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Multilateralism Works, Former Director Says as GATT Reaches Fifty

As Director General of the GATT between 1993 and 1995, Peter Sutherland was among the key players involved in the final stages of the Uruguay Round and the creation of the WTO. Before that, he served for five years as the European Community Commissioner responsible for Competition Policy. As the 50th anniversary of the multilateral trading system will be celebrated on 20 May, ICTSD asked Mr Sutherland to assess the WTO's performance and future prospects.

BRIDGES: You were able to gain support for the establishment of the WTO at a time when regional and protectionist interests were resisting the Uruguay Round and the creation of the WTO. What is your view of the WTO today and the future of the multilateral trade system?

PS: I think WTO's development since its creation has on the whole been positive. It is acquiring the authority which it needs, particularly in the area of dispute settlement. Apart from being a negotiating forum, the WTO ultimately depends for its credibility on its capacity to objectively adjudicate, and on the acceptance of that adjudication by the parties who are litigants before it. I think that the WTO's authority in this respect is gradually developing and that this is one of the more positive aspects of what has happened since the conclusion of the Uruguay Round. This essential element of making the agreements which have been entered into really enforceable in terms of their application is the crucial element in the development of the WTO as an institution. It is in turn linked to the acceptance by the world community of the absolute need for multilateral rules, rule-making bodies, and decision-making bodies. If this commitment to multilateralism by major trading partners were to be lost, it would be disastrous for the global economy, for developing countries in particular, and for the development of a peaceful and prosperous world.

So I am happy with the way things have developed. But now there is going to be an ongoing battle with those who are wedded to a nationalistic vision of international trade.

BRIDGES: Given the development and consolidation of regional trade agreements all over the world, how do you see the role of the WTO in the near future?

PS: The WTO has to ensure that any regional – or interregional – agreements are consistent with the WTO's 'most-favoured nation principle'. This is a vitally important element in terms of the development of globalisation. I believe

that regional integration is basically helpful in terms of breaking down barriers and opening up trade. The most obvious example is that of the European Union. Many of the vested interests supporting protectionism were defeated not by multilateralism but by the European single market programme, which initially took on, and contested, the issue of opening up free trade within the Union. And indeed without the prior achievement of the internal market within the EU through the 1992 process, I do not believe the Europeans would have been as positive to the Uruguay Round as they were, and we might not have reached an agreement in the Uruguay Round. So regionalism can be, and has been, of positive value to internationalisation through a multilateral organisation like the WTO, but it has to be carefully monitored in order to ensure that it does not create exclusive clubs from which others are excluded.

BRIDGES: Could the New Transatlantic Marketplace be the best way to lead to the so-called 'Millennium Round'?

PS: I don't see the New Transatlantic Marketplace (NTM) as being a necessary part of the development of the so-called 'Millennium Round'. I have no objection to closer transatlantic ties as long as the benefits of those ties are available to everybody. But if the NTM has any exclusive aspect, then it is not a good thing from any point of view.

BRIDGES: People seem increasingly concerned about what could be termed as 'non-trade' issues such as social and environmental concerns affected by trade liberalisation. How do you see the WTO performing in the future in this context?

PS: I think that the WTO has to be increasingly involved in issues which are only indirectly related to trade, such as health and hygiene concerns. But one has to be very careful about this because there are objective standards which can be applied culturally in different parts of the world at different levels. Similarly, there are political concerns which can sometimes override trade concerns and one doesn't want to create confrontations through the dispute settlement mechanism, when the real motivation is outside the strict limits of trade policy. This could lead to a loss of authority of the WTO in a fundamental area: the acceptability of its rulings. I

Continued on page 4

IN THIS ISSUE

Ministerial Meeting Special	
The WTO: A Southern NGO Perspective	2
Negotiating Trade Agreements:	3
It's the Whole Package that Counts	
Brief Overview of Pre-Ministerial Positions	5
Practical Information on the WTO Ministerial	6
Dispute Settlement Corner	7
WTO News	8
WTO/NGO Symposium on Trade, Environment and Sustainable Development	10
WTO Condemns US Shrimp Ban	11
Trading Sovereignty: Ecuador's Strategic Silence on Shrimp Ban	13
Balancing the WTO Is Not the Way to Go	15
The Blueprint for Free Trade from Alaska to Chile	17
MEA News	19
Trade and Sustainable Development News	20
TRIPs and Biodiversity: Towards the 1999 Review	21
ICTSD and Partner News	22
Meeting Calendar and Publications	24

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The WTO: A Southern NGO Perspective

By Yash Tandon

Western liberalism is based on a formal premise of equality at the state level and a tacit acceptance of the might of wealth and power in the real world. The WTO's dispute settlement mechanism – as, indeed, the entire organisation – clearly illustrates this.

Every member state of the WTO may turn to the dispute settlement process if it feels its rights have been adversely affected by the action of another country. A panel might even rule in favour of little Nicaragua against big America. Then what? Then, well, nothing: if the United States decides that a matter of vital interest is at stake, it may choose to ignore the decision of the WTO. This option is open to major economic powers because the system allows collective judicial determination (by a dispute settlement panel) but no collective sanctions: once the panel has designated the winner(s) and loser(s) in a case, retaliatory measures apply only between the parties in the dispute.

Imagine that the US decides to flaunt the panel's decision: any sanctions Nicaragua might impose against the 'condemned party' would hardly be felt by its powerful trading partner. If, on the other hand, the panel were to decide in favour of the US, a threat of trade sanctions by the US would be sufficient to ensure that Nicaragua conforms with the panel decision. Indeed, if the US felt that the sanctions would not be effective in the particular sector of the dispute (say the goods sector), it could impose sanctions in another sector (say in services).

This is the cross-retaliation formula that the stronger developed countries were able to bring into the WTO system against developing country opposition. Cross-retaliation is only a weapon in the hands of the powerful states. If you are a small state, or even a middle-sized one, such as India, and you have a weak service sector, or a pharmaceutical sector that is big but dependent on patents from Western corporations, then cross-retaliation for you is a meaningless privilege. But, at the formal level, Nicaragua, India and the United States all have the same rights to impose cross-retaliatory measures.

In Western democratic theory there is nothing wrong with this kind of dispensation where power and privilege part company from formal equality. It is all part of a social reality only occasionally questioned by a philosophically-minded minority within the domain of national states, let alone at the international level. Few in the upper echelons of society in the US lose any sleep over the disparity between the 36 million who live below the official poverty line, and the dozen individuals worth US\$10 billion or more a piece.

Blaring inequalities such as these are explained away as conjunctural and incidental by the democratic theory that puts political power in the hands of individual voters who are formally 'equal', and the market theory that places economic power in the invisible hands of the market that is supposedly 'free'. Voters can throw out governments, and individuals can get rich in the market if they have prowess and some luck. In the meantime, both equality in the political domain and freedom in the market place are hostages to wealth and power. Inequality is not only justified but even advocated as a necessary condition for growth.

In a multi-cultural world, currently only one culture rules. A vocal, but not necessarily the most profound ideologue of this culture, Jeffrey Sachs, once said that all economies are converging to the market,

capitalist model (the convergence thesis). But what if the system is pathological? What if millions starve on one side of the hemisphere while a few hundred gloat over billions of dollars on the other side? What if, in the process, the environment is pillaged, violence in cities escalates, women get abused, and children are forced to work to help feed and clothe their families? Well, the ideologues reply, these are conjunctural and incidental consequences of a system that is, 'formally' good and correct. These disparities will pass away as the benefits of growth 'trickle down'.

Abstracted from social reality and the sensibilities of a human conscience, every 'good' idea becomes an ideology, a fetish. A monster. This is what the ideas of capitalism and liberalism have become: the monsters of our time. Some thinkers in the Western world, like World Bank Senior Vice-President Joseph Stiglitz, are beginning to see this ideology's dangers. But where wealth and power rule, emphasis on rights and justice is inherently subversive.

What has this got to do with the Second Ministerial Meeting of the WTO?

Everything, for there are two responses to this international pathology. One is to reject it, to deny the legitimacy of its very existence; the other is to challenge the system and try to hold it accountable to what one deems valuable. The first path is that of the Peoples' Global Action (PGA) against the WTO. The PGA is the voice of protest of the youth of the North and the mass social movements of the South. Their message takes 'rejection of the WTO' as its point of departure and their strategy is based on 'confrontation', its tactics on direct non-violent, civil disobedience. PGA seeks alternatives to the dominant system based on decentralisation and self-organisation at local, national and international levels. Here a pathological global system meets its radical opposite.

For the rest of us it is a question of reigning in the beast. It is not the WTO but the system which has created it, that is the beast. Kill the WTO, and it will rise again. Again we are up against the dichotomy between the system's formal equality, and the reality of wealth and power. The challenge is to use the formal equality of the system, to chain the wealth and power and hold it accountable to principles of equity and justice. Fine words, but what concretely do they mean?

A Strategy for the South

The WTO is a negotiating forum, not a debating society. What is negotiated takes a contractual, enforceable form. As we saw above, the powerful have the means of enforcing the contracts. The weak must join forces, or perish individually. The culture that rules contemporary civilisation is based on competition and predation. The language of the WTO is the language of predation: you take what you can, and give the least in return. It is a hard game. But for the weak it is not a lost game. Provided, of course, that they are united.

So in the WTO's Second Ministerial meeting, the weak nations of the South must unite to say a definitive 'NO' to all new issues that the strong may want to bring on to the agenda of the next round of negotiations that might begin in 1999. There should be no new issues until the old issues are implemented and their inadequacies and imbalances fully remedied. What are these inadequacies and imbalances?

Continued on page 14

Negotiating Trade Agreements: It's the Whole Package that Counts

In late April, ICTSD interviewed Julio Lacarte Muró, Chair of the WTO Appellate Body and former Ambassador and Minister of Trade of Uruguay. Ambassador Lacarte is regarded as one of the architects of the multilateral trading system. A delegate negotiator at the Havana Conference in 1948, he has been intensely associated with the GATT/WTO for fifty years, particularly through his role as the Chair of the Negotiating Group on Institutional Issues during the Uruguay Round.

How would you assess the significance of WTO Ministerial Meetings?

I'm a strong advocate of ministerial meetings in the WTO because they provide the political will to get things done. In a sense, they crystallise and promote the work of the technical support teams. They also establish deadlines which are important for trade negotiators to follow.

For many years, the GATT functioned at high civil servant level. Ministers only came in the picture with the Kennedy Round and I think this coincided with an increasing recognition of the importance of trade matters and their vast political repercussions in many countries.

During the Uruguay Round, we had four ministerial meetings: one at the beginning, one at the end and two during the process. It has seemed very clear to me for a long time that it does not make sense for ministers not to take a direct interest in an organisation as important as the GATT had become with its increasing membership and a lion's share of world trade covered by its rules.

So, I would say that such meetings are even more necessary now than before: the WTO has unsuspected prospects for the future, I think, and to handle the diversity of subjects and the multiplicity of issues that arise, you need to have a strong political hand at the wheel.

What, specifically, can such meetings contribute?

These occasions, attended by ministers of trade of practically all member countries, create the right atmosphere for agreements among countries. In Singapore, we concluded the Information Technology Agreement which might or might not have been finalised in that time frame without such a meeting. And, furthermore, I think that Singapore justified itself fully in terms of picking up the pieces after the Uruguay Round and in projecting the WTO forward.

The second WTO Ministerial, in May 1998, will also be an important meeting because the ministers will be dealing with setting the agenda for the post-2000 round of WTO negotiations. There already is a built-in agenda arising from the Uruguay Round agreements to negotiate further liberalisation of the agriculture and services sectors, as well as review some aspects of the intellectual property rights agreement, but this agenda will surely be complemented by other important areas of negotiation. I don't want to go into detail about that now because not all governments have yet officially announced their positions.

Do you foresee a serious conflict between countries that would like to limit the talks to the 'built-in agenda' and those pushing for broader negotiations, or the so-called 'Millennium Round'?

Every 'pre-round' gives rise to arduous negotiations among countries because no government wants to go into a round without knowing that it will get something out of it. Therefore, there has to be a balance regarding the subject matter. For instance, a round mainly concerned with high technology would be of no interest at all to a number of

developing countries. If, on the other hand, you were to focus solely on agricultural negotiations, that would suit some countries but would not suit others. One of the main conclusions at the completion of the Uruguay Round was that the diversity of the subject matter allowed different countries to find ways of settling their different problems. And I think that this 'Millennium Round' is probably going to be organised along the same lines.

You mean, as a 'single undertaking'...

Oh yes, undoubtedly, that is the only way to negotiate. It may very well be that services, agriculture and some aspects of trade-related intellectual property rights are not enough to achieve the right balance; you may have to inject other subjects in addition to those areas. There is no priority as such; agriculture, services, intellectual property or tariff rates on industrial goods, all have serious repercussions. It is the whole package that counts.

You have been a leader in building the 'special and differential treatment' provisions for developing countries into the multilateral trading system. Do you think those provisions have been implemented as foreseen?

Special and differential treatment is understood in different ways by different countries and the performance varies accordingly. I think that in the WTO there now is a significant emphasis on that form of treatment for least-developed countries. The Director General has associated himself with a number of initiatives in this sense, including the initiative in Africa which is shared with UNCTAD. The results of the High-Level Meeting on improving LDCs' trade performance are not all there yet because the meeting was only held in last October. But I would say that a good start has been made for a greater emphasis in the WTO on special treatment for least developed countries.

For other developing countries, the WTO agreements foresee special and differential treatment in different ways – for example, in the time periods during which a country has to begin to implement certain provisions and commitments, and so on. Those, of course, have all been respected. And that is what developing countries agreed to. From that point of view the situation is satisfactory. I think you cannot ask for more than you negotiated for, as it were.

And yet India and Egypt have asked the Committee on Trade and Development to review the application of the special treatment provisions...

This is obviously a purely speculative comment, but I think that special treatment provisions might be part of the overall bargaining package of the Millennium Round. Of course, governments would have to agree to put that on the agenda and we don't yet know whether that will happen. And there is another aspect that underlies this whole matter, which is that a number of developing countries are fast approaching the performance of developed countries in terms of foreign trade: if you look at the statistics of world trade, you will see that at least ten of the first 20 exporter/importer countries of the world are developing countries. The gap between developed and developing countries may be narrowing, at least in terms of contribution and participation in world trade.

Of course, some countries are running way behind. Mostly the least-developed but some developing countries as well, I think we cannot deny that. And I would think that legitimate proposals would be legitimately responded to on that aspect.

Continued on page 4

Sutherland, continued from page 1

think that there has to be a concern about introducing subjects which have not been clearly agreed in advance as being part of the agreements of the Uruguay Round itself.

BRIDGES: Some, in the environmental community, argue that trade liberalisation has negative effects for the environment...

