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Fifty Years Later: Public Participation in the Multilateral Trading System

Public participation was a major issue raised by governmental and non-governmental representatives in Geneva at last month's WTO Ministerial Meeting and Fifty Year Commemoration of the ITO-GATT-WTO system. It may be instructive to look back to assess the progress of civil society participation – an issue as old as the multilateral trading system itself.

Fifty Years Ago

In August of 1948 in Geneva, the Executive Committee of the Interim Commission of the International Trade Organization (ICITO) – the body which gave birth to the GATT – discussed a set of recommendations on the entity's relations with non-governmental organizations. The document (ICITO/EC.2/11, 15 July 1948) was presented by Sir Eric Wyndham White (ICITO's Executive Secretary and the GATT's first Director General) and its Deputy Executive Secretary, Julio Lacarte-Muró (the present Chair of the WTO's Appellate Body).

The Executive Secretary's summary (ICITO/EC.2/SC.3/5) of the practical arrangements which he suggested 'for putting into effect the recommendations which he had made regarding relations with non-governmental organizations' stated:

- The Conference should adopt a list of 'consultants' chosen preferably from the Economic and Social Council list of non-governmental organizations with consultative status, on the recommendation of the Director-General with the approval of the Executive Board.
- The non-governmental organizations thus listed by the Conference should receive invitations to send observers to the Annual Conference of the Organization. They should also be provided with the Conference documentation. These organizations should also have the right to propose items for the Conference agenda; items so proposed would be considered by the Executive Board and the Board should hear the representative of a non-governmental organization which had proposed an item.
- As regards the activities of the Organization other than the Annual Conference, where specific projects were entrusted to the Director-General or to subsidiary organs of the Organization there should be consultation with any listed non-governmental organization competent in the field of such project. In the first instance such consultations should be undertaken by the Director-General in preparing the documentation of the subsidiary organ of the Organization concerned. The Committee or commission concerned could also hear representatives of non-governmental organizations which had a contribution to make to the matter under enquiry.

- On more general matters the Director-General should have the authority to set up, if he thought fit, an advisory committee of representatives of the non-governmental organizations. If such an advisory committee were established it might most conveniently meet just before the Annual Conference.
- Documentation – the listed non-governmental organizations should receive copies of all unrestricted documents of the Organization. Documents submitted to the Organization by listed non-governmental organizations should be distributed at the discretion of the Director-General, one of whose functions it will be to see that appropriate documentation is available to the Conference. The Director-General would also circulate a list of all communications received from listed non-governmental organizations and any document so listed should receive full distribution at the request of any member government.
- The Director-General should refer to the Executive Board any difference of view between himself and any listed non-governmental organization regarding the implementation of these arrangements.
- These arrangements should be subject to review from time to time, and in such review the views of the non-governmental organizations should be given full consideration.'

In 1994

These suggestions eventually evolved into Article V.2 of the Marrakesh Agreement Establishing the World Trade Organization: 'The General Council may make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO.'

In 1998

The reference to civil society in the Geneva Ministerial Declaration, adopted on 20 May 1998, reads: 'We recognise the importance of enhancing public understanding of the benefits of the multilateral trading system in order to build support for it and agree to work towards this end. In this context we will consider how to improve the transparency of WTO operations.'

Governments are currently exchanging views on the WTO's document deregulation procedures, slated to be reviewed at the next General Council meeting on 15 July. However, any changes to the current procedures (WT/L/161/Rev.1) are likely to be deferred until September, when the wider issue of relations with civil society may also be discussed. An ad-hoc task force on transparency created inside the Secretariat is also considering the issues.

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High Stakes for the 1999 Review of the Agreement on Agriculture

By Walden Bello

The Final Declaration of the Second Ministerial Meeting of the World Trade Organization affirmed the intention of the member states to begin the review of the Agreement on Agriculture in 1999. That seeming consensus, however, masked increasingly bitter conflicts in what continues to be the most contentious sector covered by the GATT-WTO.

Why Agriculture Was Brought into GATT

Prior to the Uruguay Round, agriculture was de facto outside GATT disciplines, mainly because the United States had sought in the 1950s a waiver from Article XI of the GATT, which prohibited quantitative restrictions on imports. With the US threatening to leave the GATT unless it was allowed to maintain protective mechanisms for sugar, dairy products, and other agricultural commodities, Washington was given a 'non-time-limited waiver' on agricultural products. This led to the GATT's lax enforcement of Article XI on other agricultural producers for fear of being accused of having double standards.

The US and other agricultural powers not only ignored Article XI but they also exploited Article XVI, which exempted agricultural products from the GATT's ban on subsidies. One effect of these moves was the transformation of the EU from being a net food importer into a net food exporter in the 1970's. By the beginning of the Uruguay Round in the mid-eighties, the EU's Common Agricultural Policy (CAP) had developed into what experts Michael Trebilcock and Robert Howse described as 'a complex web of price and sales guarantees, subsidies, and other support measures that largely insulated farmers' incomes from market forces.'

With domestic prices set considerably above world prices and no controls on production, European farmers expanded production. The mounting surpluses could only be disposed of through exports, sparking competition with the previously dominant subsidized US farmers for third-country markets. The competition between the agricultural superpowers turned fierce, but it was not so much their subsidized farmers that suffered. The victims were largely third country farmers, such as the small-scale cattle growers of West Africa and South Africa who were driven to ruin by low-priced EU exports of subsidized beef.

With state subsidies mounting to support the bitter competition for third country markets, the EU and the US gradually came to realize that continuing along the same path could only lead to a no-win situation for both. By the late eighties, for instance, close to 80 percent of the EU's budget was going to support agricultural programs, and the US had inaugurated a whole new set of expensive programs such as the Export Enhancement Program, to win back markets, such as the North African wheat market, from the EU.

This mutual realization of the need for rules in the struggle for third country markets is what led to the EU and the US to press for inclusion of agriculture in the Uruguay Round. Rather than seriously promoting a mechanism to advance free trade, the two superpowers resorted to the rhetoric of free trade to regulate a condition of monopolistic competition, with each seeking advantage at the margins.

The manner in which the Agreement came into being lends support to this interpretation. The final Agreement was essentially the Blair House Accord, which was negotiated only between the US and the EU in 1992 and 1993. The Accord was then promptly relabelled the GATT Agriculture Agreement and tossed to other GATT members by the two superpowers in 1994 on a take-it-or-leave-it basis.

Understandably, many of the other countries, particularly those belonging to the so-called Cairns Group of 15 developing and developed country agricultural exporters, felt that they were practically coerced into signing the Agreement.

Flawed Agreement

The key provisions of the Agriculture Agreement were the following:

- Domestic support, quantified into a common measure called the 'Aggregate Measure of Support,' would be reduced by 20 percent over a six year period beginning in 1995, with 1986-88 as the base period; that is, AMS would be 20 percent lower in 2001 than AMS in 1986-88. However, certain domestic subsidies, including direct income payments to farmers (the so-called 'Green Box' and 'Blue Box' measures), were exempted from cuts.
- Export subsidies would be reduced over a six-year-period by 21 percent in volume terms and by 36 percent in terms of total cash value, and members would agree not to expand export subsidies beyond the levels reached at the end of the six-year period.
- Import quotas would be transformed into tariffs (tariffication), and these tariffs would be reduced over a period of six years by an average of 36 percent, with a 15 percent minimum per tariff line, again with the base being the 'tariff equivalents' of these quotas in 1986-88.
- Countries would pledge 'minimum access volume' (MAVs) to agricultural imports that would start at 3 percent of 1986-88 consumption and rise to 5 percent in 1999.

Under the so-called 'special and differential status' treatment accorded to them under GATT, developing countries would be subject to only two-thirds of the cuts in tariffs, domestic support, and export subsidies applied to developed countries, and they would be given a grace period of 10 years, instead of six years, to put these into effect.

By 1999, the Agreement will have been in effect for four years but, so far, it appears to have had little effect in terms of effectively reducing the protection and subsidization enjoyed by agriculture in developed countries. Several mechanisms have worked to produce these results. First, for the aggregate measure of support, export subsidies and tariffs, the 1986-88 levels at which the items were bound were quite high relative to the levels in 1995 when the Agreement took effect, resulting in minimal actual reductions in subsidies and tariffs relative to 1995 levels. In the case of the US, for instance, between 1992 and 1996, the simple average tariffs for agriculture and livestock production rose from 5.7 percent to 8.5 percent, for food products from 6.6 to 10.0 percent, and for tobacco products from 14.6 to 104.4 percent. Also, the Uruguay Round's requirement that import quotas be transformed into tariffs has been abused by the EU and the US, with the latter, for instance, levying an ad valorem duty of 350 percent for above-minimum-access imports of tobacco products.

Second, the rules for achieving the 36 percent average tariff reduction (on the very high 1986-88 levels) were quite loose, so that countries could meet the GATT requirement through a combination of minimal tariff cuts on sensitive or valued product lines and deep cuts in non-sensitive products, and by 'backloading' their already minimal tariff cuts on the valued products toward the end of the six-year-period.

Third, major subsidies to farmers in the North, such as direct income payments to make up for the vagaries of the market, have been exempted from cuts.

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China, Trade and Sustainable Development

By David Runnalls and Wanhua Yang

Since Deng's 1978 economic reforms and open-door policy, profound changes have taken place in China. Between 1978 and 1997, China's real gross domestic product (GDP) per capita grew at a rate of eight percent per annum, and more than 200 million people were lifted out of absolute poverty during the past two decades.¹ For the world's most populous country, such an achievement is remarkable.

Economic reforms have led to China's integration with the world economy and trade has become the key engine for rapid growth. Exports have grown dramatically over the past few years, making China the tenth largest exporter in 1997.² China has also been spectacularly successful in attracting foreign investment: it is currently the largest recipient of foreign direct investment after the United States. Foreign investment has alleviated the shortage of domestic funds, provided advanced technology and managerial skills, and introduced market and competition mechanisms.

The recent session of the National People's Congress in March marked a risky new round of reforms, designed to reduce the size of the government bureaucracy and to increase the efficiency of China's thousands of state-owned firms. The restructuring plan involves abolishing 12 of 41 ministries and laying off half of the country's eight million bureaucrats.

Because of the Asian financial turmoil, the growth of China's exports during January and April dropped compared to the same period last year. Nevertheless, foreign direct investment still edged up slightly during this period. But if the crisis worsens and China is forced to devalue its currency to remain competitive with Japan and Southeast Asia, Zhu Rongji's reforms could be in jeopardy. Foreign trade is a critical component of the eight percent GDP growth target set by the new government this year and further development in years to come. A prolonged drop in exports would be fatal to the achievement of that target.

