

Labour and Environment Make a Controversial Appearance as First Phase of WTO Ministerial Preparations Concludes

WTO Members have completed the first phase of preparatory meetings for the Ministerial Meeting, to be held in Seattle from 30 November to 3 December in 1999. In Seattle, the trade ministers of more than a 130 countries will adopt the agenda for the multilateral trade liberalisation negotiations on agriculture and services scheduled to start in the year 2000. The last meeting of the preparatory phase, held in Geneva on 2 February, focused on 'other issues' countries would like to see on the post-2000 agenda, including those arising from the Singapore work programme: investment, competition policy and transparency in government procurement.

Investment, Competition Policy and Government Procurement

Egypt, India and Pakistan argued forcefully against the inclusion of new areas in the negotiations, with Pakistan submitting detailed arguments against launching negotiations on any of the Singapore work programme issues. 'Until a clear and convincing case can be made that the benefits of multilateral rules in the area of investment would far exceed any possible costs, it would be difficult to arrive at a consensus on the need to negotiate new rules in this area,' Pakistan stated. India pointed out that it would be 'premature to talk about a multilateral framework' in the area of competition policy, as the Working Group on Interaction Between Trade and Competition Policy still had not sufficiently addressed anti-competitive activities such as anti-dumping, international cartels, technical regulations, export subsidies and quotas for agricultural products and textiles. ASEAN also spoke strongly against developing WTO disciplines on investment or competition policy. The advocates of limited post-2000 negotiations also said that the working group dealing with transparency of government procurement provisions needed more time to 'understand fully the concerns of developing country Members and least-developed country Members before it can arrive at a common ground for all Members to accept.'

Some developing countries were less categoric in their refusal of the Singapore issues: Chile expressed support for their inclusion, Brazil did not rule them out and Costa Rica said it was favourable to the development of a multilateral framework on investment. The United States and Australia considered it too early to decide on the need to negotiate new disciplines on investment and competition policy, but supported the conclusion of an agreement on transparency in government procurement. Among those warmly welcoming negotiations on all Singapore issues were Canada, Japan, New Zealand, South Korea, the EU and its East European member candidates, and Switzerland.

Labour, Environment and Other New Issues

While agricultural liberalisation will undoubtedly be the most difficult part of the post-2000 trade talks, the most controversial issue in shaping the future negotiations agenda will be what areas – if any – outside the built-in agenda and the Singapore work programme to include in the 'Seattle Round'. Among these none are more hotly contested than labour and the environment.

It is not clear how these concerns would fit into the negotiations. The US proposed the establishment of a 'forward work programme in the WTO that would address trade issues (e.g., abusive child labour, the operation of export processing zones, etc.) relating to labour standards and where Members of the WTO would benefit from further information and analysis on this relationship and developments in the ILO.' It also recommended that the issue be addressed at the High-Level Symposium on Trade and Development in March (see related article on page 5).

Cuba, India, Pakistan, Egypt, Malaysia and Nigeria opposed any linkage between trade and labour, saying that the Singapore Ministerial Meeting had already decided that the International Labour Organisation was the only competent body to address labour-related issues. Developing countries fear the erosion of their comparative advantage as low-wage producers if trade concessions are linked to respect for core labour standards.

On addressing environmental concerns in the 'Seattle Round', the European Union went the furthest: 'Clearly, trade and environment is neither marginal nor a merely technical issue. This is why it should be an item in itself on this December's negotiating agenda.' Canada proposed 'mainstreaming' trade and environment concerns across relevant negotiations.

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Developing countries firmly oppose making environmental issues more central to the multilateral trading system, as such an approach could be used to justify green protectionism in a number of areas ranging from agricultural subsidies to increasingly 'environment-friendly' technical regulations and other non-tariff barriers. India submitted a proposal on the need to harmonise the TRIPS Agreement with the Convention on Biological Diversity, which 'recognises the desirability of sharing equitably the benefits arising from the use of [biological] resources as well as traditional knowledge [...] and acknowledges that special provisions are required to meet the needs of

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developing countries'. The Indian paper also proposed that 'the TRIPs Agreement may be reviewed to consider ways and means to operationalise the objective and principles in respect of transfer and dissemination of technology to developing countries, particularly the least-developed among them.'

The United States placed the trade and environment interface in the context of 'institutional issues', calling on the General Council to 'emphasise that the WTO's forward agenda must contribute to sustainable development, including in particular maintaining and improving the levels of protection of the environment.' Also in the context of 'institutional issues', the US encouraged WTO Members to improve transparency and openness by accelerating document derestriction and by providing information on their 'various consultative programmes and mechanisms', with a view to enabling the General Council 'to make recommendations with respect to the organisation of the Ministerial Conference and institutionalisation of consultative mechanisms for the WTO.' Japan and Canada also mentioned the need to improve relations with civil society.

Several WTO Members welcomed the High-Level Symposium on Trade and the Environment. Canada hoped that it would 'provide useful insights as to the interface between trade and environment considerations in the upcoming WTO negotiations', and the US anticipated the meeting to 'provide valuable input for our work in this area and help framing a vision for future work.' The EU highlighted clarification of the situation regarding eco-labelling and 'the extent to which existing WTO rules accommodate trade measures for environmental purposes' as possible contributions of the High-Level Symposium (see related articles on pages 3 and 5).

The proponents of a 'Millennium Round' got a boost when the United States finally sided with other OECD nations in supporting widening the negotiations to cover industrial tariffs. Australia submitted a detailed proposal on priority areas for tariff reductions, including tariff peaks and escalation, as well as the elimination of 'nuisance tariffs'. Several industrial tariff lines, including forestry and fisheries products, were targeted by New Zealand, which drew attention to the 'accelerated tariff liberalisation initiative' that APEC members decided to move to the WTO after they failed to reach agreement on it at the regional level last November.

Scope of the New Round

In view of the large number of contradictory priorities and views presented by WTO Members during the four preparatory sessions that took place from September 1998 to January 1999, the scope of the future negotiation remains wide open. On the one hand, many developing countries, and particularly Egypt, India and Pakistan, find implementation of existing agreements and new negotiations on the built-in agenda on agriculture and services enough. On the other, developed countries have more or less agreed that industrial tariff reduction negotiations should be conducted simultaneously with the built-in agenda, and several among them are advocating a comprehensive 'Millennium Round', including not only the Singapore issues but possibly a range of other topics as well. Others, including Brazil, the US and Canada have indicated they might be willing to include some, if not all, of the Singapore work programme items in the round.

With so many 'wish lists' on the table, it will not be an easy task to come up with a consensus agenda, and particularly one that is manageable in the three years that most Members have agreed as the length of the 'Seattle Round'.

Implementation of Existing Agreements. Developing countries made an eloquent case for paying more attention to the implementation of existing agreements throughout the first phase of the Ministerial preparations, particularly concerning the application of the special and differential treatment provisions in their favour. While their industrialised counterparts clearly do not give as much weight to implementation, many of them have acknowledged that the WTO Agreements' provisions in favour of developing countries must be more precisely spelled out and more vigorously implemented if developing countries are to be brought on board on a relatively comprehensive negotiations agenda. (For a report of the preparatory session on the implementation of existing Agreements, see Bridges Vol.2 No.7.)

The Built-in Agenda. Negotiations must start on agriculture and services by the year 2000. The agricultural talks will certainly prove the most difficult trade liberalisation negotiations ever held, with the greatest pressure falling on countries that have the most protected agricultural sectors: the European Union, Japan, South Korea and Switzerland. These countries are the staunchest advocates of a 'Millennium Round' that would make trade-offs possible in other sectors.

Mandated reviews of some other Agreements present a grey area: could they be used to change or to 'operationalise' some of the existing provisions, notably those in favour of developing countries? (See, for instance, India's proposal concerning the TRIPs review above. A report on the preparatory session on the built-in agenda appeared in Bridges Vol.2 No.8.)

Least-Developed Countries. While to a large extent, least-developed countries' (LDCs) interests in the multilateral trading system coincide with those of other developing countries, they are seeking one thing in particular: duty free access for their exports, which currently count for 0.3 percent of world trade. They also have a great interest in liberalising labour-intensive services, and securing technical assistance to address a number of trade constraints that continue to hinder their integration in the world economy. (For a report on the preparatory session on LDCs, see ICTSD's Bridges Weekly Trade News Digest Vol.2 No.49.)

The Next Steps

Members are expected to agree at a special General Council session from 25-26 February to a process that will lead to the development of specific proposals for a post-2000 negotiation agenda. Those proposals will then be formulated as 'recommendations' and forwarded to the WTO Ministerial Meeting as a draft Ministerial Declaration.

According to trade sources, the 'second phase' of the preparatory process is likely to be 'proposal-driven', i.e. countries are expected to come up with concrete proposals for a post-2000 negotiating agenda, instead of the more general statements made during the first phase. At the February General Council meeting, Members are likely to agree to hold formal General Council sessions once a month, as well as discuss arrangements for informal work between the General Council meetings. A tentative consensus seems to exist that the second phase of preparations will last from March until the WTO's summer break at the end of July.

The next phase of preparations will start in September with the aim of narrowing down the options tabled during the second phase and drafting the Seattle Ministerial Declaration, which should be ready by early November.

Trade, Environment and the WTO: A Framework for Moving Forward

By Gary P. Sampson

This article is an abbreviated version of a paper that is being circulated with this issue. The paper was published by the Overseas Development Council (ODC), an independent policy research institution based in Washington, DC. Mr. Sampson will extend his analysis and proposals in a monograph that ODC will publish later this year. Given the few creative proposals from WTO Members – as the multilateral trade system approaches its first-ever high level meetings on sustainable development – ICTSD carries this article as an interesting analytical framework on environment and trade rules.

The World Trade Organization (WTO) and its predecessor, the General Agreement on Tariffs and Trade (GATT), have been highly successful in reducing trade barriers and creating a stable, rules-based system of world trade. While protection of the environment is not the WTO's primary objective, the importance of this policy goal has been clearly acknowledged in key multilateral trade agreements and recent WTO dispute proceedings. Yet many environmentalists contend that WTO rules inappropriately constrain the use of trade measures to protect environmental standards at home and abroad.

Increasing conflict over trade and environment issues will harm the goals of both policy communities. Working with other institutions of civil society, environmental groups have proven themselves capable of mobilizing substantial public opposition to new trade liberalization initiatives. Disputes between trade and environmental stakeholders divert precious resources from promising multilateral efforts to protect the environment.

Seeking to avert further conflict, WTO Members have agreed to convene a High Level Symposium on Trade and the Environment March 15-16, 1999. Analyses and proposals tabled during the Symposium are likely to influence the agenda of the WTO's Third Ministerial, the late-1999 meeting that is expected to launch and set the agenda for a new global trade round. The High Level Symposium therefore offers the trade and environmental communities the first in a series of opportunities over the next year to initiate joint efforts to reconcile trade and environmental policy goals.