PS: I don't believe that at all. I believe that trade liberalisation leads to growth and growth leads to an amelioration of environmental problems. There is a continuing debate about the relationship of the environment to trade which I think has to be seen through to its conclusion. And maybe there can be an acceptance of the development of some linkages in the environmental area. But it is premature to say what agreement could be reached ultimately on that. I think it will be very difficult.

I believe that free trade is the most positive element in terms of the growth perspective for developing countries, where they have been, will be, or should be, provided with a level playing field and equality of opportunity to develop. That in itself is the most positive element in terms of bringing about change that will enhance the prospect of dealing with issues like the environment.

BRIDGES: What are your views on the implementation of the existing agreements and on the issue of the built-in agenda and the inclusion of new topics such as competition policy and investment, in new rounds of WTO talks?

PS: I don't feel I can comment on the implementation process because I don't know the details of how implementation has been conducted throughout the community of member states of the WTO. With regard to new issues, I am rather disappointed with the results of the OECD discussion on investment. I never thought the discussion should have been initiated in the OECD in the first place; I believe it would have been better developed through the WTO. I have always believed that a firm agreement on investment is desirable – particularly from the point of view of the developing countries, but also from that of developed countries – in the sense that it will induce and support the development of capital flows into developing countries by giving the degree of assurance that is required in terms of security that is helpful to investment flows. So I am in favour of it.

On the other hand, I have always had some doubts on the issue of competition policy. In principle it is a good idea but I think that at the end of the day it will run foul of arguments related to national sovereignty or regional sovereignty. There will never be a situation in the foreseeable future where the anti-trust authorities in Europe or in the US, for example, could be overruled by an international body. The most one could seek to achieve would be some sort of general agreement as to the parameters of competition policy.

BRIDGES: What lessons of global governance can be drawn from the 50 years of the GATT?

PS. Essentially that multilateralism works. Creating a rule-based system through a negotiating process based on consensus, and giving it credibility through a dispute settlement system, is the model which has survived all the stresses and strains of 50 sometimes difficult years, and which may provide a model for global governance. The GATT has never been blessed with financial strength, only a collective sense that the system had to be respected because its loss would leave a vacuum in which economic and political power would rule. It has helped governments do the right thing, for the most part, in trade and perhaps the system does hold lessons for other fields of collective multilateral endeavour.

Negotiating Trade Agreements, continued from page 3

How could developing countries acquire a more significant voice and role in the multilateral trading system?

I think that developing countries during the Uruguay Round acquired a greater voice in WTO affairs – or rather in world trade affairs – than they had before. This was probably partly due to the fact that, instead of staying in the sidelines as they had often done in the past, they contributed to the negotiations: the Uruguay Round offered a possibility of getting greater results than the Kennedy or Tokyo Rounds. Developing countries therefore found it in their interest to participate. With participation you acquire a voice, and your voice counts because you are offering something, not asking for something.

Beyond that, anything that contributes to a better unity of purpose among developing countries is a positive factor. A group of countries that has a coherent position and presents it coherently has a greater chance of achieving results. The fact that a number of developing countries are now part of regional or sub-regional mechanisms is leading to greater collaboration among them. MERCOSUR, for example was already speaking with one voice on almost every subject during the Uruguay Round although it only came into being while the round was in process. Participation in regional mechanisms practically obliges countries to co-ordinate their positions to ensure they don't agree to anything in the multilateral sphere that would counter what they are trying to do in the regional sphere – and vice versa. Good co-ordination means a stronger voice in the WTO because you are speaking for a group of other countries and those other countries are supporting you.

The WTO dispute settlement procedure will be reviewed this year. Do you think the review is necessary?

The review is required by the Uruguay Round Agreements and therefore has to take place. As the Chair of the Appellate Body, it is very difficult for me to give too many views on its possible results. Broadly speaking, I would say that the dispute settlement system as it stands is an enormous improvement over the GATT system: each case results in a ruling and that ruling has to be complied with. The procedures have been substantially improved and I think the addition of the Appellate Review has rounded out the mechanism and given it a stature it did not have before.

While I saw the advantage of the dispute settlement mechanism when we were negotiating it, I did not foresee the enormous jump in the recourse to dispute settlement under the WTO compared to the GATT: even small developing countries have no hesitation about using the system and winning cases against very large countries. One of the great things about the system is that it makes everybody equal before WTO law. So, my own feeling – but you should ask other people – is that it has been quite successful, in fact unexpectedly successful.

Isn't the sheer number of cases a considerable burden on the system?

Yes, but I don't think we should worry about that. What is important is that each country should feel that its interests are taken care of. At the end of the Uruguay Round there was a tremendous stalemate: many texts were near conclusion but nobody would agree to them. There was always some reservation or some new change. The negotiation of the dispute settlement mechanism and institutions was the first basic breakthrough, and when that basic breakthrough came, everybody knew that whatever they agreed elsewhere was under the umbrella of a dispute settlement system that was much improved. I have always felt that the agreement on the dispute settlement proceedings was essential in breaking the logjam.

Brief Overview of Pre-Ministerial Positions and Issues

Many countries and groups of countries have announced their initial positions regarding the second WTO Ministerial Meeting, as well as the negotiations that are scheduled to start in the year 2000. While the scope of those negotiations will be decided at the 1999 Ministerial, the May meeting will be an important stepping stone.

Views on 1998 Ministerial

Developing countries have stated their determination to resist using the meeting for widening the scope of the negotiations and reviews foreseen in the WTO's 'built-in agenda', which comprises new liberalisation talks in two principal areas: agriculture and services. Instead, they have called for the 1998 Ministerial to focus on the implementation of existing agreements, whether those agreements are achieving their objectives and whether their benefits are balanced. Assessments of the implementation of the agriculture and textile agreements are of particular interest to developing countries.

At a workshop for African chief trade negotiators held in March, Zimbabwe's Industry and Commerce Minister Nathan Shamuyirira said that African countries should brace themselves for 'a big fight' and not let themselves be 'dragged into a new round before the items on the agenda are completed and implemented'.

Meeting in Paris in late April, trade ministers of the EU, US, Japan and Canada (the so-called Quad countries) agreed that 'the 1998 WTO Ministerial should set in motion a process that would enable decisions to be taken in 1999 on the scope and modalities of further liberalisation, and that it should encompass the subjects of the WTO's built-in agenda, issues arising from decisions made at the Singapore Ministerial, and further issues of interest to members, including remaining barriers to trade in industrial products.'

At the Quad meeting, the EU was the strongest advocate for leaving the door open for new issues to be included on the agenda. Japan backed the approach more cautiously while the US and Canada have apparently not yet decided just how wide-ranging they would like the future trade talks to be.

Issues for the Post-2000 Round

Development concerns: While developing countries in general resist any additions to the built-in agenda of post-2000 negotiations, the WTO's special treatment provisions may provide them with a bargaining chip. Egypt and India have already requested that informal talks be undertaken to review the application of WTO provisions in favour of developing countries.

Agriculture: The Cairns group of agricultural producers on 3 April said that the next round of agricultural negotiations should result in a complete ban on farm export subsidies. It also called for substantial progress in improving market access through the reduction of tariffs and non-tariff measures, which should not 'diminish the size and value of market access opportunities, particularly in products of special interest to developing countries.' Another Cairns goal is major reductions in trade-distorting internal supports, the group said. The Cairns Group includes Australia, Argentina, Brazil, Canada, Colombia, Chile, Fiji, Indonesia, Malaysia, New Zealand, the Philippines, South Africa, Thailand and Uruguay.

Millennium Round: The EU, where agriculture is a particularly sensitive topic, is by far the keenest proponent of broad-based post-2000 negotiations, dubbed the 'Millennium Round'. Sir Leon Brittan, the EU's Trade Commissioner, has proposed starting negotiations

between the EU and the US on removing technical barriers to trade, eliminating industrial tariffs by 2010, creating a free trade area in services, as well as liberalising government procurement, intellectual property and investment. This so-called New Transatlantic Marketplace (NTM) initiative – aimed, in Sir Leon's words, to 'kickstart' the Millennium Round – was 'designed to provide a provisional agreement between Europe and the United States which can only be implemented on the basis of other countries accepting what we propose.' However, the NTM proposal failed to gain the support of all EU members at the 27 April EU Council meeting where France, backed by Spain and the Netherlands, was particularly opposed to bilateral talks between the EU and the US prior to the WTO negotiations. Nevertheless, the two trading powers are likely to discuss elements of the proposal at the EU-US Summit scheduled for 18 May. The United States has reviewed the NTM proposal, which does not include two of its key areas of interest: agriculture and audiovisual services. The Summit talks will probably focus on the technical barriers aspect of the original NTM proposal.

Electronic commerce: The United States has stated its interest in placing electronic commerce on the post-2000 agenda. The US proposal focuses on keeping electronic commerce transactions free from customs duties. Members of the OECD have expressed their support for the proposal, but many developing countries are against starting multilateral negotiations on the subject.

Investment: Following the stalemate on the Multilateral Agreement on Investment at the OECD (see separate item on page 20), many speculate that sooner or later the talks will start anew at the WTO. Speaking at the Canadian Center for Trade Policy and Law in early March, WTO General Council Chair John Weekes said that he sensed 'an increasing view in Geneva that it is desirable, and inevitable, that [current] work will turn into negotiation later next year.' At least Japan and Canada, both members of the OECD, have said they would prefer a multilateral approach to the issue through the WTO. At the Quad meeting, Japan's trade minister called for the WTO talks to include the built-in agenda, tariffs and 'new areas such as investment'.

Transparency and WTO reform: The Quad countries have requested the WTO Director General to 'explore means within the WTO that would allow for enhanced consultations with civil society'. In addition, the trade ministers urged the WTO to review its document restriction policies and seek ways for speedier release of panel reports.

Environment: The environment does not figure prominently in the plans for post-2000 trade negotiations. However, Japan, Canada, the United States and European Union have expressed their support for a high-level meeting of the WTO Committee on Trade and Environment to attempt to solve the CTE's long-standing stalemate.

The Ministerial Declaration

The draft Ministerial Declaration, to be finalised and released at the end of the May meeting, is short and of a general nature. The ministers state their 'commitment to the maximum possible transparency, which is also important in order to enhance public understanding of support for the multilateral trading system'. The declaration leaves open the scope of the future negotiations: 'The work under the existing agreements and decisions will constitute the core of future activities of the WTO. However, it is also opportune to examine whether a more comprehensive agenda could be envisaged. In this endeavour, our objective will be to respond to the interests of all Members, while keeping the rule-based WTO system abreast of the latest developments in the world economy.'

Practical Information on the WTO Ministerial Meeting

The opening session of the Ministerial Conference will take place at 11 a.m. on 18 May at the Palais des Nations in Geneva. The session will adopt the conference agenda. The substantive part of that agenda consists of an overview of WTO activities, divided between a review of the implementation of the WTO Agreements and discussions on future activities. Pascal Couchepin, Head of the Swiss Federal Department of Public Economy, will address the meeting. John Weekes, Chair of the WTO General Council, and Renato Ruggiero, Director General of the WTO, will also speak.

From 3 p.m. to 6 p.m., the ministers will discuss the implementation of the WTO Agreements. The session may be continued the following morning if the schedule of 50th anniversary celebration permits.

At the time of writing, the exact number of heads of state attending the anniversary celebration was not yet known. The event will take place on 19 March.

The Ministerial Meeting will resume at 10 a.m. on 20 March with discussions on the future work of the WTO. At the afternoon session, scheduled for 3 p.m., the ministers are expected to finalise the Ministerial Declaration, as well as choose the date and venue of the next Ministerial Conference and elect its officers. A short closing session will follow.

The opening and closing sessions, as well as the 50th anniversary celebration, will be open to accredited observers and will be relayed to the NGO Centre via a video link. The NGO Centre will be located at Room XII at the Palais des Nations in Geneva. Room C-310 will be equipped with computers, a printer and Internet connections and three other rooms have been reserved for NGO meetings. A tentative schedule of such meetings is published below.

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Schedule of NGO Events Planned during the WTO Ministerial Meeting

TIME	18 MAY	19 MAY	20 MAY
8 – 9	ICTSD/TWN Briefing Room XII	ICTSD/TWN Briefing Room XII	ICTSD/TWN Briefing Room XII
9 – 10	International Coalition for Development Action (ICDA) Room C-3	International Coalition for Development Action (ICDA) Room C-3	International Coalition for Development Action (ICDA) Room C-3
9 – 11		ICTSD <i>"Trade, Agriculture and Sustainable Development"</i> Room A-206	ICTSD <i>"Competition Law and International Trade"</i> Room A-206
9 – 11		Third World Network <i>"Reviewing the WTO Agreements and Problems of Implementing Them"</i> Room XII	Swiss Coalition Room F-3
10–12		Genetic Resources Action Int'l/GAIA Foundation <i>"Sui Generis Options and the TRIPs revision"</i> Room C-3	BIOTHAI <i>"Asean and the WTO"</i> Room C-3
11–13		INZET <i>"WTO and LDCs"</i> Room A-206	THIRD WORLD NETWORK <i>"The Future of the WTO: Defining Issues and NGO Activities"</i> Room XII
12-14	Transnational Institute Room C-3		
13-15		International Coalition for Development Action Room F-3	National Wildlife Federation Room F-3
14-15			ICTSD Room A-206
14-16	ICTSD <i>"Trips and Sustainable Development"</i> Room A-206		
14-16	CIEL <i>"Relationship between trade rules and voluntary and compulsory labelling schemes"</i> Room C-3		
14-16	WWF <i>"Addressing trade disputes with social and environmental effects in the WTO"</i> Room F-3		
14-16	Third World Network <i>"Key issues facing the WTO Ministerial Conference"</i> Room XII		
15-17		WWF <i>"Assisting the social and environmental effects of WTO trade liberalization"</i> Room F-3	
16-18	IUCN <i>"Trade and Biodiversity"</i> Room A-206		
18-20	International Coalition for Development Action Room F-3		

Dispute Settlement Corner

Views Sought on Dispute Settlement Review

WTO members were asked, at the 25 March meeting of the Dispute Settlement Body, to submit initial suggestions on what changes, if any, they would like to see made to the WTO's dispute settlement process. That the Dispute Settlement procedures could be up for modification might come as a surprise to those who remember that the improved Dispute Settlement procedures were hailed as a significant feature of the newly established WTO. The review, requested by the built-in agenda adopted in 1994, is not expected to bring in any major changes as WTO members agree that the Dispute Settlement Mechanism is functioning well in its current form. The review should be completed by the end of 1998 and any proposals for change submitted to the WTO Ministerial in 1999.