As China's economy grows, so do its environmental problems. Air quality in major Chinese cities is among the worst in the world. The current consumption of about 1.3 billion tons of coal per year is the main cause of China's growing air pollution and acid deposition. In recent years, increasing numbers of motor vehicles have added to the problem in urban areas. They have become the major source of nitrogen oxide, carbon monoxide, and hydrocarbons, particularly in cities with populations above 10 million, such as Guangzhou, Beijing, Shanghai, Wuhan and Shenyang. In Beijing alone, automobiles contribute 70 percent of nitrous oxide emissions.³ School children in many major cities have been detected with high lead levels from gasoline. At present, there are about 10 million vehicles running on roads nationwide. This number increases at an annual rate of 13 percent.

Water pollution has contaminated most major rivers with their urban sections unable to meet even the lowest standards for irrigation. This alarming water pollution problem has recently prompted the Chinese Government to clean up three major rivers and three major lakes during the next few years. Water shortages are particularly serious in China's northern cities, prompting calls for ambitious schemes to divert water from as far south as the Yangtze.

Soil erosion, deforestation and the loss of biodiversity are alarming. The Canadian academic, Vaclav Smil, estimates the cost of all this environmental damage at more than five percent of China's GDP per year.

On paper, China has established a comprehensive set of laws to guide environmental policy development with a range of command-and-control measures as well as some economic incentives (such as pollution charges) and a network for administering, monitoring and enforcing environmental policy. China's 9th Five-Year Plan (1996-2000) and the Long-Term Program for 2010 take sustainable development as critical for the country's future development. The environmental goals set for the next two decades are: 1) by 2000, the trend of environmental pollution and ecological worsening will be brought under the control; and 2) by 2010, the environmental quality will be basically improved in some cities and regions.

Whether these goals are at all realistic remains to be seen: despite its promotion to ministerial status in the reforms, the national environment agency remains weak, and much of the enforcement is left to the provinces, whose record is mixed, to put it kindly. Furthermore, much of the worst of China's pollution comes either from antiquated state-owned industries which are broke, or from the small and medium size township and village enterprises. Most of these are technologically backward and rarely subject to regulation.

There is little doubt that the Chinese senior leadership is committed to sustainable development – as long as it does not reduce the magical eight percent per annum rate of growth. They have been surprisingly open with their

environmental data and the trends in these data are truly frightening. But they have just chosen to add greatly to China's already serious unemployment problems with the reforms and their survival depends upon the eight percent being chalked up regularly.

Although the trade/environment interface is not one of China's prime concerns, it has attracted some attention in the academic community and in the Ministry of Trade and Economic Co-operation, one of the few Ministries untouched by the reorganization. On the whole, China shares many of the concerns which other Southern countries have with the issue.

- China clearly fears that the environment may become a green cloak for protectionism. As they are taken to task for their human rights record and the prison labour issue, they feel that their environmental record may become an excuse for excluding their goods from foreign markets, particularly as the height of the Three Gorges Dam continues to rise. Although there is little hard evidence to back up this claim, Chinese researchers frequently cite European regulations on Azo dyes in textiles as an example of this disguised protectionism. And China has been watching the various WTO dispute resolution cases on unilateralism with considerable interest.
- Chinese industry seems to have a schizophrenic attitude toward ecolabeling. On the one hand, there is the lingering fear of green protectionism. On the other, some Chinese entrepreneurs see additional business if they can comply with the new standards. This is particularly notable in the case of ecolabeling. Last year, the Working Group on Trade and Environment of China Council for International Cooperation on Environment and Development helped to organize a national seminar on ISO14000 in Beijing. More than 300 Chinese and foreign companies participated, many with the express intention of securing ISO certification as a marketing tool in western markets.

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High Stakes in Agriculture Review, continued from page 2

The exemption of direct income payments to farmers from GATT discipline was a major blow to the hopes of many countries that the Agriculture Agreement would serve as a mechanism for freer international trade. Such payments were excluded on the specious grounds that they were 'decoupled from production' and thus 'non-trade distorting.'

In the EU, these direct income payments are mainly based on output, the bulk of them via a 'land set-aside program' which entitles each farmer to a subsidy when he/she withdraws 15 percent of his/her land from cultivation. The idea behind the set-aside program is to restrict output, thus raising prices. In the US, direct income subsidies have taken the form of 'deficiency payments,' which bridge the gap between a guaranteed floor intervention price (usually the market price) and a politically determined target price to support farm incomes. Under the 1996 US Farm Bill, farmers get the same level of subsidy in good and bad crop years. Deficiency payments are projected to average US\$5.1 billion a year between 1996 and 2000.

But the truth is that direct payments to European and US farmers are anything but decoupled from production, since without them agriculture would scarcely remain profitable. Deficiency payments, for instance, make up between one-fifth and one-third of US farm incomes. In other words, in enshrining the notion of decoupled payments as untouchable subsidies in the Green Box, the US and the EU were shifting from indirect subsidization of their agriculture via price intervention in agricultural markets to direct subsidization of farmers as the main mechanism of state support for agriculture.

The combination of minimal cuts in tariffs, export subsidies and AMS, and the maintenance of direct income payments has had the predictable result of raising the total amount of agricultural subsidies in the OECD countries since the Agreement came into force: from US\$182 billion in 1995 to (according to a Cairns Group estimate) an astounding US\$280 billion in 1997, with the major share of this figure accounted for by the EU and the US. Over 40 percent of the total value of production in the OECD countries is now accounted for by different forms of producer subsidies.

In contrast to this massive subsidization in the OECD countries, farmers in many developing countries have not only had little financial support from government; they have actually been penalized by policies that have brought about the 'negative subsidization' of their agricultural sector. One study estimates that for 18 developing countries, 'taxation' or the transfer of value from agricultural production as subsidies to other sectors of the economy amounted to an average of 30 percent of the value of production. Yet it is the farmers of these countries of the South that will be forced to bear the burden of adjustment to the new agricultural regime since their lack of subsidies is paralleled by their clear commitments to give greater market access to Northern farming interests, whose runaway subsidization continues to push them to create mountains of commodities seeking export outlets.

A 1997 report to the EU farm ministers anticipated the surplus of wheat rising from 2.7 million metric tons to 45 million tons by 2005, and total cereal surplus shooting up to 58 million metric tons. The solution to this condition of subsidized overproduction, said EU Agriculture Minister Franz Fischler, was intensified efforts to export grain. Continuing subsidization has also deepened US agriculture's dependence on massive exporting. Admitting that 'one out of every three farm acres in America is dedicated to exports,' US Trade Representative Charlene Barshefsky has concluded that 'given the limitations inherent in US demand-led growth, we must find new

markets for American agriculture. We must open new markets to support the increasingly productive US agricultural sector.'

The unequal burden of adjustment that is institutionalized in the Agreement on Agriculture was perhaps best summarized by the Philippines' Secretary of Trade and Industry Cesar Bautista in his speech at the Second Ministerial: 'The Agricultural Agreement as it now stands provides for firm and transparent disciplines and meaningful commitments in market access but with respect to domestic support measures and export subsidies, the disciplines have been less defined and the commitments less substantial. This has perpetuated the unevenness of the playing field which the multilateral trading system has been seeking to correct. Moreover, this has placed the burden of adjustment on developing countries relative to countries who can afford to maintain high levels of domestic support and export subsidies.'

Jockeying for Position for 1999

Nevertheless, the positioning of countries in the run-up to the review of the Agreement does not follow strict North-South lines. The US and Europe are engaged in a global struggle for markets where coalitions with other countries are needed by the superpowers to outmaneuver one another.

The EU has united with South Korea and Japan behind the position that the 1999 review should be just that – a review of the implementation of the Agricultural Agreement, addressing the problems encountered in the process.

Under severe pressure from farm lobbies, this group is strongly against using the review to launch new negotiations that would lead to any more cuts in subsidies and domestic support than were agreed upon in the Uruguay Round. The common position nevertheless hides a basic difference between the EU and South Korea and Japan. While all three are highly protectionist, Japan and South Korea are not agricultural exporters and are mainly concerned with saving their farmers from extinction. The EU not only seeks to insulate its agriculture from global competition but to consolidate and expand its capacity to dump its growing surpluses on foreign markets.

To the Cairns Group of 15 developed and developing country agro-exporters (Australia, Argentina, Brazil, Canada, Chile, Colombia, Fiji, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand, and Uruguay), the review will be an opportunity to press their longstanding demands for abolition of export subsidies and direct income payments in the highly subsidized OECD countries.

Manoeuvring as usual to isolate the EU, the US has backed the Cairns Group's call for the abolition of export subsidies. It is also reportedly calling for an end to direct income payments tied to 'land set-aside' programs – the main channel of direct subsidization of EU farmers. That this move is opportunistic rather than a principled opposition to direct income support is indicated by the fact that Washington has not offered to eliminate its own system of direct income support without which agriculture would cease to be a profitable enterprise in many commodities: the US\$5 billion a year system of deficiency payments that currently entitles US farmers to a flat rate of direct income support.

Washington also wants the review to cover countries' adherence to the Agreement on Sanitary and Phytosanitary Standards (SPS), to make sure, in the words of Agriculture Secretary Dan Glickman, that these standards are being really used to pursue 'legitimate health and safety concerns' rather than serving as another mechanism of protection. Again, the EU appears to be the main target here, in the

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Colombia Seeks WTO Waiver to Protect Indigenous Salt Production

The Colombian government is seeking a waiver of its WTO obligations for the purpose of protecting the Wayyú indigenous community and the transformation of the Colombian salt-producing industry. In its notification (WT/COMTD/N/8) to the WTO, Colombia evokes the provisions of Section C of GATT Article XVIII. These provisions allow developing countries to provide governmental assistance 'to promote the establishment of a particular industry with a view to raising the general standard of living of its people', if 'no measure consistent with the other provisions of this Agreement is practicable to achieve that objective'.