Anticipating these opportunities, this paper first proposes a new way of thinking about initiatives designed to reconcile trade and environmental goals – a framework for action. It then examines five of the key trade and environment issues with which WTO Members will be grappling during upcoming discussions and negotiations.

A Framework for Action

Initiatives that seek to resolve trade and environment conflicts may be organized into groups defined by the required degree of government involvement or negotiation. On this basis, it is possible to envisage three categories of initiatives:

- For certain objectives there may be sufficient informal support from WTO Members for the Director-General and the Secretariat to undertake measures without formal discussion and decision-taking by Members. In such cases, consultation among Members would be a necessary and sufficient requirement for action.

- Other initiatives would require the collective approval of Members, but not necessarily changes in formal rules, rights, or obligations. In cases like these, consultation would be a necessary but insufficient requirement.

- Finally, some objectives could only be achieved through formal changes in rules, which, historically, have only been possible during comprehensive trade rounds.

The High Level Symposium offers the trade and environmental communities an opportunity to reconcile trade and environmental policy goals. As a start, it should be possible to quickly reach consensus on reforms in document derestriction and dialogue.

The classification of issues under this framework cannot be categorical. Some objectives could usefully be pursued in more than one of the three ways set out in this framework. In any case, applying this framework to proposed initiatives could help the environmental and trade communities jointly set realistic goals and perhaps arrive at a common understanding of the kinds of steps necessary to achieve certain reforms.

Critical Trade and Environment Issues

Transparency and Public Access

A widespread perception that the WTO is inaccessible and unresponsive to environmental and other civil society groups has generated hostility not only toward the organization, but toward the multilateral trading system more broadly. In recent years, WTO Members have come to accept that greater openness to civil society can strengthen public support for the trading system without threatening the intergovernmental nature of the organization. It should, therefore, be possible to quickly reach a consensus on reforms in two important areas: access to documents, and dialogue.

Access to WTO Documents. The WTO has taken several steps recently to broaden the circulation of WTO documents. Under current rules, however, WTO Members review document lists and select candidates for public circulation. Subject to limited exceptions, all submissions by WTO Members, Secretariat background notes, minutes of meetings and agendas, and other documents should be circulated immediately as unrestricted documents. Appropriate exceptions would include documents that could compromise the negotiating position of a Member country, contain trade secrets or other proprietary information, or contain sensitive information relating to a country's economic circumstances. Rules requiring that certain documents be withheld for six months, even when they are to be circulated as unrestricted, also need to be reexamined. Documents cleared for public access under these more liberal standards could be quickly and inexpensively circulated through the WTO's Internet website.

Dialogue with Civil Society. More frequent and systematic opportunities for dialogue with civil society at the multilateral level would support and extend dialogue undertaken at the national level. While there has been significant progress in this area in recent years, interaction between governments and civil society in the WTO could be more productive. During future symposia, for example, the WTO Secretariat could organize government-civil

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society working groups that would address specific trade and environment issues like those described below. The WTO Secretariat has also conducted six regional seminars addressing trade and environment issues confronting the organization. Recent seminars have included two days of meetings between government officials and representatives of regional non-governmental organizations. It is important that initiatives like these not be considered one-time affairs; follow-up is important, but at present not provided for. Funding from the regular budget of the WTO should be allocated both for the NGO symposia and for the regional seminars.

Finally, in the run-up to the 1999 Ministerial, the General Council could provide a forum for an exchange of views among WTO Members on the broader issue of developing effective relationships with interested stakeholders. Consideration could be given, for example, to recent NGO proposals for a 'Standing Conference' that would address trade and environment issues.

Trade Liberalization and the Environment

Eliminating trade restrictions and distortions can produce 'win-win' outcomes: environmental benefits and improved market access. Identifying and exploiting these potential win-win situations is an initiative that clearly can be pursued within the existing rules of the WTO. In the case of fisheries, for example, New Zealand and the United States have made submissions to the WTO's Committee on Trade and Environment on the potential environmental benefits of removing trade-distorting subsidies. Another example is agriculture, where subsidies and market access restrictions are known to contribute to over-production and other environmental problems.

Governments, with the support of NGOs, need to do more to identify products or sectors for which the removal of trade distortions would simultaneously benefit trade and the environment. Once promising targets have been identified, governments have a responsibility to put them on the agenda of future trade negotiations.

Product- and Process- Related Environmental Standards

WTO rules permit Members to regulate imports on the basis of their essential characteristics, but they prohibit discrimination against imports on the basis of *how* they were produced. Yet this kind of 'process-related' discrimination lies at the heart of much domestic environmental regulation. Many environmentalists see no reason why WTO rules should not extend beyond product characteristics and into production processes.

At present, there is no sign of consensus on these issues, which pose fundamental challenges for the WTO and its Members. These matters urgently need to be addressed in the near term, perhaps in the next global trade round. The High Level Symposium would be a good place to start the discussion.

Multilateral Environmental Agreements (MEAs) and the WTO

WTO Members recognize that transboundary environmental problems are best dealt with in specialized Multilateral Environmental Agreements (MEAs). Several countries have argued that it would be prudent for the WTO to address the possibility that measures inconsistent with WTO rules could be applied under certain MEAs.

One proposal circulating in the WTO calls for amending one or more WTO Agreements or drafting an 'Understanding on

Interpretation' comparable to those prepared for certain GATT Articles in the Uruguay Round. For example, an amendment to the exceptions provisions of GATT Article XX could accommodate measures taken pursuant to an MEA that might otherwise be inconsistent with WTO rules. Alternatively, Members could, in exceptional circumstances, seek the approval of WTO Members for a waiver of a WTO obligation in order to meet an MEA obligation.

The essence of both proposals is that WTO Members must be permitted to forgo their WTO rights and allow their trade to be discriminated against if obligations specified in an MEA are not met. This formal WTO recognition of standards established under environmental agreements would not represent a departure from WTO practice, since some WTO agreements, such as the Agreement on Sanitary and Phytosanitary Measures, already defer to other international agreements with enforceable standards that apply to WTO Members.

Dispute Settlement

The large case-load of the WTO dispute-settlement system threatens the sustainability of high-quality adjudication. More frequent and effective consultations between parties could potentially resolve disputes before panels are requested, lines are drawn, and stakes are raised.

An alternative consultative mechanism can be envisaged in which, subject to the approval of the Member parties, environmental and other disputes could be debated in a fully open and transparent manner, including the possibility of public hearings and a moderator nominated by the Director-General. Relevant facts could be put on the table by all interested parties, governmental and nongovernmental. If these alternative consultations did not work, Member countries could pursue their rights within the formal DSU process.

The current formal review of the Dispute-Settlement Understanding (DSU) provides an opportunity to address the transparency of the dispute system, which has been a source of concern in the NGO community. There is no reason why there should not be a more rapid dissemination of panel and Appellate Body reports once the 'Findings and Conclusions' section has been made available in all three WTO working languages, even if the descriptive part of the report only exists in one language.

Conclusion

An important implication of the framework and proposals in this paper is that the work of the WTO can promote a healthy environment and sustainable development. Not only is conflict between environmental protection and the WTO not inevitable, but the two can play mutually supportive roles.

Other analysts would doubtless have highlighted a set of issues different from the one covered here. The objective in this paper was not to be comprehensive, but to offer a framework for thinking about trade and environment initiatives and to suggest some useful policy proposals. There are clearly measures on which the environmental and trade communities can move forward relatively quickly. Progress on those issues will build the confidence necessary to tackle more challenging issues.

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General Council Stalls on Document Derestriction

India and Mexico blocked discussion of a Chairman's Proposal on document derestriction at the 16-17 February General Council meeting. India cited concerns about the access of parties to a dispute to documents that the Secretariat prepares for panels, and Mexico said that WTO Members were not properly consulted about document derestriction. The proposal, already submitted to the December 1998 General Council meeting, would amend current practice through circulating as unrestricted Secretariat background notes 'unless the relevant [WTO] body, while making the request, decides that the note be initially considered on a restricted basis.' Minutes of meetings would be derestricted after three months, instead of the current six, but working documents (including meeting agendas) would continue to be restricted until the adoption of the relevant report. The proposal also advocated circulating as unrestricted the 'Findings and Conclusions' portion of dispute settlement panel reports as soon as it is available in all three WTO languages. India objected to discussing changes to panel report circulation in the General Council, arguing that such changes should be considered as part of the ongoing review of the Dispute Settlement Understanding. For a more detailed description of the proposal tabled at the General Council meeting, see Bridges Vol.2 No.8, page 5.

Document derestriction is part of a larger mandate, given to the WTO at the Ministerial Meeting last May, to 'consider how to improve the transparency of WTO operations'. So far, Members have not been able to agree on any changes to current practice. Some observers speculate that in the absence of progress at the regular sessions of the General Council, document derestriction could become part of the larger negotiation package in the run-up to the third WTO Ministerial. The issue is expected to figure on the General Council's agenda when it meets next on 14 April.

Legal Aid Centre Planned for Developing Countries

A group of 13 developed and developing countries are in the process of designing an Advisory Centre on WTO Law that would assist developing countries in bringing and defending disputes at the WTO. The Centre is to be independent of the WTO Secretariat and have a small permanent staff. Norway, the Netherlands, Sweden and the UK have already committed financial support, as has Colombia. The other countries behind the initiative are Bangladesh, Hong Kong, the Philippines, South Africa, Tanzania, Tunisia, Turkey and Venezuela. Only developing countries and countries in transition would have access to the Centre's services, which would be priced on the basis of ability to pay, calculated according to the country's share of world trade. Founding developing country Members would be eligible for discounts, and least-developed countries would pay no more than 10 percent of the real cost of the Centre's services. The Advisory Centre responds to a shortcoming identified by many developing countries during the dispute settlement review: the prohibitive legal expense of initiating proceedings or defending cases. In its first submission to the review process, Venezuela proposed enhancing developing countries' access to WTO justice along similar lines (see Bridges Vol.2 No.4, page 7).

The European Commission drew criticism from all sides when it presented a counter proposal at the February General Council meeting, advocating the establishment of 'free-standing legal unit' within the WTO Secretariat rather than an independent legal centre outside the WTO structure. Neither solution has yet been adopted.

High-Level Symposia on Environment & Development

Agendas have now been set and participants invited to the high-level symposia on trade and environment, as well as trade and development, to be convened by the WTO Secretariat on 15-16 March and on 17-18 March respectively. Speakers and discussants mainly include representatives of intergovernmental organisations, as well as civil society, the private sector and academia. WTO Director-General Renato Ruggiero will give the opening statement at both meetings.

The Trade and Environment meeting will address three broad issues: linkages between trade and environmental policies; synergies between environmental protection, trade liberalisation, sustained economic growth and sustainable development; and interaction between the trade and environment communities. Keynote addresses will be delivered by Sir Leon Brittan, Vice President of the European Commission, UNEP Executive Director Klaus Töpfer, and Ian Johnson, World Bank Vice President for Environmentally and Socially Sustainable Development. The meeting will then address each of the symposium themes in panel sessions designed for interaction between the two main speakers, the four to five discussants and other participants.