No formal proposals for change have yet been made, but some informal views have been aired. Professor Ernst-Ulrich Petersmann, in an article to be published shortly, has suggested that the panels' working procedures be codified. As things stand at the moment – as set out in Annex III of the Dispute Settlement Understanding – different panels can, and do, adopt different working procedures. This uncontroversial proposal would harmonise the panels' working procedures and speed up their work.

WTO Director General Renato Ruggiero called in April for action to boost the transparency of the WTO dispute settlement proceedings, warning that their opaque nature could undermine public support for the multilateral trading system by providing sometimes incomplete information about WTO decisions. 'The situation as it is now is unacceptable' said Ruggiero. 'The system works well but the public relations of the system doesn't.' He has proposed providing for quicker, or reduced, translation of panel reports so that they can be made available faster; and having only one panel report, thus dispensing with the two stages of interim and final reports. Permitting facilitated access to interim reports may be a serious topic of the review as currently, despite their supposed confidentiality, they are often leaked to the public. Ruggiero told the WTO General Council on 24 April that almost all the confidential interim reports to date have been leaked, sometimes within hours. He said that such leaks reduce the likelihood of a mutually agreeable solution to the dispute, which is the preferred result of the dispute settlement process and the basic reason for the two-stage panel reports in the first place.

The US has also made public some of the changes it would like to see. These include opening the now closed oral hearings to the public, making more documents – like the briefs that countries write to support or oppose complaints – available to the public, and allowing outside organisations to submit their own arguments in a case. The US may also follow up on its request that no former WTO secretariat members be nominated to dispute settlement panels.

The Dispute Settlement Body is expected to meet after the Ministerial to discuss the suggestions put forward and decide how to proceed with the formal review.

EU's Beef and Bananas Implementation Plans Under Fire

Two arbitrators were appointed on 30 April by WTO Director General Renato Ruggiero to decide on a 'reasonable period of time' for the European Union to implement the WTO Appellate Body ruling of 16 January that the EU import ban on beef treated with growth hormones violates the Sanitary and Phytosanitary Agreement. The Appellate Body found that the ban was maintained 'without sufficient

scientific evidence', such as a risk assessment supporting the claim that it was necessary to protect human health. Fifteen months is usually considered a 'reasonable period' for implementation of WTO panel decisions. The arbitrators are expected to rule on the matter by mid-May.

The European Union on 13 March told the WTO Dispute Settlement Body that it would 'fulfil its international obligations under the World Trade Organisation', but retain its import ban on hormone-treated beef while a complementary risk assessment on the potential health risks from hormone residues in meat and meat products was carried out. The US and Canada, who were the complainants in the case, called for the EU to immediately lift the ban. The EU stressed that the decision to retain the embargo was based on its 'primary concern' for health protection of consumers and safety of food. US cattle growers claim that the ban costs them between US\$100 and US\$200 million in lost export revenue.

The EU's Ambassador to the WTO told US officials on 26 March that it might take up to four years to complete the implementation of the ruling: the risk assessment could take two years – or less if other countries contribute relevant data – and another two might be needed for any possible changes to legislation, which would require the approval of the European Parliament.

Another potential beef/health-related WTO dispute was at least temporarily averted when EU ministers of agriculture agreed on 31 March to postpone until January 1999 a complete ban of products containing beef gelatin or tallow. The ban was scheduled to enter into force on 1 April. Tallow and gelatin – both widely used in cosmetics and pharmaceuticals – are considered 'specific risk materials' because they are made of cattle body parts thought capable of transmitting bovine spongiform encephalopathy (BSE) or 'mad cow disease' to humans. The US, which claims to be free of BSE, had said that it would oppose a blanket ban at the WTO if necessary.

Controversy also continues around the EU's implementation plan for the Appellate Body's September ruling that the Union's import licensing and quota arrangements for bananas were contrary to WTO rules. Meeting from 20-21 April, the EU's Agriculture Council agreed 'for the time being' to work on the basis of a proposal adopted by the European Commission on 14 January. The proposal calls for the establishment of separate tariff rate quotas for bananas from Latin America and former colonies known as the ACP countries in Africa, Asia and the Caribbean (see Bridges Vol. 2 No. 1, page 7). Disagreement between EU members still persists, however, over the licensing system, as well as the size of the quota for non-ACP bananas, which Spain and France reportedly want cut from the proposed level of 353,000 tonnes. Other countries would like to reduce the 300 ECUs tariff proposed by the Commission for the Latin American quota. The EU is expected to finalise its position on the implementation plan at its June ministerial session. The European Parliament must also approve the plan before legislative changes can be made.

The US, Ecuador, Guatemala, Honduras and Mexico – complainants in the case – joined by Panama delivered a statement to the WTO Dispute Settlement Body on 22 April insisting that the new implementation plan would still violate WTO rules. They asserted that the plan was incomplete and did not detail steps for the elimination of import licenses. The complainants argue that only tariffs, not quotas, could be used to favour ACP producers. The EU has until 1 January 1999 to comply with the ruling.

Committee on Trade and Environment

The Committee on Trade and Environment (CTE) met on 19-20 March 1998 for the first time with Ambassador Chak Mun See of Singapore in the Chair. At the meeting, the Committee decided to extend observer status to the World Intellectual Property Organisation (WIPO) and adopted the work programme and schedule of meetings for 1998 (see box below).

WTO Deputy Director General, Dr Chulsu Kim, commented on the NGO Symposium on Trade, Environment and Sustainable Development held prior to the CTE meeting, saying it had yielded a number of useful suggestions for future events regarding the nature of participation, issues to be addressed, format of discussions and possible outcomes. A representative from the European Communities said the EC had been impressed by the widespread feeling among the speakers at the Symposium that so far the CTE had not delivered and by the WTO Director-General's critical evaluation and disappointment with the lack of concrete results achieved so far (see also separate story on page 10). The EC added that for any major new package of WTO agreements to be adopted and implemented in the decades ahead, it would be essential to have the support of the environment and sustainable development communities in both developing and developed countries. India reminded the participants that as a standing body of the WTO, the CTE's primary function was to uphold the integrity of the multilateral trading system.

In related news, trade ministers of Japan, Canada, the US and the European Union agreed in late April to push for a high-level meeting of the CTE in order to break the deadlock on issues that have paralysed the Committee since its inception. The idea of a political meeting to revitalise the CTE's work was first floated by the EU's Trade Commissioner Sir Leon Brittan at the 'Policing the Global Economy' conference held in late March (see separate story on page 20).

The March CTE meeting focused on issues related to market access (Items 2,3,4 and 6 of the CTE work programme). Discussion on Item 6 was based on the Secretariat's background document on the Environmental Benefits of Removing Trade Restrictions and Distorsions (WT/CTE/W/67), as well as national submissions. Along the lines of the Secretariat's report, the CTE looked at the effects on market access of removing trade obstacles in the agriculture, energy, fisheries, forestry, non-ferrous metals, textiles and clothing, leather, and environmental services sectors. During general comments on Item 6, a delegate stated that the complexity of the issue was partly due to the absence of comprehensive environmental valuation techniques, as well as to the large number of factors that had to be taken into account.

1998 Schedule of CTE Meetings

19-20 March	Items related to market access (Items 2,3,4 and 6 of the work programme)
23-14 July	Items related to the linkages between the multilateral environment agenda and the multilateral trade agenda (Items 1,5,7 and 8 of the work programme)
26-28 October	Items related to the two areas above, as well as Items 9 and 10 of the work programme (trade in services and the environment, and arrangements with inter-governmental and non-governmental organisations).

The CTE work programme has not changed since the Committee was created. The programme is available from the WTO as document PRESS/TE/017.

As an illustration of national experiences in dealing with non-product related processing and production method (PPM) standards and labels in the forestry sector, Canada tabled a paper entitled 'Forests: A National Experience' (WT/CTE/W/81). It concludes that the impact of trade barriers, including tariff escalation, on the environment is generally negative because trade barriers impede efficient resource allocation and thus increase the overall impact on the environment.

In the context of Item 4 – which deals with the transparency of trade measures used for environmental purposes, as well as environmental measures and requirements that have significant trade effects – the Secretariat tabled an update on its work to develop a database of all trade-related environmental measures notified to the WTO Central Registry of Notifications (WT/CTE/W/78).

As a contribution to discussion on Item 3(b) on environmental product requirements (standards, technical regulations, packaging, labelling and recycling) Colombia presented a report entitled 'Environmental Labels and Market Access: Case Study on the Colombian Flower-Growing Industry' (WT/CTE/W/76). The paper points out the dangers of private environmental labelling schemes and their potential negative implications for market access. It concludes that the CTE and the Committee on Technical Barriers to Trade must have a clear position aimed at ensuring that the proliferation of private environmental labels without common standards or monitoring of any kind does not create trade and market distortions and thereby confuse consumers.

The next meeting of the CTE will take place from 23-24 July. The main subject of the meeting will be the relationship between the international trade and environmental regimes. Representatives of the Secretariats of multilateral environmental agreements relevant to the work of the CTE will be invited to inform the Committee of recent developments in their respective agreements.

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China Accession

Talks about China's joining the WTO are intensifying as the post-2000 round of multilateral trade negotiations draws closer. An EU communiqué issued after the first-ever EU-China Summit in late March said that the EU remained 'one of the keenest advocates of China's early accession to the WTO'. Japan has also expressed its support to early accession in view of the importance of China's participation in the post-2000 WTO negotiations. Several meetings have taken place between US and Chinese officials in advance of President Clinton's visit in June. Officials on both sides have indicated that agreement has been found to step up the talks.

Among sticking points are the transition periods for China's full compliance with WTO requirements in the areas of intellectual property protection, government procurement and customs, as well as standards harmonisation. In addition, China's current offer on industrial goods still includes numerous tariff peaks in key areas such as chemicals, automobiles, textiles and footwear. Another bone of contention is China's proposed phase-out schedule for tariffs on information technology, which would start only in 2005 and even then for a limited number of products. At the latest WTO Working Party on China meeting in early April, Chinese officials countered that the information technology sector was still developing in China and needed protection, while China's other commitments went further than those offered by other developing countries in the Uruguay Round. Agricultural exporters emphasised that China's offer on market access for agricultural goods was still insufficient.

Committee on Trade and Development

Meeting on 23 April, the Committee on Trade and Development adopted the Director-General's report on the outcome and follow-up of the High-Level Meeting on Integrated Initiatives for Least-Developed Countries' Trade Development (WT/COMTD/W/40). The meeting, held in October 1997, endorsed an Integrated Framework for Trade-Related Technical Assistance involving six intergovernmental agencies, namely the WTO, the IMF, the International Trade Centre, UNCTAD, UNDP and the World Bank.

Thirty-nine LDCs are participating in the exercise being carried out under the Integrated Framework. To date, 34 of these have completed their needs assessments regarding trade-related technical assistance. The remaining five will complete this task at the next inter-agency meeting to take place at UNDP headquarters in New York in June 1998.

The report stresses the Director-General's commitment 'to the full and successful implementation' of the programme of technical assistance and co-operation activities within the Integrated Framework. An Inter-Agency Working Group, administered by a small unit located at the International Trade Centre, has been established to co-ordinate between the six collaborating agencies. A new post will be created in the WTO Technical Co-operation and Training Division to deal with LDCs' technical assistance needs and co-ordinate the WTO's contribution to the Integrated Framework. At the Secretariat level, the WTO has focused on assistance to least-developed countries in the accession process, as well as accommodating on a priority basis their requests for Trade Policy Reviews and assisting them in their preparation.

The report underlines the importance of improving market access for products of particular export interest to least-developed countries, an objective included in the Uruguay Round Decision on Measures in Favour of Least-Developed Countries, as well as in the WTO Plan of Action for the Least-Developed Countries adopted at the Singapore Ministerial Meeting in 1996. Pointing out that LDC exports currently account for only 0.4 percent of total world exports, the Director General states his firm belief that 'the multilateral system will emerge strengthened from more wide-spread action in this regard'. In the preparation of the third Ministerial Conference, Mr Ruggiero suggests that 'it would be appropriate to consider including the objective of eliminating all tariff barriers in favour of the least-developed countries as a matter for implementing on a priority basis in the negotiations that start in the year 2000. It would be important not just for all the advanced economies, but also the most dynamic developing countries, to subscribe to this objective and to the principle of binding the liberalisation under the WTO.'

As another priority, Mr Ruggiero has committed himself to ensuring that the ministries of trade of the LDCs are properly equipped by the end of 1998 with the necessary technology to take advantage of the opportunities offered by the new information age, and that the WTO Secretariat be fully capable of responding to their needs in this area.

At an earlier meeting of the Committee on Trade and Development, India and Egypt requested the opening of informal discussions on the implementation of the special provisions in favour of developing countries contained in different WTO agreements. The Committee has not yet adopted a detailed programme of work or set the dates of future meetings.

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Council for Goods Adopts Textile Report

On 16 February, the Council for Trade in Goods adopted the first major review of the implementation of the Agreement on Textiles and Clothing (ACT). The review covered the years 1995-97, or the first stage of implementation, during which Members were required to integrate at least 16 percent of their 1990 volumes of textile and clothing imports into the GATT. The integrated items needed to cover products from each of the following categories: tops and yarns, fabrics, made-up textile products and clothing.

The review confirmed the conclusions of the Singapore Ministerial: Member states, with minor exceptions, are generally honoring their commitments under the ACT, if in a minimalist fashion. Whether they are also following the spirit of the agreement is a different question. Developing countries pointed out that: 'notwithstanding the fact that the required percentages of products to be integrated had been met (with the exception of a shortfall in one Member which was being addressed in the TMB), the integration programmes of the importing Members for Stages 1 and 2 were not commercially meaningful for developing exporting Members: the products selected for integration were concentrated in less value-added products such as tops, yarns and fabrics, with only small shares of made-up textile products and clothing; furthermore, the shares of integrated products were substantially lower in terms of value of trade than in volume of trade while more of the integrated trade was being accounted for by imports from developed countries than from developing countries. These Members noted that the proportion of the integrated trade in respect of products that were under restraint was in the range of only 0-3 per cent of 1990 imports of products covered by the ATC. As the first and second stages of integration would have little or no impact on the restraints, with over 96 per cent of restricted trade remaining to be integrated even after seven years of implementation, there would be no benefits for developing countries. These Members also considered that this "back-loading" of integration with virtually all meaningful integration being left to the last three years of the ATC, coupled with the use of other trade-restricting instruments, would not be conducive to meeting the objectives of trade liberalization. The process of integration was far from being "progressive in character" as envisioned in the ATC.'

The report is available as document G/L/224 from the WTO's electronic document distribution system at <http://www.wto.org>.

