



ICTSD

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## Basel Convention Parties to Examine Export Ban on Hazardous Wastes

From 23 to 27 February, delegates from some 116 countries will take stock of the effects of the hazardous waste export ban from developed to developing countries in force since 1995. The fourth meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes will take place in Kuching, Malaysia.

Hazardous waste exports intended for final disposal from OECD to non-OECD countries have been prohibited since January 1995 by virtue of Decision II.12 of the Conference of the Parties. As of 1998, that decision also forbids transboundary movements from developed to developing countries of hazardous wastes intended for recycling or recovery. The ban's primary purpose is to eliminate shipments of dangerous wastes to countries which may not be equipped to deal with them.

As members review implementation of the Convention in Kuching, not only compliance with the ban but also its benefits and disadvantages will be under scrutiny. (Among countries which have not yet ratified the Convention are the United States, Thailand, Laos and Myanmar, as well as several African and some Latin American and Eastern European countries.)

### Trading Rights

In 1995, the Convention was amended (Decision III.1) to prohibit all transboundary movements of hazardous wastes to states not listed in a new Annex VII, which presently comprises OECD and EU countries, as well as Liechtenstein.

The amendment is not yet in force because it has not been ratified by three-fourths of the countries that accepted it, as required by the Convention. Thus, the export ban currently binding Basel Convention members only applies to hazardous waste shipments from OECD to non-OECD countries. Once the amendment becomes effective, however, it will be Annex VII membership that will determine trading rights. This is why the eventual enlargement of Annex VII promises to be the hot topic of the Kuching meeting: for some countries not listed in Annex VII, hazardous wastes disposal and recycling could become a significant source of income.

In Kuching, Israel is requesting inclusion into Annex VII, citing the dependence of its recycling industry on imported hazardous waste as secondary raw material, as well as its adequate recycling facilities. Neighbouring countries are likely to vigorously oppose the proposal,

diplomatic sources say, referring – among other things – to a lack of national hazardous wastes legislation. As other countries may also request inclusion in Annex VII in the future, some African countries are likely to table a proposal to develop stringent criteria for Annex VII status and demand full compliance with those criteria before that status can be granted. This is particularly important, African diplomats argue, in view of the fact that indiscriminate enlargement of Annex VII may lead to circumvention of the original purpose of the export embargo.

Monaco is also seeking Annex VII status in order to be allowed to continue exporting small quantities of hazardous wastes to France for recycling after the amendment enters into force. The proposal is likely to be accepted without difficulty because of Monaco's special border arrangements with France.

### Classifying Hazardous Wastes

Implementation of the Convention has been complicated by a lack of a common understanding of what exactly is hazardous waste. Two lists that clarify this issue are up for adoption by the Kuching meeting: List A refers to wastes considered hazardous under the Basel Convention and thus subject to the trade ban between OECD and non-OECD countries, while List B specifies wastes that do not fall under the Convention unless they contain List A materials to an extent causing them to exhibit one or more of the hazardous characteristics specified in the Convention's Annex III. This annex provides the basis on which experts decide to include substances in List A.

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### Liability Protocol and Compensation Fund

The high point of the Kuching meeting was to be the adoption of a Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and Their Disposal. However, the legal and technical expert working group drafting the protocol was not able to finalise it on time. Whether the 'person(s) in operational control' of the wastes at the time of an incident/accident or the exporter should be liable for compensation for damage caused by transboundary movements of hazardous wastes is still hotly debated. Views also differ on the need to establish an international fund under the protocol for emergency response and compensation for damage in cases where the civil liability regime is inadequate or not available. The working group requests the Conference

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## The Basel Convention and International Trade

The text below has been abridged from Chapter 10 of *The Basel Convention: A Global Solution for Controlling Hazardous Wastes*, published by the Convention Secretariat in 1997.

The relationship between trade and environment has recently taken a new dimension in view of the promotion of free trade internationally by the World Trade Organization (WTO) and other organizations and of the necessity to protect the environment as well as ensuring the proper management of natural resources. The Basel Convention contains two provisions referring to international trade. The first one is related to the obligations of the Parties to the Convention not to allow export to or import from non-Parties to the Convention (article 4, paragraph 5), and the second provision is the right of the Parties to ban the import of hazardous wastes (preamble, paragraph 6 and article 4, paragraph 1(a)).

### **The obligation of the Parties to the Basel Convention not to export to or import from non-Parties to the Convention**

One of the main principles of the Basel Convention is to impose strict control measures on the transboundary movements of hazardous wastes in order to avoid the negative effects on health and the environment which could result from the movements such wastes and to guarantee their proper handling from their generation to their final disposal. It was clear during the negotiations leading to the Basel Convention that permitting a Party to deal with non-Parties would be a valve through which the Party could derogate from the obligations it has undertaken under the terms and provisions of the Basel Convention and thus practising the movement and disposal of hazardous wastes without any kind of guarantee and safety for human health and the environment. As a result of this reasoning and also in order to encourage non-Parties to become Party to the Basel Convention, the provision of paragraph 5 of article 4 was included in the Basel Convention stating that "A Party shall not permit hazardous wastes or other wastes to be exported to a non-Party or to be imported from a non-Party".

Of direct link to this article comes the provision of article 11 in both its paragraphs 1 and 2, permitting Parties to deal with non-Parties under the condition of concluding bilateral, multilateral or regional agreements or arrangements. These agreements or arrangements shall stipulate provisions which are not less environmentally sound than provided for by this Convention for agreements concluded after the entry into of the Basel Convention. Agreements concluded before the entry into force of the Convention shall be compatible with the environmentally sound management of hazardous wastes and other wastes as required by this Convention.

### **The right of the Parties to ban the import of hazardous wastes**

The provisions of the Basel Convention state that the right to ban is a general one which shall, if used, be applied equally vis-a-vis all other countries, whether Parties or non-Parties to the Convention. Exercising such a right is, therefore, in compliance with the principle of non-discrimination. Also, doubts cannot be raised that the country which exercises this right is following a protectionist policy because from the definition of waste it is clear that they are not goods which are produced to be commercialized, but are generated as a result of the production process of other goods. The concept of protecting a

market for the waste generated locally has, therefore, no place within the logic of the Basel Convention.

As referred to above, article 11 of the Basel Convention regulates the relationship with non-Parties on a non-discriminatory basis. No problems have been raised in implementing this article. Should any problem be raised in the future, the Open-ended Ad Hoc Committee, established under the terms of Decision 1/9 of the First Meeting of the Conference of the Parties to the Basel Convention, will deal with it.

Recognizing the increasing desire and demand of the international community for the prohibition of transboundary movements of hazardous wastes and their disposal especially in developing countries, the Second Meeting of the Conference of the Parties adopted a decision establishing the immediate prohibition of all transboundary movements of hazardous wastes which are destined for final disposal from OECD to non-OECD countries. The transboundary movement of hazardous wastes from OECD to non-OECD countries destined for recycling or recovery operations is to be phased out by 31 December 1997 and prohibited as of that date. This transitional period has been seen as necessary for those concerned

with these movements to enable them to take appropriate measures consistent with the environmentally sound management of such wastes.

