and unnecessarily suppressing core labour standards. MNEs, like large employers in general, usually provide better work conditions. But this does not account for poor working conditions and wages among subcontractors and suppliers. Union avoidance appears to be a major problem of MNE conduct, but seems to reflect the cultural ethos of American parent companies. Union avoidance as such finds little economic justification since employers gain from cooperative labour relations. However, co-operation might require complementary measures of good governance.

Confronting globalised entities and business strategies, governments, labour and MNEs themselves would gain from co-operation and a more uniform set of labour standards. States and labour would gain because regulations should match the size of the market to be effective, and MNEs could also benefit because it would reduce the cost of learning about, and complying with, labour codes. In addition, it might help reduce harmful tensions, which hamper full realisation of the potential of MNEs. But in this case, social clauses need not be restricted to core labour standards. In fact, their coverage should embrace a broader range of standards and issues, setting comprehensive framework conditions, in order to ensure MNEs' activities concur with the global good; avoid strangling the golden goose; and meet the challenges of globalisation and of sustainable development. In other words, this would mean extending the coverage of, and giving binding force to, MNEs' voluntary codes of conduct.

### Conclusion

Sustainable development demands that we re-invent growth, emphasising qualitative improvements rather than unrelenting quantitative increases, which no longer seem feasible. This process calls for comprehensive changes. It should not frighten us, but challenge us to enhance co-operation and adopt a more holistic, systemic and evolutionary approach. The narrow focus of self-interests, and of the additive utilitarian paradigm, has little to offer in this respect. They cannot generate synergies, which call for another mindset altogether, synergies that portend the potential for leaping forward. Higher labour standards could provide an avenue for improving co-operation and labour-management relations in order to set synergies in motion.

*Maryke Dessing is a socio-economist specialising in economic development, labour and trade issues. She is based in Geneva, Switzerland. This article is based on research by the author for a forthcoming ICTSD discussion paper on The Social Clause and Sustainable Development.*

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## Round Table on Trade Issues for Developing Countries

The CUTS Centre for International Trade, Economics and Environment (CITEE) of Jaipur and ICTSD are organising a round table on The International Trade System: Issues for Developing Countries at the Palais des Nations in Geneva from 27-28 November 1997.

The round table aims to provide an interactive forum for examining key issues and challenges for developing countries in the run-up to the next WTO Ministerial Conference and the negotiations thereafter. While each topic will be briefly introduced by an expert, most of the round table will be devoted to an informal exchange of views between panelists and other participants.

Gamani Corea, former Secretary-General of UNCTAD, and Celso Lafer, Chairman of the WTO General Council, will spark off the exchange by setting the general context of developing countries in the multilateral trading system.

The afternoon session, chaired by José M. Salazar Xirinachs, State Minister for Trade of Costa Rica, will focus on WTO rules. To pave the way for further deliberations, Professor Ernst-Ulrich Petersmann will offer his views on dispute settlement; Carlos Fernandez-Ballesteros of the World Intellectual Property Organization will focus on the TRIPs Agreement; and Gretchen Stanton, Secretary of the WTO Committee on Sanitary and Phytosanitary Measures, will open discussions on standards.

On 28 November, Professor Yash Tandon of the International South Group Network will chair the morning deliberations on market access. As a starting point, Dr Basudeb Guha-Khasnobis of the Indira Gandhi Institute of Development Research will talk about tariff escalation; Ambassador Nestor Osorio Londoño, Chair of the WTO Agriculture Committee, will initiate discussions on agriculture; and Mr Munir Ahmad of the International Textiles and Clothing Bureau those on textiles.

In the afternoon, Professor Jagdish Bhagwati of Columbia University will chair a session on 'New Issues'. Opening remarks on regionalism will be made by Professor Christian Friis Bach of the University of Copenhagen; Ambassador Anthony Hill of Jamaica will offer views on investment; Pradeep Mehta from CUTS will launch discussion on investment; and Ambassador Juan Carlos Sánchez Arnau of Argentina, former Chairman of the WTO Committee on Trade and Environment, will initiate exchange on the environment.

The round table will conclude with a look at the road ahead by the Chairman of the WTO Appellate Body, Ambassador Julio Lacarte Muró of Uruguay.

More than a hundred participants are expected, including a strong attendance of government trade negotiators from both developing and developed countries. Numerous representatives of civil society from a broad range of institutions are also expected.

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November 20-21 WTO Committee on Agriculture  
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November 21 WTO Committee on Rules of Origin  
Contact: Eki Kim, tel: 5584, fax: 5770

November 21-25 APEC Economic Leaders' Meeting  
Vancouver Contact: APEC Secretariat, tel: (65) 276-1880,  
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December 1 WTO Sub-Committee on Least-Developed  
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December 1-10 Third Meeting of the Conference of the Parties  
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December 4-5 WTO Committee on Regional Trade Agreements  
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Between Trade and Investment  
Contact: Mark Koulen, tel: 5224, fax: 5790

December 12 WTO Committee on Financial Services  
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December 15-17 WTO Textile Monitoring Body  
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December 17 OECD Meeting on the Role of Foreign Direct  
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Publications

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