Colombia states that manual salt-mining is the only means of subsistence for the 130,000-strong Wayyú community which for centuries has manually harvested salt of the Manaure salt works in north-western Colombia. As a consequence of constitutional reform in 1991, the government recognised the ancestral right of the Wayyú to the territories where the salt works are located, and agreement was reached on a 25 percent shareholding of the community in a new company entitled Salinas Marítimas (SAMA). A Social Welfare and Development Fund was established to promote community work in the areas of health, education and basic sanitation. SAMA is to reorganise and modernise salt production in such a way as to maintain the manual extraction of 150,000 tonnes of salt by a work force of some 3000 indigenous people, and at the time increase mechanised production until it accounts for two-thirds of the total volume. Whereas current salt production (half manual, half mechanised) costs US\$15.2 per tonne, the planned increase in mechanised production (while keeping the 150,000 tonne manual quota at the cost of US\$25.4 per tonne) will reduce the average weighted cost of production to US\$8.8 per tonne.

Colombia requests a waiver of its obligations under Article XI of the GATT (General Elimination of Quantitative Restrictions) in order to establish a non-automatic license for imports of crude salt, to be applied up to 31 December 2002. As from 1999, import licenses would be granted up to a level of six percent of domestic consumption, with an annual increase of three percent until a full 15 percent is reached in 2002, at which time the prior licensing requirement will be lifted.

According to the government, Article XVIII Section C provisions apply in this case because, 'given the exceptional circumstances in this domestic industry, the existing mechanisms under the WTO Agreement do not permit the necessary protection for its transformation.' The Safeguards Agreement does not apply because it only allows for measures to be applied to imports of 'like or directly competitive products': in this case the problem concerns importation of refined salt while the industry needing protection is the one producing crude salt. Substantially higher tariffs on salt imports are not an option either because of Colombia's commitments under the Common External Customs Tariff of the Andean Community. The request is currently under consideration by other WTO Members.

Rules of Origin Harmonisation Delayed

In spite of several meetings held in May, the Committee on Rules of Origin has acknowledged that it cannot meet the 20 July deadline it had established for completing the harmonisation of Members' rules of origin provisions (see also Bridges Vol.2 No.1, page 5 and Vol.1 No.6, page 5). So far, the Committee has agreed on rules of origin for some 1300 items out of a total of more than 5000 tariff lines. The harmonisation of rules on origin in sensitive product categories, such as textiles and apparel, agricultural and chemical products, has proven

particularly controversial, as reflected by the 276-page negotiating text for harmonising rules of origin for textiles (G/RO/W/27) circulated to Members on 25 May.

Rules of origin can affect trade actions such as anti-dumping, safeguards and countervailing duties, and are of particular importance to countries that perform downstream alterations or assemble goods produced in other countries. The Committee has to define what exactly constitutes 'substantial transformation' for each category products in order to determine a WTO-wide classification for a product/product category. Agreement has been found in several relatively non-controversial areas, such as conferring the origin of flowers to the country where they are grown from bulbs, or the origin of products made of fibres from rags to where the shredding of the rags takes place. 'Substantial transformation' is the central test used by the Committee to decide where goods originate. At a more general level, some countries have argued that origin should be conferred according to the country where a certain amount of value is added, but other WTO Members have rejected this as a general criteria because it would be unpredictable and hard to enforce.

The Committee is currently discussing whether to establish a new deadline for completing the harmonisation process (the third WTO Ministerial in 1999 has been mentioned as a possibility) or to set an earlier date for reviewing progress already made. A decision is expected at the Committee's next meeting from 18-19 June.

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Arbitration Procedures for Non-Actionable Subsidies Adopted

The WTO Committee on Subsidies and Countervailing Measures on 2 June completed the framework for the application of the so-called 'non-actionable subsidies' allowed under the Agreement on Subsidies and Countervailing Measures. While the Agreement generally prohibits subsidies on exports, it specifically defines as 'non-actionable' certain subsidies for the adaptation of existing facilities to meet new environmental requirements, for assistance to economically-disadvantaged regions of the country, and for research and development activities of firms or higher education establishments. Non-actionable subsidies are protected from countervailing-duty or dispute-settlement actions by other WTO Members (Article 8 of the Subsidies Agreement).

Under the Subsidies Agreement, if the Committee cannot agree that a programme notified to it as 'non-actionable' meets the Agreement's criteria, any Member may request binding arbitration to resolve the status of the programme. The new procedures specify that the arbitration body shall consist of three members appointed by consensus by the parties involved, or by the Director General when consensus cannot be found. The confidential proceedings will be based on written submissions and documents, and the arbitration body is required to present its conclusions within 120 days. The Committee had previously adopted the other elements of the non-actionable subsidies framework, which are formats for the initial notification of such programmes and for updating notifications.

The full text of the arbitration procedures (document G/SCM/19) and the formats for initial and updating notifications (documents G/SCM/14 and G/SCM/13, respectively) are available on the WTO Website (www.wto.org).

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Second WTO Ministerial Meeting

As expected, the second WTO Ministerial Meeting which took place in Geneva from 18-20 May 1998, did not result in any major decisions on the scope and contents of the next WTO negotiating round. Those will be decided at the third Ministerial, to be held in the United States in late 1999. In Geneva, trade ministers aired their views regarding the implementation of existing WTO Agreements and outlined some of their priorities for the post-2000 negotiations.

Implementation and future work

Broadly speaking, developing countries attach most importance to the implementation of the existing Agreements. Many of them criticised the slow pace of liberalisation in the textiles and clothing sector, and emphasised the importance of conducting the built-in negotiations on agriculture in a way that would open heavily protected developed country markets to agricultural products from the South. The Cairns Group of agricultural producers singled out the elimination of export subsidies as a major priority.

Other frequent themes were the difficulties developing and least-developed countries were having in implementing their Uruguay Round commitments; the need for greater market access for least-developed country exports; and the importance of protecting food security in net food-importing countries. Many developing country governments insisted on the implementation and possible extension of the 'special and differential treatment' provisions in their favour.

No meeting of the minds was found regarding the scope of future WTO negotiations. While some developing countries, such as Costa Rica and Brazil, appeared flexible about broadening the scope beyond the 'built-in agenda' of agricultural and services negotiations, a great number of others stressed that the introduction of new issues on the agenda was premature, and that focus needed to be on the implementation of existing WTO agreements and the built-in agenda. The European Union and Japan continued to push for a comprehensive new round, including further negotiations on industrial tariff reductions and possibly new areas such as investment, government procurement and competition policy. Other OECD countries were more cautious about entering into talks that could drag on for years as the previous GATT negotiating rounds did. The US Trade Representative recently predicted that WTO members would ultimately reject a comprehensive round in favour of fewer sectors and better chances for concrete progress.

Shaping of the post-2000 negotiations will start in earnest at a special session of the General Council to be held in September. The final declaration leaves the door open for a variety of outcomes, stating that ministers 'decide that a process will be established under the direction of the General Council to ensure full and faithful implementation of existing agreements, and to prepare for the Third Session of the Ministerial Conference. This process shall enable the General Council to submit recommendations regarding the WTO's work programme, *including further liberalisation sufficiently broad-based to respond to the range of interests and concerns of all Members*, within the WTO framework, that will enable us to take decisions at the Third Session of the Ministerial Conference' (italics added, ed). It further specifies that, in addition to areas already agreed to in previous WTO Agreements, the General Council may make

Please note that a summary of country positions on the key issues of the Ministerial will be available shortly. ICTSD published summaries of all civil society meetings held in connection with the Ministerial in its Weekly Trade News Digest Vol.2 No.19.

'recommendations arising from consideration of other matters proposed and agreed to by Members concerning their multilateral trade relations'.

Ministers also adopted a short Declaration on Electronic Commerce directing the General Council to 'establish a comprehensive work programme to examine all trade-related issues relating to global electronic commerce' and reaffirming that, at least until the next WTO Ministerial, 'Members will continue their current practice of not imposing customs duties on electronic transmissions'.

Accountability

The most striking departure from the Singapore Ministerial was the attention paid by a large number of governments to the issues of accountability and public participation in the multilateral trading system. Developed and developing countries, ranging from the United States to Botswana and the Czech Republic to the Holy See, called for serious efforts to improve transparency within the WTO and to facilitate the participation and consultation of representatives of civil society. Many countries called for making more documents publicly available, including proposed agendas for meetings, and derestricting minutes of meetings faster. Renato Ruggiero announced that he would devote a considerable part of his time after the Ministerial 'to try to improve information and dialogue with civil society, taking into account the point of view of all the WTO Members, and the rules you have given me.' The final Ministerial Declaration, however, only notes 'the importance of enhancing public understanding of the benefits of the multilateral trading system' and, in this context, promises consideration of how to improve the transparency of WTO operations. It remains to be seen how this statement will be put to practice, particularly regarding the role of the Secretariat.

Environment

Another minor surprise was the frequency of references to environmental concerns, which were not expected to figure prominently on the Ministerial agenda. Both developed and developing countries stressed the importance of integrating environmental considerations into the trade debate and the actions of the WTO, and of examining the links between trade and environment. The United States backed the EU's proposal to hold a meeting of trade and environment ministers 'to provide strong direction and new energy to the WTO's environmental efforts in the years to come.'

Unilateral measures such as trade embargoes and sanctions – whether for environmental, social or human rights reasons – were strongly condemned by many countries, but the US stressed that trade rules must permit nations to pursue higher than international protective standards for health, as well as the environment and biodiversity.

SPS and Biosafety Rules on Collision Course?

At its meeting from 10-11 June, the Committee on Sanitary and Phytosanitary Measures (SPS) initiated discussions on the relationship between the WTO's SPS rules and the Biosafety Protocol currently being negotiated under the Convention on Biological Diversity. Noting that some countries were not co-ordinating the positions of their biosafety negotiators and WTO SPS representatives, Canada, the US, Australia, Mexico, Argentina and others said that the emerging protocol could create new barriers to agricultural trade and undermine countries' rights and obligations under the SPS Agreement. The Committee agreed to arrange informal consultations with representatives of the biosafety talks.

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Dispute Settlement Corner

Dispute Settlement Review Gets Underway

WTO Members met informally on 10 June to start discussions on the review of the Dispute Settlement Understanding (DSU) mandated by the Uruguay Round Agreements (see also Bridges Vol.2 No.3, page 7). According to informed sources, Members debated the possibility of including outside experts or the Appellate Body in the review, but took no decision on the issue. The review must be concluded by the end of the year. Any changes to the DSU must be agreed by consensus among all WTO Members.