At the Third Conference of the Parties a decision was adopted to amend the Convention with respect to a prohibition, by each Party member of OECD, EC, Liechtenstein, of all transboundary movements of hazardous wastes which are destined for final disposal to other States. It also phases out by 31 December 1997 and prohibits as of that date all transboundary movements of hazardous wastes which are

destined for recovery, recycling, reclamation, direct reuse or alternative uses from Party members of the OECD, EC, Liechtenstein, to other States. Such transboundary movement shall not be prohibited unless the wastes in question are characterized as hazardous under the Convention.

### **The following important points related to trade clauses under the Basel Convention should be emphasized:**

Trade between Parties and non-Parties to the Basel Convention is not prohibited. But in order to enhance the principle of non-discrimination and equal treatment, the Basel Convention requests, in accordance with article 11, its Parties when dealing with non-Parties to conclude bilateral agreements or arrangements stipulating provisions which are not less environmentally sound than those provided for by the Basel Convention. Therefore, in relation to the control of transboundary movements of hazardous wastes, Parties and non-Parties will have to respect standards recognized as essential by the international community for the protection of the environment. Trade restrictions against non-Parties do not only aim to induce non-Parties to accede to the agreements, but also to achieve the aim of non-discrimination. Article 11 of the Basel Convention on bilateral, multilateral or regional agreements or arrangements which complement the provisions of article 4 prohibits transboundary movements of wastes with non-Parties. Article 11 allows such movements through the conclusion of agreements or arrangements not less stringent than the provisions of the Basel Convention.

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# The Kyoto Protocol: Business Recommends a Framework that Supports Trade and Investment

By Noreen Kennedy

## **An Engaged Business Community and a Strong Global Economy are Prerequisites for Success**

To generate the financial and technological resources necessary to address the challenge of climate change, economic growth must continue through open trade and investment which the U.N. Framework Convention on Climate Change (UNFCCC) should support, not hinder. Crucial to the Convention's success will be the extent to which it accommodates open trade and investment.

With the Kyoto Protocol, the Framework Convention is like no other multilateral environmental agreement (MEA). When fully elaborated, the UNFCCC architecture promises to rival that of the WTO in its complexity. Unlike other MEAs, it will pervade all aspects of economic and commercial activity. In addition to its interface with the world trading system, the Kyoto Protocol will create new conditions and institutions for investment, and these too will have to be reconciled with the emerging Multilateral Agreement on Investment (MAI).

Taken as a whole, the Protocol could establish a ceiling over how fast and far economies can grow (within the limits of technology's ability to delink emissions from economic activity). Yet the UNFCCC's successful implementation will require continued economic growth and social development to support it. Given the limitations it will impose, integrating it into an increasingly open and vital trade and investment systems will be a major challenge.

This article will suggest principles which would lessen the UNFCCC's impacts on economic growth, investment, trade and jobs. These general principles would form a basis for more business-friendly actions in implementing treaty commitments. Business is concerned that the differentiated nature of commitments between OECD and non-OECD countries will set the stage for trade and investment discrimination. As countries become concerned about competitiveness, the temptation to resort to trade and investment barriers will assert itself.

At this point, the Kyoto Protocol is still a work in progress. A number of unresolved issues remain, such as emissions trading, joint implementation and compliance. The resolution of these issues will determine both the feasibility, the costs and the public acceptability of the UNFCCC roadmap to address climate change. But it is clear that trade and investment disputes, if not avoided early, will detract from the effectiveness of the UNFCCC.

Business has a central role to play in elaborating the treaty. It recognizes that governmental response to climate change will effect the way companies do business, domestically and internationally. Business will be involved in the challenges ahead as employers, investors in, developers and users of innovative technologies and manufacturing capital, in short, as eventual implementers of their national governments' commitments.

The WTO Committee on Trade and Environment has discussed how to reconcile implementation of Multilateral Environmental Agreements (MEAs), national and regional environmental policies

with established trade disciplines. The issue of whether trade and economic interests or environmental considerations should take precedence has been a sticking point. Fed by protectionist interests, this question has already bedeviled U.S. Fast Track, NAFTA and MAI debates, as it no doubt will the further development of a UNFCCC framework.

Such controversies however, can and should be avoided in the climate context, and therefore they should be considered as early as possible in the ongoing negotiations. From a business perspective, it is critical that further development of the Kyoto Protocol, and national implementation thereof, complement – rather than hinder – the trend towards more open trade and investment.

## **National Policies and Measures Must Eschew Trade and Investment Restrictive Approaches**

Much will depend on how national governments choose to implement their commitments through the choice and combination of policies and measures. Moreover, the timing of entry into force and possible anticipatory implementation by some countries before that time will likewise impact trade and investment. Governments should assess trade and investment impacts of their policies and measures accordingly.

In the experience of business, certain policy approaches tend to erect trade and investment barriers more than others. In general, multilateral approaches, voluntary agreements and initiatives and product-oriented rules are to be favored over unilateral, command and control mandated, process based policies. These principles should apply in implementation of the UNFCCC; minimization of trade and investment limitations should be a key consideration in selecting national policies and measures.

Two areas require special attention from a trade perspective: labeling and energy taxes. Some governments have proposed labeling of "clean" energy sources, products made with "clean" energy. Which criteria will be used to award such labels, and how will they be applied to other countries, which may or may not have commitments? Will there be mutual recognition of different national criteria? Could these labels discriminate against countries with different energy mixes, or against developing countries?

On a similar note, countries are looking to carbon or energy taxes as a policy tool. Inevitably, the issue of border tax adjustments will arise. Here too, governments should avoid such trade barriers, and consider less trade restrictive policies wherever possible.

## **The Supporting Institutions of Joint Efforts Should Function in Coordination with Trade and Investment Bodies**

Business and industry has supported "where" and "when" flexibility in the UNFCCC framework to permit the cost-effective greenhouse gas reductions. The Kyoto Protocol captures this flexibility through joint efforts like "bubbles," joint implementation, and the Clean Development Mechanism (CDM), but has not defined many important procedural issues connected with them. Great care must be taken in

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elaborating these approaches. Furthermore, new institutions to support these joint efforts should be developed to interface with significant trade and investment bodies, such as the WTO and the MAI.

The CDM could be a first step to encouraging non-Annex I countries to reduce greenhouse gas emissions in their infrastructure and energy use. However, business already has concerns about the complexity and constraints of this mechanism, which could discourage the very investment it seeks to attract. The extent to which reductions credit is available to Annex I countries for cooperative ventures with non-Annex I countries is still in question. This uncertainty sends an unclear signal in motivating Annex I countries and their business communities about where and how to invest.

The Protocol will augment the current trend of globalization and investment in developing countries, bringing with it private sector transfer of technologies and expertise, and sharing of good environmental management practices. Adequate protection of intellectual property rights, and sound investment and regulatory framework will further encourage these investments.

Concurrently, the growing economic activity will certainly result in increased energy demand and consequently GHG emissions from non-Annex I countries. A climate policy regime that is sensible to and encourages non-Annex I countries' needs for development will be crucial for the long-term success of the effort. Eventually and most importantly, the potential for trade and investment distortions will diminish as developing countries choose to accept greenhouse gas control commitments of their own.

#### **Open Trade and Investment will Contribute to a Successful UNFCCC**

Business views climate change as a long term issue of critical importance. Business encourages governments to address the trade and investment issues unique to this ambitious treaty, developing a framework that will work with the business community to contribute to economic growth and environmental protection.