The Trade and Development meeting will focus on the links between trade and development; trade and development prospects for developing countries; and further integration of developing countries, including least-developed countries, in the multilateral trading system. The meeting will start with speeches given by UNCTAD Secretary General Rubens Ricupero; ECOSOC President Paolo Fulci; World Bank Vice President and Head of the Poverty Reduction and Economic Management Network Masood Ahmed; Jack Boorman, Director of the Policy Development and Review Division of the International Monetary Fund, and Professor T.N. Srinivasan of Yale University. The ensuing panel sessions will be organised along similar lines as those of the environment symposium, except that there is only one main speaker and fewer discussants. Alec Irwin, South Africa's Minister of Trade and Industry, will address the session on Further Integration of Developing Countries in the Multilateral Trading System.

With the very full programmes both meetings are proposing, it is difficult to see how time can be found for a meaningful dialogue among the senior government officials from trade, environment and development ministries, as well as the nearly 200 civil society participants invited to attend the meetings. Such dialogue would be particularly valuable since several countries, during the Ministerial preparatory meeting held in early February, referred to the contribution the symposia could make to addressing these controversial and cross-cutting issues in the run-up to the post-2000 WTO negotiation round (see cover story), and since few government representatives figure on the panels of either meeting.

The fact that the symposia will be convened by the WTO Secretariat outside the WTO's formal structure is, perhaps, a sign of just how controversial environment and development concerns are within the multilateral trade context. WTO Members agreed to hold the meetings on condition that they were separate from all ongoing processes and negotiations, and did not involve a negotiated outcome. The WTO Director General will prepare a factual Chairman's Summary for each meeting.

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Committee on Trade and Environment

Papers tabled for the 18-19 February session of the Committee on Trade and Environment (CTE) reflect WTO Members' larger goals with regard to the post-2000 multilateral trade negotiations. Thus Norway, one of the key supporters of the 'multifunctionality' argument in defense of continued domestic support for agriculture, submitted an 18-page document entitled *Environmental Effects of Trade Liberalisation in the Agriculture Sector (WT/CTE/W/100)*, which concludes that 'analysis does not seem to indicate that the shift in production from high- to low-support countries, that is projected from further trade liberalisation, would lead to an overall reduction in environmental degradation.' Japan submitted a paper on the same topic (*WT/CTE/W/107*), noting *inter alia* that the monetary value of multifunctionality, such as land conservation by paddy fields, far exceeded that of rice production.

Brazil's submission (*WT/CTE/W/109*) argued that 'If the concept of multifunctionality is to be justified by or applied to attain environmental preservation objectives, then it should be understood as a global responsibility. [...] Normally, the environmental benefits obtained in subsidising economies are often neutralised by the environmental costs provoking increased production in non-subsidising countries.'

Australia – a member of the Cairns Group which has made subsidy reduction its overriding goal in the forthcoming agriculture negotiations – argued in its paper on Trade Liberalisation and the Environment: A Positive Agenda for Trade Reform (*WT/CTE/W/105*) that, in order 'to ensure that future trade negotiations give priority to those trade reforms that either directly or indirectly can facilitate better environmental outcomes', the CTE should bring to the attention of the Ministers the importance of eliminating agricultural export subsidies and substantially reducing domestic support in the agriculture and fisheries sectors. 'There is an urgent need for substantial action on all these fronts in view of the serious environmental problems facing many countries,' Australia concluded. Another paper by the Cairns group and the United States (*WT/CTE/W/106*) called on the WTO to focus on eliminating agricultural export subsidies as they 'directly work against efforts to address rural poverty, and to deal with the close inter-relationship between poverty, the over-exploitation of natural resources and environmental degradation to the detriment of the global environment as a whole.'

Iceland, where three-quarters of exports earnings are generated by an unsubsidised fisheries sector, put forward a paper entitled *The Icelandic Fisheries Management System: A Market-Driven Sustainable Fisheries Regime (WT/CTE/W/103)*. The paper notes that while Icelandic fish stocks have recovered as a result of the establishment of a 'market-driven fisheries management system', overcapacity of the global fishing fleet is still decimating fish stocks in many of the world's oceans, mainly due to government subsidies and a lack of rigid fisheries management systems. Iceland concludes that 'no single action could bring about such positive results towards achieving sustainable development in fisheries as would the elimination of government subsidies.'

As at previous sessions addressing the market access cluster, Members also discussed eco-labelling schemes. Argentina suggested that the CTE draw up a checklist of steps to take to ensure that eco-labels were not discriminatory.

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Dispute Settlement Review Update

The Dispute Settlement Body convened on 11 February to continue the review of the Dispute Settlement Understanding (DSU), underway since last year. In the wake of the banana case, the relationship between Articles 21.5 and 22.6 in the implementation of WTO dispute settlement decisions is likely to become the most substantive issue of the review (see related article on page 7). However, Members will probably delay tackling the compliance procedure until the panel established to determine the EU's compliance with the banana ruling has issued its report, currently scheduled for 12 April. The DSU review is expected to conclude in July. Amendment proposals will be forwarded to the WTO Ministerial, but some observers say that the more substantive or controversial issues may end up as an element of the trade negotiations that will start in the year 2000.

At their February meeting, WTO Members reached a tentative consensus on three issues: the need (in the context of Article 3.6) to notify mutually agreed solutions to matters raised in consultations as early as possible, and that a request for a panel can only be made after the 60-day consultation period set out in Article 4.7 has elapsed. Members also agreed to consider adjusting the time table for panel submissions which currently allows complainants a longer period than respondents to deposit their submissions.

Other items put on the table by Members in the review process include panel and Appellate Body proceedings, the timing of the second (automatically granted) panel request, the rights of third parties, provisions in favour of developing countries and transparency of the dispute settlement proceedings (for more information on country proposals on these issues, see Bridges Vol.2 No.8, page 9).

At the February meeting, Canada put forward a submission focusing on the need to enhance transparency, improve implementation of dispute settlement rulings and guarantee equal access to the dispute settlement mechanism to all WTO Members. Canada suggests that countries consider making their submissions to dispute settlement panels and the Appellate Body publicly available on a timely basis (under current rules they are not released at all), and that an obligation be established for Members to release public versions of their submissions. The proposal also requests Members to review the role of non-governmental actors in the dispute settlement process, including consideration of the impact of granting them observer status. Concerning implementation, Canada urges the DSB to give high priority to clarifying the relationship between Articles 21 and 22 of the DSU. Finally, Canada emphasised that all Members should have fair and equal access to dispute settlement proceedings, and that Members should explore the possibility of establishing an Advisory Centre on WTO Law to assist developing countries in participating in the system (see separate article on page 5).

The DSB did not discuss the Canadian submission. At the 17 February General Council meeting, India and Mexico blocked discussion of a Canadian document derestriction proposal that included provisions for speedier release of panel reports, arguing that the DSU review was the proper forum for considering such changes (see separate article on page 5).

The date of the next DSU review meeting will be set by the DSB's new Chair, Ambassador Nobutoshi Akao of Japan, in consultation with Members.

Dispute Settlement Corner

Compliance Rules Remain a Problem in Banana Case

Confusion continues around the banana dispute opposing the European Union to the United States. The case has revealed major ambiguities in the provisions of the Dispute Settlement Understanding (DSU) regarding the timing and sequence of compliance findings and the right to retaliate against a Member that does not bring its practices into conformity with WTO obligations within a prescribed 'reasonable period' of time.

US Requests Retaliation Rights, EU Asks for Arbitration

In a process characterised by procedural wrangling and uncertainty, the Dispute Settlement Body (DSB) decided on 29 January that Article 22 of the Dispute Settlement Understanding conferred the US the right to request permission to 'withdraw concessions', i.e. impose punitive duties on a range of European exports. The US proposes to levy these duties in retaliation for the EU's non-compliance with a September 1997 Appellate Body ruling that its banana import and licensing regime violated WTO rules. The US and the other complainants in the case – Ecuador, Guatemala, Honduras and Mexico – claim that the EU's changes to the regime, in force since 1 January 1999, are merely cosmetic and still discriminate against Latin American bananas and US distributors.

The EU continues to maintain that the new regime is WTO compatible. However, since the US was allowed to table its retaliation request, the EU requested the WTO to arbitrate the level of the proposed sanctions. The US is seeking to tax US\$520 million worth of European goods ranging from pork products and cheese to paper, cashmere sweaters and bed linen, a sum it says 'is equivalent to the level of nullification or impairment of benefits accruing to the United States from the EU's failure to bring its banana regime into compliance' with DSB rulings. The EU is likely to argue for a considerably lower value, or possibly no retaliation at all. The arbitration is expected on 2 March, or 60 days after the 'reasonable period' of time expired for the EU on 1 January 1999.

Compliance Panel to Rule on 12 April

What complicates matters is that the DSB has not, as yet, issued a finding of non-compliance regarding the EU's new regime. The Union therefore claims that the US sanctions threat is based on a WTO-illegal unilateral non-compliance determination. At the root of the problem are contradictory provisions under Articles 21.5 and 22 of the DSU. Article 21.5 provides that non-compliance must be determined by a panel, preferably the same one that originally ruled on the case. The panel must rule within 90 days of its establishment. However, Article 21 does not specify whether a compliance panel can/must be requested before the reasonable period is over. Nor is it clear whether the panel's ruling can be appealed, or even whether the same rules apply to its establishment as to setting up an ordinary panel, including a mandatory 60-day consultation period and two panel requests at DSB meetings. Article 22.6, on the other hand, is very specific: it states that when a complainant and a non-complying loser of a dispute fail to agree on compensation, 'the DSB, upon request, shall grant authorisation to suspend concessions or other obligations within 30 days after the expiry of the reasonable period.' Arbitration of the level of the sanctions can prolong

this period to 60 days. The US argues that the DSU does not specify that a non-compliance finding under Article 21.5 is a prerequisite for an authorisation to retaliate under Article 22.6.

In spite of the procedural confusion, the original panel was re-established on 12 January at the request of Ecuador to judge whether the EU's new regime is compatible with the Appellate Body's findings and recommendations. The same three-member panel will arbitrate the level of the trade sanctions. But, while the compliance finding is only expected on 12 April, the arbitration should be final on 2 March. The US argues that, in order not to lose its right to retaliate under Article 22.6, it must act within a sixty-day period from the implementation date set by the DSB. The import taxes could thus be levied as of 3 March – some six weeks before the WTO has actually determined whether the EU's new regime still violates its rules.