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More WTO Committee Chairs Chosen

Committee on Agriculture: Amb. Nestor Osorio Londoño (Colombia)

Committee on Rules of Origin: Mr. Ric Wells (Australia)

Committee on Sanitary and Phytosanitary Measures: Mr. Alex Thiermann (United States)

Committee on Subsidies and Countervailing Measures: Mr. Carlos Antonio da Rocha Paranhos (Brazil)

Committee on Technical Barriers to Trade: Mr. Otto Th. Genee (Netherlands)

Committee on Trade Related Investment Measures: Mr. Dimitrij Grear (Slovenia)

See also list in Bridges Vol. 2 No. 2, page 6

WTO/NGO Symposium on Trade, Environment and Sustainable Development

The fourth WTO/NGO Symposium on trade and sustainable development issues was held from 17-18 March in Geneva. More than 150 representatives of civil society and some 60 government officials attended the meeting. Discussions focused on three major themes: institutional linkages related to the trade, environment and sustainable development interface; economic linkages between trade liberalisation and the environment; and the legal compatibility between trade and environmental agreements.

Participants drew at least one nearly unanimous conclusion: the trade and environment communities have made giant strides in understanding each other's role and competence. Some of the seemingly insurmountable barriers apparent at the first such symposium in June 1994 have given way to reasoned debate, revealing a sophisticated level of knowledge of both the issues and the possibilities and limits of the WTO to address those issues. The days of sterile 'WTO bashing' seem largely over.

NGOs recognised the WTO's efforts to increase transparency, particularly through its electronic document distribution system. However, much remains to be done: documents are still routinely restricted until six months after issuance and all meetings, even those not involving negotiations, remain closed to civil society observers. As the NGO representative summing up the meeting observed: 'The WTO has evolved from opaque to translucent'. Transparency is still some distance away.

It was generally recognised that while trade liberalisation, subsidy reductions and other trade-related measures could contribute to sustainable development – through improved living standards and more resources for environmental protection, for instance – the link was by no means automatic: adequate national policies coupled with effective enforcement were essential preconditions for trade and sustainable development goals to be mutually reinforcing.

The Format

The Symposium was the largest NGO consultation ever organised by the WTO. It also attracted more government delegates than any of the previous ones. While these facts may indicate success, time may have come to consider supplementing the rather general exchange-of-views type of symposia with smaller, more focused meetings on specific topics where more concrete and detailed debate on key issues could take place. Among the many possible topics for such meetings are achieving a better balance between the global environmental and trade regimes, and finding mechanisms to address the environmental and social impacts of international trade. There also is an obvious need, expressed by one of the very few African NGO participants, to hold symposium-type regional meetings to build civil society capacity to deal with trade and sustainable development issues in Africa and other developing regions.

The Issues that 'Will Not Go Away'

Most participants agreed that the Committee on Trade and Environment had not lived up to expectations. In his closing remarks, Renato Ruggiero said he shared the sense of disappointment and committed himself to 'revitalising' the CTE, which should move from

'identifying problems to identifying solutions'. Several major stumbling blocks, however, still remain.

The relationship between MEAs and the WTO

Many speakers acknowledged that the WTO was ill-equipped to deal with the global commons. In his opening statement, Renato Ruggiero challenged the participants to help establish a new 'international architecture' or framework to 'manage the linkages' between the multilateral trade regime and sustainable development concerns. The need to better integrate the various components sustainable development was reflected in the addresses of the heads of UNCTAD, UNEP and UNDP's Bureau of Development Policy. Referring to the fragmented nature of the international environmental regime, Klaus Töpfer said one his top priorities as UNEP's new Executive Director was to develop a 'single voice' for MEAs to provide a coherent environmental counterpart to the powerful world trading system. The agreement between the two institutions on 'a fresh start of informal cooperation' could prove a part of the framework. The newly-proposed Standing Conference on Trade and Environment could offer another avenue for forging the 'inter-national architecture' currently missing (see story on page 22).

An upcoming issue of major importance is the 1999 review of the TRIPs Agreement and its relationship with the Convention on Biological Diversity (CBD). The challenge will lie in ensuring that the TRIPs provisions on plant variety protection and biotechnology products support the CBD's provisions on compensation for traditional knowledge and custodianship, as well as benefit-sharing

from products based on genetic resources. On the day following the Symposium, NGOs initiated dialogue with the Secretariats of the WTO and the World Intellectual Property Organization (WIPO) in preparation for the review of Article 27.3.(b), which deals with intellectual property protection for plant varieties (see related story on page 21).

Subsidies

Reflecting talks in the CTE over the past three years, much of the Symposium's 'win-win' discussions revolved around subsidy reduction, particularly in agriculture but also in the fisheries and mining sectors. The CTE has identified subsidy reductions as one way to advance the environmental agenda while benefiting freer trade, but has not clearly recommended that the WTO should therefore concentrate on subsidy reductions in future negotiations. Clear calls for reductions or elimination were made by some government representatives, particularly concerning agriculture, and by NGOs with regard to fisheries.

Other speakers highlighted the complexity of the issue: subsidy reduction may cause severe social and, in some cases, environmental damage. Furthermore, there might be some scope for using subsidies to achieve environmental benefits, such as preserving rural landscapes or avoiding soil erosion in mountainous areas. Should the CTE be able to reach a recommendation, it is still doubtful to what extent – if at all – that recommendation would be taken into account when governments start negotiations on the ultra-sensitive agricultural front.

Continued on page 14

WTO Condemns US Shrimp Ban, Recommends Negotiated Solutions to Conserve Sea Turtles

The United States' import embargo on marine shrimp from countries that do not require turtle exclusion devices on shrimp trawlers violates the rules of the multilateral trading system, a WTO dispute settlement panel ruled on 6 April. The case was brought to the WTO by India, Pakistan, Malaysia and Thailand.

The disputed trade measure is based on Section 609 of the US Endangered Species Act. To implement that legislation, the US Court of International Trade ruled in December 1995 that in order to export mechanically-caught marine shrimp into the US, countries who trawl for shrimp in waters where marine turtles occur must, as of June 1996, be certified by the US government to have equipped their vessels with turtle excluder devices (TEDs, mandatory on all US shrimp trawlers since December 1994). The complainants' main point was opposition to the extra-jurisdictional and unilateral application of domestic law.

The Arguments of the Parties

India, Pakistan, Malaysia and Thailand claimed that the US embargo constituted a violation of GATT Article XI, which prohibits the use of quantitative trade restrictions such as embargoes. They also alleged non-compliance with the most-favoured-nation principle embodied in Article I.1, because the US treats differently physically identical shrimp and shrimp products from different member states. The complainants also argued that the import ban was discriminatory under Article XIII.1 because newly affected nations were given a shorter period to comply than those initially affected.

The United States based its entire defence on Article XX, which allows countries to take measures contrary to GATT obligations when such measures are necessary to protect human, animal or plant life or health. In this case, the United States argued, the trade measure was necessary because sea turtles were threatened with extinction and the use of turtle excluder devices on shrimp nets was the only way to effectively protect them from drowning in shrimp nets.

The Panel Findings

Overall, the panel stressed the WTO's preference for multilaterally negotiated solutions: 'We consider that the best way for the parties to this dispute to contribute effectively to the protection of sea turtles in a manner consistent with WTO objectives, including sustainable development, would be to reach co-operative agreements on integrated conservation strategies covering, inter alia, the design, implementation and use of TEDs while taking into account the specific conditions in the different geographic areas concerned.'

Article XI

Having examined the claims of the complainants, the panel ruled that the embargo was inconsistent with the obligation not to institute or maintain any 'prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other charges' (Article XI.1). Since this finding was enough to show that the ban was inconsistent with GATT obligations, the panel did not find it necessary to examine consistency with Articles I and XIII.

The Marrakesh Preamble

The panel then turned to examine whether the measure could be justified under the exceptions provided under Article XX or the Preamble of the Marrakesh Agreement.

While it acknowledged that the Marrakesh Agreement Preamble recognises the need for trade liberalisation to promote sustainable development, the panel stressed that the 'central focus of that agreement remains the promotion of economic development through trade; and the provisions of the GATT are essentially turned toward liberalisation of access to markets on a non-discriminatory basis.' It also noted the Vienna Convention's provision that 'a state is obliged to refrain from acts which would defeat the object and purpose of the treaty.'

The panel also recalled the Rio Declaration's recognition of the right of states to design their own environmental policies on the basis of their particular environmental and developmental situations and responsibilities. It pointed out the Declaration's emphasis on the need for international co-operation and avoidance of unilateral measures. In the light of those principles, the panel considered that the Preamble did not justify 'interpreting Article XX to allow a Member to condition access to its market for a given product on the adoption of certain conservation policies by exporting Members in order to bring into line with those of the importing Member.'

Article XX

Having ruled that the embargo ran counter to GATT Article XI.1 and could not be justified under the Preamble, the panel turned to examine whether the shrimp ban could still be legitimate under Article XX, which allows countries, under certain conditions, to take trade measures contrary to GATT rules for environmental or health reasons.

The panel focused its analysis on the heading or 'chapeau' of Article XX, which requires legitimate trade restrictions to be applied 'in a manner which would not constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade.' The panel found that interpreting the chapeau in a way which would allow importing countries to restrict market access according to exporters' adoption of 'certain policies, including conservation policies' would mean that 'GATT 1994 and the WTO Agreement could no longer serve as a multilateral framework for trade among Members'. Such an interpretation, the panel felt, could lead to 'conflicting policy requirements' since exporting countries would need to conform with different domestic policies in importing countries, thus threatening the 'security and predictability of trade relations' under WTO agreements. It therefore drew the conclusion that 'certain unilateral measures, insofar as they could jeopardise the multilateral trading system, could not be covered by Article XX.'

In conclusion of its discussion on Article XX, the panel noted that its findings did 'not imply that recourse to unilateral measures is always excluded, particularly after serious efforts have been made to negotiate, nor do they imply that, in any given case, they would be permitted. Nevertheless, in the present case, even though the situation of turtles is a serious one, we consider that the United States adopted measures which, irrespective of their environmental purpose, were clearly a threat to the multilateral trading system and were applied without any serious attempt to reach, beforehand, a negotiated solution.'

Based on the arguments above, the panel ruled that the US measure was not within the scope measures permitted under the chapeau of Article XX. Since it had already found the ban unjustifiable under Article XX, the panel did not 'find it necessary to examine whether the measure was covered by the terms of XX(b) or (g).'

Continued on page 12

WTO Condemns US Shrimp Ban, continued from page 3

Precedent-setting

While the ruling concerns 'a particular situation where a Member has taken unilateral measures which, by their nature, could put the multilateral trading system at risk,' the panel stressed that it was also determining whether similar measures adopted by other Members would 'threaten the security and predictability of the multilateral trading system'. The report is thus likely to be considered precedent-setting: after the two unadopted tuna-dolphin reports, it is the first WTO ruling concerning a trade embargo based solely on domestic environmental legislation.

Because of this precedent-setting nature, environmentalists were generally disappointed that the panel chose only to look at the chapeau of Article XX, without ruling on two key provisions of the environmental exceptions: could the measure have been considered as 'necessary to protect human, animal or plant life or health' as required by Article XX(b)? Could it have been justified as a measure 'relating to the conservation of exhaustible natural resources' that was 'made effective in conjunction with restrictions on domestic production or consumption', as allowed by Article XX(g)?

The report only hints at a partial answer: in its concluding remarks, the panel said that, based on the information provided by scientific experts, it considered TEDs to be '*one of the recommended means of protection within an integrated conservation strategy* (italics added).' The panel does not seem to have been convinced that TEDs are the only, or even a key, component of marine turtle protection. Instead, it appears at least partly to concur with the complainants' claim that most human-induced sea turtle deaths are not due to TED-less trawling but to other factors such as pollution or habitat loss.

Implications for the Future

Ironically, the ruling may advance two diametrically opposed agendas: on the one hand, it will reinforce the position of those committed to free trade and disapproving of unilateral action under any circumstances, as well as those who think that trade measures should never be used for environmental purposes. At the same time, it strengthens the hand of those who oppose trade liberalisation in general, and the role the WTO plays in that liberalisation in particular.

'[The decision] is going to be very difficult to explain to the US conservation community with fast-track negotiations coming up and the environmental movement aligning itself more with the strong protectionist forces in America,' a commentator observed during the recent WTO/NGO Symposium.

The complainants in the case expressed their satisfaction at the ruling, underlining its basic thrust against unilateralism and defence of the principle that at the WTO 'no country can assert its will against another'. In India, which recently lost an important intellectual property case against the US, the ruling is thought to rally support for the multilateral trading system.

The panel's insistence on multilaterally negotiated solutions highlights the limits of the WTO as a venue for addressing transboundary environmental problems. Other instruments – including the Convention on Biological Diversity which the US has not ratified – might offer more appropriate fora for defending trade measures designed to protect shared global resources.

Due to translation constraints, the panel report will not be circulated to WTO Members until this summer. The US has at most 60 days after that to lodge an eventual appeal.

US Reactions to the Shrimp Turtle Report

Extracted from a comment by US Trade Representative Charlene Barshefsky in the Journal of Commerce of 28 April:

The WTO panel recently ruled that the US law, as applied, goes too far in requiring exporting countries to adopt the sea turtle conservation policy that we prescribe.

The shrimp-turtle findings were wrong. WTO rules clearly allow WTO members to adopt measures to conserve natural resources. While the administration plans to review its options regarding this dispute, our approach will ensure that US conservation interests are fully protected.

It is inappropriate to draw general conclusions about the WTO from this report. The report consisted of narrowly drawn findings that focused on the specifics of this case. It is not the last word, since under WTO rules, the United States has the right to appeal.

Extracted from an open letter to Charlene Barshefsky, signed by the United States Council for International Business on 16 April:

We do not agree with you that the panel reached the wrong conclusion. We believe that the administration has been negligent in pursuing multilateral solutions to problems such as these and in not searching to bring unilateral US actions in conformity with international rules. Instead of pursuing an appeal in this case, we recommend that the administration intensify efforts in the WTO to clarify or reinterpret the trade rules to permit the pursuit of legitimate environmental objectives without undermining the trading system.

We suggest following the example of the Uruguay Round decision revising the GATT Article XIX safeguard regime. The new safeguard rule could provide a model for dealing with import restrictions imposed to enforce national production and processing requirements. Countries would be allowed to use unilateral trade measures for, say, a three-year period to deal with a direct threat to living organisms. During that time multilateral solutions would be sought.

Extracted from an open letter to President Clinton, signed by twelve US conservation organisations on 21 April:

The WTO decision not only threatens the world's remaining sea turtles and other marine resources, but also highlights the WTO's failure to act as an appropriate forum for resolving international environmental issues.

We urge you to fulfil your commitment to the American people and to the environment by taking the following steps:

- Immediately and vigorously appeal the panel decision;
- Increase your efforts to negotiate, ratify and implement international agreements for the protection of sea turtles and their habitats; and
- Reassert US leadership in international environmental protection by addressing the environmental deficiencies of the WTO during the upcoming Second WTO Ministerial Meeting.