In conclusion, the process to further elaborate and implement the Kyoto Protocol should take account of existing international trade and investment rules and practices, and consider carefully the interface of existing and emerging trade and investment institutions, like the WTO and MAI with new climate change bodies. The emerging multilateral climate policy regime should minimize trade and investment barriers by:

- moving quickly and deliberately to address issues of compliance, emissions trading and joint implementation;
- allowing business and industry the opportunity to recommend effective and realistic alternatives to mandatory controls that cut emissions by constraining commerce;
- avoiding discrimination based on processing and production methods (PPMs) in national implementation, and favoring policies which are less trade restrictive (such as voluntary approaches);
- recognizing that technology development and its commercial dissemination, like other initiatives requiring major capital investments, constitute long-term challenges that need to respect investment cycles, and address and resolve barriers to implementation; and
- promoting a favorable trade and investment climate in all countries.

Climate protection, economic growth, trade and investment need not be perceived as a zero-sum game. Some aspects of the traditional trade, environment and investment debate still pertain. The UNFCCC raises new questions in both trade and investment contexts which are of crucial importance to business, including those to come from the creation of new institutions to administer international emissions trading and joint implementation. However, it also presents new opportunities to resolve these questions in partnership with business.

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of the Parties to extend its mandate until the next COP meeting in 1999.

Another inter-sessional working group has been examining whether an emergency fund (for rapid response in case of accidents) should be set up under the Convention itself, but here again countries' views remain severely divided. Progress has also been slow in determining whether a mechanism or procedure for monitoring implementation of, and compliance with, the Convention is required. No conclusion has been reached and the working group requests that it be mandated to continue its 'step by step approach to examine the relevant issues'.

#### **Illegal Traffic**

Several cases of illegal traffic in hazardous wastes are signalled to the Basel Convention secretariat each year. A long list of measures designed to curb illegal traffic will be presented for the COP's approval in Kuching. The measures aim at improving reporting, legislation and enforcement, as well as international co-operation and capacity-building regarding the prevention, identification, management and penalisation of illegal trafficking. Developing countries, many of which have imposed import bans on hazardous wastes, in particular need financial and technical assistance to monitor illegal traffic. When such traffic is detected in any country, government officials seize the consignment, often falsely or incompletely labelled, and notify it to the secretariat. The secretariat then notifies the competent authority in the country of origin which arranges the re-export or disposal of the wastes in question. At Kuching, the Parties are expected to adopt a standard form for reporting on confirmed cases of illegal traffic of hazardous wastes.

As of December 1997, 116 States and the European Community are Parties to the Basel Convention. More than 400 million tonnes of hazardous wastes are generated each year world-wide; some 10 percent of these cross national borders. Due to economic reasons, a large amount of the movements go from industrialised countries to developing countries as well as to Eastern and Central Europe where disposal costs are lower. A number of these countries still lack environmentally sound management of waste disposal. The 1995 amendment to the Convention, which prohibits movements of hazardous wastes from OECD to non-OECD countries, sought to eliminate shipments of these wastes to countries not equipped to deal with them.

*Source: The Basel Convention Secretariat*

### **Committee on Trade and Environment**

The CTE continues its thematic approach to its work agenda and is currently in a stage of 'reflection and analysis' leading up to its first 1998 meeting on 19-20 March (the meeting will be preceded by an NGO Symposium, see below). Over the next year it will continue to cover the ten items of its work programme. Its last meeting on 24-26 November, 1997 focused on Trade in Services and the Environment, and on relations with intergovernmental and non-governmental organisations. Last year the Committee extended observer status to the UN Convention on Biodiversity (CBD), CITES, and the Latin American Economic System (SELA).

The General Council is expected to confirm Ambassador Chak Mun See (Singapore) as Chairman of the CTE on 19 February. Informal consultations will then begin on the sequence of the CTE's work programme for the upcoming year. The schedule should be completed by the end of February/beginning of March. The March meeting is expected to focus on CTE agenda item 6: 'The effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions'.

Nigeria is likely to continue to push for WTO-mandated notifications of domestically prohibited goods exports, a thorny issue for the international trading system since the early 1980s. The CTE is expected to address this issue near the end of 1998.

From 17-18 March, the CTE will hold an NGO Symposium for organisations who have 'expressed an interest in the CTE proceedings and who have made appropriate arrangements with CTE staff'. Trade diplomats and some of the Secretariats of Multilateral Environmental Agreements – such as the Montreal Protocol and the CBD – are also likely to attend. The Symposium will focus on sectors within market access, namely forests, industry, fisheries, agriculture, energy, textiles, and environmental services. Interpretation of GATT Article XX will also be broached. The report on the Symposium will be available in a forthcoming issue of the Trade and Environment Bulletin.

For the CTE meeting contact: Sabrina Shaw, Trade and Environment Division, tel: (41-22) 739-5482, fax: 739-5620. For the NGO Symposium contact: Scott Vaughan, tel: (41-22) 739-5091, fax: 739-5774.

ICTSD, IUCN and the International Institute for Sustainable Development are planning to hold a policy dialogue on CTE-related issues prior to the NGO Symposium. The meeting will be chaired by Maurice Strong, Chairman of the Earth Council. For more information contact Miguel Jiménez-Pont at ICTSD.

### **Committee on Agriculture**

The Committee on Agriculture is continuing informal and formal meetings for the setup of the 1999-2000 round of agricultural talks. There remains disagreement amongst Members about when exactly the discussions should be initiated. Those with protected or subsidised agriculture sectors are pushing for a longer time period than Members such as the Cairns group or agriculture exporting countries. According to the Agreement on Agriculture, the implementation period for Uruguay Round commitments refers to 'the six-year period commencing in the year 1995'. Developing countries have 10 years to implement their agriculture commitments, with no reduction commitments required for least-developed country Members.

Informal meetings for analysis and information exchange set up by the 1996 Ministerial are also continuing apace. Here the Committee

is looking at how the Agreement on Agriculture is being implemented – in particular in the EU, Japan and Switzerland – and is preparing technical material for the upcoming new round of talks. Tariff quotas are being assessed, and offending countries are being urged to 'tariffify' their quota systems to allow greater market access for exporters.

The Committee's formal work is centring around a review of Member notifications; specifically the assessment of Member commitments regarding market access, domestic support and export subsidies. Once notified the WTO, other Members can challenge such notifications.

Papers submitted by Pakistan, Peru and the Dominican Republic argue that developing countries have too few resources to effectively negotiate in the upcoming agriculture talks. They have appealed to the FAO for assistance, but have yet to hear back on their requests. Developing countries have also applied to the Secretariat to do quantitative analysis of their agriculture sectors, but accurate studies of this type are difficult at this early stage. For instance, it can be difficult to isolate the impact of the Uruguay Round trade liberalisation on wheat prices in a particular country while also accounting for other shifts such as weather patterns or global supply and demand. The Committee's next meeting is scheduled for 19-20 March.

Contact: Paul Shanahan, WTO Agriculture and Commodities Division, tel: (41-22) 739-5097; fax: 739-5760.

### **Textile Monitoring Body**

The 22nd of January saw the conclusion of the meeting of the Textile Monitoring Body (TMB). The central issue discussed was a complaint by Honduras against US import restrictions on Honduran cotton and man-made fibre. Honduras argued that the restrictions were unfair in light of the November 1996 dispute settlement panel finding (against the US) concerning US import restrictions on Costa Rican cotton and man-made textiles (Honduras was not a third party to the dispute). The US defence has focused on the fact that the restrictions were part of a bilateral agreement between Honduras and the US dating to 1995 and slated to terminate on 26 March, 1998. The TMB noted the events and invited the US to consider lifting the restraints before that date. The next meeting of the TMB will take place on 18-20 February.