The EU on 22 January requested the General Council to decide whether a WTO member had the right to seek authority to impose sanctions on another in the absence of a WTO panel ruling, and whether the rules should be interpreted to allow retaliation after the 60-day period has elapsed. However, after a day-long procedural debate, the General Council on 16 February agreed to refer the issue of the relationship between Articles 21.5 and 22.6 back to the Dispute Settlement Body which is to consider it during its ongoing review of the Dispute Settlement Understanding (see related article on page 6).

EU Ponders Interim Measures to Implement Beef Hormone Decision

A compliance case is also brewing regarding the European Union's implementation of the Appellate Body's February 1998 ruling against the EU's import ban on beef treated with growth hormones. The Appellate Body found that the embargo violated Articles 5.1 and 5.2 of the Agreement on Sanitary and Phytosanitary Measures because it was not sufficiently supported by scientific evidence, or a risk assessment showing that residues of the hormones in meat posed a risk to human health. The case was brought by the United States and Canada. Both complainants have stressed that to implement the ruling the EU must lift the import prohibition at the latest on 13 May when the 'reasonable period of time' for compliance expires.

The EU disagrees that the ruling means the ban should be revoked. Instead, it has launched a number of studies which it hopes will show that there are legitimate scientific reasons for the embargo. While some preliminary results are expected to become available by the end of April or early May, the European Commission has admitted that the complementary risk assessment might not be finalised until the year 2000. On 10 February, the Commission adopted a Communication to the Council of Ministers and the European Parliament outlining three possible options which could be introduced as interim measures to implement the WTO ruling. The Commission invited the Council and the Parliament 'to decide on the most appropriate EU strategy' between the following options:

- paying compensation through trade concessions (most likely increased market access for other US agricultural products);

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Dispute Settlement Corner

- transforming the present ban into a provisional one on the basis of available pertinent evidence; or
- lifting the ban on imports and applying labelling.

The Commission also said it would initiate talks with the complaining parties 'in order to evaluate the merits of these options and in particular to explore the feasibility of compensation'. The US cautiously welcomed the EU's willingness to negotiate a solution, but Agriculture Secretary Dan Glickman warned that the US would expect the EU to rescind the embargo whether the studies were complete or not. EU officials said that a temporary ban pending the conclusion of the studies would be allowed under Article 5.7 of the SPS Agreement, but acknowledged that the complainants – who must agree to the implementation measures – were unlikely to accept the solution. At a DSB meeting on 1 February, US Ambassador Rita Hayes reminded the EU that it accepted the 15-month reasonable period of time 'only for the purpose of bringing its measures into compliance.' According to US industry sources, the Clinton Administration is already preparing a retaliation list against European exports in case of non-compliance by the 13 May deadline. As in the banana case, the US will request industry comment on an initial draft list, likely to be published in the Federal Register sometime in March.

Solution Sought on Canadian Magazines Dispute

A US sanctions threat seems at least temporarily averted in the third dispute involving compliance with a WTO ruling. In this case, Canada revoked its 'offending measures' before the end of the compliance period, but a new bill that would have the same effect is currently before the Parliament. The dispute concerns market access for foreign 'split-run' magazines, i.e. magazines that run two or more editions with virtually identical editorial content, but sell separate advertising targeted to domestic audiences in different countries. To comply with a WTO ruling, Canada stopped levying an 80 percent tax on advertisement in foreign split-runs and discontinued a postal subsidy in favour of Canadian magazines. However, the Parliament is in the process of passing Bill C-55, which – instead of imposing prohibitive taxes or unfavourable postal rates on split-runs – would ban Canadian firms from selling advertisement to Canadian editions of foreign magazines. The US has condemned the proposed bill as substitution of 'one form of protection for another' in a way that threatens 'to make a mockery of the dispute settlement process'. On 11 January, the US conveyed to Canada a list of exports that could be hit by punitive import taxes if Bill C-55 were adopted by the Parliament in its original form. The list targets vital sectors to the Canadian economy, including steel, timber, textiles and plastics. In an effort to ward off the sanctions, the Canadian government on 10 February amended the bill so it would take effect only after a cabinet decision that it is needed. The government also suggested referring Bill C-55 to the WTO for a quick decision. The US rejected the proposal, saying it would result in an 'endless loop' of litigation. Negotiations continue between the two countries.

Panel Requested on US Trade Remedy Law

At the meeting of the DSB on 17 February, the EU requested the establishment of a dispute settlement panel to rule on the WTO-consistency of sections 301-310 of the US Trade Act of 1974.

The EU contends that 'by imposing specific, strict time limits within which unilateral determinations must be made that other WTO Members have failed to comply with their WTO obligations and trade sanctions must be taken against such WTO Members, this legislation does not allow the United States to comply with the rules of the DSU and the obligations of GATT 1994 in situations where the Dispute Settlement Body (DSB) has, by the end of those time limits, not made a prior determination that the WTO Member concerned has failed to comply with its WTO obligations and has not authorised the suspension of concessions or other obligations on that basis.' Sections 301-310 of the Trade Act contain the procedures and timeframes the US must follow in trade retaliation cases. These provisions provided the basis for US action in the banana case, and will also be used in case the US decides to retaliate in the beef hormone or Canadian magazines disputes.

India's TRIPs Compliance Questioned

India has agreed to consult with the United States on its implementation of the WTO's recommendations regarding its patent filing and exclusive marketing rights regulations for agricultural chemicals and pharmaceuticals. The Appellate Body ruled in December 1997 that Indian legislation in these areas fell short of its obligations under Articles 70.8 and 70.9 of the TRIPs Agreement. The Indian government issued an executive ordinance on 5 January that allows the establishment of a 'mailbox' system for filing patents on drugs and agricultural chemicals while patent laws are brought into conformity with TRIPs, and grants five-year exclusive marketing rights for such products. The ordinance is retroactive, covering all patent filings since the TRIPs Agreement entered into force in 1995. With the executive ordinance, the government temporarily bypasses the Parliament, which so far has refused to pass similar legislation. The bill will be reintroduced to the Parliament in late February. In its consultation request, the United States expressed concern that the exclusive marketing rights system 'fails to meet the standards of TRIPs', adding that it would refer the matter to the original panel for a compliance determination under DSU Article 21.5 if a mutually satisfactory solution was not found.

Dispute Settlement Briefs

- At the DSB meeting on 1 February, Colombia and other affected countries expressed concern about the Brazilian government's request for consultations with the EU over the duty-free access the EU offers to soluble coffee originating from countries belonging to the Andean Group and the Central American Common Market. The preferential treatment is granted to countries that conduct programmes to combat drug production and trafficking. Brazil alleges that this special treatment adversely affects the importation into the EU of soluble coffee originating in Brazil, and is inconsistent with the Enabling Clause, as well as the most-favoured nation principle.
- The United States and complainants India, Malaysia, Pakistan and Thailand have agreed on an implementation period of 13 months from the date of adoption of the Appellate Body and panel reports (i.e. from 6 November 1998) which condemned the US import ban on marine shrimp caught without turtle protection devices. The US must thus comply with the rulings by 6 December 1999.

Lomé Convention Talks Start in Earnest

Foreign affairs and development ministers of the European Union and 71 African, Caribbean and Pacific (ACP) countries met in Dakar, Senegal, from 7-8 February for a first high-level negotiation session for a successor arrangement to the fourth Lomé Convention.

The Lomé Convention is a trade and development co-operation agreement that has, among other things, provided preferential market access to ACP exports into the EU since the 1970s. The present Convention expires in the year 2000, and the EU is suggesting to replace its trade component with several free trade agreements between itself and regional groupings of ACP countries (four for Africa, and one for the Caribbean and the Pacific each; see Bridges Vol.2 No.6, page 3 for more information).

The negotiations were formally launched last September, but the Dakar meeting provided the first occasion for real stocktaking between the Lomé partners. Despite the conciliatory tone of the co-Presidents and the fact that views did converge on many issues, the ministerial meeting revealed deep divergences regarding balance between development co-operation and the trade component of EU-ACP relations, as well as the nature and timing of changes to the Lomé Convention trade regime. ACP countries also rejected the inclusion of 'good governance' as an 'essential element' – or condition for preferential treatment – of the future treaty. For an ACP view, please see Minister Anthony Hylton's comment on page 9.

In addition to these issues, ACP countries wish to review the content of the 'non-execution clause', which allows preferences to be withdrawn in retaliation to violations of the treaty's essential elements. Ministers agreed to continue discussions on improving consultation procedures. The ACP group hopes that those discussions will result in a permanent consultative mechanism that would enhance dialogue and forestall unilateral decision-making.

The Framework

Ministers agreed that poverty eradication should be the overarching objective of development strategies. In this context, co-operation and policy frameworks should be tailored to individual circumstances, local 'ownership' of development strategies should be promoted, and the private sector and civil society should be integrated in the development process. The approach should be people-centred, include coherent economic and social policies, be guided by principles and best practices for sustainable development and concentrate on better governance. However, the exact role and meaning of 'good governance' remains undecided and contentious.

Improving access to key basic services and support for the reform of basic social systems was included in the general agreement on support for general and sectoral social policies. Gender was recognised as a cross-cutting issue to be taken into account in formulating and implementing policies at all levels. Ministers also noted the need to support regional co-operation and integration as a step towards integration into the world economy, a factor for growth and the reduction of economic and social disparities.

Trade Arrangements

Since the Lomé Convention operates under a temporary waiver of WTO obligations, the EU maintains that it must be eventually be replaced by WTO-compatible reciprocal trade arrangements between former Lomé members. ACP countries stressed that free trade areas should not be considered as the only model for future EU-ACP trade relations, and that alternative options – such as an enhanced EU Generalised Scheme of Preference – should be considered equally seriously. And, even if regional free trade areas were eventually established, the transition to fully reciprocal trade concessions should be extended to ten to fifteen years, instead of the five proposed by the EU. Non-reciprocal trade preferences should be maintained during that period for all ACP countries, and the WTO waiver should be extended accordingly. While the EU has already agreed that least-developed countries would be able to keep their unilateral market preferences, ACP countries maintained that alternative solutions should also be found for vulnerable landlocked or island countries not falling into the LDC category. It is unclear to what an extent the European Union is willing to consider the proposed alternatives or prolong the transition period, particularly as some member countries seem at odds with the European Commission that is conducting the negotiations on their behalf.

Recognition should be given to the fact that civil society has been responsible for promoting many of the concepts that today are taken extremely seriously such as 'poverty elimination', gender and debt cancellation. Indeed it is because of civil society that the debate on opening up this particular co-operation agreement to non-state actors has gone so far.

Excerpted from the ACP Civil Society Forum Recommendations

Role of Civil Society and the Private Sector

While ACP leaders accepted in principle the necessity of including all decentralised co-operation actors in the new partnership, they emphasised that their involvement must be within the framework of objectives and priorities set by the state, according to civil society's comparative advantage in implementing co-operation projects and programmes. Further work is needed on the modalities of consultation and dialogue, as well as operational policies for support of these actors in relation to the programming process.