The panel decision renders meaningless the environmental exceptions in Article XX. We are convinced that it jeopardises other US and international environmental laws by establishing the precedent that unilateral actions are unacceptable even if they are intended to protect internationally recognized endangered species.

Trading Sovereignty: Ecuador's Strategic Silence on the Shrimp Ban

By María Amparo Albán

Since June 1996, all countries where sea turtles occur have been subject to a trade restriction based on the US Endangered Species Act: they can only export marine shrimp to the United States if the President annually certifies to the Congress that the harvesting country has a regulatory programme governing the incidental taking of sea turtles that makes such catches comparable to United States rates. In practice this means that the exporting country must equip its shrimp fleet with turtle excluder devices (TEDs).

While Thailand, Malaysia, India and Pakistan were getting ready to lodge their protest with the WTO (see related story on page 11), Ecuador and other countries subject to the unilateral restriction were struggling to solve this sudden conflict as soon as possible.

The Ecuadorean Experience

The United States decertified the harvest of wild Ecuadorean shrimp on 1 May, 1997. As a consequence, a ban on wild shrimp imports from Ecuador was imposed by the US Department of State due to 'assumed violations' of the turtle protection provisions of the Endangered Species Act. This restriction was recommended by a government official from the US Fisheries Service which, in April 1997, sent a commission to carry out several inspections of Ecuador's shrimp fleet. The investigation determined that Ecuadorean vessels were not complying with the obligation to use TEDs.

This ban was a unilateral trade measure, in clear contradiction of the WTO principle that production and processing methods are not valid reasons for product differentiation. In addition, it was based on the application of domestic law outside a country's jurisdiction. In spite of these obvious violations of international trade rules, Ecuador on 5 May, 1997, presented a formal recertification request to the US Department of State, 'hoping that another commission could carry out a new inspection of the Ecuadorean fleet during May'. New certificates of origin were introduced to certify aquaculture production exported to the United States.

Ecuadorean fisheries officials agreed that this was the best course of action considering that if the embargo persisted, the State Department could ban all Ecuadorean shrimp imports for the rest of the year, and thus paralyse shrimping operations until a new inspection could be carried out in May 1998. By that time the ban would have affected no less than 10 percent of Ecuador's total shrimp exports, calculated at US\$700 million per year.

Notably, Ecuadorean government officials always 'showed their optimism', and insisted that the fleet was ready for a new inspection, due to the big effort they had made to ensure that all shipments complied with US requirements. Later explanations regarding the decertification pointed out that some failures in the use of TEDs were due to the inexperience of Ecuadorean shrimp trawlers who had been given a very short time to comply with the new requirement.

An important new element was brought into the debate when one of the most important environmental NGOs in Ecuador – the Charles Darwin Foundation which deals with the conservation and technical aspects within the Galapagos Islands – repeatedly explained that in Ecuador marine turtles shelter 60 miles off the coast, while shrimp harvesting is carried out only eight miles from the shore.

It was not clear to fleet owners or to the government whether the trade measure was in fact contributing to the protection of an

endangered species. Nevertheless, no one protested against the government's decision to request another inspection instead of bringing the case to the WTO, as other countries were willing to do.

It is not hard to imagine why a small country such as Ecuador does not complain about the use of unilateral measures or the extrajurisdictional application of US Public Law, but instead dutifully assumes the burden of repeated inspections until it is finally certified.

First, the United States is Ecuador's biggest market and strategic commercial partner. Second, since Ecuador by virtue of the Andean Trade Preference Act still enjoys tariff concessions that can be withdrawn at any moment, it is more prudent to comply than to complain. Another reason – and probably the most important one – resides in the fact that shrimp exports provide one-third of Ecuador's GNP, and the country simply cannot afford a dispute settlement procedure which usually takes a considerable period of time. Such arguments, unfortunately, tend to prevail over sovereignty.

The 1997 ban lasted a month and caused Ecuador's economy more than US\$3 million in losses – about US\$100,000 a day according to official records. Understandably, for Ecuadorean business, sovereignty was an uncomfortable and extremely expensive issue to talk about.

Satisfaction at Last?

Some Latin American countries could not hide their satisfaction at the WTO panel decision, particularly those currently subject to unilateral 'certification procedures' and several other forms of pressure from the US to comply with their requirements.

Most Latin American countries are members of CITES and the Convention on Biological Diversity, and put a lot of political and economic effort into protecting their privileged biodiversity according to national capacities. Marine turtles, of course, are part of this natural capital and, as such, subject to many environmental laws and policies. Latin American countries have a strong commitment to the enforcement of the Biodiversity Convention (CBD), one of the most important multilateral environmental agreements and only one of the many that the US has not yet ratified. It was therefore paradoxical that the WWF Amicus Brief submitted to the panel stressed the importance of international and multilateral environmental protection obligations naming, among others, several obligations arising from the CBD.

Countries are free to set their own environmental standards in accordance with the WTO Agreements and have to keep their national standards applicable within their territory. The United States considers environmental goals of prime importance, and wants them to be pursued in the US as well as in the rest of the world. The difference, perhaps, resides once again in the countries' true capacities to reach a balance between economic, social and environmental priorities.

Today, sustainable development is without a doubt the world's most wanted goal. Using certification procedures which are not in compliance with the multilateral trading system does not help developing countries to get on the right path, particularly if they have to use their resources to fight the most powerful country in the world, just to remind the system that sovereignty is still a valid concept, even if we sometimes have to trade it to make our living.

María Amparo Albán is Programmes Director at CEDA – the Ecuadorean Centre for Environmental Law, and Associate Editor of Puentes, the Latin American edition of ICTSD's Bridges.

The WTO: A Southern NGO Perspective, continued from page 2

The Uruguay Round Agreements (URAs) were negotiated without full and fair participation of the countries of the South. Many concessions were extracted from the South through 'coercive persuasion'. Thus the Agreements are full of deficiencies that need to be corrected before moving on to new issues.

Take textiles. Contrary to all the sacred vows of 'free market', the pre-WTO textile regime was an unabashed derogation of normal GATT rules. When developing countries were becoming competitive in textiles in the 1960s, they were 'persuaded' to enter into 'orderly marketing arrangements' to give Northern textile industries time to adjust. This, the Multi-Fibre Agreement (MFA), was supposed to be temporary. It lasted over a quarter century. One consequence of this was that Southern textile exporters could not benefit from their competitiveness and had to slow down their pace of industrialisation and diversification. The URA set out to liberate trade of impediments like the MFA. In a just world, Southern textile exporting countries should have been compensated for their loss of revenue over thirty years. But in the world of wealth and power, it is them, ironically, that were called on to 'compensate' the developed countries in return for agreeing to dispense with the illegal MFA. The negotiated compromise allowed the developed countries ten years (that is until 1 January 2005) to adjust their textile sector. The proposed adjustments allow developed countries to 'technically' fulfil their commitments without actually making any material difference in the liberalization of the textile sector. They have 'back-loaded' the more sensitive items towards the year 2005, thus robbing the exporting countries of the South of any meaningful benefit of the Agreement (see related article on page 9). Also, contrary to other Uruguay Round Agreements where rights and obligations were negotiated cross-sectorally, for textiles this was done within the sector itself, denying the South of possible tradeoffs in other sectors, and setting a precedent for sectoral negotiations in which the South finds itself at complete disadvantage.

The textile case illustrates an anomaly that is contrary to all the professed principles of free trade and liberalisation. So, instead of pushing for 'new issues', Southern countries should seek to remedy the anomalies of the Agreement on Textiles. In the second phase of implementation, they should seek compensation for the loss incurred during the first phase, demand that the developed countries use the transitional safeguard measures sparingly (as provided in the Agreement), and that the provision of sectoral balance be removed altogether.

This is just one example. Earlier, we cited the example of the Dispute Settlement system. It is a costly system, and one based on unilateral retaliatory power of aggrieved countries. Its structure favours the powerful against the weak. This must be corrected, and the provision for cross-sectoral retaliation removed altogether. There are many other anomalies in the WTO system, for instance in the areas of tariffs and unfair trade practices such as subsidies and anti-dumping – extensively used against the South – as well as agriculture, Services, TRIPS and TRIMS, and so on.

The WTO is, we are constantly reminded, a 'member-driven' organisation. Its credibility and legitimacy lie in the democratic principle of equality. The South should take this principle and unite to correct the many derogatory rules and practices that the North, using its wealth and power, managed to get into the system. The WTO is not irreversible. Refuse to get into new issues, and make the system unworkable for the North until the existing anomalies are remedied.

Yash Tandon is Director of the International South Group Network based in Harare, Zimbabwe.

*WTO/NGO Symposium, continued from page 10***Processing and production methods and unilateral trade measures**

Import bans or other forms of discriminatory treatment based on processing and production methods (PPMs) are not allowed under WTO rules. Dispute settlement panels have consistently ruled against such unilateral actions as violations of the obligation of non-discrimination for 'like products' on the one hand, and as efforts to extend domestic legislation beyond national borders on the other. While most speakers agreed that MEAs offered the best approach to addressing global environmental concerns, many stressed the difficulty of reaching such agreements, or providing them with stringent and enforceable dispute settlement mechanisms. In the absence of those, trade measures – even unilaterally taken – were sometimes necessary to reach a desired environmental goal, the latter argued.

Many speakers pointed out that one of the key components in setting the world on a sustainable development path involved changing the way goods are produced (or commodities grown, harvested or extracted). While NGOs seem to have generally accepted that GATT provisions are unlikely to be changed in this respect, several suggestions were made to initiate discussions on a possible side agreement or other ways of making PPM-based trade restrictions GATT-compatible under certain circumstances. A suggestion was made to possibly allow favourable tariffs for products made with methods that promote sustainable development. While to most Northern advocates the PPM issue is essentially an environmental one, Southern participants saw the need for legitimate product differentiation based on their artisanal and culturally appropriate production.

Looking Forward

Several participants referred to the potential of the Kyoto Protocol to influence the trade and sustainable development interface. If scientific evidence keeps mounting on the existence and consequences of global warming, pushing governments to adopt increasingly stringent mitigation strategies, including trade measures, the Protocol could become 'the most important economic treaty since the creation of the GATT', and as such a WTO test case regarding trade restrictions imposed for environmental purposes.

Civil society is likely to seek avenues to take forward Professor Cottier's suggestion to open up the WTO dispute settlement mechanism by allowing public hearings and *amicus curiae* briefs submitted by NGOs. Measures such as these would make the system more transparent, as well as contribute to making panel rulings more acceptable to the public. A much longer-term goal might be the establishment of a WTO Parliament, suggested by Professor Cottier as a way to further the 'democratic legitimisation' of the world trading body.

Many of the participants praised the technical expertise that characterised interventions on such subjects as the relationship between the TRIPs agreement and the Convention on Biological Diversity, the revision of the WTO's dispute settlement mechanism or ways to advance the PPM debate. Mechanisms might be found to address some of these issues. Another major challenge, however, needs equal attention: the effects of globalisation on vulnerable populations in the poorest countries, already marginalised in the global trading system. Until the international trading system addresses the real needs of those populations, it will not truly achieve 'the objective of sustainable development', as mandated by the Preamble of the Marrakesh Agreement establishing the WTO.

This article is adapted from a detailed report on the meeting produced by the International Institute for Sustainable Development in co-operation with ICTSD. The entire report is available at <http://www.iisd.ca/linkages/>

Balancing the WTO Is Not the Way to Go – and Does Not Require a WEO

By Rubens Ricupero

The creation of a major new institution for global governance, such as the proposed World Environment Organisation, would be an anachronism out of tune with today's realities. Moreover, even if it were politically feasible, it should be recalled that in the case of multilateral trade, the creation of a powerful organisation like the WTO was the *outcome* – almost the by-product – of a half-century of consensus-building and value-sharing, not its *precondition* or precedent.

We may be persuaded that, after Stockholm, it was a mistake not to build a strong UNEP. Nor, more recently, should we perhaps have tolerated the excessive fragmentation of the secretariats of the different conventions. But those decisions have engendered a reality and vested interests that will be extremely difficult to change. It is worth recalling that those decisions, often made by default, were taken against the background of inadequate commitment to the goals or methods of environmental negotiations.

This is not to say that there is no possibility for improvement in the institutional area. One idea currently being explored by UNCTAD and UNEP involves the creation of an intergovernmental panel on economic instruments for environmental policy, to examine ways in which these instruments can contribute to sustainable development. Other similarly realistic and practical measures could be envisaged in a gradual, step-by-step process of institution-building not dissimilar to the one that finally led to the WTO.

Rather than set up a counterpoint to the World Trade Organisation, I would submit that the environment needs to be mainstreamed into economic decision-making at all levels. Governments should not deal with the environment as an afterthought, or an exercise in damage-containment, but as an essential element in the planning of all economic projects and the assessment of their costs and benefits. Thus, national tributaries would feed into the international river of multilateral institutions' social and economic work – an appropriate analogy for an issue such as the environment which has little respect for national sovereignty.

The WTO and the Environment

I wonder whether the phrase 'balancing the WTO' might, in effect, create the impression that the major problems for the environment stem from international trade. This is not the case: until now there have been few cases of serious incompatibility between the environment and world trade.

The only point at which there could be a conflict between the trade and environment regimes concerns trade provisions which might have been negotiated into the environmental treaties and which might potentially come into conflict with provisions of the trade regime, embodied in the WTO. But the plain fact is that, although there are nearly 200 extant international environment agreements, there has not been a single case of differences between these agreements and the GATT/WTO agreements which member countries have felt of sufficient importance to bring to the dispute settlement process. This striking feature of the trade-environment nexus results from the fact that the WTO does *not* put barriers in the way of the international community pursuing shared goals in MEAs.

Thus, to postulate conflicts between the trade and environment regimes – at least insofar as they relate to internationally agreed

treaties – is to indulge in abstractions that have yet to be shown to be grounded in reality. It must be said, however, that if a conflict between the trade and the environment regimes, as manifested by multilaterally agreed treaties rather than unilateral actions, were to arise, the current state of international jurisprudence is unsatisfactory. It is not clear whether the provisions of the WTO or of the environmental treaty would take precedence. The WTO has neither the competence, nor the ambition, to take on the role of global policeman because of its enforcement procedures. Indeed, the very paralysis of the debate in the WTO's Committee on Trade and Environment seems to me to be evidence that the WTO is not a monolithic monster 'riding roughshod over the existing MEAs and supporting national environmental legislation'. In this light, it is not self-evident that it is necessary to make significant changes to the existing relationships.