Contact: Vasanthi Saverimuttu, TMB, tel: (41-22) 739-5306; fax: 739-5780.

### **Rules of Origin**

Starting on 6 February, the Committee on Rules of Origin will begin considering unresolved issues on rules of origin, including agricultural products, clocks and watches, textiles, wood and wood paper, pharmaceuticals, ceramics and glass, and musical instruments. The Committee is working in conjunction with the World Customs Organization's Technical Committee on Rules of Origin in order to eventually harmonise international rules of origin for each and every product traded. It expects to complete the review on 20 July 1998.

The central 'test' used by the two Committees involves determining what constitutes 'substantial transformation' of a product. For instance, does wool bleaching or shirt printing constitute allocation of country of origin status for textiles? Rules of origin can affect trade actions such as anti-dumping, safeguards, and countervailing duties, and are of particular importance to countries that perform downstream alterations/assembly of goods produced in other states.

Contact: Susan Aspinall, Rules Division, tel: (41-22) 739-5109; fax: 739-5505.

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### Competition Policy Working Group

At its meeting on 27-28 November, the Working Group on the Interaction between Trade and Competition Policy continued work begun in September 1997 on two main foci:

- the relationship between the objectives, principles, concepts, scope and instruments of trade and competition policy, and their relationship to development and economic growth; and
- stock-taking and analysis of existing instruments, standards and activities regarding trade and competition policy, including of experience with their application, taking up in turn each of the three sub-items, namely national competition policies, laws and instruments as they relate to trade, existing WTO provisions, and bilateral, regional plurilateral and multilateral agreements and initiatives.

Written submissions were received from Colombia, the EC and its Member states, Kenya, New Zealand, the US, Hong Kong China, Canada, Japan, Mexico, Argentina, Turkey and Brazil.

The Working Group was informed as to the relationship between competition policy, international trade and development via a Symposium on 29 November – jointly organised by the WTO, UNCTAD and the World Bank Secretariats. The Symposium included a mix of industrialised, transition and developing countries. An invitation to SELA was renewed to attend the Working Group's next meeting on 11-13 March as an observer on an ad hoc basis, and a request for observer status from the Organization of the Islamic Conference will also be assessed then. Aside from general discussion, the March meeting will also address the impact of anti-competitive practices of enterprises and associations on international trade.

Contact: Hans-Peter Werner, Information and Media Relations Division, tel: (41-22) 739-5015; fax: 739-5458.

### Working Group on Trade and Investment

The Group is still in its 'study phase'. Ministers in Singapore in December 1996 gave the Working Group two years to design recommendations, which will be submitted to the General Council at the end of 1998. Currently the Working Group is working on submissions made by other bodies also involved in international investment (UNCTAD and OECD) in order to harmonise outputs and avoid duplication.

At the Working Group's last meeting on December 8, 1997, it continued revision of its three main items:

- implications of the relationship between trade and investment for development and economic growth;
- the economic relationship between trade and investment; and
- stocktaking and analysis of existing international instruments and activities regarding trade and investment.

Written submissions were presented by the US, Colombia, Korea, Cuba, Japan and Canada. At its next meeting, scheduled for 30-31 March, the Working Group will revert to the matter of granting observer status to a number of international intergovernmental organisations, including SELA, the Organization of African Unity, Organization of American States, and Organisation of the Islamic Conference.

Contact: Luis Ople, Information and Media Relations Division, tel: (41-22) 739-5374; fax: 739-5458.

### Trade Policy Review of Japan

A report released on January 28 by the WTO Trade Policy Review Body drew attention to the continued need for Japan to stimulate domestic demand and increase its efforts to open the country's economy to foreign goods and services.

The report acknowledged that some steps had been taken toward greater deregulation and structural reform, but said that these had been only 'partial in scope'. In order to rectify structural rigidities that existed in the Japanese economy in the early 1990s, Japan has introduced several reform packages containing deregulation measures in the past few years. Various packages of fiscal and monetary stimulus during 1995, for instance, sustained moderate economic growth but led to a worsening of public finances. A new Foreign Exchange Law is expected to substantially open the foreign exchange market to all agents and reduce notification requirements. This will potentially facilitate trade and financial transactions. However, the result of earlier reforms is yet to be seen, and concerns have been raised – even in Japan itself – about the slow pace of reform and the ambiguity of the reform agenda.

There have been no major changes in Japan's tariff structure since its last review, which was conducted in April 1995. Though some 60 percent of Japan's tariff lines are rated at 5 percent or below, the country maintains a simple average tariff rate of 9.4 percent. High tariffs continue to exist in agriculture, food manufacturing, textiles and footwear, and petroleum refining, while state trading regulations such as import quotas remain in place for a number of agricultural products such as rice, barley and milk. '[S]everal sectors, especially agriculture, construction and certain services, especially financial, remain subject to restrictive regulations that affect both foreign market access and better allocation of domestic resources.'

Despite these restraints, Japan was credited for abolishing nine of eleven export cartels since 1995. The remaining cartels – related to quality protection, import monopolies in partner countries, and intellectual property – are due to be abolished by the end of 1999. Also up for termination in 1999 is Japan's only remaining voluntary export restraint on car exports to the European Union.

The WTO report noted that the financial and structural crisis in other East Asian economies is 'likely to affect Japan more severely than other major industrialised countries, because the structure of Japan's trade and investment has become increasingly concentrated in East Asia.' Japan's exports and imports to the region have continued to grow since the last TPR, reaching 43 and 36 percent respectively in 1996, compared to 30 and 28 percent in 1990.

Spurred on by the financial problems experienced by its Asian neighbours, however, Japan has weathered a downturn in its domestic economy, with export demand the only significant source of growth. In this respect, Japan was warned by the WTO to avoid mimicking the practice of other East Asian economies by exporting its way out of the current situation, concentrating instead on encouraging domestic demand. 'Firm continuation of the deregulation process would therefore be an essential element in stimulating the domestic market,' the report said. Representatives of Member countries echoed this statement at a meeting held to compile the report, expressing hope that Tokyo would accelerate its deregulatory efforts. 'Given the current global economic and financial situation, it is incumbent on Japan, the second largest economy in the world and the largest economy in Asia, to revive its economy not by reliance on an export-led strategy, but by boosting domestic demand,' said Assistant US Trade Representative Wendy Cutler.

## Dispute Settlement Corner

**Beef Hormone Ban: To Lift or Not to Lift?**

On 16 January, the WTO Appellate Body circulated its twice-postponed report on the WTO-compatibility of the EU's import ban on beef treated with growth hormones. The case was brought by the United States and Canada, with Australia, New Zealand and Norway as interested third parties (see also legal analysis on page 9).

The Appellate Body ruling, the WTO's first concerning non-compliance with the Sanitary and Phyto-Sanitary (SPS) Agreement, upheld an earlier dispute settlement panel finding that there was not enough scientific evidence to warrant the ban, as required by SPS Article 5.1. The Appellate Body found that the evidence presented by the EU did not include a risk assessment convincingly showing that the import ban was necessary to protect the health of EU citizens.