A coalition of ACP NGOs called for 'a mechanism for formal and structured dialogue between governments and civil society [to] be enshrined within the ACP-EU Co-operation Agreement', as well as for the establishment of national consultative fora to 'advise and inform the process at the state level'. The group's statement to the ministers emphasised poverty eradication as the primary goal of development strategies, and underlined the need to integrate women's needs in such strategies. The statement supported the ACP position that at least a ten-year transition period would be necessary before the establishment of EU-ACP regional free trade areas, and the need for an in-depth analysis of alternatives to the free trade areas.

The EU and the ACP countries recognised the leading role of the private sector in generating growth and employment. In addition to the need to support private sector development and create a favourable environment conducive to investment, it will be necessary to clarify the issue of coherence and complementarity between the different levels of actions and policies carried out. Particular attention needs to be paid to improving the macro-economic, political and institutional environment.

NAFTA to Revisit Investor-State Arbitration Provisions

Canada, Mexico and the United States, the three members of the North American Free Trade Agreement, will focus on the treaty's investor-state dispute settlement provisions at the NAFTA Commission meeting on 22-23 April in Ottawa.

In the wake of several industry claims against governments involving health or environmental regulations (see below for an example), NAFTA members will seek to come up with a 'rider', or interpretative statement, with regard to the expropriation clause on NAFTA Chapter 11. Article 1110(1) provides that investors can seek compensation from foreign governments for measures 'tantamount to nationalisation or expropriation of [...] an investment.' The interpretative statement would clarify the original intent of the investor-state arbitration provisions, which the three governments agree were never meant to give a carte blanche for corporations to attack government regulations.

The statement is likely to clarify what exactly can be considered a measure 'tantamount to expropriation'. A confidential Canadian memo also suggests that '[A]ll types of regulatory practice should be excluded from the ambit of these provisions to the extent that they are legitimate and reasonable'. In the controversial NAFTA challenges that led to the decision to clarify Article 1110(1), companies have sued for large monetary damages on the grounds that government regulations, while not actually seizing their assets, have amounted to measures 'tantamount to nationalisation or expropriation of [...] an investment.'

Last July, Canada settled a case with the US-based Ethyl Corporation for US\$13 million, in compensation for profits lost by Ethyl's Canadian production unit of the gasoline additive MMT. Ethyl claimed that the Canadian government's inter-provincial ban on MMT sales amounted to an expropriation of Ethyl's Canadian assets, as it would oblige the company to close its manufacturing plant. The government had taken the measure on health and environmental grounds, but cancelled it as part of the settlement saying there was insufficient scientific evidence to support it. See Bridges Vol .2 No.6, page 8 for more information.

Mercosur and EU Edge Closer to Deal

With the WTO trade negotiations looming ever closer, momentum has slowed both on the creation of new regional trade groups such as the Free Trade Area of the Americas and on tariff deals between existing trade blocs. Mercosur and the European Union, however, are scheduled to hold a summit meeting in Rio next June with a view to start negotiations on a free trade area between the two blocs. Business leaders on both sides of the ocean have expressed support for the initiative, but analysts predict that the challenges posed by the Brazilian currency crisis to the Mercosur internal integration process may affect the bloc's willingness to open its import markets to the EU. Daily exports from Brazil to Argentina almost doubled in January, while Brazilian demand for Argentine products had already slumped.

On the European side, EU agricultural ministers last July demanded an impact assessment of a Mercosur-EU free trade pact on the European agricultural sector citing an internal EC report showing that the Commission would have to transfer up to US\$15 billion per year to farmers to compensate for markets lost to Mercosur products. To be in line with WTO provisions, free trade areas must cover 90 percent of total traded products between the partners.

NGOs Critical of EU Trade & Sustainability Assessment

The European Commission's External Relations Directorate held a meeting with civil society representatives on 27 January to discuss environmental and investment issues in the run-up to the next round of WTO trade negotiations. Participants were briefed on the 'sustainable development impact assessment' of the new round, promised by Sir Leon Brittan at the first EU/NGO meeting on the subject last November (see Bridges Vol.2 No.8, page 13).

The EU plans to have the assessment carried out by independent experts. A call for tender has been issued requiring the study to 'make a broad qualitative assessment of the sustainable impact of the New Round and any ideas for how best to maximise the positive impacts of the expected liberalisation of rule making'. NGOs expressed concern that the assessment would focus exclusively on positive synergies between trade liberalisation and sustainable development, and requested that it should start with a review of the impacts of currently implemented Uruguay Round Agreements on the economy, the environment, labour and human rights standards, gender equity and democracy. In a letter to Mr. Hans-Friedrich Beseler, Director General of European Commission's External Relations Directorate, NGOs urged the EU to devise a transparent and participatory process that would 'address the concerns raised by a wide range of stakeholders about the effects of trade liberalisation'. The terms of reference of the study are expected to be finalised in March/April, and the contract to carry it out should be awarded by May. The assessment report will be submitted the European Council of Ministers, who will decide how to take it into account in the EU's negotiating strategy.

NGOs were also critical of the EU's push for international rules on investment as part of the next round of WTO trade talks. They pointed out the difficulty governments would have in drumming up popular support for a multilateral investment treaty after the failed attempt to conclude such an agreement within the OECD. Reiterating some of their objections over the MAI, NGOs brought up the weak negotiating position of developing countries and the potential negative impacts of WTO investment rules on national sovereignty; investor-state dispute settlement provisions that would allow companies to challenge government health or environmental regulations; and the WTO's suitability as a forum for the development of investment rules. European NGO activity related to the EU and the multilateral trade negotiations is co-ordinated by the International Coalition For Development Action, tel: (32-2) 230-0430, fax: 230-5237, e-mail: Icd@skynet.be.

Regarding the High-Level Meeting on Trade and Environment, to be convened by the WTO Secretariat from 15-16 March, EU officials admitted that the Commission had had to lower its initial ambitions. This was partly due to the cool reception of the EU initiative among developing country WTO Members, and partly to the lack of a unified position vis-à-vis the meeting among EU nations. Instead of addressing controversial questions such as amending GATT Article XX to take into account product and processing methods, the EU will focus its efforts on 'win-win' situation where synergies between trade and the environment can benefit both.

An EU/civil society meeting on industrial tariffs, trade facilitation, and trade and competition is scheduled for 23 February. A meeting on the WTO High-Level Symposium on Trade and Development will take place on 4 March.

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The EU and Developing Countries: An Agenda for Action

By Anthony Hylton

This article is adapted from a speech given by Minister Hylton at the opening session of a WTO/European Parliament Round Table on the Multilateral Trade Negotiations: The European Union and its Developing Country Partners, on 18 February 1999 in Brussels.

Last week in Dakar for the post-Lomé negotiations, it fell to me to be the ACP (i.e. the African, Caribbean and Pacific country members of the Lomé Convention, *ed.*) spokesman in the Trade and Economic Co-operation Negotiating Group. Almost simultaneously, back in Montego Bay, Jamaica, my Prime Minister was chairing the XIth Summit of Heads of State and Government of the Group of Fifteen Developing Countries (G-15). While I do not speak for the ACP or the G-15 here, it is against the backdrop of these encounters that I address the Round Table's theme: the EU and its Developing Country Partners.

The Lomé Convention

Let me begin by underlining the proposition which the ACP affirmed at the very start of the Libreville Declaration of 1997, which is in the nature of our negotiating Charter, namely that *'we aim to establish with our European partners a development co-operation agreement'*. That, for us is the essential nature of the challenge of these negotiations. When everything else is stripped away, the quality of the new arrangements, indeed the very rationale for new arrangements, will depend on the degree to which they respond to this need for practical and concrete ways of furthering the sustainable development of ACP countries.

In our Negotiating Mandate, we spelt this out with even greater clarity when dealing with 'Principles and Objectives':

The ACP's fundamental position is that the post-Lomé IV arrangements should essentially be a partnership between Europe and more than half of the world's developing countries in the unique process of development co-operation. 'Development' is the primary objective of this partnership; it must not be subordinated, for example, to the political objectives of other agendas. The ACP mandate makes it clear, therefore, that 'development' is an objective in its own right; that 'development' is in itself a fundamental human right.'

You can be sure that the ACP will measure every aspect of the negotiations by these criteria. Pride of place within this emphasis must be accorded to the eradication of poverty. Again we have made our priorities clear and unambiguous. In paragraph 85 of our Mandate, we say;

A key feature of the new Agreement should be the eradication of poverty through development of economic and social infrastructure, creation of income-generating activities and the fight against exclusion which, after all, is the principal objective of development co-operation.

Poverty eradication is the basis on which I explain to the people of Jamaica why we are involved in these costly negotiations embracing a new relationship with Europe which is overtly more political than anything in the previous Lomé experience.

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Lomé always had 'development' at its center. That is true of Lomé I to IV. We want to preserve that architecture. The EU does not. The view from where we as ACP countries sit, is that despite the language of 'co-operation for development' that it uses in its Green Book, and Guidelines and Negotiating Directives, the EU wishes to dismantle Lomé and refashion it closer to a blueprint that sees trade in goods and services as a net benefit to Europe, and development assistance as a lever for social, political and economic policies imposed through a system of conditionalities adorned as political dialogue.

Perhaps this is too harsh a view; that is why the ACP called for a 'political encounter' with Europe before negotiations began. Again, the received view is that the Commission – not the Member States – resisted this in all the ways open to it, and they are many. What we got instead was a two hour 'three-a-side' discussion in the last month of the Austrian Presidency in which the Commission's main interest was to agree on a PR program to give 'the Negotiations' a good spin.

The EU therefore has a different vision from the ACP – a vision rooted in the notion that if our countries do better in democracy, the rule of law, and respect for human rights, development will assuredly follow; trade, investment (including investment for infrastructure) can then safely be left to market forces. It is a flawed notion, and could be a dangerous one. We had all those elements; certainly many of the EU's member states would assert that we did, during the colonial period; yet, the fact that 'Europe underdeveloped Africa' is hardly contestable. Moreover, many of our countries have these elements in place and have done so for a long time, in some cases before all of Europe. Our democracy has certainly improved since colonial days.

I can speak with assurance for the Caribbean. Democracy, human rights, the rule of law are important to us – as important to us as they are to Europe; they are part of our social and political ethos too. But they do not guarantee development, nor are they a prerequisite of it. They affect the quality of development; which is why we cherish them. But they do not sell bananas or rum, or textiles or rice, or provide access for our services such as entertainment. That depends on national and international economic arrangements, including market arrangements. It depends on arrangements like Lomé. And to those who have blithely asserted that preferential arrangements have not worked, the incontrovertible evidence is that where the preferential margins have been significant and the supply-side constraints attenuated, there have been significant trade activities, to the benefit of ACP countries.