Substantive work on the review is expected to start at the Dispute Settlement Body's next meeting on 22 June. Japan has already submitted a 20-page paper calling for, *inter alia*, strengthening the consultation phase of the dispute settlement procedure to help relieve the panel case load, as well as provide panels with a detailed understanding of the cases that do reach the panel stage. Among other points made by Japan are the development of standard working procedures with regard to scientific and technical expertise, 'including those for the selection of individual experts or body, and a meeting among a panel, the parties to the dispute and experts or body'. The paper stresses that strict confidentiality of panel deliberations must be maintained, but supports the establishment of a deadline for the provision of public versions of submissions when requested by any Member, as well as consideration for the timing of derestricting final panel reports.

Korea's suggestions include the right to appoint private counsels of any nationality in a country's delegation to 'advocate its views and advise on legal matters'. It also proposes the establishment of a fixed pool of candidates 'representing a broad range of expertise' from which panel members would be chosen. Korea claims that, under current rules, 'some developed country Members show a strong preference for government officials, especially Geneva-based diplomats, while other Members tend to favour scholars and practitioners of high international stature. This built-in bias among Members not only causes delays, but also frustrates the settlement objectives of the DSU in ensuring the expertise, independence and integrity of a panel'.

Looking particularly at the situation of developing countries vis-à-vis the DSU, Venezuela has also submitted a non-paper on possible items to be included in the review. Noting that the Secretariat is not currently able to effectively assist developing countries with their cases, Venezuela suggests that the number of legal consultants within the WTO Secretariat be raised from three to five and that these be organised as an independent legal unit to 'ensure the neutrality required of the Secretariat itself'. Other Venezuelan proposals include the establishment of a 'permanent Defence Council to help developing and least-developed countries when cases are brought against them', as well as setting up a 'trust fund to finance strategic alliances with lawyers' offices or private firms to expand the scope of consultancy and advisory services'.

At the WTO Ministerial Meeting in May, many countries commented on the DSU's success and effectiveness, often noting its role in upholding the interests of developing countries and avoiding the imposition of arbitrary unilateral measures. The Philippines and Pakistan called for the review process to address problems stemming from the high costs of dispute settlement, the complexity of the system, the impossibility of imposing decisions against larger trading partners, and the absence of definite time-

frames for compliance. President Clinton urged the WTO to open dispute settlement hearings to the public and make all briefs by the parties publicly available. He committed the United States to 'open[ing] up every panel that we are a party to' and challenged 'every other nation to join us in making this happen'. He further called for the acceptance of amicus briefs submitted to panels by civil society organisations, and for making panel reports available to the public as soon as they were issued. The US Trade Representative has requested public comments on how the US should proceed with the review. (For further details, please refer the summary of ministerial positions on key issues, shortly to be issued by ICTSD).

Beef Hormone Implementation Deadline Set for May 1999

The arbitrator appointed by the WTO ruled on 26 May that the European Union must implement the Appellate Body ruling on 'hormone beef' imports by 13 May 1999, or fifteen months after the report was formally adopted by the Dispute Settlement Body (DSB) on 13 February 1998. The dispute, brought by the United States and Canada, concerned the EU's import ban on beef treated with growth hormones. The EU forbids the use of such hormones in its fifteen member countries, and has prohibited 'hormone beef' imports since 1989. The Appellate Body found that the ban was contrary to the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) – in effect since 1 January 1995 – which requires health-related trade restrictions to be based on scientific evidence. Since the report was issued in February, the EU has maintained that the Appellate Body ruling gives it the right to retain the ban while complementary risk assessments are performed to provide the necessary scientific evidence for permanently prohibiting 'hormone beef' imports.

The EU had argued that it would need 39 months to implement the ruling, i.e. to conduct a new risk assessment and obtain the consent of the European Parliament for any legislative changes. The arbitrator's decision stated that 'to grant the European Communities a further two years, from the date of the adoption by the DSB of the Appellate Body Report and Panel Reports, to conduct the risk assessment that was required as of 1 January 1995 would not be consistent with the provisions of the [Dispute Settlement Understanding] requiring prompt compliance with DSB recommendations and rulings.' The arbitration decision also points out that the panel and the Appellate Body had clearly held that 'the EC import prohibition [was] not based on a risk assessment within the meaning of Articles 5.1 and 5.2 of the SPS Agreement', and that the 'measures' found to be inconsistent with the obligations of the European Communities under the SPS Agreement were the Directives maintaining the import prohibition. The arbitrator noted that withdrawal of the measure found to be inconsistent with WTO obligations was the *preferred*, but not the *only* means of compliance with dispute settlement rulings. After the implementation delay was set, the EU announced its intention to comply with the Appellate Body ruling, but said it still hoped to provide enough scientific evidence before the May 1999 deadline to retain the import embargo. Fourteen scientists have been commissioned by the EU to work on eight projects related to the case.

The WTO verdict has attracted wide-spread criticism from European and other consumer/food safety groups, which advocate the application of the so-called 'precautionary principle' when dealing

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Dispute Settlement Corner

with public health-related trade disputes. The European Parliament, which must agree to public health-related legislation under the so-called co-decision procedure, is also virtually unanimously against lifting the ban.

Shrimp-Turtle Report to Be Appealed

The United States has announced that it will appeal the 6 April WTO panel report, which found against its import ban on marine shrimp from certain countries. The ban, in effect since May 1996, concerns non-aquaculture shrimp caught without turtle excluder devices (TEDs, which keep endangered sea turtles from drowning in the nets dragged by mechanised shrimp trawling vessels). The case was brought to the WTO by India, Malaysia, Pakistan and Thailand, which objected to the unilateral and extra-territorial nature of the trade measure. Sixteen countries and the European Union joined the case as third parties (for more information on the panel report, see Bridges Vol.2 No.3, page 11).

Meanwhile, the United States government continues its long-running domestic litigation on the scope of the shrimp embargo. The US Court of International Trade (CIT) ruled on 25 December 1995 that the import ban must be applied to all 'shrimp and shrimp products *wherever harvested in the wild*' (italics added, ed.) by mechanised trawlers without TEDs operating in waters where marine turtles occur. The State Department initially applied the decision in a way that allowed marine shrimp to be imported into the US from non-certified countries (i.e. countries that do not require TEDs on all mechanised shrimp trawling vessels) as long as the shrimp in question were caught by TED-equipped vessels. This interpretation was successfully challenged by Earth Island Institute, and the CIT ruled on 8 October 1996 that the US must embargo wild shrimp imports from all countries that do not mandate and enforce TEDs on all commercial trawlers. A stay on the order sought by the Administration was denied on 25 November 1996.

The State Department appealed the decision in an effort to narrow the scope of the ban from a 'certified country' basis to a shipment-by-shipment basis depending on whether TEDs were used or not. In early June 1998, the Court of Appeals for the Federal Circuit ruled in favour of the Administration, but Earth Island Institute and other complainants are likely to petition for a re-hearing of the case as the Court decision was based on procedural grounds and did not consider the consistency of shipment-by-shipment certification with the Endangered Species Act on which the ban is based.

Towards a Trade War or a New Banana Panel?

The European Union has rejected a US request for an assessment of the WTO compatibility of its implementation proposal for the September 1997 Appellate Body ruling against the EU's import licensing and quota arrangements for bananas. The current banana regime favours imports from African, Pacific and Caribbean countries belonging to the Lomé Convention.

The European Commission on 14 January proposed an implementation plan which would establish a new tariff quota at 300 ECUs per tonne to be shared between 'all suppliers with a substantial interest' in the European banana market, while keeping the present quota of 2.2 million tonnes at a tariff rate of 75 ECUs. The complainants in the case have forcefully argued that the proposal is unacceptable, and that the EU should only use tariffs, not quotas

for preferential treatment of ACP bananas. After the EU rejected the WTO-compatibility assessment, the US Trade Representative sent an official letter to the EU calling the Commission's proposal 'no better and, indeed maybe even worse, than the current regime in its failure to fulfil the EU's WTO obligations,' and warning the EU that if it adopted the proposal, the US would 'not hesitate to exercise its full rights under the WTO', including 'withdrawal of concessions against EU goods and services'. The EU Agriculture Council is expected to vote on the proposal – controversial even among member states – on 26 June. The EU has until 1 January, 1999, to comply with the Appellate Body ruling.

Meanwhile, Panama, which joined the WTO after the Appellate Body report was adopted, has initiated new dispute settlement proceedings on the matter. Panama alleges that both the EU's initial banana regime and the Commission's proposal 'are clearly inconsistent' with the European Communities' obligations under the GATT, the General Agreement on Trade in Services (GATS) and the Agreement on Import Licensing Procedures. Citing their 'substantial trade interest' in the matter, Colombia, the Dominican Republic, Costa Rica and Côte d'Ivoire have requested to be joined in the consultations. So far, none of the complainants have asked for another dispute settlement panel to be established on the issue.

The original complaint was brought to the WTO by Ecuador, Guatemala, Honduras, Mexico and the United States, which have also joined Panama's consultations 'to ascertain how the European Communities intend to implement the mentioned ruling' in light of Panama's request. However, these countries stress that the EU-Panama consultations must in no way alter or delay the process of implementation of the Appellate Body's recommendations.

Second Panel Ruling on SPS Violations Condemns Defendant

A panel report circulated to Members on 12 June found against Australia's import ban on untreated fresh, chilled or frozen salmon from the Pacific. Siding with Canada, the panel concluded that the measure was not based on a risk assessment, as required by the Sanitary and Phytosanitary Measures Agreement (SPS). In addition, the panel found that the Australian measure was 'more trade-restrictive than required to achieve its appropriate level of sanitary protection'. The salmon case is only the second time that a dispute settlement panel has ruled on an SPS violation; the first being the EU beef hormone case. Both cases were won by the complainants.

Appellate Body Overturns Panel Findings for First Time

In a ruling released on 5 June, the Appellate Body has reversed the findings of a dispute settlement panel for the first time. The original panel had upheld the US claim that the EU's reclassification of local area network (LAN) technology as telecommunications equipment violated the EU's Uruguay Round tariff schedule commitments. In the schedules, LAN cards were classified as computer parts, which have a tariff rate of about half that of telecommunications equipment. The Appellate Body found that the dispute settlement panel had misjudged the justification for the reclassification, and said there was not enough evidence to draw conclusions. The higher tariffs – thought to cost the US computer industry millions of dollars a year – will in any case be phased out in the year 2000 under the Information Technology Agreement, but the decision is significant in terms of GATT law: up to now, the Appellate Body had always upheld the basic conclusions of dispute settlement panels.