The final verdict, however, emphasises that nations have the right to set their sanitary and phyto-sanitary standards at higher levels than those set by accepted international organisations (in this case, the Codex Alimentarius), provided a risk assessment has been carried out showing that a risk may indeed exist. Further, the Appellate Body enlarges the panel's concept of the elements that can be covered in a risk assessment to include 'risks arising from failure to comply with the requirements of good veterinary practice in the administration of hormones for growth promotion purposes, as well as risks arising from difficulties of control, inspection and enforcement of good veterinary practice'.

The Appellate Body overturned the panel ruling that the hormone beef ban was inconsistent with other EU policies and therefore 'arbitrary and unjustifiable', resulting in 'discrimination or a disguised restriction on international trade'. Administering hormones to beef for growth purposes is also forbidden in all EU countries.

It was not immediately clear what measures the EU should take to comply with the findings. Initial comments by officials seemed to indicate that the EU is planning a more thorough risk assessment along the lines suggested by the report in order to justify the import embargo. Pointing to the finding that no scientific evidence indicates that growth hormone-treated beef is harmful to human health, the US demands that the ban be lifted. The EU has until mid-March to decide how it will implement the ruling.

**Appellate Body Confirms India's TRIPs Violations**

On 19 December, the WTO Appellate Body circulated its report upholding a July panel finding that India's legal regime for filing patent applications for pharmaceutical and agricultural products did not comply with Articles 70.8(a) and 70.9 of the TRIPs Agreement. As a developing country, India has a transition period extending until 2005 to fully implement TRIPs. However, Article 70 spells out specific conditions regarding patents and marketing rights for agricultural and pharmaceutical products. According to Article 70.8, during the transition period countries must 'provide a means by which applications for patents for such inventions may be filed'. This 'means' is called a 'mailbox', i.e. a system that allows a country to keep track of agricultural and pharmaceutical patent applications until it has brought such products under intellectual property legislation and can grant (or reject) the patents with respect to their novelty claims as ascertained by the dates of filing. Article 70.9 requires countries to provide exclusive marketing rights for products for which patents have been sought for a period of five years after obtaining marketing approval in that Member or until a patent is granted or rejected in that Member, whichever period is shorter.

The Appellate Body found that India had failed to establish 'a sound legal basis to preserve novelty of inventions and priority of applications as of the relevant filing and priority dates', i.e. an adequate 'mailbox'. The AB further concluded that India had not established a mechanism for the provision of exclusive marketing rights effective as of 1 January 1995, as required by Article 70.9. The AB ruled, however, that the panel erred in ruling India in violation of Article 63, as that claim was brought to the dispute settlement process after the terms of reference for the panel had been set and those terms did not include an examination of Article 63 (which deals with transparency requirements). According to WTO practice, India now has 15 months to bring its 'mail-box' and exclusive marketing legislation into conformity with Articles 70.8 and 70.9 of the TRIPs Agreement.

The Appellate Body report was the first WTO ruling on a complaint related to the implementation of the TRIPs Agreement. At least four other cases are currently pending: on 9 January, the US requested the establishment of a panel to rule on the TRIPs compliance of Ireland's copyright and neighbouring rights legislation and consultations are pending with the EU on the same case. Consultations are also pending between the US and Denmark regarding Denmark's provisional arrangements to ensure copyright protection in the context of civil proceedings. The EU on 19 December asked for consultation with Canada, claiming that Canada's patent legislation does not provide for the full protection of patented pharmaceutical inventions for the entire duration of the term of protection envisaged by Articles 27.1, 28 and 33 of the TRIPs Agreement.

**EU Discussions Start on Compliance to Banana Ruling**

On 14 January, the European Commission provided the first indication of how the EU plans to implement the September 1997 Appellate Body finding that several aspects of its banana import and import licensing regimes were inconsistent with its WTO obligations. The Commission's proposal calls for the establishment of an autonomous tariff quota of 353,000 tonnes of bananas at a duty of ECU 300/tonne (over and above the present quota of 2.2 million tonnes at ECU 75/tonne) to account for EU enlargement; abolishing the present import licensing arrangements and replacing them with WTO-compatible policies; granting a share of the tariff quota to 'all suppliers with a substantial interest' and therefore not allocate individual countries shares within the total allocation for traditional African, Caribbean and Pacific (ACP) suppliers'. The Commission also proposes that the EU provide technical and financial assistance of ECU 450 million over ten years to ACP countries adversely affected by the new regime.

The Commission's proposal needs to be approved by the European Parliament and the EU Council. The case was examined on 20 January by the EU Agriculture Council which, citing the complexity of the issues, mandated a special committee to study the Commission's proposal. According to an EU press release, the Agriculture Council focused on the Union's obligation to comply with the WTO ruling on the one hand, and its obligations toward traditional suppliers within the EU as well as ACP countries on the other.

Many ACP countries have expressed concern over the dismantling of the preferential scheme. The US, on the other hand, immediately called the proposal unacceptable, saying it continued to discriminate against certain Latin American producers. The case was brought to the WTO by the US, Ecuador, Honduras, Guatemala and Mexico. The EU has until 1 January, 1999 to comply with the ruling.



### **Biosafety Protocol: Large Agenda, Little Time**

Negotiators will meet for the fourth time in Montreal from 5-13 February to continue working towards a protocol on biosafety. 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.

Delegates will attempt to streamline draft text reflecting the multiple options for protocol articles put forward by governments at the negotiating group's last meeting in October 1997 (see Bridges Vol. I, No. 5, p. 9). This will be a difficult task, as on many of the key issues proposals range from 'no provision' to more than ten often conflicting options.

Among such key issues are the so-called Advance Informed Agreement (AIA) clauses, as well as risk assessment and management provisions. Heated discussion, barely begun as yet, is expected regarding liability and compensation, trade with non-Parties and illegal traffic. Most of these are also key components of the PIC Convention under construction (see below) as well as the Basel Convention's Liability Protocol (see cover story). Positions are polarised on the inclusion of socio-economic considerations in the protocol (generally supported by developing countries), as well as provisions dealing with non-discrimination in line with the WTO principles of most favoured nation treatment and national treatment.

The scope for international trade in biotechnology products is tremendous. The difficulty lies in effectively limiting risks and providing compensation for damage caused by cross-border movements of LMOs without hampering the growth of trade in biotechnology products. Countries with strong or nascent biotechnology industries tend in general to favour a 'looser' agreement than those likely to be at the receiving end of biotechnology trade.

The fifth meeting of the Ad Hoc Working Group on Biosafety is tentatively scheduled from 29 June to 10 July in Montreal. The last negotiating session, to be followed by an adoption ceremony, is tentatively scheduled for early December 1998.

Contact: CBD Secretariat, tel: (1-514) 288-2220; fax: 288-6588; e-mail: [chm@biodiv.org](mailto:chm@biodiv.org); Internet: <http://www.biodiv.org>

Nota bene: Please note that the special protocol on biodiversity benefit sharing, briefly described in Bridges Vol. 1 No. 6, was discussed in an informal forum co-organised by the UNEP Regional Office for Latin America and the Caribbean and the Colegio de Mexico. Its recommendations were not in any way adopted or endorsed by UNEP. The recommendations and the papers presented will be published by the co-sponsors later in the year.