Analysis and research carried out in UNCTAD for many years has confirmed that compatibility between trade and the environment is the rule. Conflict is the exception. And, where conflict has arisen, current rules have often provided an appropriate setting for their settlement. *Causes celebres*, such as the so-called 'eco-dumping' controversy, or unfair competition induced by lax environmental regulations, have in reality proven to be either non-issues or to be greatly exaggerated. Equally exaggerated have been fears over the potential for disagreement between members and non-members of the MEAs.

The Real Conflict

This said, we should not overstate the point and fall into the trap of wishful thinking or denial of reality. This happens when people try to dismiss or underestimate the potential for conflict between the economic system in general and the environment. Instead of insisting that some kind of natural complementarity exists between the two, it would be more realistic to admit that there is an inherent, and constant, dialectical tension between the two poles. One can speak about a universal consensus around the concepts of human rights and the environment only in general terms. But every time we attempt to translate these principles from the abstract to the concrete, from the paper they are written on to the reality on the ground, we clash with vested political or economic interests that are hard to reconcile with human or environmental goals.

No invisible hand is at work to generate a sort of automatic, effortless harmony between clashing objectives. No *deus ex machina* exists, or can be imagined, that will spare us the trouble, the pain, the mutual hostility, and the adversarial relationship that is inseparable from struggle. It is in this bubbling cauldron that we will find the reason for the difficult, tense relationship between the economy and the environment.

For most of the past 15 years, we have been living under the intellectual, political and practical hegemony of a current of thought and action that, starting with von Hayek, Popper and Friedman, has rehabilitated the market as the central mechanism for achieving growth and balance in the economic sphere. After the collapse of the communist regimes in the early 1990s, a tremendous boost was added to the accelerated unification of the economic space worldwide with the establishment of a single, unified, global market for production and trade as the final goal. Ironically, the environmental movement has simultaneously been moving in the contrary direction.

Continued on page 16

Balancing the WTO, continued from page 15

For those committed to the defence of our planet's eco-system, the market as a pricing mechanism is of little help as long as the current pattern of price formation does not adequately reflect environmental costs. This is why the environmental movement has relied much more on regulation and on the power of the state as arbiter, at the very moment when economies as a whole are actively promoting deregulation and the withdrawal, or containment, of the state in the fields of production and trade.

Act Locally

My experience as Minister of the Environment of Brazil led me to the conclusion that by far most environmental problems are not global, nor even regional, but local. They do not involve an international dimension, nor, *a fortiori*, a trade dimension. So, if our concern is to deal with real-life environmental problems, we should, literally, start at home.

At the local level, decision-makers are inevitably captured by concerns about employment creation and tax revenues, pushing environmental concerns down the list of priorities. It is therefore necessary, in a very real sense, to 'reinvent the economy', to focus energies on creating incentive structures which will induce decision-makers to move the environment up their priority list. What do I mean by 'reinventing the economy'? While a large number of features of the modern economy need change, let me focus here on the use of natural resources.

Markets and accounting systems often fail to recognise natural resources as assets in the true sense of the term, or to value properly resource-based goods and services. Misleading information about scarcity values is the source of this failure. In turn, this creates a faulty decision-making process over the management, utilisation and enhancement of natural resources. Too many resources are allocated to activities that generate external costs. And too few are allocated to activities that generate external benefits. If these resources are to contribute most effectively to sustainable development, their prices should reflect the full range of the costs involved in using them, including the costs of the external effects associated with exploiting, transforming and using them, together with the costs of future uses foregone. Broadly speaking, these could be seen as forming a package of environmental costs, to which a notional price can then be attached.

Unfortunately, this desirable process rarely happens. Indeed, without government intervention, and in the absence of well-defined property rights for public goods or goods to which access is generally open – such as clean air, clean water, or biodiversity – these environmental assets have been treated as free goods in the economic production process. Consequently, they have been overused in production activities. In these cases, there is a clear need for governments to intervene in order to create the conditions for the internalisation of the external costs associated with such over-use, especially where the sustainability of environmental services is endangered.

The Role of Government

I have mentioned the need for governmental intervention. So that I am not misunderstood let me say that I mean this only in the context of creating the correct conditions for the pricing system to perform effectively what economists call its allocative function. I am keenly aware of the dangers involved. In some cases, government intervention has actually worsened the situation: for example, by under-pricing certain resources either by providing them below their marginal cost, or by subsidising private producers.

Governments intervene in agricultural commodity markets through price support, agricultural taxation and export taxes. Whilst in the developed countries intervention usually seeks to keep domestic agricultural prices *above* world market levels, in many developing countries, agricultural production is often influenced by interventions aimed at keeping domestic agricultural prices *below* world price levels. Both types of intervention have adverse consequences for the management of natural resources. Resources are misallocated in the present, and are prematurely depleted, affecting future generations.

Agricultural protectionism leads to more resources being used in farming than is environmentally or economically justified, and impedes access to markets of low-cost producers, thus raising consumer prices in developed countries while lowering incomes in developing countries.

This indicates an obvious starting point for an intervention of a fruitful sort: the reduction or elimination of perverse subsidies. Indeed, one of the outcomes of the Uruguay Round was a distinct effort to address production subsidies, particularly in agriculture, which is precisely where major, environmentally perverse, subsidies have long existed.

In seeking to 'reinvent' the economy, I thus wish to convey a double message. First, left to itself, the market system provides incorrect signals and misleading information, and therefore needs to be complemented by prescient government intervention. Second, such government intervention should seek to ensure that levels of costs and benefits reflect the fullest information about scarcity and price, rights and responsibilities, and actions and consequences. The pragmatic and timely use of such information by society is a precondition for effective human interaction with the natural environment and the promotion of sound, long-term management of natural resources.

Conclusion

So, what are the possible changes in institutional arrangements that could advance our shared goals for the protection of the environment and the advancement of economic growth and development?

Even if a World Environment Organisation were desirable, I do not think it would be possible to negotiate one in the current generation. At a recent meeting sponsored by several of the largest and most important NGOs working in this field, it was unanimously agreed that the proposal is entirely utopian. Quite frankly, there is no political will to negotiate such an organisation now. This reality was recognised even by the organisers of that meeting. Instead they proposed that a 'Standing Conference on Trade and Environment' be established which would bring together the various stakeholders in the environment, to 'articulate the environmental interest in trade policy in such a manner that further steps can be taken through a process that is acceptable to all concerned' (see related article on page 22).

If I understand the proposal correctly, the intention is to make it easier for voices at all levels – international organisations, global and regional environmental regimes, and international civil society – to consider collectively, and in a co-ordinated fashion, the international rules needed to ensure that the trade and the environment regimes are mutually supportive. Given the number, variety and forcefulness of non-state actors involved in environmental policy-making, it seems to me that only good could come of such a process.

Rubens Ricupero is Secretary-General of UNCTAD. This article is adapted from his address to the session on Balancing the WTO at the 'Policing the Global Economy' conference on 24 March 1998 (see related article on page 20).

The Blueprint for Free Trade from Alaska to Chile: An opportunity for the environment?

By Aimée Christensen

On 18 to 20 April, 34 heads of state of the Western hemisphere met for the second Summit of the Americas in Santiago, Chile, and launched the negotiations for the Free Trade Area of the Americas (FTAA). One month prior to that, at the Fourth FTAA Ministerial Meeting in San José, Costa Rica, the hemisphere's trade ministers announced agreement on the guidelines for launching the FTAA negotiations which will conclude by 2005, creating a free trade zone from Alaska to Chile.

The substantive elements of the trade pact will be worked out by nine negotiating groups on agriculture, market access, intellectual property rights, services, investment, competition policy, antidumping and countervailing duties, government procurement and dispute settlement. The guidelines also specify the rotating leadership and location arrangements of the negotiations.

While none of the negotiating groups address the environment or labour per se, the ministers agreed to create a committee of government representatives to receive input from all sectors of civil society: business, labour, environmental and academic groups, to be analysed by the committee and presented for the ministers' consideration. For those concerned that the hemisphere's integration will continue without due consideration of environmental and social issues, the results of the March ministerial meeting offer challenges and opportunities.

On 16-18 March, the private sector met for their Hemispheric Business Forum to develop recommendations for the ministerial meeting. In addition to recommendations on private sector participation in the FTAA, they focused on the negotiating areas of the governmental process, including investment, intellectual property rights, and competition policy. In a parallel session at the Central American University for Business Management, some 25 non-governmental organisations from around the hemisphere met to address trade and sustainable development issues. The resulting NGO declaration of recommendations for the ministers included broad principles as well as specific actions linked directly to issues being addressed by the governmental negotiating groups. The NGOs also participated in the Business Forum to initiate a process of exchange with the business community, recognising areas of common interest, especially that of public participation in the FTAA process.

The Role of Civil Society

The launch of the negotiations of a free trade zone of the Americas could be a chance to 'get it right'. From the European Community to NAFTA, we have experience and examples to guide the hemisphere's progress toward economic integration. For environmental protection, the FTAA can be an opportunity to correct market signals, improve regulatory enforcement and institutionalise the participation of civil society in trade processes. According to the ministerial declaration, one of the General Objectives of the FTAA is to 'strive to make our trade liberalisation and environmental policies mutually supportive'.

The new Committee for the Participation of Civil Society (CPCS) offers an avenue for citizens' groups and businesses to provide input,

suggest actions, and propose steps to be taken toward ensuring environmental and sustainability objectives are met in the FTAA process. By identifying environmental linkages to trade, environmental organisations play a substantive role for governments. The CPCS can be an opportunity for demonstrating the compatibility of free trade with environmental protection, and for showing that addressing environmental protection within the trade context can actually be good for the economy as well as the environment. For instance, the removal of trade distorting subsidies in key sectors such as energy and land use can improve governments' balance sheets as well as serve environmental goals of reducing greenhouse gas emissions and preserving biodiversity. Putting in place certain governmental policies and regulations will guide investment to sectors that benefit the environment. The FTAA could also be an opportunity for NGOs to call for the creation of trade exceptions for production process methods (PPMs) which, while at the heart of most environment-related trade disputes, are not allowed by the WTO.

The Committee can serve to highlight environmental issues related to the areas covered by the negotiating groups. The Trade Ministers' Declaration states: 'The TNC [Trade Negotiating Committee] shall identify linkages and outline appropriate procedures to ensure timely and effective co-ordination [...] This is without prejudice to decisions made by the TNC to dissolve, establish or merge groups. Likewise, the negotiating groups may establish ad hoc working groups.' As the CPCS presents the issues for ministerial consideration, the TNC

can ensure that negotiating groups on intellectual property protection, investment, market accession and other areas take into account the related issues identified by the CPCS. The CPCS may also propose the creation of a study group on environment, or the TNC may create a full negotiating group on environment to agree on actions to be taken by all FTAA members to meet the ministers' goal of mutually supportive trade and environmental policies.

Other opportunities

Beyond the FTAA process, the Summit of the Americas provides another important opportunity for civil society to pursue hemispheric progress on environmental protection. At the April Summit in Santiago, the heads of state gathered to announce and sign another set of principles and actions aiming to improve the lives and livelihood of citizens of the hemisphere. The Santiago Plan of Action focuses on education, poverty alleviation and economic integration. While some claim that the commitments are insufficient, many of them are important steps forward, as were the principles and actions agreed to at the first Summit of the Americas, in Miami in 1994.

In addition to agreeing to new actions – and perhaps more importantly – the heads of state reviewed their progress in implementing previous commitments. The Miami Summit was not just about free trade by 2005, but addressed twenty-two other issue areas, including important agreements on biodiversity, pollution prevention, sustainable energy, micro-enterprise and health. The heads of state also reviewed the implementation of the 1996 Hemispheric Summit on Sustainable

Continued on page 18

Blueprint for Free Trade, continued from page 17

Development, which included another five areas of action, with 65 items in all. Although the policy changes called for in the '94 and '96 documents would clearly improve environmental protection in the hemisphere, this part of the Summit process seems to have been largely overlooked by governments and civil society alike. Indeed, the Miami Summit's 'Partnership for Pollution Prevention' includes a commitment to 'develop environmental policies and laws with the goal of ensuring that economic integration of the region occurs in an environmentally sustainable manner.' This could be a key guidepost to the trade ministers: the heads of state have called for economic integration that supports sustainable development. The 1994 Summit commitments include important environmental policy actions that should not be forgotten in the larger debate.

Unfortunately, the Summit of the Americas commitments other than the FTAA have not been high priorities for implementation. The importance of economic integration to the governments of the hemisphere, combined with the 2005 deadline pushing implementation, has ensured its progress. The other Summit action items do not include timelines for their completion, and with scarce resources many of the issues fall behind other domestic priorities. As host of the Miami Summit, the United States Government has chaired the Summit Implementation Review Group, a series of Vice Ministerial meetings to review progress. But without effective monitoring or enforcement mechanisms, the commitments are largely forgotten as governments and civil society focus on the next negotiation, the next agreement. Far too little attention is given to implementation.

For environmental issues, the Miami agreements set commitments in several key areas, and some progress has been made, for example in phasing out lead from gasoline, promoting renewable energy development, and establishing a hemispheric network on biodiversity. Progress on these environmental goals has largely been due to key governments' or assistance agencies' interest in moving forward. For example, the Partnership for Sustainable Energy Use had a good beginning, largely because of interest from the United States and Venezuela, as well as the fact that the energy actions addressed both economic and environmental goals. Recognising a disparity among governments' abilities to implement the energy agreements, energy ministers created a process for hemispheric energy co-operation, including capacity building, a study on clean technology options for energy markets, and the development of a sustainable energy fund within the Inter-American Development Bank. But over the last year and a half, the North-South antagonism of the climate change debate has soured much of the co-operation, and that hemispheric initiative is under threat of stalling completely. In the absence of government attention or resources, NGOs can play a critical role within each country by monitoring progress and proposing locally appropriate measures for domestic implementation.

Within the Summit of the Americas process, there is much promise for sustainable development. The words are there, the rhetoric in the FTAA guidelines is there. What is needed now is consistent attention and resource dedication to ensure the words are met by action. In addition to focusing on implementation of the specific commitments, civil society has an opportunity to promote sustainable development goals within the FTAA process through the CPCS. As governments develop the structure and guidelines for the operation of the CPCS and the FTAA negotiations as a whole, the importance of NGO strategising and networking will grow. The March NGO declaration can be the first submission to the CPCS, and the San José NGO meeting the beginning of building a network of hemispheric sustainable development organisations in the FTAA process.

The People's Summit of the Americas, the civil society gathering held parallel to the Santiago Summit, built on the San José NGO meeting and further articulated civil society concerns, particularly on the environment and labour. New constituencies were represented there, including indigenous communities, women's groups, and human rights organisations. After five days of intense negotiations in several parallel forums, 2,500 organisations from nearly 30 countries called for a hemispheric integration process that was socially just, ecologically sustainable and truly democratic, expressing their dissatisfaction with the FTAA process as it stands. Continued strengthened networking within the NGO community, as well as collaboration with those business representatives who may have overlapping priorities, will be key to influencing the integration process.