That is why the ACP told the EU in Dakar that we are not going any further at this point in time with 'essential elements' than we have gone already; democracy, respect for human rights, protection of the rule of law we accept. 'Good governance' with all its subjectivity's and variances is another matter; we believe it appropriate for political dialogue – on both sides, good governance in Europe no less than in ACP Countries; we will not have it hung around our necks as a conditionality collar fashioned for the ACP countries alone.

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The EU and Developing Countries, continued from page 11

We want to get first things first. The Lomé Convention has been and must remain essentially about development – about eradication of poverty; about improving the human condition in 72 developing countries. It is not a small ambition; but we will not come anywhere near to attaining it if we do not keep it constantly in focus. I hope the European Commission left Dakar last week understanding that the ACP is not going to agree to a framework agreement later this year which commits us to the loss of Lomé and to options which are indifferent to our core developmental needs – worse still, to options, like regional free trade agreements from which Europe stands to gain at the expense of the ACP.

The European Parliament and the Capitals of some Member States have always had a larger vision of post-Lomé arrangements; but I would be less than candid if I did not say that the European Commission does not seem to be driven by the same enlightenment. The Lomé Convention has brought and kept together, in a commitment to development, 84 countries of the developed and the developing worlds. That commingling for development is nothing short of a global asset.

The ACP countries are committed to preserving what is best in Lomé, to improving what is not, and to strengthening overall the potential of the relationship for contributing to real development. I urge the European Parliament in particular to share this commitment and to help its fulfillment, which would be a credit to both Europe and the ACP.

The WTO

And that brings me to the factor of the WTO in these negotiations between 'the EU and its developing country partners'. Let me make it clear that the ACP countries, as part of the developing countries generally, stand for the highest purposes of the WTO.

It is a members' organisation and while some 40 odd ACP countries are members, we are mindful of the fact that the efforts of other developing countries desirous of becoming members are being frustrated by a legalistic process which undermines the objectives of ensuring for them a share in the growth in international trade commensurate with the needs of their economic development. This fact was reaffirmed by the G-15 group of countries in the Jamaica Consensus.

A world of rules and disciplines in international trade should be a better world for the weak who without economic clout must look to the rule of international law for their salvation. If the WTO is ever threatened in the future, those threats will come not from the weak but from the strong – as is always the case with the rule of law. What the weak will constantly struggle to ensure is that the law itself is just, that the disciplines fall on all fairly, that no one is above the law. And the weak will do all they can to ensure that the values that inform the law take account of their needs and their condition, and that not only its application, but also the law itself is tempered by equity and fairness.

For the ACP, as well as for the G-15 countries, that means that the WTO must evolve in this way. It means that it must not become a fundamentalist institution commanding unswerving obedience to

the ideology of liberalisation and uncritical acceptance of all that globalisation is made to yield. The current financial crisis threatening global growth reminds us of this.

Just take the issue of reciprocity for which the ideologues of liberalisation would claim sanctity. Reciprocity between equals is one thing; it is the very essence of equity. But as between unequals it is the opposite. We do not have to go back to Aristotle's *Ethics* to recognize that between rich and poor, between highly-developed industrial economies and under-developed largely agricultural ones, between countries that are large and well-endowed and those that are small and vulnerable, reciprocity is a recipe for enlarging inequality. It cannot be what the WTO stands for, or ordains for ACP-EU post-Lomé arrangements.

As far as those arrangements are concerned, the ACP's priority must be to ensure that the negotiations produce results that are compatible with development. If the rigidities of WTO rules proscribe those results as not being 'WTO compatible', the accommodation to be made cannot be with the development objective, but by the regime that impedes its attainment.

Actually, the realities are less stark. The WTO has already moved on in its acknowledgement of the development factor. The Singapore Ministerial started that process – and the Seattle successor to it later this year will almost certainly take further. The Director-General himself has already given a lead in this direction regarding the LDCs. More generally, it is now acknowledged that WTO rules are not 'written in stone'. We must not predicate relations between the EU and its developing country partners, or conduct the ACP-EU negotiations, on the assumption that they are.

The views of the G-15 countries are not dissimilar in this regard. In their Jamaica Consensus on an approach to the future work programme of the WTO to be discussed at the Seattle Conference, the G-15 affirm the legitimacy of the development objectives of developing countries as well as the need to preserve economic spaces within the multilateral trading system to implement market-oriented development policies; and stresses the importance of redressing the difficulties faced by developing countries in implementing WTO agreements and laments the lack of implementation or non-fulfillment of Uruguay Round obligations by developed countries.

The challenge, it seems, is to generate forward-looking ideas on the evolution of the development factor in the WTO regime. If 84 countries of North and South, most of them members of the WTO and wedded to the organisation's highest purposes, can engineer creative development-driven trade arrangements for the new century, we should not lack confidence in our collective ability to ensure that WTO rules and disciplines are compatible with those arrangements. We in the ACP countries are convinced that it is only through a 'community of interests' between developed and developing countries that this can be achieved, and so shape a just and equitable global economy.

Anthony Hylton is Minister of Foreign Affairs and Foreign Trade of Jamaica and the leader of the ACP Ministerial Negotiating Team on Trade and Economic Co-operation in the post-Lomé process.

Biosafety Negotiations May Not Conclude in Cartagena

As this issue of Bridges went to press, delegates in Cartagena, Colombia, were trying to finalise the Biosafety Protocol under the Convention of Biological Diversity. While the negotiating mandate – to develop a protocol on the safe transfer, handling and use of ‘living modified organisms’ (LMOs), particularly focusing on their transboundary movements – sounds unexceptional, the Biosafety Protocol is proving one of the most controversial multilateral environmental treaties ever concluded. The controversy arises from its potential impacts on international trade in biotechnology products worth billions of dollars, as well as the heated debate surrounding biotechnology issues in many countries.

Five prior negotiation sessions on the Protocol have left most of the key issues of treaty undecided, including the very definition of ‘living modified organisms’ and the scope of the agreement. Most importantly, countries disagree on whether the Protocol’s provisions should apply to only LMOs themselves or also to ‘products thereof’. Major crop exporters, who see biotechnology playing a growing role in their agricultural development, generally want to keep the Protocol as narrow as possible, while countries which mostly expect to import bio-engineered products seek an agreement with broader coverage.

WTO Compatibility and LMO Labelling

Living modified organisms, such as genetically modified crop seeds, could threaten biological diversity by overwhelming native species through cross-pollination. Some scientists also fear the appearance of ‘super-weeds’, i.e. ordinary weeds made immune to herbicides and traditional weed control methods because of accidentally-acquired genetically modified traits. Mitigating threats such as these is the legitimate target of the Biosafety Protocol, proponents of a narrow Protocol argue. However, they maintain that transboundary movements of LMO ‘products’ – which could range from agricultural commodities to foodstuffs, fabrics and pharmaceuticals – fall outside the scope of the Protocol as they are not intended for release in the environment and therefore have no effect on the conservation of biological diversity.

The United States, backed by biotechnology companies and other industries, leads the movement to exclude ‘products thereof’ from the Protocol (see, for instance, Bridges Vol.2 No.8, page 12). It has raised concerns at the WTO about the compatibility of the future Protocol with the TBT and SPS Agreements, which require trade barriers to be based on sound science. Among key issues to be settled is also whether to include in the treaty provisions restricting (or banning) transboundary movements of LMOs between Parties and non-Parties to the Protocol. Such provisions could create considerable barriers to trade in biotechnology products and trigger WTO disputes between Parties and non-Parties to the Protocol.

Labelling requirements for genetically modified organisms are also likely to come up during the February negotiating session. The European Union’s labelling regulation for genetically-engineered soya and maize is currently under scrutiny at the WTO’s Committee on Technical Barriers to Trade, which has also expressed concern about a Japanese labelling initiative still being developed. In addition to opposing GMO labelling schemes as unwarranted barriers to trade in the WTO, the US maintains that labelling is a consumer issue that has nothing to do with the original scope of the Biosafety Protocol, and that food safety concerns are addressed by other international bodies such as the Codex Alimentarius (see related story on page 15).

Liability Provisions Unlikely

As there are no multilateral rules on trade or other movements of genetically modified organisms, and most developing countries lack legislation and enforcement capacity in the area, it is easy to see the attraction of an internationally-binding treaty that would offer broad protection to both the environment and human health in countries faced with the many uncertainties associated with modern biotechnology. Many developing countries, particularly in Africa, support the inclusion of rigorous provisions on transboundary movements of all LMOs, including ‘products thereof’, as well as the development of a liability regime for cases where LMO movements cause damage to the environment. However, the need for liability and compensation clauses is so disputed that such provisions will almost certainly be left out of the text if the negotiators are to conclude the Protocol by the end of the Cartagena session on 23 February. Another major sticking point is whether the Protocol’s provisions should take into account risks to human health or so-called socio-economic considerations. Most developing countries think they should, while industrialised countries regard them outside the scope of the Protocol. In the draft text, all references to LMO products, human health and socio-economic concerns remain bracketed.

The future Convention’s centrepiece is to be an Advance Informed Agreement (AIA) procedure, which will require LMO shipments to be notified to the recipient government, which will have to give its consent before the shipment can be imported. Biotechnology exporters are keen not only to keep processed LMO products outside the procedure, but also to exclude grains and oilseeds intended for consumption rather than planting. Mexico recently said it would fight attempts to weaken the AIA procedure through the establishment of a list of exceptions, but said it could agree to limit the AIA requirement to just the first shipment of LMOs intended for consumption. Some other developed and developing countries are also strongly in favour of requiring notification and advanced informed consent for all movements of LMOs covered by the Protocol.

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Ivory Trade Resumes

The CITES Standing Committee on 10 February authorised the first international ivory sales for nearly a decade. The Committee was following up on a decision of the CITES Conference of the Parties in July 1997 to ‘downlist’ Botswanan, Namibian and Zimbabwean elephant populations from Appendix I (species threatened with extinction, no international trade allowed) to Appendix II (species which might become threatened if international trade was not controlled). An 18-month moratorium on resuming trade in ivory was agreed to allow the countries involved to inventory and strengthen controls over stockpiled tusks, as well as export and import formalities. The Standing Committee agreed that Namibia and Zimbabwe had completed the preliminary requirements and could now proceed with their experimental shipments to Japan, the only country presently allowed to import raw ivory. Checks on Botswana’s compliance are still pending. The elephant populations will be retransferred to Appendix I if resumption of the trade proves to increase poaching.

Persistent Organic Pollutants Pact Progresses

From 25-29 January, some 350 delegates from 103 countries participated in the Second Session of the International Negotiation Committee (INC-2) for an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants (POPs). The meeting was held at the headquarters of the United Nations Environment Programme (UNEP) in Nairobi, Kenya. Governments are working to finalise the text of a treaty by the year 2000 that would aim to reduce and eliminate specified POPs. At the first negotiating session in Montreal last June (see Bridges Vol. 2 No. 5), consensus was reached on targeting 12 POPs: aldrin, chlordane, DDT, dieldrin, dioxin, endrin, furans, heptachlor, hexachlorobenzene, mirex, polychlorinated biphenyls (PCBs), and toxaphene.