Contact: Enrique Leff, UNEP/ROLAC, tel: (52-5) 202-4841; fax: (52-5) 202-0950; e-mail: [Educamb@latino.rolac.unep.mx](mailto:Educamb@latino.rolac.unep.mx)

### **New Round of Pesticide Negotiations**

The fifth meeting of the intergovernmental negotiating committee preparing an international convention on the 'prior informed consent' (PIC) procedure for trade in hazardous chemicals and pesticides, will take place in Brussels from 9-14 March (for a report of the previous negotiation round, see Bridges Vol. I, No. 5, p. 9).

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 which are 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.

The negotiations will be closely watched both by those involved in the development of the Liability Protocol under the Basel Convention and those working on the Biosafety Protocol under the Convention on Biological Diversity. Many of the questions are the same: who is responsible for damage – the exporter, the person(s) in charge when an accident happens, the importer or some combination of these? What is the responsibility of transit countries? What legislation to apply? Where will compensation come from? How much information must an exporter provide on the composition of its products?

After the March session, only one short meeting is envisaged in December for finalising the Convention, followed by a signing ceremony (exact dates are not yet available). The consolidated negotiating text for INC-5 is available from UNEP Chemicals as UNEP/FAO/PIC/INC.5/2 (see address at the end of the story below).

### **Beyond PIC: Eliminating POPs**

Whereas the PIC treaty will require mandatory controls of dangerous pesticide and chemical shipments – labelling, export notices, etc. – the negotiations due to start next June on persistent organic pollutants (POPs) will aim at reducing and eliminating the production of the most hazardous and long-lasting pollutants. Some of these compounds such as PCBs, may persist in the environment for periods of years and may bioconcentrate by factors of up to 70,000 fold. POPs are noted for their long-range transport through the atmosphere: they have been measured on every continent, including remote regions such as open oceans and deserts, where no significant local sources exist.

The initial twelve substances on the POPs list are: DDT, aldrin, dieldrin, endrin, chlordane, heptachlor, mirex, hexachlorobenzene (HCB), toxaphene, dioxins, furans, and PCBs. Endosulfan and organotins – both commonly used as pesticides in developing countries – have been proposed for inclusion in the list. These substances are often either banned or severely restricted in their countries of origin but continue to be manufactured in/shipped to developing countries by multinational chemical companies. Even where the governments of these countries ban or restrict the use of the pesticides, enforcement remains problematic and illegal traffic is widespread. The principal aim of the POPs convention would therefore be to phase out the production of the most dangerous compounds altogether.

The first session of the POPs negotiations is tentatively scheduled for 28 June to 3 July in Montreal and the second for 7-12 February 1999 in Geneva.

Contact: UNEP Chemicals (IRTPC), tel: (41-22) 979-9111, fax: (41-22) 797-3460, e-mail: [IRTPC@unep.ch](mailto:IRTPC@unep.ch).



# Appellate Body Report on the Beef Hormones Case: A Brief Legal Analysis

By Hiranya Fernando Senadhira

On 16 January 1998, the WTO Appellate Body (AB) upheld an earlier ruling which found that the European Union's ban on hormone-treated beef violated global trade rules because it was not backed by sufficient scientific evidence as required by the WTO Sanitary and Phytosanitary Agreement (SPS).<sup>1</sup> However, the appellate ruling rejected the legal interpretation of the SPS by the original panel on two counts and held that: the EU was within its rights to impose a higher level of food safety than international standards, provided it was backed by scientific evidence; and the ban was not inconsistent with other EU policies.

The original US complaint claimed violation of a number of provisions under three separate WTO Agreements – the SPS, the Technical Barriers to Trade Agreement (TBT) and the GATT 1994.<sup>2</sup> This is an inevitably selective look at the most relevant legal arguments regarding the points which were appealed.

## The Burden of Proof

In any system of law, including the WTO, the burden of proof is usually on the complainant: the complainant must actively prove that the defendant is guilty while the defendant does not have to prove he is innocent. In this case, the Panel attributed the burden of proof to the defendants. It stated that once a plaintiff government makes a *prima facie* case of violation, the burden shifts to the defendant government to justify its health measures. Some consider that this was pivotal to the US government's victory in the first case. This rather puzzling finding was overturned by the Appellate Body, which stated that the evidentiary burden does not shift to the defendant whether there is a *prima facie* case or not, nor whether the measure is based on international standards or not.

## The Precautionary Principle

This is a norm (soft law) of customary international law which prescribes that if there is the potential for harm, it is better to take precautions even in the absence of full scientific certainty. The EU said that it chose to give consumers the benefit of the doubt over the interests of farmers and pharmaceutical companies. It strongly argued that certain health hazards only became apparent long after substances were assumed to be safe;<sup>3</sup> therefore it was better to be safe now than sorry later. The Panel ruled that the principle was already incorporated in Article 5.7 which permits governments to adopt *provisional* measures where there is insufficient scientific evidence.<sup>4</sup> The AB upheld the Panel's view and ruled that the precautionary principle could not override the explicit wording of Articles 5.1 and 5.2.

While examining the substantive questions of interpretation raised on appeal, it is important to bear in mind the basic rights and obligations of WTO Members under the SPS Agreement. These are laid out in Article 2: members have the right to take sanitary and phytosanitary measures for the protection of human, animal and plant health or life (Article 2.1); but they also have the obligation to ensure that such measures are applied only to the extent *necessary*

to protect human, animal or plant health or life, and are based on *scientific principle* and not maintained without *scientific evidence* (Article 2.2).

## The Crux of the Dispute – Risk Assessment

Article 5.1 of the SPS elaborates on the basic obligation contained in Article 2.2. above and must be read in conjunction with it. It stipulates that sanitary and phytosanitary measures must be 'based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organisations'.

The United States claimed that the EU had never performed any risk assessment that could serve as a basis for its ban. In fact, submitted the US, in the EU the 'risk' was usually described in terms of consumer anxieties rather than any observable adverse effects on human health. The European Union responded that although consumer anxieties was not the purpose behind the measures, their concerns certainly mattered, along with other risks such as mistakes and misuse by producers if

they were permitted to administer growth hormones at free will and animals were slaughtered for consumption soon after treatment.

The Panel agreed with the US. It said that although several scientific reports<sup>5</sup> could be considered risk assessment material, the EU had not satisfactorily shown that they were actually taken into account when the sanitary measure was enacted. The Panel pointed to the preambles of the EU Hormone Directives and noted that they did not mention the scientific studies referred to by the EU.

**The Appellate Body ruled that the EU's hormone beef import ban violated the SPS Agreement because it was not based on an adequate risk assessment, but overturned the Panel finding that the EU's different levels of tolerance for growth hormones in beef and pork production were arbitrary and resulted in discrimination on international trade.**

The AB supported, in substance, the Panel's conclusion that the EU measure was contrary to the requirements of Article 5.1. However, it disagreed that 'based on' meant that Members were under a 'minimum procedural requirement' to submit evidence, such as a mention of scientific studies, to prove that they took into account a risk assessment when legislating on an SPS measure. According to the Appellate Body, 'based on' simply meant that there must be a *link* between the SPS measure and a risk assessment, i.e. some risk assessment must sufficiently warrant or reasonably support the SPS measure in question.

The AB also modified the Panel's interpretation of 'risk assessment'. It overturned the Panel's contention that a risk assessment should not take into account non-scientific factors, referring to Article 5.2. which clearly stipulates that in assessing risk, scientific evidence is only one of the factors to be taken into account along with, for instance, relevant production and process methods, as well as sampling, testing and inspection methods.