European Union

Renegotiating Lomé IV

The European Union and 71 developing African, Caribbean and Pacific nations, known as ACP countries, will start negotiations for the successor arrangement to the fourth Lomé Convention in September. The Convention provides the framework for trade and development co-operation between the fifteen member countries of the Union and their former colonies. The EU proposes to replace the present Convention, which expires in the year 2000, by six regional free trade areas, four in Africa, and one in Asia and the Caribbean each. Many ACP countries have expressed their misgivings about splintering the ACP group, and the EU's intention of tying future agreements to broader ACP policies in the areas of good governance, human rights and social issues. Opposition to the plan is also growing in EU member countries; in early June a UK House of Commons International Development Committee report called the proposal 'immoral' and 'unacceptable', claiming that it would force ACP countries to either open their markets to EU products or to suffer higher tariffs for their exports to the EU. The UK Presidency Project, an umbrella group linking development NGOs in Britain, commented that 'the current proposals for free trade areas would transform Lomé into a battering ram for free trade, forcing the infant industries of the developing countries in the ACP into unfair competition with the industrialised economies of Europe.' The EU, whose banana import licensing regime in favour of ACP countries was found to violate WTO provisions last year, has repeatedly emphasised that any post-Lomé arrangement needs to be WTO-compatible.

The ACP Secretariat has requested UNCTAD to assist these countries in preparing for the negotiations and during the negotiations themselves, and the EU and UNCTAD have agreed to reinforce their collaboration. According to both EU and UNCTAD spokespersons, special attention will be paid to least-developed countries (LDCs) and other vulnerable economies that do not qualify for LDC status, as well as strengthening ACP countries' supply-side capacities. UNCTAD Director-General Rubens Ricupero also highlighted his organisation's role in developing a 'positive trade agenda' for ACP countries, with special emphasis on issues such as tariff escalation and tariff peaks.

The EU General Affairs Council was expected to finalise the post-Lomé negotiating mandate at its meeting on 8 June, but no agreement was reached. According to an official communiqué, the Council discussions focused on the improvement of the trade regime for LDCs; alternatives to the free trade areas proposed in the draft mandate, particularly through the use of the Generalised System of Preferences for countries 'unable to join economic partnership Agreements with the EU'; and the future of preferential protocols on sugar, beef and bananas from ACP countries. The EU Permanent Representatives Committee will continue work on these issues on the basis of a Presidency compromise proposal. The Committee will report back to the Council with a view to reaching an overall agreement at the next meeting of the General Affairs Council on 29 June 1998.

EU Tries New Approach to Social and Environmental Issues

The European Union on 25 May adopted a regulation offering enhanced General System of Preferences (GSP) benefits to countries that comply with core labour standards set by the ILO and the environmental management standards promoted by the International Tropical Timber Organisation (ITTO). Developing countries that already benefit from the European GSP scheme will be eligible for further reductions in customs duties if they can demonstrate that they

have, and enforce, legislation that guarantees the right to organise and to bargain collectively, as well as establishes a minimum age limit for child labour. The environmental clause only concerns tropical timber; to qualify for extended GSP benefits, countries need to have legislation incorporating ITTO standards, as well as implementation provisions and a commitment to enforcement. If all GSP countries qualified for the new scheme, their collective savings would amount to US\$884 million a year. The regulation will be in force until January 1999 for industrial goods and June 1999 for agricultural products.

The EU regulation was adopted just before the International Labour Conference in June, which largely focused on child labour and the elaboration of a Declaration Concerning Fundamental Human Rights at Work, as well as a follow-up mechanism that would allow monitoring of the enforcement of those rights in signatory countries. The next issue of Bridges will report on the outcome of the ILO conference.

In related news, the New York-based Council on Economic Priorities on 10 June launched the first independently-certified global standard to verify that companies' sourcing policies are ethically acceptable. Companies whose policies in developing countries comply with minimum age and wage requirements, as well as appropriate health and safety standards will be awarded the SA8000 mark. The first recipient of the mark was the Avon cosmetics group. The September issue of Bridges will provide more information on this ethical trading initiative.

EU Adopts GMO Labelling, Considers Agenda 2000

Meeting from 25-26 May, the EU Agriculture Council approved a regulation that requires labelling of foodstuffs and food ingredients produced from genetically modified soya or maize approved for commercialisation in the European Union. The regulation is expected to become a model for other products not covered by the Novel Foods Regulation, which took effect after genetically modified soya and corn were already accepted for sale within the EU. The new regulation requires final products where modified DNA – or proteins resulting from it – can be detected to be labelled as 'produced with genetically modified soya/maize'. Denmark, Italy and Sweden, which favoured an earlier proposal for labels to state that such products 'may contain GMOs', voted against the regulation. The United States has argued at the WTO that there is no scientific justification for labelling GMO products because there is no evidence that such products involve a risk. Such claims are likely to be pressed at the WTO SPS Committee against the EU regulation and other similar initiatives in the future, informed sources say. SPS standards are also expected to be a major topic of the upcoming Transatlantic Economic Partnership negotiations (see next page).

A group of EU scientists will develop testing methods and determine thresholds below which no labelling is required. Oil and starch derivatives were left outside the scope of the labelling obligation, prompting Greenpeace and the European Consumers' Union to call the regulation 'deeply flawed'. Additives, such as lecithin, will also be excluded from the new requirement. 'By means of these tricks between 95 and 98 percent of roughly 30,000 product items in the supermarkets that contain genetically engineered soya will not have to be labelled and the situation will be similar for maize,' a Greenpeace spokesperson commented.

In related news, the United States on 6 May announced the establishment of a senior-level steering group to focus on 'non-scientific based foreign sanitary and phytosanitary barriers that block our agricultural exports or otherwise threaten to restrict agricultural trade.'

Transatlantic Economic Partnership

The EU and the United States agreed at their May 18 Summit to launch the Transatlantic Economic Partnership (TEP), a scaled-down version of the New Transatlantic Marketplace (NTM) proposed by EU Trade Commissioner Sir Leon Brittan to 'kickstart' a Millennium Round of wide-ranging WTO negotiations (see previous reports in Bridges Vol.2 No.2, page 10 and Vol.2 No.3, page 5). Instead of negotiating further tariff concessions between the partners, as proposed by the NTM, the TEP focuses on harmonising norms and standards, removing technical barriers to trade and reducing administrative red tape. It lays out the partners' shared objectives in seeking wider trade liberalisation within the multilateral trading system, including, inter alia, 'ambitious objectives and offers for the liberalisation of services in forthcoming WTO negotiations'; 'a broad WTO work programme for the reduction on an MFN basis of industrial tariffs and the exploration of the feasibility of their progressive elimination within a timescale to be agreed', and 'the development of common approaches on investment, competition, public procurement and trade and environment'. It also contains an agreement to 'advance core labour standards on an international basis'. However, doubts remain on both side of the Atlantic on the exact content, or even the desirability, of bilateral trade talks between the United States and the European Union. For instance, several European countries see waivers to the Helms-Burton and Iran-Libya Sanction Acts as a pre-condition for opening negotiations, but Congress support in the US for such waivers remains uncertain. Furthermore, the EU's exclusion of agricultural subsidies and the audiovisual sector from the bilateral negotiation menu has raised opposition in the United States where these are key areas of interest.

Free Trade Area of the Americas

Guidelines for Civil Society Committee

A draft outline prepared by the Canadian government for the Free Trade Area of the Americas negotiations - slated to start in September - provided a starting point for discussions on the scope of the Committee of Government Representatives on Civil Society (CGR, see also Bridges Vol.2 No.3, page 17). Meeting in Buenos Aires from 17-19 June, the FTAA Trade Negotiating Committee failed to reach an agreement on the CGR's role, which was among the most controversial issues of the session. The Committee was set up as a venue of interaction between governments and non-governmental sectors of society, and the draft guidelines proposed that it should:

- Exchange information on the national consultation processes parties have in place with their civil society, as well as on similar consultation processes in place in other regional and multilateral fora;
- Establish and diffuse broadly procedures for the receipt of submissions from all elements of hemispheric civil society;
- Develop procedures for meetings with representatives of civil society from the hemisphere;
- Be available, from time to time, to meet with and receive submissions from civil society groups regionally, as well as in Miami;
- Issue public status reports on the progress of the negotiations in order to facilitate informed and constructive discussions of civil society views;
- Manage civil society inputs to the Committee through a number of mechanisms (e.g. the Tripartite Committee could provide a communications function for the consultative process as well as a clearing house mechanism for submissions); and
- Deliver its report for Ministers to the Trade Negotiating Committee by 15 September, 1999.

NAFTA: Mexico Denounces US

Mexican authorities contend the United States federal government is hiding behind state legislation to avoid compliance with trilateral environmental impact assessments, mandated by the North American Free Trade Agreement on state-generated investment projects. The NAFTA Commission for Environmental Co-operation (CEC) is currently negotiating guidelines on transboundary environment impact assessments, recommended in the NAFTA environmental side agreement as mechanisms for information sharing and participation in the approval of projects near borders that could affect the environment or public health. At issue is the US government's refusal to include state-level projects within the CEC's purview and the impact assessment process. As a result, Mexican officials say, harmful projects can still take place near borders. They cite the approval process for the Sierra Blanca radioactive confinement site in Texas as one recent example of lack of effective Mexican participation in state-generated projects within the US. The US Administration maintains that it can only provide transboundary environmental assessments on projects subject to decision by federal authorities. Mexican, Canadian and US officials will discuss the issue at the next CEC meeting from 25-26 June in Yucatan.

UN-ECE to Adopt Significant New Agreements

The fourth 'Environment for Europe' Conference will take place under the auspices of the United Nations Economic Commission for Europe in Århus, Denmark, from 23-25 June. Three significant new environmental instruments will be adopted:

- A Protocol to the 1979 Geneva Convention on Long-range Transboundary Air Pollution on heavy metals;
- A Protocol to the same Convention, on persistent organic pollutants (POPs); and
- A Convention on access to information, public participation in environmental decision-making and access to environmental justice.

The latter treaty will be of particular interest to readers of Bridges because of its focus on transparency and public participation in environmental issues. The Convention will give individuals and groups wide-ranging rights with regard to environmental information and decision-making, as well as access to justice. Open to ratification by non-UN-ECE States – a first for a UN-ECE environmental treaty – the Convention could significantly affect national and international decision-making on the environment in all fields.

The Protocol on heavy metals targets three particularly harmful substances: lead, cadmium and mercury. Parties to the Protocol have to reduce their emissions of these three metals below their levels in 1990 (or an alternative year between 1985 and 1995). The Protocol aims primarily to cut emissions from industrial sources (iron and steel industry, non-ferrous metal industry), combustion processes (power generation, road transport) and waste incineration, and requires countries to phase out leaded metal.