UNEP Executive Director Klaus Töpfer was enthusiastic about the outcome of the meeting: 'I am confident that the constructive progress made this week in Nairobi during the second round of talks on a global treaty will produce a legally binding agreement by the year 2000 that will help safeguard people worldwide from these dangerous pollutants.'

Progress was made in parallel meetings of Negotiation and Implementation Groups. In the Negotiation Group, participants completed discussions on measures to reduce or eliminate releases of POPs into the environment. The Implementation Group focused on options for financial assistance and capacity building for developing countries, though future discussions still need to hammer out where the funding will come from. One area of concern is the scarcity of viable alternatives for developing countries seeking to control malaria-carrying insect populations without DDT – one of the chemicals covered by the treaty – and the concomitant need for technical and financial support from developed-country signatories.

Disagreement remains over the extent to which the issue of trade should be dealt with by a future POPs convention. Some countries state that trade in banned substances could be managed by other international agreements such as the Basel Convention and the Prior Informed Consent (PIC) Convention. Others argue that existing treaties may not adequately deal with POPs, and that a future convention requires strong trade measures since POPs travel across borders and over long distances, and do not break down naturally.

The INC-2 meeting set a high-water mark for the next negotiation session on the POPs protocol, tentatively scheduled for September or October 1999 in Geneva.

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Basel Liability Protocol Still Unconcluded

Negotiators failed to complete the draft Protocol on Liability and Compensation for damage resulting from transboundary movements of hazardous wastes and their disposal when they met for the eighth time on the subject from 11-15 January 1999. They now hope to finish the talks at a meeting tentatively scheduled towards the end of April in New Delhi, India.

Talks on the Protocol have been under way nearly six years, and the treaty was originally to have been adopted at the fourth Basel

Convention Conference of the Parties held a year ago in Kuching, Malaysia. Negotiators now aim to adopt the Protocol at the next Conference of the Parties, which will take place in Basel next December. Major hurdles remain to be resolved before that, however, leading many to doubt the text will be ready for adoption by late this year.

Among difficulties is finding consensus on a text that would override national waste treatment liability laws. Industrialised and developing countries are also split on setting up an international trust fund that would pay for clean-up and other costs in cases where liability cannot be established. Industrialised countries argue, *inter alia*, that since the so-called 'Basel Ban' prohibits transboundary movements of hazardous waste from OECD to non-OECD countries, it is not fair to ask them finance a compensation or emergency fund in response to toxic spills in developing countries. Establishing the chain of responsibility and insurance coverage is also difficult, particularly in case of illegal shipments. These might involve falsely labelled exports or hazardous wastes dumped without the knowledge of recipient country authorities.

The Basel Liability Protocol would be the first legal instrument to deal with liability and compensation ever adopted under an environmental treaty. Calls for similar instruments have been made in the context of the Rotterdam Convention on Prior Informed Consent for Hazardous Chemicals and Pesticides in International Trade, as well as the Biosafety Convention negotiations, but neither is likely to actually establish a liability regime in the near future.

Action Plan Adopted to Curb Fisheries Depletion

Delegates from more than 100 countries adopted an International Plan of Action for the Management of Fishing Capacity at the end of the 23rd Session of the Committee on Fisheries (COFI) of the FAO. The meeting was held in Rome from 15-19 February. The Action Plan will provide a first step in addressing over-capacity of the world's fishing fleet, which is generally agreed to be the main reason for declining fish stocks worldwide: there simply are too many boats chasing too few fish.

The FAO has recommended a 30 percent reduction in the capacity of the global fishing fleet to allow fish stocks to recover and keep catches at a sustainable level thereafter. Greenpeace has called for halving the global commercial fishing fleet by 2005.

The non-binding FAO agreement requires members to assess their fishing fleet capacity, maintain national records of their vessels, develop national capacity management plans and – most importantly – gradually eliminate subsidies that contribute to over-capacity in the fisheries sector. A recent World Bank study estimates that such subsidies amount to between US\$14 to 20 billion. OECD countries and China are thought to count for 75 percent of these subsidies.

Measures required by the Action Plan should be in place preferably by 2003, and by 2005 at the latest, but the plan's success will depend on how seriously governments will implement their commitments. Assessing and reducing over-capacity will be particularly difficult for developing countries, many of which are poised to expand their fisheries sectors.

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Codex Alimentarius to Address Milk Hormone, Again

Since the early 1990s, the European Union and the United States have pressured the Codex Alimentarius Commission to either provide justification for the prohibition of a bio-engineered bovine growth hormone, or to pronounce it safe. The hormone, called recombinant bovine somatotropin (rBST), is administered to dairy cows to boost milk production. Manufactured by the biotechnology giant Monsanto, rBST was approved by the US Food and Drug Administration in 1994, and is now used by an estimated 13,000 dairy farmers there. The EU declared the drug safe in 1990, but placed a moratorium on its sale in 1993 following consumer and political opposition. The moratorium is in force until the end of the century.

Codex Alimentarius sets internationally agreed food safety standards by specifying, *inter alia*, 'maximum residue levels' (MRLs) for veterinary drugs. Two Codex consultative committees have concluded that rBST does not present a danger to human health through milk, milk products or meat of cows treated with it, and the recommendation of a 'not specified' (i.e. unnecessary) MRL has been forwarded for the consideration of the full Commission meeting in late June. This decision is hotly contested by the EU, which is insisting on the completion of toxicological monographs by the Joint WHO/FAO Expert Commission on Food Additives, and on the Codex Committee on General Principles reviewing 'other legitimate factors' beyond strict science that would justify continuing the EU moratorium (see also Bridges Vol.2 No.6, page 12). The next meeting of the General Principles Committee will be held from 19-23 April in Paris.

The Codex decision is important because the WTO SPS Agreements encourages the use of Codex norms to determine human health-related trade measures. Measures stricter than those warranted by Codex recommendations are only acceptable if they are 'justified by science' and based on adequate risk assessments. The Appellate Body used these provisions to condemn Australia's import ban on Pacific salmon, as well as the EU's ban on beef treated with growth hormones. The latter case does not involve rBST, which increases milk production, but four other hormones used to boost lean muscle on cattle.

The EU's case may have received a boost from Canada, where health authorities on 14 January 1999 rejected rBST for sale in the country. Health Canada cited two newly-released studies as the basis for its decision: one showing that rBST posed no significant risk to human safety, but the other raising serious concern about its effects on the health of dairy cows, including significant increases in risk of mastitis, infertility and lameness. However, the Codex Committees are only concerned with human health, which studies so far show unaffected by rBST. Animal health standards are set by the International Office of Epizootics, whose recommendations can be used to justify trade measures taken to protect animal health. Countries are not obliged to apply the recommendations of either institution.

If the Codex Alimentarius Commission determines that there are no human health risks – or 'other legitimate factors' – in favour of forbidding rBST use, it will be difficult for WTO Members to prohibit imports of dairy products made using 'rBST milk'. This could put dairy product manufacturers at a commercial disadvantage in countries that have banned rBST use on animal health grounds. Monsanto, for its part, has said it would 'actively pursue' Canadian approval for the hormone, and possibly challenge the ban under NAFTA if all else fails.

New Programme on Globalisation and Human Development

UNCTAD and the United Nations Development Programme (UNDP) have launched a new programme on Globalisation, Liberalisation and Sustainable Human Development. The main objective of the programme, initially set to run from 1999 to 2001, is to enhance the ability of developing countries, particularly low-income developing countries, to manage their integration into the global economy in a manner supportive of sustainable human development.

In their introduction to the new programme, its sponsors note that the opportunities globalisation offers for achieving high and sustained growth to developing countries and countries in transition are 'beset by the risks of marginalisation and exclusion, economic insecurity and instability. The fundamental changes and increased volatility brought about by global economic integration have rendered both weaker economies and disadvantaged population groups more vulnerable to economic exclusion and impoverishment. Already sharp increases in inequality among nations and within them have become apparent.'

The programme, conceived as a response to such challenges, will form part of the follow-up to the High-Level Meeting on Integrated Initiatives for Least Developed Countries' Trade Development. It has global and country-level goals.

At the global level, it will:

- Develop a conceptual and operational framework for analysing the process of integration of developing countries, as well as countries with economies in transition, into the world economy. The framework will examine the relationship between sustainable human development goals, including poverty alleviation, equitable distribution of growth, environmental protection and economic advancement of women, and global integration policies in the areas of trade, investment and finance.
- Assist developing countries in strengthening their capacity to participate effectively in multilateral trade and investment negotiations, and in developing their own positive agenda.
- Promote better understanding of linkages between globalisation and sustainable human development.

At the country-level, it aims to support 10-12 low-income developing countries and countries in transition in:

- Acquiring the necessary policy and institutional tools for managing their integration in the global economy in a manner that is supportive of sustainable human development.
- Increasing co-ordination between policy development at the macro and micro levels, and promoting institutional capacity development.
- Developing capacity to monitor both the implementation of policy recommendations and their impact on sustainable human development over the medium and long term.
- Developing networks of academic institutions and business schools, as well as other civil society groups to advise the private sector and governments.

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Regional Integration Agreements: A Tool for Sustainable Development?

Nearly 120 representatives of regional economic integration organisations, academic institutions and non-governmental groups met in Geneva from 1-2 February to discuss regional approaches to trade policy and sustainability. While conventional wisdom has it that approximation of environmental and social standards is easier at the regional than at the global level, nearly all speakers noted that, even within regional blocs, different levels of economic development and an unequal power structure were the greatest obstacles to forging common environmental and economic policies designed to promote sustainable development. National priorities differ widely both in emerging trade arrangements such as the South African Development Community or the Free Trade Area of the Americas, as well as in established entities such as NAFTA, Mercosur or the European Union.

Standard Setting and Co-operation

Regional trade arrangements that have an explicit environmental component rely on two basic approaches: standards harmonisation between member countries and programmes designed to foster regional co-operation in a number of areas, which can range from fisheries to chemical and hazardous waste management.

The degree of environmental and social harmonisation depends on whether the group focuses primarily on integration or on trade facilitation. Regional schemes centred on pure trade facilitation tend to emphasise environmental co-operation. However, if successful, trade facilitation can foster policy integration: increased trade between neighbours brings in its wake the necessity to address competitiveness concerns through 'levelling the playing field'. This interdependence can drive regional blocks to mobilise the political and financial instruments necessary to tackle environmentally and socially related trade distortions arising from different levels of economic development.

The European Union, which is a political as well as an economic entity, has focused on harmonisation of standards and setting binding norms for all member governments. Mercosur and NAFTA have opted for an obligation not to lower existing standards and to enforce national legislation. Both blocs also address cross-border environmental issues through intergovernmental co-operation.