## International Standards

Article 3.1 of the SPS, states that SPS measures must be based on international standards as embodied in the Codex Alimentarius Standards.<sup>6</sup> Standards were available for five out of the six hormones in issue: for two of them the Maximum Residue Limit (MRL) was 10ug/kg and for the other three, no MRL had been established.

*Continued on page 10*

*Beef Hormones, continued from page 9*

The United States contended that this showed that the hormones used in much smaller quantities were not harmful at all and that the EU ban was not consistent with Codex standards. The European Union argued that at the time it had adopted its measures, no Codex standard existed on the hormones and there still was no standard for the hormone MGA. Furthermore, the EU argued that the Codex standards on five of the hormones were adopted by a very narrow margin indicating that the issue had been controversial. It added that there was no absolute obligation on Members to always follow Codex standards with respect to SPS measures.

The original Panel found that the EU measures were not 'based on' international standards, in the sense that they did not 'conform to' such standards as specified by Article 3.1. Regarding the Article 3.3 exception which allows a Member to have higher standards than those agreed in international fora (provided risk was established as per Article 5), the Panel concluded that since the EU measures were already found to be inconsistent with the risk assessment provisions of Article 5, it was also inconsistent with Article 3.3.

On the first count, the AB disagreed with the Panel's interpretation that 'based on' means 'conform to' and held that it has a broader meaning of 'built on' and stressed Members' rights to have different standards, including higher standards leading to a higher level of sanitary protection. But it agreed with the Panel that a higher level of protection must meet the requirements of Article 5.

#### Consistency with Other EU Policies

Article 5.5 of the SPS states that in the interest of achieving consistency in the levels of protection, Members should avoid arbitrary distinctions which could lead to discrimination. The US claimed that EU policies were inconsistent and resulted in discrimination, arguing that the EU had no problem with the use of growth hormones in the production of pork where international competitiveness was a high priority for the Union, whereas hormones were forbidden in beef where the EU wanted to limit competition from abroad. The Panel agreed with these claims.

The AB ruled that such a finding was not supported by either the EC Directives or by the evidence submitted by the US and accordingly overruled it. The AB held that different levels of protection were only one factor which, when supported by others, may indicate discrimination.

#### Conclusion

With respect to the legal proceedings, the beef hormones dispute has been unusual: in an unexpected turn of events, the Appellate Body *upheld, modified and reversed* respectively a number of key findings by the original Panel. This has led to some confusion, with both parties claiming a partial victory. Perhaps this confusion is unwarranted as the AB clearly supported the Panel's ruling against the EU for its GATT-illegal measure. Beyond this conclusion, however, it amended a number of dubious interpretations which had raised concern when the original Panel report was released.

With respect to the substance of this case, was it a fair outcome? A couple of points could be noted here: first, some commentators have pointed out that while the Panel, commendably, solicited the advice of several scientists, neither it nor the AB took into account the views of food safety groups, several of whom have concerns about possible risks from growth hormones in meat. Second, assuming that a GATT-compatible alternative for the EU could consist of lifting the ban

while requiring 'hormone beef' to be labelled as such, problems might arise with regard to the affected parties' acceptance of such a solution. A National Cattlemen's Beef Association spokesman has already said the US association might agree to beef being labelled as American, but would not be willing to accept a 'hormone beef' label as part of the EU's implementation package.

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

#### NOTES

<sup>1</sup> EC Measures Concerning Meat and Meat Products (Hormones), Report of the Appellate Body, 16 January 1998.

<sup>2</sup> EC Measures Concerning Meat and Meat Products (Hormones), Panel Report, 18 August 1997.

<sup>3</sup> The EU refers to E Coli and BSG as examples of substances which were assumed to be safe, and the EC had been criticised at the time for being unnecessarily cautious. But 20 years later it turned out that they were fatally dangerous substances.

<sup>4</sup> Interestingly, however, it should be noted that the EU did not rely on Article 5.7 because it felt that the Directive was definitive and not provisional in nature.

<sup>5</sup> For instance, the 1982 Lamming Report, and the 1988 and 1989 JECFA Reports, Panel Report p. 187

<sup>6</sup> This is a collection of internationally adopted food standards, originally a joint FAO/WHO effort to protect the health of consumers and to ensure fair practices in food trade through the elaboration of standards.

*Basel Convention and International Trade, continued from page 2*

Therefore, the aim of both articles 4 and 11 of the Basel Convention is to set international standards in relation to the transboundary movement of hazardous wastes, to be respected by Parties and non-Parties to the Basel Convention. This approach of the Basel Convention enhances the principle of equal treatment and non-discrimination.

The decision taken by the third Conference of the Parties to amend the Convention constitutes a prohibition of transboundary movements of hazardous wastes from OECD, EC, Liechtenstein, to other States. It is based on the recognition that the movement of hazardous wastes, especially to developing countries, has a high risk of not constituting environmentally sound management of hazardous wastes and is not based on any trade consideration including protectionism. This concept of high risk of affecting the environment is part of the amendment and will be inserted as a new preambular paragraph and provision in the Convention.

As a general principle regarding the trade clauses it has to be emphasized that a clear differentiation is to be made between unilateral actions by some governments related to the establishment of environmental standards which have a direct impact on trade, and the global environment agreements which do establish rules that could affect trade, but which are agreed upon by a very large number of governments. In this regard, it has to be pointed out that while WTO could be in a position to examine the compatibility of such unilateral action with GATT provisions, this is not the case for environmental agreements of a global character because of the equal legal status of WTO and those global environmental agreements.

**In Memoriam**

**ENRIQUE PEÑALOSA-CAMARGO**

Bogotá, August 1930 - January 1998

Many of us around the globe will mourn the loss of a mentor, a leader, a colleague and a friend whose wisdom, work and example taught us and moved us to strive to move others in the quest for a sustainable world.

**Greening Consumption**

An Inter-Regional Expert Group on the UN Guidelines for Consumer Protection met from 28-30 January in São Paulo to start revising the consumer protection guidelines adopted by the UN in 1985. The experts sought to amend the guidelines to make them reflect the Agenda 21 requirement of promoting sustainable consumption and production. The meeting was organised by the United Nations in anticipation of the April meeting of the Commission on Sustainable Development. Governmental and non-governmental agencies, particularly consumer groups, attended the expert group meeting.

Recommendations prepared by Consumers International, an umbrella group of some 220 consumer associations in more than 100 countries, provided a starting point for discussions. As modified and adopted by the expert meeting and later the CSD, they will be presented to the UN Economic and Social Council for adoption next summer.

Due to our press deadline, the meeting's outcome could not be included in this issue. Among the highlights of the Consumers International recommendations were the following:

- Support for, and promotion of, environmental education and citizen involvement with particular emphasis on the role of women;
- Promoting durable, repairable and recyclable products;
- Ban on the production/use of severely harmful pesticides/heavy metals, and compliance with the Montreal Protocol;
- Internalisation of environmental costs/natural resource accounting;
- Adoption of agricultural policies that favour the conservation of biological diversity, safe handling/use of genetically modified organisms, as well as adequate labelling of such products;
- Greener government procurement policies; and
- Promoting more equitable sharing of resources through development assistance, market access, technology transfer and support for local research in developing countries.