The Protocol on persistent organic pollutants (POPs) singles out 16 substances including aldrin, DDT, dieldrin, polychlorinated biphenyls and dioxins, with the ultimate aim of eliminating any discharges, emissions and losses of POPs. The Protocol completely bans the production and use of some substances, severely restricts the use of others, while a few are scheduled for elimination at a later stage. The UN-ECE POPs Protocol, which recognises that measures taken to reduce POPs should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade, is widely seen as a basis for work towards a world-wide agreement, due to start in late June in Montreal under UNEP's auspices.

First Views Aired on International Emissions Trading

The UN Framework Convention on Climate Change subsidiary bodies met in Bonn from 2-12 June 1998 to pave the way for the Convention's next Conference of the Parties, scheduled to take place in Buenos Aires from 2-13 November. The key issue on the agenda was to reach agreement on how to fill in the blanks in the Kyoto Protocol, now signed by forty states (see Bridges Vol.1 No.6, page 3 for more information).

In order to make the Protocol operational and to attract a sufficient number of ratifications for its entry into force, the so-called 'flexibility mechanisms' created under it (see box) need to be fleshed out. However, in spite of the large number of open questions regarding these mechanisms, the meeting was characterised by a low sense of urgency and few decisions.

While discussions on emissions trading – limited to industrialised countries – did not advance beyond a first airing of views, they revealed a fundamental difference between the positions of the United States, Australia, Canada, Iceland, Japan, New Zealand and Russia on the one hand, and the European Union, the Czech Republic, Slovakia, Croatia, Latvia, Switzerland, Slovenia, Poland and Bulgaria on the other. The first group suggests setting up a system of tradable emissions reduction units called Assigned Amount Units amounting one metric tonne of CO₂ equivalent emissions. All AAUs would be valid for the commitment period in which they are issued and infinitely thereafter until they are used. These countries advocate no ceilings to international emissions trading, i.e. no bound limit to how much of its emissions reduction target a country can meet through buying AAUs from another country that has achieved reductions in excess to its commitments.

The EU group's proposals emphasises that domestic actions should provide the main means of meeting commitments, and therefore suggests a 'concrete ceiling' on the use of all the flexible mechanisms. The ceiling could be defined according to the assigned amount, 1990 emission levels, or required efforts by a Party. The paper also points out that trading of 'hot air' should not lead to overall reductions being lower than would otherwise be the case. 'Hot air' refers to reductions achieved by a Party without any actual climate change mitigation measures. For instance, Russia, due to economic difficulties, is already well below the 1990 emissions levels it committed to in Kyoto. To ensure that 'hot air' trading does not become too prominent a means in meeting commitments, the paper suggests that a rule might be required that net transfers by a Party not be greater than the amount of emissions reduced by that Party as a result of domestic action.

G-77 and China's position on emissions trading does not directly touch on the question of ceilings, but stresses the importance of addressing supplementarity to domestic actions in meeting commitments under the Protocol. The group singled out the Clean Development Mechanism (CDM) as a priority for post-Kyoto work, including methodological/technical work, institutional issues, linkages with the other flexibility mechanisms and participation in CDM projects. G-77 and China opposed addressing joint implementation projects under the Protocol until the pilot phase for joint implementation activities under the Convention itself is completed. The US said that real emissions reductions achieved under the pilot phase should receive credits.

The Kyoto Protocol establishes three 'flexibility mechanisms' for achieving the greenhouse gas reduction targets agreed to by industrialised (i.e. Annex I) countries:

- A Clean Development Mechanism which will enable industrialised countries to finance emissions reduction projects in developing countries and receive credit for doing so;
- Joint implementation activities between Annex I countries; and
- Emissions trading between Annex I countries.

Other trade-related subjects addressed during the subsidiary bodies' meeting included the first serious push by oil-producing countries to review the implementation of the Framework Convention's Article 4.8, which deals with actions necessary to 'meet the specific needs of developing country Parties arising from the adverse effects of climate change and/or the impact of the implementation of response measure. Sub-paragraph (h) specifically refers to 'countries whose economies are highly dependent on income generated by the production, processing and export, and/or on consumption of fossil fuels and associated energy-intensive products.' The July-August issue of Bridges will return to this issue in more detail.

To a large extent, the meetings of both subsidiary bodies (on implementation and scientific and technical advice) were overshadowed by the question of developing countries' participation in emissions reductions. The G-77 and China are adamant that – according to the principle of 'common but differentiated responsibilities' agreed to in Rio – commitments under the Framework Convention on Climate Change, as well as under the Kyoto Protocol, apply only to industrialised Annex I countries and that no efforts should be made to involve developing countries in fulfilling those commitments. Several

Annex I countries, and particularly the United States, have stated their intention of seeking 'meaningful developing country participation' in global emissions reductions, and envisage using the second review of adequacy of commitments (whose timing is still much debated) to wrench that concession. Argentina, the host country for the next COP, announced that it is considering 'voluntarily' taking on emissions reduction commitments, and proposed that COP-4 consider reinstating a provision for voluntary commitments which was dropped in the final negotiations in Kyoto. The proposal met with overwhelming opposition from G-77 and China.

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IPRs and Farmers' Rights Stall Plant Genetics Talks

Since late 1994, the FAO Commission on Genetic Resources for Food and Agriculture has been negotiating the revision of the International Undertaking (IU) on Plant Genetic Resources for Food and Agriculture in order to harmonise its provisions with those of the Convention on Biological Diversity. The original IU, established in 1983, aimed to ensure that plant genetic resources, particularly those with major economic potential, were collected, conserved and made available for plant breeding and other scientific purposes. The revision should result in a new regime that is compatible with the Convention on Biological Diversity, which provides for 'the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources, including by appropriate access to genetic resources' and encourages 'the equitable sharing of the benefits arising from the utilisation of [indigenous and local communities'] knowledge, innovation and practices.'

At the Commission's latest meeting from 8-12 June, discussions ended in a stalemate on two key issues of the revision: the concept and treatment of so-called 'farmers' rights' and benefit sharing

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arrangements for the use of/products derived from germplasm held by a 'multilateral system' to be established under the IU. The system is likely to consist of germplasm held by international agricultural research centres supported by the Consultative Group on International Agricultural Research and operating under the auspices of FAO. For plant genetic resources held in national institutions, a list will be drawn up indicating which resources in the collection would be available to the multilateral system (Annex I). Most of the germplasm held in various collections originates in the biodiversity-rich South.

While it has been agreed that access to the multilateral system is to be free, sharing benefits arising from the use of the germplasm held by the system is extremely controversial. A key question of interest to the trade and sustainable development community is the treatment of intellectual property rights (IPRs). Several options remain on table, including not recognising IPRs under the IU. Many delegates noted that this option would be incompatible with TRIPs Article 27.3(b), as well as the provisions of the UPOV Convention. Another proposal to confer IPRs to the country of origin and set up an international fund to facilitate sharing of benefits met with stiff resistance from many developed countries. Developing countries objected to a third option which would recognise IPRs and 'promote and better channel the flow of available funds, including private sector sources related to commercialisation of some plant genetic resources protected by IPRs'. Considerable, but not unanimous, support was expressed for denying plant genetic resources recipients 'proprietary rights' over unmodified resources, whether in the form of IPRs or plant variety rights under UPOV. This array of possibilities regarding IPRs and plant genetic resources for food and agriculture made available through the multilateral system was completed by a proposal to apply intellectual property rights to 'improved materials' and grant preferential conditions for countries of origin to access and conduct breeding programmes, using protected varieties and/or technologies applied to them. All these options are included in the final report, which will form the basis of the negotiating text for the Commission's next meeting.

Discussions on farmers' rights got bogged down early on because countries have not agreed on what exactly are 'farmers' rights'. While these are usually understood as the right of farmers to keep, use, exchange, share and market their seeds, the Commission hotly debated the use of the word 'rights', the role of national legislation, the protection and promotion of collective knowledge, and the protection and promotion of plant genetic resources. One bracketed provision in the negotiating text would promote the establishment of 'an international *sui generis* system for the recognition, protection and compensation of knowledge, innovations and practices of farmers and traditional communities'. While there are far more brackets and options than agreed text in the articles on farmers' rights and benefit sharing, many participants noted that private seed companies seemed more willing than governments to engage in financial compensation for patented materials.

The next meeting of the Commission is scheduled for the latter part of 1998. The deadline for concluding the revision is the Eighth Session of the Commission, planned for the second quarter of 1999.

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Detailed summaries of the climate, biodiversity and plant genetic resources negotiating sessions are available from the International Institute for Sustainable Development at <http://www.iisd.ca/linkages>.

Governments and NGOs Discuss Biodiversity and Trade

The fourth Conference of the Parties (COP-4) to the Convention on Biological Diversity took place from 4-15 May, in Bratislava, Slovakia. A number of NGO meetings were held around COP-4, including the tenth session of the Global Biodiversity Forum.

Global Biodiversity Forum

The Global Biodiversity Forum involved some 40 institutions in the organisation of eight workshops – on education and communication; financial innovations for biodiversity; trade and biodiversity; sharing the benefits arising from the utilisation of genetic resources; protection of traditional knowledge (Article 8 (j) of the CBD); influence of tenure and access rights on the sustainability of natural resource uses; clearinghouse mechanism; ecosystem approach to management of inland waters and their biological diversity. More than 300 participants from 57 countries attended the Forum, representing industry, government, academia and local communities.

The Forum's workshop on trade and biodiversity focused on the links between the CBD and the international trade regime, discussing a number of issues including fisheries, forests and intellectual property rights. Workshop participants recognised the need for better information on developments in the international Intellectual Property Rights regime related to biodiversity. They asked COP-4 to mandate the CBD Secretariat to monitor and report to the COP on such developments, focusing in particular on work at the multilateral level (such as in the WTO and in WIPO) as well as at the level of regional trade agreements. The trade and biodiversity workshop also called on the CBD Secretariat to seek an active role in the TRIPs review, to ensure that its results are supportive of the CBD's objectives.

Workshop participants recommended that trade negotiators be informed of the benefits and necessity of biodiversity. The biodiversity community should arrange, for example, to brief WTO delegations nationally and internationally, and the COP should encourage exploration of possible policy responses to biodiversity threats, including trade measures.