The FTAA framework provides the opportunity for civil society to strengthen governmental action and to play a leadership role by demonstrating that the goals of trade and sustainable development are not mutually exclusive but can, in fact, be mutually reinforcing. Perhaps after increased interaction between governmental and non-governmental players may comfort levels rise high enough to make real progress on sustainable development in the Americas.

Aimée Christensen recently joined ICTSD after four years of co-ordinating Latin American Energy Policy for the US Department of Energy.

Progress at the Santiago Summit

The Summit of the Americas in Santiago demonstrated that seasoned diplomats, too, can learn from past mistakes.

In Miami, leaders had pledged to ensure that all citizens completed at least six years of education. But leaders failed to identify an institution to fulfil this mandate, or to assign fresh resources to build new schools and train competent teachers.

In contrast, in Santiago the leaders asked the resource-rich World Bank and Inter-American Development Bank to set aside US\$6 billion (double their previous commitments) over three years to bolster education in Latin America. The World Bank will chair a meeting this June to transform Santiago's promise into a step-by-step work plan, and will monitor progress to keep performance on track.

Perhaps the biggest challenge facing inter-American summitry is the cultivation of domestic political constituencies. Most notably in the larger countries, many citizens still question the wisdom of inter-American cooperation. Mexican cherish their 'sovereignty', some Brazilians fear US power, and many US citizens doubt that Latin Americans are worthy partners.

Last fall the US Congress reminded the hemisphere of the importance of domestic opinion when it denied President Clinton the authority to negotiate the centerpiece of the Miami Summit, the Free Trade Area of the Americas. As the US lawmakers demonstrated, popular will can quickly render asunder the most exquisitely crafted diplomatic declarations.

One way to build popular support for inter-American cooperation is to involve the private sector and civil society more fully in the design and implementation of summit initiatives. When people are present at the creation, they feel ownership in the success of the enterprise.

Richard Feinberg and Robin Rosenberg, co-directors of the Leadership Council on Inter-American Summitry wrote this comment for the San Diego Union-Tribune. Abbreviated with the kind permission of the authors.

Rotterdam Treaty on Pesticide Trade Controls Finalised

Negotiations concluded on 14 March on the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. The new treaty will be formally opened for signature at a diplomatic conference scheduled for Rotterdam, the Netherlands, next September.

The Convention makes the hitherto voluntary Prior Informed Consent (PIC) procedure legally-binding, but does not otherwise substantially alter its scope. It covers the same 22 pesticides and five industrial chemicals as the existing procedure (these include Dieldrin, DDT, Chlordane, Lindane and PCBs, among others). These compounds are banned or severely restricted in many countries, but continue to be produced and exported to third, often developing, countries which have not outlawed them. Shipments of such chemicals and pesticides must be notified to the importing country, which must explicitly agree to receive the chemicals before they can enter its territory.

A new chemical or pesticide can be added to the Convention's Annex III, otherwise known as the 'PIC list', if at least two countries in different 'PIC regions' (loosely based on the seven FAO regions) notify the Secretariat that they have banned it or severely restricted its use. All Parties to the Convention will then have to comply with the PIC procedure when exporting or importing that compound. Importers must provide timely decisions and submit decisions on future imports to the Secretariat, as well as notify the latter about any relevant changes of regulation. If the Designated National Authority of the importing country fails to respond to a notification within nine months, the exporter may proceed with the shipment provided the chemical in question is registered in the importing country, has previously been imported, or explicit consent has been sought and received. Exporters have 180 days to change legislation to reflect export notification requirements on any compound newly added to the PIC list.

For chemicals banned or severely restricted domestically, but not on the PIC list, exporters must notify importers before the first export, and subsequently before the first export of every year. They must also provide an updated export notification after regulatory action resulting in major changes concerning the ban or the restriction of the chemical.

Provisions on 'information to accompany exported chemicals' were somewhat watered down during the final negotiation session: instead of requiring exports to be classified, packaged and labelled according to 'equally stringent' standards as those mandated for domestic use, each Party 'shall require that both chemicals listed in Annex III and chemicals banned or severely restricted in its territory, when exported, are subject to labelling requirements that ensure adequate availability of information with regard to risks and/or hazards to human health or the environment, taking into account relevant international standards' (Article 13.2).

After much discussion, negotiators reached agreement on what information cannot be regarded as 'confidential'. The expiration date of a chemical is not confidential, neither is the production date 'generally' so considered. The information contained in safety data sheets; information on precautionary measures, including hazard classification, the nature of the risk and the relevant safety advice; and the summary results of the toxicological and ecotoxicological tests are also to be a matter of public record. Beyond the specific

provisions, Article 14.2 directs countries to protect 'any confidential information mutually agreed between them'.

The Convention stipulates that 'any body or agency, whether national or international, governmental or non-governmental, qualified in matters covered by the Convention' will be granted observer status at the meetings of the Conference of the Parties unless at least one-third of the Parties object. The first meeting of the COP will establish a subsidiary body, to be called the Chemical Review Committee, to assist the implementation of the Convention and decide on the inclusion of new chemicals in Annex III.

In an attempt to address both trade and sustainable development concerns, the Convention's Preamble recognises that 'trade and environmental policies should be mutually supportive with a view to achieving sustainable development', and emphasises that 'nothing in this Convention shall be interpreted as implying in any way a change in the rights and obligations of a Party under any existing international agreement applying to chemicals in international trade or to environmental protection'. To assist controls on PIC pesticides and chemicals, the Convention foresees the development of special customs codes for Annex III compounds.

The Open Questions

The Convention's dispute settlement procedures are not entirely clear. Disputing Parties may – but are not obliged to – either accept 'arbitration' (the arbitration procedures are to be adopted by the Conference of the Parties in an Annex 'as soon as practicable'), or submit the dispute to the International Court of Justice. However, if the Parties to a dispute have not accepted either of the avenues above, and the dispute still exists 12 months after initial notification, either Party can submit the dispute to a Conciliation Commission (procedures to be determined at the latest by COP 2). The Commission will not have the power to sanction but 'shall render a report with recommendations'. A number of governments requested that the report of the meeting include a statement reflecting their 'concern regarding the failure to include in the Convention a dispute settlement procedure that was mandatory and resulted in a legally-binding and final outcome.' Others defended the establishment of a Conciliation Commission as an innovative attempt to broaden the options for dispute settlement under MEAs.

Compliance requirements are also left entirely to the COP: 'The Conference of the Parties shall, as soon as practicable, develop and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Convention and for treatment of Parties found to be in non-compliance' (Article 17). Corollary to the absence of compliance requirements, the Convention does not address illegal traffic.

Developing countries failed in their efforts to include liability and compensation provisions into the Convention, but are expected to continue pressing for a liability regime at subsequent meetings, perhaps as a free-standing protocol.

The next step in multilateral chemicals management will be taken from 29 June to 3 July, when governments will initiate negotiations on the elimination of the most hazardous and long-lasting pollutants, or 'POPs' as persistent organic pollutants are also known.

A number of governments expressed concern regarding the failure to include in the Convention a dispute settlement procedure that was mandatory and resulted in a legally-binding and final outcome.

Expert Panel on Trade and Sustainable Development

In operation since 1996, the Expert Panel on Trade and Sustainable Development (EPTSD) attempts to develop mixes of policy tools which can tackle the key problems of the trade, environment and development interface. Whether for electricity, textiles, timber or any other sector, trade should be made to work for sustainable development, not against it. The principles which EPTSD seeks to promote, are equity/values, efficiency, good governance, stakeholder participation and responsibility, and international cooperation.

At its fourth meeting in Hanoi on April 6-8, 1998, the panel made significant progress both in terms of policy formulation and in enhancing prospects for the implementation of integrated policy packages. The meeting's conclusions include: international trade in electricity can provide new possibilities to reduce greenhouse gas emissions; more trade opportunities can boost efforts to make textiles production cleaner and more environmentally friendly; and the timber trade could be re-structured to make the management of forests more sustainable. The presence of the UNCTAD Secretary-General, the Vietnamese Vice Minister of Environment and the active engagement of the World Bank and UNDP at the meeting were particularly valuable with regard to future implementation work.

EPTSD has developed a methodology that integrates in a whole Principles, Guidelines and Tools. These categories cover the main issues pertinent to any policy measure, while being internally consistent and mutually reinforcing. This approach has yielded three products relevant to the wider policy community, namely:

- A Generic Framework, consisting of Principles and Guidelines which are applicable in any sector.
- A Sectoral Toolbox, consisting of Principles, Guidelines and Tools, applicable to a particular sector (e.g. timber, textiles, and electricity).
- Policy Packages, consisting of Tools drawn from a sectoral toolbox and appropriate for a particular case in a specific trade sector (e.g. timber trade in Indonesia, textile trade in China, electricity trade in Latin America).

EPTSD has made clear progress towards its goal of engaging policy makers in formulating integrated policy packages which can maximise synergies and minimise conflicts between the objectives of trade, environment and development. A concrete opportunity for collaborative work on an integrated forestry policy project is being pursued with the Vietnamese government, other key local players and intergovernmental bodies. Another case to be further explored is the formulation of integrated policies for a cooperative electricity trading project in Latin America.

The experience so far tends to confirm that this panel of experts, deliberating in their personal capacities, has been innovative and inclusive in its policy evaluation and formulation process. Clear paths for policy analysis leading to concrete policies have been set out. The panel is already sharing elements of this methodology with sectors of the international community. However, the ultimate challenge will be to persuade governments to replicate the approach in their policy-formulation processes.

The Panel – chaired by Trần Văn-Thinh, former EC Ambassador to the GATT – comprises trade, environment, and development experts from governments (Egypt, Argentina, Sweden, China), intergovernmental organisations (World Bank, UNCTAD), NGOs (Greenpeace, Third World Network, US Council for International Business, International Centre for Trade and Sustainable Development) and academia (University of Geneva, University of London). The composition of panelists has been balanced on a North-South and regional basis.

Policing the Global Economy

More than 500 participants attended the 'Policing the Global Economy: Why, How and for Whom?' conference organised in Geneva by the Bellerive Foundation and Globe International from 23-25 March 1998. Many distinguished speakers and discussants addressed the meeting, which examined the social and environmental effects of globalisation and WTO rules, as well as ways to achieve a better balance between trade, environmental and social concerns. (See page 15 for Ambassador Rubens Ricupero's comments on the proposal to create a World Environment Organisation.)

Sir Leon Brittan, the EU's Trade Commissioner, called for a high-level political trade and environment meeting to be organised next fall to 'break the logjam which has prevented significant progress being made in this area up to now'. Among issues that could be discussed in such a meeting, Sir Leon mentioned problems relating to multilateral environmental agreements, eco-labeling and the 'precautionary principle'. Another priority would be to establish a general WTO 'understanding' on GATT Article XX which allows members to take measures contrary to GATT rules in order to protect human, animal or plant life or to conserve natural resources. Sir Leon also expressed his support for removing trade obstacles for environmental goods, services and technologies.

Several speakers, often referring to the Asian financial crisis, emphasised the need to bring global capital markets under control. Many others highlighted the marginalisation and social consequences brought by globalisation. Bishop Morelli saw globalisation leading to an expanding gap between rich and poor, and called the increasing concentration of wealth morally and ethically unacceptable in the face of growing hunger and malnutrition. Vandana Shiva spoke of the negative effects of the TRIPs Agreement on indigenous efforts to conserve biological diversity and produce goods sustainably.

The Chairmen's Statement released at the end of the three-day meeting urged WTO members at the May Ministerial Meeting to adopt a binding declaration 'with the aim of urgently re-invigorating the political momentum so that progress can be made on the unresolved issues within the Committee on Trade and Environment.'

The speeches, as well as the debates and interventions from the floor, will be published as a contribution to the WTO Ministerial.

MAI Update

Meeting from 27-28 April, the OECD Council of Ministers agreed to postpone any further negotiations on the Multilateral Agreement on Investment (MAI) until October 1998, with no deadline indicated for finalising the treaty. The MAI negotiations started at the OECD in 1995 and were initially scheduled to conclude in 1997. While the official Council communiqué directs the negotiators to 'continue their work with the aim of reaching a successful and timely conclusion of the MAI and seeking broad participation in it', it also affirms the ministers' support for the current work programme on investment in the WTO and states that once the work programme is completed, OECD members 'will seek the support of all their partners for next steps towards the creation of investment rules in the WTO.'

Enthusiasm for the MAI in the OECD has been waning for some time and several countries, particularly Canada, have expressed their preference for a 'real multilateral agreement' within the WTO. Ministers stressed that balance must be found between economic concerns and political, cultural, social and environmental sensitivities, as well as issues relating to extraterritoriality.

TRIPs and Biodiversity: Towards the 1999 Review

By Richard Tarasofsky

On 19 March, about forty people from around the world attended a roundtable dialogue on the upcoming review of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). The event was convened in Geneva by the International Centre for Trade and Sustainable Development, IUCN-The World Conservation Union, the Sociedad Peruana de Derecho Ambiental and the Institute for Agriculture and Trade Policy.

The purpose of the roundtable on 'TRIPs and Biodiversity: Towards the 1999 Review' was to provide a non-partisan forum for examining the issues at stake in the review of Article 27.3(b) of the TRIPs Agreement. This Article deals with patenting obligations and exemptions concerning life forms and plant varieties and must be reviewed by the WTO in 1999 (i.e. four years after the Uruguay Round agreements entered into force).

Panelists addressing the meeting included Kristin Dawkins of IATP, Graham Dutfield of the University of Oxford, Michael Flitner of the University of Freiburg, David Hathaway of AS-PTA, André Heitz of the International Union for the Protection of New Varieties of Plants, V.R. Krishna Iyer of the People's Commission on Biodiversity, Dieter Laudien of Boeringer-Ingelheim, Nuño Pires de Carvalho of the WTO, Richard Owens of the World Intellectual Property Organisation, Manuel Ruiz Muller of the Sociedad Peruana de Derecho Ambiental, Richard Tarasofsky of the IUCN Environmental Law Centre, Godber Tumushabe of the African Centre for Technology Studies and Joseph Vogel, independent consultant. The roundtable was facilitated by Ricardo Meléndez-Ortiz of ICTSD. All panelist and other participants from intergovernmental and non-governmental organisations attended in their personal capacities.