Contact: Erik Brandsma, UN Division for Sustainable Development, tel: (1-212) 963-3170; fax: 963-4260; e-mail: brandsma@un.org; or: Maria-Elena Hurtado, Consumers International; tel: (44-171) 226-6663; fax: 354-0607; e-mail: gpcu@consint.org.uk

**Upcoming Trade and Sustainable Development Meetings**

**First Conference of People's Global Action Against 'Free' Trade**  
Geneva, 23-25 February

People's Action Against 'Free' Trade and the WTO (PGA) – an umbrella organisation for a number of citizen's groups, political freedom movements and others opposed to trade liberalisation – has announced that will co-ordinate protest actions around the globe during the WTO Ministerial Conference next May. PGA campaigns will use a 'confrontational attitude' and 'non-violent civil disobedience' to draw public attention to their rejection of the WTO and other trade liberalisation agreements 'as active promoters of socially and environmentally destructive globalisation'.

Contact: PGA Secretariat, Peasant Movement of the Philippines, tel: (63-2) 435-3564, fax: 920-5668, e-mail: kmp@info.com.ph

**Fourth Americas Business Forum**

**Fourth Western Hemisphere Trade Ministerial Meeting**

San José, 16-19 March

The Fourth Western Hemisphere Trade Ministerial Meeting will take place on 19 March. It will be preceded by the Fourth Americas Business Forum (from 16-18 March), a business leaders' and civil society conference regularly held in connection with the Trade Ministerial Meetings. On the agenda of both events will be preparations for the next Summit of the Americas, to be held in Santiago de Chile from 18-19 April at the heads of state level. During the Summit, formal negotiations are expected to be launched for the future Free Trade Area of the Americas.

For the Ministerial Meeting contact: Organisation of American States, Trade Unit at e-mail: sice@sice.oas.org. For the Business Forum contact: Marco V. Ruiz, tel: (506) 299-2882, fax: 299-2884, e-mail: Info@alca.co.cr

**Policing the Global Economy: Why, How and for Whom?**

Geneva, 23-25 March 1998

The Bellerive Foundation and GLOBE International (i.e. Global Legislators Organization for a Balanced Environment) will hold a major conference on questions related to the international trade agenda, sustainable development and global governance in March. Panel sessions/workshops will focus, among other themes, on how to revive the trade and environment agenda, and the possibility of balancing the WTO with a World Environment Organisation. Speakers and panellists includes such personalities as David Korten and Ricardo Petrella, as well as Sir Leon Brittan of the European Commission and Klaus Schwab of the World Economic Forum. Senior government representatives and parliamentarians are also expected to attend. Renato Ruggiero, WTO Director-General, will deliver the keynote address. The conference proceedings will be published and offered as a contribution to the WTO Ministerial Meeting next May.

Contact: Barry Gilbert-Miguet, Bellerive Foundation, tel: (41-22) 346-8866, fax: 347-9159, e-mail: bellerive@gestronic.ch

**International Conference on Trade and the Environment**

San José, 2-3 April

This conference, sub-titled Preparing for the 21st Century, will be convened by the Costa Rican Ministry for Foreign Trade. Participants will include trade and environment experts from intergovernmental organisations, governments, academia and non-governmental groups, as well as business leaders. While the meeting is not officially part of the Free Trade Area of the Americas (FTAA) process, many of its themes reflect those the FTAA negotiators will be grappling with over the next several years, including the environment and labour rights. Most Latin American governments have already expressed their opposition to the inclusion of these issues in the FTAA agenda, while domestic constituencies remain bitterly divided over labour and environment linkages, particularly in the United States.

Contact: Mónica Araya S., International Trade Negotiations Division, Ministry of Foreign Trade, tel: (506) 256-7111, fax: (506) 255-3281, e-mail: comext.sol.racsa.co.cr

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

February 4-13 Montreal	Ad Hoc Working Group on Biosafety: Fourth Negotiation Session for a Protocol on Biosafety Contact: CBD Secretariat, tel: (1-514) 2878-2220, fax: (1-514) 288-6588
February 6	WTO Committee on Rules of Origin Contact: Eki Kim, tel: 5584, fax: 5770
February 10-12 San José	Third Vice Ministerial Meeting (FTAA Prep. Com.) Contact: OAS Trade Unit, e-mail: <a href="mailto:sice@sice.oas.org">sice@sice.oas.org</a>
February 13	WTO Dispute Settlement Body Contact: Paulo Barthel-Rosa, tel: 5191, fax: 5761
February 16-18	WTO Committee on Regional Trade Agreements Contact: Richard Eglin, tel: 5148, fax: 5774
February 18-20	WTO Textile Monitoring Body Contact: J.-P. Lapalme, tel: 5223, fax: 5771
February 19	WTO General Council Contact: Paulo Barthel-Rosa, tel: 5191, fax: 5761
February 19-20	WTO Working Group on Transparency in Government Procurement Contact: Vesile Kulaçoğlu, tel: 5187, fax: 5790
February 20	WTO Committee on Regional Trade Agreements Contact: Richard Eglin, tel: 5148, fax: 5774
February 23-27 Kuching Malaysia	Fourth Meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes Contact: Basel Convention Secretariat, tel: (41-22) 79-9111, fax: 797-3454
February 24-25	WTO Council on TRIPs Contact: Matthijs Geuze, tel: 5418, fax: 5790
March 9	WTO Committee on Trade and Development Contact: Richard Eglin, tel: 5148, fax: 5774
March 9	WTO Committee on Rules of Origin Contact: Eki Kim, tel: 5584, fax: 5770
March 9 Brussels	INC-5 for a Legal Instrument on the Prior Informed Consent Procedure for Hazardous Chemicals in International Trade Contact: UNEP IRTPC, tel: (41-22) 979-9111, fax: 797-3460, e-mail: <a href="mailto:IRTPC@unep.ch">IRTPC@unep.ch</a>
March 10	WTO Council for Trade in Goods Contact: Suja Rishikesh, tel: 5485, fax: 5770
March 11-13	WTO Working Group on the Interaction between Trade and Competition Policy Contact: Mark Koulen, tel: 5224, fax: 5790
March 11-13	WTO Textile Monitoring Body Contact: J.-P. Lapalme, tel: 5223, fax: 5771

March 12-13	WTO Committee on Sanitary and Phyto-Sanitary Measures Contact: Gretchen Stanton, tel: 5086, fax: 5760
March 16	WTO Committee on TRIMs Contact: Mark Koulen, tel: 5224, fax: 5790
March 16-18 San José	Fourth Americas Business Forum Contact: Marco V. Ruiz, tel: (506) 299-2882, fax: 299-2884, e-mail: <a href="mailto:Info@alca.co.cr">Info@alca.co.cr</a>
March 17-18	WTO NGO Symposium on the Committee on Trade and Environment's Work Programme Contact: Scott Vaughan, tel: 5091, fax: 5774
March 19 San José	Fourth Western Hemisphere Trade Ministerial Contact: OAS Trade Unit, e-mail: <a href="mailto:sice@sice.oas.org">sice@sice.oas.org</a>
March 19-20	WTO Committee on Trade and Environment Contact: Sabrina Shaw, tel: 5482, fax: 5620
March 19-20	WTO Committee on Trade and Agriculture Contact: Paul Shanahan, tel: 5095, fax: 5760

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## INTERNET RESOURCES

Agenda 21 - <http://www.unsystem.org/agenda21>. The UN's Division for Sustainable Development has recently created this page containing information on the implementation of Agenda 21 at the national level. Agenda 21 is the action plan for sustainable development adopted at the 1992 Earth Summit.