Fourth Conference of the Parties

The Convention on Biological Diversity (CBD) now has 172 States parties, making it the most popular of the environmental treaties. Among the main issues on COP-4's agenda were biosafety; implementation of Article 8 (j); inland water, marine and coastal, agricultural and forest biodiversity; and access and benefit sharing.

COP-4 decided to continue the work on the Biosafety Protocol beyond the previously announced December 1998 deadline (see Bridges Vol.2 No.2, page 13 for an update on the latest negotiation session). The Protocol is now expected to be completed and ready for adoption by Parties to the CBD by February 1999. The next meeting of the Working Group drafting the Protocol will take place in August 1998. The Working Group's sixth and last session should be held next February, concurrently with a special session of the COP to adopt the Protocol.

The COP launched an open-ended working group on 'traditional knowledge', defined as *in situ* conservation that respects, preserves, and maintains knowledge, innovations, and practices of indigenous peoples and local communities.

Finally, of interest to the trade and environment community, will be COP-4's decision to request the CBD's Executive Secretary to apply for observer status on the WTO Committee on Agriculture. This once again underlines the close connection between agriculture and biodiversity.

Liberalising Services Means Freer Movement of Natural Persons

This article offers a synthesis of the presentations and comments made at an informal meeting organised by ICTSD on 3 June on the Movement of Natural Persons. We are grateful to Professor Bimal Ghosh for his thorough introduction to this complex topic, as well as to Dale Honeck from the WTO's Trade in Services Division who attended the meeting as a resource person.

In spite of the growing share of services in the world economy, the potential gains from facilitating freer movements of natural persons as service providers and consumers – a contentious point during the Uruguay Round – are still inadequately understood. Most developing countries believed that liberalising trade in services was not in their interest; the relative weakness of their own services sectors was the main reason for their reservations about the inclusion of services in the Uruguay Round. However, in a large number of sectors, including those that are skill and knowledge intensive, they could have a competitive advantage in providing low-cost services. Beyond export interests, strengthening the services sector in developing countries would improve local incomes and employment. Furthermore, strengthening the services sector would put the overall economy of many developing countries on an 'upward swing': services are crucial to other sectors of the economy as they create high value-added inputs, sometimes accounting for up to 50% of the sales price. In addition, developing countries should bear in mind that liberalising access to their services sectors also means access to foreign technology. As for the developed countries, they too can gain from lower cost of services and increased efficiency in the world economy. These could also lead to increased investment through higher returns and possibly increased innovation and higher productivity growth.

Professional services and labour immigration

Professor Ghosh pointed out that the General Agreement on Trade in Services (GATS), includes a historical recognition of the general principle that restrictions on movements of natural persons should not provide an excuse for restricting trade expansion. He stressed, however, that in the context of GATS, movement of natural persons is limited to service providers and consumers.

While modern technology allows a good part of services to be handled almost anywhere in the world, a degree of personal interaction between the service provider and the consumer is often necessary in most service deliveries: a Ghanaian architect may work on a design for a building in Germany on the basis of photographs and other documents, but eventually he/she will need to see the site and meet the client face to face. However, market access to service providing natural persons is still restricted in 92 percent of national schedules submitted under the GATS while 61 percent limit national treatment provisions. Eighty percent of industrial country schedules and 99 percent of countries-in-transition schedules restrict market access. In 1996, during the extended period for completing the negotiation, Australia, Canada, Norway, Switzerland, India and the European Union relaxed some of their restrictions on the movement of skilled self-employed persons but very little progress has taken place since then. In several cases the actual commitments fall short of the provisions under existing migration legislation.

Many countries fear that movement of natural persons will lead to long-term employment and permanent settlement in the host country. Professor Ghosh pointed out that these apprehensions were unfounded in the case of service providers who come to the host country under pre-negotiated, time-bound commercial contracts as providers of (a) specific service(s), rather than seeking a short-term (and potentially extendible) employment contract. While temporary labour immigrants may become permanent or vanish into the underground as illegal

immigrants, a professional service provider is likely to have a good income and social position in his/her own country and increased opportunities to participate in world trade in services would enable the person to enrich his/her experience and improve earnings. Therefore there will be little reason for the individual to take the risks inherent in the life of an illegal immigrant. A participant drew attention to the downward pressure on wages likely to result from a more liberal services regime and freer cross-border movement of service providers. It was explained in reply that while these were inherent in trade expansion, the all round efficiency gains resulting from an effective and wider use of comparative advantage should not be overlooked.

One speaker said that while pressing progress on the movement of natural persons provisions made sense in the context of professional services, the issue of unskilled labour movements would probably be best dealt with through goods liberalisation: if labour-intensive goods from developing countries were more easily accepted in developed country markets, there would be fewer incentives for migration to low-skill manufacturing jobs in developed countries. Alliances between service providers from different countries, particularly for construction contracts and other labour-intensive services, could offer possibilities for countries with relatively undeveloped professional services sectors to make composite service packages and compete in the world market.

Another cause for the slow progress on the issue lies in immigration legislation and visa arrangements which, even in the most sophisticated countries, tend to lump service-providing persons and labour immigrants together. There should be a means of distinguishing one from the other in national legislation, perhaps through special visa arrangements for service-providing persons. It was pointed out that such visas could also be a useful tool both for facilitating trade-related movements as well as for monitoring that service providers do not 'overstay their welcome'.

The importance of the lack of mutual recognition of educational and professional standards as a major barrier to the mobility of professional service providers cannot be over-emphasised. For instance, licensing regulations are supposed to be non-discriminatory, and there is a need to ensure that they really are so (Article VI of GATS). Mutual recognition offers a potential 'fast-track', but it can also lead to discrimination towards third parties (Article VII), which should have the possibility of joining such arrangements.

Practical difficulties, such as restrictions on collecting insurance or pension benefits in a foreign country, also hamper free movements of natural persons as consumers. These constraints point to a need for an efficient financial services sector including removal of restrictions on remittances.

An information gap

There is a real lack of information on countries' policies concerning the movement of natural persons, as most country schedules (i.e. agreed liberalisation offers) offer few bound commitments in this area, and those commitments tend to be more restrictive than actual practice in order to allow countries maximum flexibility in regulating foreign penetration of their services markets. In addition, the wide diversity in approach and presentation of detail, including references to related regulatory provisions, administrative practices and discretionary measures, make it difficult to have a complete and clear picture of the availability of market access and national treatment

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light of two celebrated battles where EU authorities tried to prevent, on public safety grounds, the entry of two controversial imports from the US: hormone-treated beef and genetically modified soybeans. Washington has also made clear that it is prepared not only to use the review to confront Europe but to employ all mechanisms to wrest more markets from the EU, including increasing its own subsidies – a move which would subvert the ostensible objectives of the Agreement.

Can the South be a Player?

The fourth player in the coming review is the vast majority of developing countries. Some are, like the developing country members of the Cairns Group, both key exporters and importers of agricultural commodities. Thus, they worry that new negotiations might end up forcing them into granting even greater market access without significant new openings to their exports in the key OECD markets.

A great many are concerned about the impact of trade liberalization on the incomes of their farmers and food security. With increasing volatility in the supplies of key grains like rice in world markets owing to factors such as El Niño-induced climate shifts, food security is increasingly a key consideration in the developing countries' attitude toward new negotiations. In some countries, influential farmers' groups, such as Via Campesina, are calling for the withdrawal of agriculture from WTO coverage altogether on the grounds that agriculture is not just a system of production but a way of life, so that at stake in further trade liberalization is the very survival of farming communities.

Still other developing countries are net food importers that depend greatly on concessional food prices and food aid. Their main concern is that the stronger emphasis on market power and the threat of tighter rules on food aid in another round of global trade liberalization will confront them with increased food import bills, a reduction in concessional food imports and lower availability of food aid.

The upshot of the fears of this diverse group of countries is a great reluctance to support further trade liberalization. For some, the review should not be aimed at more liberalization but at institutionalizing safeguards such as implementation of the 1994 Marrakesh Decision to protect the net food importing countries from the impact of agricultural trade liberalization; or adding to the Agreement a 'Food Security Box', which would specify legitimate protective mechanisms that countries can activate to assure their food security, promote a degree of self-sufficiency in food production and preserve their agricultural communities.

These countries were largely bystanders during the Uruguay Round, except for a few big countries such as India. Their lack of organization allowed the EU and the US to give short shrift to their concerns. Now, there are some efforts afoot to constitute them as a lobby. For instance, in an informal paper circulated in September 1997, Pakistan, Peru, and the Dominican Republic suggested that consultations be held on 'the actual experiences of developing countries so far,' emphasizing the need to exchange information regarding the 'possible negative effects' of the 1994 Agreement, especially on the least developed and net-food importing countries.

Whether such efforts will bear fruit remains to be seen. What is clear though is that without some form of collective organization, the South will again be a helpless bystander in the 1999 review and the negotiations that are likely begin in the year 2000.

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- There is some evidence that the much talked about 'race for the bottom' may be taking place in parts of China. Research at the International University for Business Economics seems to indicate that a number of small and medium sized foreign-funded enterprises have been established in China's southern provinces to take advantage of either lower environmental standards or the lax enforcement of existing laws. Most of these enterprises appear to have been funded from Hong Kong, Taiwan and other Asian countries.
- Finally, interesting evidence is emerging on China's attempts to meet its multilateral environmental obligations. Despite an active phase-out strategy for ozone-depleting substances (ODS), put in place by the Chinese environment agency, a study done by the working group on foreign direct investment related to ODS in China shows that there has been an increase in recent years in foreign direct investment (FDI) related to production and consumption of ozone-depleting substances. The existing guiding principles for foreign investment do not include measures to control ODS through FDI. There is a lack of policy and institutional coordination between the trade department and the environmental department, and among relevant central and local governments.

China has some real advantages to be realized in this area. Unlike most other developing countries, China is such a major player in world trade and such a magnet for foreign investment that it could begin to experiment with favourable treatment to foreign investors interested in cleaner technologies and even in environmental industries themselves. China has recently revised its guiding principles for foreign investment, including a basic principle that efforts should be made to ensure China's commitments to international environmental conventions be met in attracting foreign investment. However more could be done in the areas of technology choice and technology transfer, particularly of clean coal technology.

China could also be the major beneficiary under the clean development provisions of the Kyoto protocol. The Chinese energy industry is legendarily inefficient, so much so that investments in the power sector could return CO₂ reductions at a fraction of their cost almost anywhere else in the world. The younger technocrats in the state science and technology ministries and in the energy industries clearly favour such a step. But the Foreign Ministry still insists that China is opposed to both the Clean Development Mechanism and emissions trading. It will be interesting to see how this debate plays out over the next few years.