Patenting life forms

The first area of discussion concerned the desirability of patenting life forms, an area the TRIPs Agreement might in the future possibly allow. Among the principal points made by participants were:

- Patents are needed to stimulate research and invention.
- The requirements of the Agreement are not clear in this respect, except that patents are mandatory for micro-organisms.
- It should not be assumed that the TRIPs Agreement, which is an international instrument, should be interpreted in the same way as national legislation containing similar provisions.
- TRIPs allows exclusion from patenting for ethical or moral reasons, so long as commercial exploitation is also disallowed.
- Patenting life forms is unethical. Few countries permit such patenting, and the result of the TRIPs review of Article 27.3(b) should be a ban on all patenting of life forms since it is difficult to contain its possible harmful consequences.

Treatment of plant varieties in the TRIPs Agreement

The obligation to protect plant varieties was discussed particularly in relation to the UPOV regime, based on the International Convention for the Protection of New Varieties of Plants. A key element of that convention is the requirement to grant and protect breeder's rights for plant varieties which are new, distinct, uniform and stable.

The main thrusts of this discussion included:

- Conceptually, it is important to distinguish between plant genetic resources for food and agriculture and those for medicinal or biotechnological purposes.
- The UPOV Convention provides a negative right, rather than a monopoly, since many countries allow for a 'farmer's privilege'.
- Plant variety protection assists in:
 - ensuring that varieties are exploited optimally;
 - promoting investment in plant breeding;
 - optimising trade; and
 - developing sustainable agriculture.
- Environmental impacts of this system are mixed: if new varieties provide a better yield there is a temptation to replace traditional varieties while, at the same time, some new varieties require less exploitation of land.
- Since UPOV effectively restricts farmers' access to seeds to those from commercial firms, the result is no benefit-sharing. Therefore, the special protection for plant varieties provided for under Article 27.3(b) of TRIPs should be deleted.
- A contradiction exists between the reciprocity provisions of UPOV and the national treatment principle of TRIPs.

**TRIPs Article 27.3 (b):
Members may exclude from patentability plants and animals other than micro-organisms, and essentially biological processes for the production of plants and animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof.**

Protection of indigenous knowledge

The protection of indigenous knowledge is a key concept of the Convention on Biological Diversity (CBD). Its Article 8(j) requires Parties to 'encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovation and practices'.

Participants put forward the following points:

- Both India and Peru are experimenting with establishing registers for traditional knowledge.
- Contracts can be useful for benefit-sharing arrangements.
- The issue of indigenous knowledge was never raised during the negotiation of the TRIPs Agreement, but it has been discussed by the WTO Committee on Trade and Environment. According to the speaker, most indigenous knowledge can be protected by intellectual property rights and the TRIPs Agreement does not hamper the creation of new rights.
- Patents, by definition, could not protect indigenous knowledge, but trade secrets might.
- Indigenous people face a 'Catch-22' situation: if indigenous knowledge is published, it becomes part of the public domain; if it is a trade secret, competition among suppliers drives the price down. The creation of 'oligopolies' or cartels of suppliers of indigenous knowledge could be a way forward (see Bridges Vol. 1 No. 6, page 14 for details on biodiversity cartels, *ed.*).
- It is important to combat biopiracy from a commercial perspective. Article 8(j) of the CBD could be implemented through patent protection of indigenous knowledge (including a requirement of evidence of prior informed consent), contracts creating 'know-how' licenses and national trust funds to share benefits.
- It is important not to fall into the 'TRIPs trap', whereby everything is seen through the perspective of commercialisation. A litmus test should be whether a given measure advances the interests of the weakest members of society.

Continued on page 23

Trade and Environment: The Search for a Suitable Home

Many incompatibilities between global trade rules and environmental treaties could be avoided if the trade and environment communities learned to speak each other's language, participants at a recent policy dialogue agreed. Entitled 'Coming to Grips with the Environmental Agenda in Trade', the dialogue was organised by the International Centre for Trade and Sustainable Development, IUCN-The World Conservation Union and the International Institute for Sustainable Development (IISD) on 16 March. The meeting, chaired by David Runnalls of IISD and Ambassador Celso Lafer of Brazil, brought together representatives of NGOs, government, international organisations, including UNEP, UNDP, UNCTAD and the WTO, as well as industry – all participating in their personal capacities.

Discussion focused on possible mechanisms for addressing the linkages between trade and environmental policies, particularly those concerning the effects of trade on the environment. A number of important points were raised during the day. Amongst these were the realisation that the WTO has no comparative advantage for addressing the impacts of trade on the environment; that trade rules need to acknowledge that different environmental endowments call for different standards; and that environmental disputes cannot be adequately addressed by the system's dispute settlement mechanism. Indeed, this mechanism is designed to deal with trade conflicts (i.e. conflicts of interest) whereas environmental conflicts tend to be conflicts of conception. Most significant was the recognition by some key players that WTO rules should differentiate between environmentally-sound and unsound goods through a new interpretation of the concept of 'like products'.

No adequate home for the environmental perspective

This dialogue – the first in a series whose objective is to trigger a constructive process for development of co-operative approaches to trade and environment issues – arose out of the fact that although the linkages between trade and the environment are clearly acknowledged, there is no adequate institutional home in which all aspects of the two issues can be properly considered. Although the GATT/WTO has been considering trade and environment issues for several years, as a trade organisation it neither has the mandate nor the capability or the ambition to cover all environmental aspects of trade. One speaker said that the fact that the WTO had made no effort to develop a systematic mechanism to evaluate the environmental effect of trade negotiations was a serious omission. The WTO Committee on Trade and Environment (CTE) focuses on the compatibility environmental policies and measures with global trade rules, leaving a gap where there should be a forum to systematically address the reverse side of the coin: the effects of trade and globalisation on the environment. Thus, trade and sustainable development issues beyond the CTE's mandate have no obvious 'homes' where they can effectively be discussed by all stake-holders interested in moving the agenda forward. The need for the WTO to effectively implement its working relations with UNEP, UNDP, UNCTAD and IUCN, as provided for in its Article V, was also raised.

The environmental agenda causes fear in almost all involved

Speakers at the policy dialogue pointed out that at the moment trade and environmental policies are often thought of separately. In many countries' domestic policy-making it is unclear where the responsibility for policy coherence in trade and the environment lies. In fact, trade practices – such as subsidies – that have negative environmental effects are often also bad trade policy, thus, better communication between the two communities could be beneficial all round. Several participants observed that, for the most part, trade rules

and environmental regulations are compatible and trade liberalisation and environmental protection could, and should, be mutually supportive. Appropriate rules on competition policy could promote sound environmental practices in the market, and trade rules can protect the role of government as a regulator of environmental issues. Nevertheless, the environmental agenda in trade is viewed with apprehension by almost all concerned. Although some of these fears are legitimate, better communication and co-ordination between the trade and environment communities could dispel many of them. A number of participants said that the existing fears needed to be openly addressed, and several examples of fruitful exchanges between environmental experts and trade specialists, that helped dispel mutual apprehensions, were mentioned, including increased technical (as opposed to political) exchanges amongst the trade and the environment communities. One panelist suggested that as a starting point for a new era of co-operation, environmentalists could agree to apply the 'least trade restrictive' principle in new international agreements, in exchange for trade policy-makers agreeing to apply the precautionary principle and the polluter pays principle in theirs'.

Regional approaches could help

One way to advance the environmental agenda in trade is through regional integration processes, most participants agreed. Because such processes mostly involve countries where similar conditions and concerns prevail, regional approaches could provide important test cases for elaborating mutually acceptable policies to deal with the trade and environment linkage in the multilateral trading system. By providing scope for addressing the issues with less of a trade focus than in the WTO, a regional approach could also help respond to the fears of many developing countries, who feel that discussions on trade and environment have been imposed on them. One panelist pointed out that in the NAFTA context, the Commission on Environmental Cooperation tried to examine environmental problems and only then question how trade might affect them.

The environmental regime is the trade regime's poor relation

At the global level, the international environmental regime is handicapped vis-à-vis its trade counterpart: while the trade regime is relatively coherent (many of the multilateral trade agreements are administered under the same set of rules including an integrated dispute-settlement mechanism and are serviced by the same secretariat) there is no equivalent on the environmental side. The environmental regime has evolved in an atomised way and is administered by a disparate range of institutions with cross-cutting mandates. Neither UNEP, which has the co-ordinating mandate for environmental issues within the UN system, nor the Commission on Sustainable Development have the mandate, capability or ambition to act as the environmental counterweight to WTO. The WTO is also privileged in relation to environmental organisations by the nature of the commitments which it oversees, and its strong dispute settlement mechanism.

A Standing Conference as a move towards a solution

While the disparate and fragmented nature of global environmental institutions certainly does not help balance the debate, many participants pointed out that even the creation of a World Environment Organisation was not likely to change the dynamic that had resulted in a near deadlock on trade and environment. However, most participants felt that some mechanism was needed to deal with issues arising from the complex inter-relationship between trade and

Continued on page 23

TRIPs, continued from page 21

Developing effective *sui generis* systems

Article 27.3(b) of TRIPs requires Members to 'provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof'. In certain circumstances, it allows Members not to grant patents for 'essentially biological processes for the production of plants and animals other than non-biological and microbiological processes'. The following comments were made regarding these provisions:

- The exact meaning of three key concepts remains to be defined by WTO Members, i.e. what is understood by:
 - '*sui generis*' (literally, from Latin, 'of its own kind'.)
 - 'effective' (in the context of the obligation to provide 'effective' *sui generis* systems for the protection of plant varieties.)
 - 'essentially' (referring to the 'essentially biological processes' which need not be patented when ethical, health or environmental concerns contradict such patenting.)
- A universal definition of *sui generis* systems would defeat the purpose. Even a nation-wide standard for *sui generis* systems may be inappropriate.
- Too much variety in *sui generis* systems, on the other hand, might ultimately be unsuccessful, and the TRIPs Agreement was intended to produce some amount of harmonisation.
- *Sui generis* systems should not hinder the implementation of Article 8(j) of the Convention on Biological Diversity or be limited to Western notions of intellectual property rights.
- *Sui generis* systems must involve prior informed consent of indigenous knowledge, as well as benefit-sharing, and must still allow individuals within the communities to have rights.
- A *sui generis* system could be based on an integration of rights and responsibilities from a number of international regimes, but this would require increased national co-ordination of various government units.

Future intergovernmental activity on these issues

The final component of the dialogue concerned future work of WIPO and the WTO on the issues raised in the dialogue.

- Pending official approval, the work programme of WIPO will include components on biodiversity, indigenous knowledge and technology transfer.
- Although no suggestions concerning the 1999 Review have yet been made in the TRIPs Council, the subject has come up in the CTE. One participant speculated that while it may be difficult to reach consensus on these matters in the context of the WTO review process, agreement might be more attainable in a new trade negotiations round where various interests and objectives can be traded off against each other.

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The Search for Suitable Homes, continued from page 22

environmental policies. In response, IUCN and IISD put forward a proposal for a Standing Conference on Trade and Environment, a new and independent forum which would meet as need arises in order to permit a broad range of actors from governments and civil society to participate in 'articulating the issues in such a manner that governments can usefully address them and develop the needed system of international rules'. A key function of such a forum could be to find 'appropriate homes' for outstanding issues as a complement to the work of the WTO on trade and the environment.

For copies for the proposal for a Standing Conference on Trade and Environment, please contact ICTSD.

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May 15-17 Birmingham	G-8 Summit Contact: Nicholas Harrocks, UK Foreign Office, tel: (44-171) 270-3019, fax: 270-2266
May 18 London	European Union-United States Summit Meeting Contact: Nigel Gardner, European Commission, tel: (32-2) 295-8562
May 18 & 20 May 19	Second WTO Ministerial Conference 50th Anniversary Celebration Contact: Alain Frank, tel: 5152, fax: 5777
May 25	WTO Committee on Rules of Origin Contact: Eki Kim, tel: 5584, fax: 5770
May 25-27	WTO Textiles Monitoring Body Contact: J.-P. Lapalme, tel: 5223, fax: 5765
May 25-27 Brussels	EU Agriculture Council Contact: Chiara Mantegazzini, Council of the European Union, tel: (32-2) 299-1111, fax: 285-8026
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June 12 Brussels	Dispute Resolution in the World Trade Organisation Contact: Cameron May Ltd., 69-71 Bondway, London SW8 1SQ, UK, tel: (44-171) 582-7567, fax: 793-8353, e-mail: nickmay@cameronmay.com
June 15-16 Cardiff	EU Ministerial Council Contact: Council of the European Union, tel: (32-2) 299-1111, fax: 285-8026
June 23-25 Aarhus	Fourth Ministerial Meeting 'Environment in Europe' Contact: Serge Ludwiczak, UN Economic Commission for Europe, tel: (41-22) 917-3174, fax: 907-0117
June 8-12 Rome	Fifth Extraordinary Session of the Commission on Genetic Resources for Food and Agriculture, to revise the International Undertaking on Plant Genetic Resources for Food and Agriculture in harmony with the Convention on Biological Diversity Contact: José Esquinas-Alcazar, FAO, tel: (39-6) 52251, fax: 522-3152
June 29-July 3 Geneva	First Session of the Intergovernmental Negotiating Committee on Persistent Organic Pollutants Contact: UNEP IRTPC, tel: (41-22) 979-9111, fax: 797-3460, e-mail: IRTPC@unep.ch

PUBLICATIONS/DOCUMENTS

Alam, Ghayur. 1997. 'TRIPs, Biotechnology and Competition'. CUTS Research Report 9709. Jaipur Printers Pvt. Ltd. Jaipur.

European Commission/TRAFFIC Europe/WWF. 1998. Reference Guide to European Community Wildlife Trade Regulation. Brussels.

French, Hillary. 1998. 'Harnessing Private Capital Flows for Environmentally Sustainable Development'. Worldwatch Paper 139. Washington.

FitzGerald, E.V.K; Cubero-Brealey, R. and Lehmann, A. 1998. The Development Implications of the Multilateral Agreement on Investment. UK Department for International Development.

Mugabe, John; Barber, Charles Victor; Henne, Gudrun; Glowka Lyle and La Vina, Antonio. 1997. Access to Genetic Resources: Strategies for Sharing Benefits. IUCN. Bonn.

OECD. 1998. Open Markets Matter: The Benefits of Trade and Investment Liberalisation. OECD. Paris.

UNCTAD/ICC. 1998. Special Business Survey of the Asian financial crisis and foreign direct investment. UNCTAD. Geneva.

Serra, Jaime et. al. 1998. Reflections on Regionalism - Report of the Study Group on International Trade. Brookings Institution Press. Washington.

Verbruggen, Harmen; Kuik, Otto; Bennis, Martijn; Hoogeveen, Hans and Mollerus Roland. 1998. 'Environmental Product Measures: Barriers for North-South Trade?'. CREED Working Paper No. 18. IIED. London.

World Resources Institute. 1998. World Resources 1998-99. WRI. Washington.

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