As WTO accession draws nearer, it seems inevitable that the Chinese trade establishment will pay more and more attention to the intersection of trade and environment issues. They already have the intellectual resources, with research being conducted in half a dozen institutions. It is the politics of the issue, many of them internal, that they will have to solve.

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NOTES

¹ World Bank, China 2020: Development Challenges in the New Century, September 1997.

² WTO, 'World Trade Growth Accelerated in 1997, Despite Turmoil in some Asian Financial Markets', Press Release, 19 March 1998

³ China Daily, March 31, 1998

Movement of Natural Persons, continued from page 13

opportunities and thus to assess the quality or depth of the commitments in the schedules, particularly as the WTO Trade in Services Division does not have the resources to carry out a comprehensive evaluation.

The coverage of professional services in the schedules is relatively broad but, again, hard to assess in qualitative terms. Engineering and architecture seem to be relatively open fields of professional services, while in accountancy, for instance, governments maintain extensive restrictions. International standards would go a long way towards solving the problem, but many governments are reluctant to agree to their useage. It is important to remember that the WTO itself does not set international standards, these are agreed between members of other standard-setting bodies. The Singapore Ministerial Declaration supports the development of standards by 'relevant organisations', i.e. those open to all WTO members.

Recommendations

- The improved market access for self-employed service providers granted by Australia, Canada, Norway, Switzerland, India and the European Union needs to be made better known to traders in developing countries so that they can make full use of these provisions.
- GATS 'enquiry points' should organise information on immigration legislation and customs procedures in a user-friendly manner. Traders in developing countries should be encouraged to make effective use of these 'enquiry points'.
- Developing countries could negotiate both access for service providing personnel and recognition for educational and professional standards on a bilateral/regional basis to build stepping stones to multilateral post-2000 negotiations. Databases could be developed to facilitate standards of information.
- Consideration should be given to the introduction of an internationally harmonised visa regime for purposes of both facilitating and monitoring trade-related temporary movements.
- It would be useful to conduct an analysis of the extent to which the 350 measures listed as MFN exemptions (linked to existing bilateral and plurilateral agreements) affect foreign service suppliers in particular sectors. Likewise, a case by case analysis should prove useful in determining the effects of the MFN exemptions claimed by 17 countries (12 EU members counting as one) as regards entry and residence visas and work permits for foreign service-providing personnel.
- Both industrial and developing countries should be made more aware about the differences between the movement of service providing persons and migration for employment or permanent settlement.

Conclusion

Contrary to trade in goods where liberalisation is achieved mainly through tariff reductions, in liberalising services, countries need to change domestic regulations as the principal mode of action. Such changes are always a slow process and will only be accomplished over a considerable period of time. Very little has happened since the completion of the Uruguay Round on the issue of movement of natural persons. WTO's post-2000 negotiations offer an opportunity to move the agenda forward, and developing countries are likely to seriously press for progress in this area. Entailed in such progress there is, of course, a high degree of commonality of interests that binds countries in different stages of development.

PUBLICATIONS/DOCUMENTS

Aga Khan, Sadruddin, ed. 1998. Policing the Global Economy: Why, How and for Whom? Proceedings of the international conference organised by the Bellerive Foundation and Globe International in October 1997. Cameron May. London.

Biotechnology and Development Monitor No. 34. March 1998. Special Issue on Review of the TRIPs Agreement. University of Amsterdam, Department of Political Science. Amsterdam.

Brack, Duncan, ed. 1998. Trade and Environment: Conflict or Compatibility? Royal Institute of International Affairs. London.

Brenner, Carliene. 1998. 'Intellectual Property Rights and Technology Transfer in Developing Country Agriculture: Rhetoric and Reality'. Technical Papers No. 133. OECD Development Centre. Paris.

Evans, Phillip. 1997. 'Trade, Labour, Global Competition and the Social Clause'. CUTS Research Report 9708. Jaipur Printers Pvt. Ltd. Jaipur.

GRAIN. 1998. Signposts to Sui Generis Rights. Resource materials from an international seminar on *sui generis* rights (December 1997). BIOTHA/GRAIN. Bangkok/Barcelona.

Mooney, Pat Roy. 1998. 'The Parts of Life: Agricultural Biodiversity, Indigenous Knowledge and the Role of the Third System. Development Dialogue 1996:1-2. Dag Hammarskjöld Foundation. Uppsala.

Torres, Hector. 1998. Environmental Rent: Cooperation and Competition in the Multilateral Trading System. International Institute for Sustainable Development. Winnipeg.

WTO. 1998. EC Measures Concerning Meat and Meat Products (Hormones). Arbitration on implementation delay. WT/DS26/15. WTO. Geneva.

WTO. 1998. European Community Comments on the Note by the Secretariat of the CTE on the Environmental Benefits of Removing Trade Restrictions and Distorsions (WT/CTE/W/67). WT/CTE/83. WTO. Geneva.

WTO. 1998. Origin Rules Adopted by the Committee on Rules of Origin. G/RO/W/22/Rev.3. WTO. Geneva.

WTO. 1998. Rules of Origin Negotiating Text for Chapters 50-63: Textile Products. G/RO/W/27. WTO. Geneva.

WTO. 1998. Synthesis of the Information Made Available to the Working Group on the Links Between Foreign Direct Investment and Development. Note by the Secretariat. WT/WGTI/W/38.

WTO. 1998. Trade Policy Review: Australia. Report by the Secretariat. WT/TPR/S/41. WTO. Geneva.

WTO. 1998. Trade Policy Review: Japan. Minutes of the Meeting. WT/TPR/M/31. WTO. Geneva.

WTO. 1998. United States - Import Prohibition of Certain Shrimp and Shrimp Products. Panel Report. WTO. Geneva.

BRIDGES

MEETING CALENDAR

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

June 19	WTO Committee on Trade and Development Contact: Annet Blank, tel: 5349, fax: 5774	July 9-10	WTO Committee on Regional Trade Agreements Contact: Richard Eglin, tel: 5148, fax: 5774
June 22	WTO Dispute Settlement Body Contact: Paulo Barthel-Rosa, tel: 5095, fax: 5761	July 13-17	WTO Committee on Rules of Origin Contact: Eki Kim, tel: 5584, fax: 5770
June 22-23	WTO Working Group on Transparency in Government Procurement Contact: Vesile Kulaçoglu, tel: 5187, fax: 5790	July 15	WTO General Council Contact: Paulo Barthel-Rosa, tel: 5095, fax: 5761
June 23-25 Århus, Denmark	Fourth UN/ECE Ministerial Meeting 'Environment in Europe' Contact: Serge Ludwiczak, UN Economic Commission for Europe, tel: (41-22) 917-3174, fax: 907-0117	July 16-17	WTO Council for TRIPs Contact: Matthijs Geuze, tel: 5418, fax: 5790
June 24-26	WTO Council for Trade in Services Contact: A.-Hamid Mamdouh, tel: 5435, fax: 5771	July 20-22 Geneva	UNCTAD Expert Meeting on Strengthening Capacities in Developing Countries to Develop their Environmental Services Sector Contact: Office of the Secretary of the Board, tel: (41-22) 907-5007, fax: 907-0056
June 25-26	WTO Committee on Trade and Agriculture Contact: Paul Shanahan, tel: 5059, fax: 5760	July 20-22	WTO Trade Policy Review Body (Trinidad and Tobago/Jamaica) Contact: Peter Tulloch, tel: 5089, fax: 5765
June 25-26 Merida, Mexico	NAFTA Commission for Environmental Cooperation Contact: CEC Secretariat, tel: (1-514) 350-4300, fax: 350-4343, e-mail: melhadj@ccemtl.org	July 20-22	WTO Textiles Monitoring Body Contact: J.-P. Lapalme, tel: 5223, fax: 5765
June 26	WTO Committee of Participants on the Expansion of Trade in Information Technology Contact: Denby Misurelli, tel: 5847, fax: 5770	July 21	WTO Council for Trade in Services Contact: A.-Hamid Mamdouh, tel: 5435, fax: 5771
June 29	WTO Committee on Rules of Origin Contact: Eki Kim, tel: 5584, fax: 5770	July 23	WTO Dispute Settlement Body Contact: Paulo Barthel-Rosa, tel: 5095, fax: 5761
June 29 Brussels	EU General Affairs Council Contact: André Gillissen, Council of the European Union, tel: (32-2) 285-8704, fax: 285-8026	July 23-24	WTO Committee on Trade and Environment Contact: Sabrina Shaw, tel: 5482, fax: 5620
June 29-July 3 Montreal	First Session of the Intergovernmental Negotiating Committee on Persistent Organic Pollutants Contact: UNEP IRPTC, tel: (41-22) 979-9111, fax: 797-3460, e-mail: IRPTC@unep.ch	July 23-24	APEC Workshop on Information Gathering on Trade-Related Environment Measures and Environment-Related Trade Measures Contact: APEC Secretariat, tel: (65) 276-1880, fax: 276-1775, e-mail: info@mail.apecsec.org.sg
June 30	WTO Trade Policy Review Body (Australia) Contact: Peter Tulloch, tel: 5089, fax: 5765	July 27-28	WTO Working Group on the Interaction Between Trade and Competition Policy Contact: Robert Anderson, tel: 5198, fax: 5790
June 30 - July 1	WTO Committee on Technical Barriers to Trade Contact: Vivien Liu, tel: 5455, fax: 5620	July 27-29	WTO Trade Policy Review Body (Burkina Faso/Mali/Togo) Contact: Peter Tulloch, tel: 5089, fax: 5765
July 6-7	WTO Committee on Regional Trade Agreements Contact: Richard Eglin, tel: 5148, fax: 5774	July 29-31 Geneva	Intergovernmental Group of Experts on Competition Law and Policy Contact: UNCTAD Office of the Secretary of the Board, tel: (41-22) 907-5007, fax: 907-0056
July 6-10	WTO Committee on Rules of Origin Contact: Eki Kim, tel: 5584, fax: 5770	August 17-28 Montreal	Ad Hoc Working Group on Biosafety of the Convention on Biological Diversity Contact: CBD Secretariat, tel: (1-514) 288-2220, fax: 288-6588, e-mail: chm@biodiv.org
July 8	WTO Council for Trade in Goods Contact: Suja Rishikesh, tel: 5485, fax: 5770		