Other regional groupings, including the South Asian Association for Regional Co-operation (SAARC) and the Association of South East Asian Nations (ASEAN) do not deal with standard setting but have collaborative programmes in place in a number of fields, including social development and the environment. APEC emphasises economic and technical co-operation, with modest social development or environmental goals. The South African Development Community (SADC) with its primary focus on economic development and investment facilitation also has an extensive Environment and Sustainable Development Programme which, however, lacks co-ordination with the region's economic integration process. The flagging Free Trade Area of the Americas (FTAA) process is mired in controversy over the inclusion of environmental or labour concerns in the future agreement.

Institutions and Civil Society Participation

The institutional capacity of regional trading blocs to deal with sustainability issues varies according to their standard setting role. The EU and NAFTA both have set up permanent institutional structures to administer the environmental and labour dimensions of the agreements. Other trade blocs rely on working groups or

periodical ministerial/senior officials meetings to move the agenda forward on these issues. Several participants stressed that where integration is loose, it is often more effective to focus on reinforcing national legislative and enforcement capacities than on intergovernmental efforts.

While many participants noted the potential of regional integration schemes to promote sustainable development, equally many questioned the actual contribution made by most of these regimes so far. They pointed out that environmental institutions were weak compared those created to promote trade liberalisation, and that in the absence of real integration neither poverty alleviation nor other human development goals were likely to find their way to the top of the trade agenda. For instance, the NAFTA Commission for Environmental Co-operation was not able to impact either trade, agricultural or environmental policy, a former official said.

Only a few regional trade blocs have developed mechanisms for civil society input. The European Union organises informal consultations on trade-related issues with a range of non-governmental actors. NAFTA has several advisory groups, including the Joint Public Advisory Committee, which meets in conjunction with the NAFTA environment council. SAARC convenes Eminent Persons Groups to advise member governments on politically sensitive topics, Mercosur provides access business, labour and civil society in its working groups, and the FTAA process has set up a 'mailbox committee' to which civil society may address concerns regarding the creation of the world's largest free trade area. However, dialogue participants perceived most regional trade blocs as unresponsive to civil society concerns.

Agriculture

Agriculture, dialogue participants agreed, offered the best example of the direct link between trade and sustainable development. Regional experience has shown that market access concessions are not automatically offset by export gains or in other areas.

In the case of NAFTA, participants pointed out that agricultural liberalisation had brought both social and environmental ills to Mexico: decreased government intervention and increased foreign competition have affected price stability and rural employment; local farmers have turned to more intensive methods of cultivation; and pressure on forest resources has grown. Many participants stressed that developing countries must make food security and other non-trade concerns central to the WTO's forthcoming deliberations on agriculture. They emphasised agriculture's unique role in promoting social stability and self-sufficiency in food, and called for special and differential treatment with regard to agricultural liberalisation in developing countries. For instance, subsidies aimed at ensuring food security rather than agricultural exports should not be prohibited in the final agricultural package.

Conclusion

Regional integration offers complementary and needed possibilities to address environmental and other sustainable development concerns than the multilateral trading system. Regional integration schemes can address equity issues between members and take into account a variety of non-trade concerns. Although dialogue participants felt that few economic integration initiatives had lived up to their potential, they agreed that regional schemes can make a significant contribution to sustainable development by helping overcome the disparities within and between nations.

International Market Access for Wood Products: Post-Uruguay Round Issues

By Steven Ruddell, James A. Stevens and I.J. Bourke

The Uruguay Round of multilateral trade negotiations improved international market access through the creation of schedules for reducing tariff trade barriers and by converting non-tariff barrier (NTB) protection policies into tariff equivalents. For forest products, an important achievement was to phase out tariffs on pulp and paper while reducing tariffs on other wood products by 50 percent from negotiated rates. With regard to non-tariff barriers, two agreements are of special interest to forestry: the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) which could improve conditions surrounding inspection and quarantine; and the Agreement on Technical Barriers to Trade (TBT) which could limit the use of technical regulations and product standards for other than legitimate health, safety, product quality, and environmental protection purposes.

These agreements are particularly noteworthy in their implications for employing trade policy for accomplishing environmentally motivated objectives. Although it has been questioned whether the GATT/WTO is an appropriate instrument for advancing an environmental agenda, the Uruguay Round did raise some specific issues related to the environment, including the interaction of two existing GATT/WTO principles on the use of trade policy for accomplishing environmental goals: the Most Favored Nation and National Treatment principles; and the creation of barriers to trade through the application of country product standards addressed by the TBT and the SPS Agreements.

The National Treatment (NT) principle addresses how countries may treat imports. It requires that any restriction placed on imports (such as product standards) be no less favorable than those applied to domestic products so that standards do not create unnecessary obstacles to trade. The NT principle also restricts, 1) product standards that discriminate between domestic and foreign 'like products' and, 2) product standards on imports that reflect how a product is produced; i.e. process and production methods (PPMs). The interpretation and application of this principle is a concern for forest product market access.

The second principle that affects forest product market access and trade is the Most Favored Nation (MFN) principle. Through the MFN principle, Member nations extend any negotiated tariff reductions agreed to by two countries to all other Members. In addressing market access concerns, the MFN principle does allow trade restrictions where product standards are necessary for protecting human, animal, or plant life/health and are the least trade restrictive instrument available. The extent to which these two principles have been used to justify protectionist trade policy has been the center of several trade dispute settlements by the WTO and have important implications for the international forest products industry.

Non-tariff Barriers

Several recent developments that affect future market access and trade in forest products have the potential to become new NTBs:

Several recent developments that affect future market access and trade in forest products have the potential to become new non-tariff barriers:

- environmental and trade restrictions on production and exports in developed countries that affect international trade patterns;
- quantitative restrictions on imports of 'unsustainably produced' timber products;
- the use of ecolabeling and 'green' certification as import barriers.

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- quantitative restrictions on imports of 'unsustainably produced' timber products;
- the use of ecolabeling and 'green' certification as import barriers.

A specific example of these developments can be seen in the 'systems-based' approach of the International Organization for Standardization (ISO). Voluntary international standards, such as the ISO 14001 Environmental Management System (EMS) standards, are endorsed by the TBT Agreement and were adopted in 1996 to provide organizations with internationally recognized standards by which to manage their environmental impacts. Concurrent with these EMS standards, ecolabeling and resource labeling such as forest product certification have also emerged as 'product-based' forest policy tools which supporters believe may promote sustainable forest management (SFM) practices internationally.

Systems-based Approaches

The ISO has developed and published the ISO 14001 Environmental Management System (EMS) standards. Since they are voluntary in nature and exclude performance standards, these management system standards are consistent with the NT principle of the GATT/WTO. The importance of these standards is increasing. For example, the Asia Pacific Economic Cooperation (APEC) regional trading block has agreed to endorse the use of ISO 14001 EMS by Member states. APEC, whose members include 18 nations from North and South America, and the Pacific Rim, imported more than 76 percent or about US\$5.5 billion dollars of US wood products in 1995. By the end of 1997, five large scale pulp, paper, saw-milling, and forest holding companies in Brazil, Finland, Sweden, and Indonesia had registered to ISO 14001. In 1998, the eastern region of International Paper's forest resource division became the first US-based forest products company to register to ISO 14001.

Forest sector guidelines for implementing ISO 14001 within woodland operations were approved by ISO earlier this year. As the first sector-specific guidelines, technical report ISO/TR 14061 provides assistance to forest management companies wishing to adopt sustainable forest management practices.

Product-based Approaches: Ecolabels/Certification

Current GATT/WTO-legal trade-related measures for addressing international environmental impacts of forest product production include voluntary ecolabeling or resource labeling such as forest product certification. Ecolabeling and forest product certification are market-based instruments for communicating environmental attributes of a product. Different approaches to forest product certification have expanded the available options for communicating SFM to the buyers of forest products, making these initiatives potentially significant for market access of forest products.

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International Market Access for Wood Products, continued from page 17

Government and private ecolabeling schemes – covering many different types of products such as textiles, paper, footwear, horticultural products, vegetables, paint, light bulbs and lubricants – exist in more than 25 developed countries. With the exception of pulp and paper products, ecolabeling of forest products has not significantly distorted trade patterns. Since all ecolabeling schemes require some level of life cycle analysis (LCA), they may eventually create non-tariff barriers for imports, especially from developing countries who see these schemes as protectionist barriers to trade. For example, in 1996 the European Commission adopted copying paper ecolabeling standards which included criteria for water pollution, sulfur emissions, energy efficiency, and a commitment to forest management which would benefit largely European producers while creating non-tariff barriers to trade for Brazilian pulp and paper. This year, in an effort to minimize the potential trade impacts associated with different government and private ecolabeling scheme requirements, the ISO published internationally recognized ecolabeling guidelines. Among the requirements, these guideline standards classify ecolabels (Type I, II, and III) based on the environmental claims that can be made about products and the level of LCA that is required.

Resource labeling in the forest products sector has taken the form of forest product certification, a tool for providing credible environmental forest management information to consumers of wood products. The objectives of such schemes are to provide access to environmentally sensitive markets and to attain a well-managed forest, but the marketing aspects seem to have become the primary focus of most schemes. Since forest product certification is concerned with the environmental impacts at one location in the forest-consumer supply chain (the forest), resource labels provided by forest product certification are sometime referred to as a single-issue ecolabel.

The best-known forest certification scheme is operated by the Forest Stewardship Council (FSC), whose approach to promoting sustainable forestry practices differs markedly from the ISO's. The FSC has developed a set of performance standards which are used by FSC-accredited certifiers to independently certify the forest management practices of a land owner. Nevertheless, applying either the ISO/TR 14061 guideline or the FSC standards communicates a commitment to practicing sustainable forestry and might provide a competitive advantage within the environmentally sensitive markets of North America and Europe.

Trade Implications of WTO Rulings

Recent WTO rulings on 'like products' have particular importance to and will affect future market access within the international forest products industry. The NT principle prohibits product standards that discriminate between domestic and foreign products that are 'like products'. Within the GATT/WTO rules, interpretation of 'like products' provides much leeway for the WTO panel reviewing the dispute. When determining 'like products', Article III of the GATT provides a narrow and broad test. A narrow interpretation has been used when imported products are subjected to taxes that are not applied to 'domestic like products', allowing governments more flexibility in differentiating products and discriminating against imports. A broader interpretation states that 'directly competitive or substitutable products' must be taxed similarly, restricting governments from differentiating products.

Since all ecolabeling schemes require some level of life cycle analysis, they may eventually create non-tariff barriers for imports, especially from developing countries who see these schemes as protectionist barriers to trade.

An example of this interpretation came in the Canadian Periodical case AB-1997-2 (World Trade Organization, 1997). In this case the judgment confirmed the importance of substitutability in determining 'like products'.

The national treatment principle of the GATT prohibits restrictive trade measures based on the way a product is produced, i.e., the PPM used. The GATT also prohibits quantitative restrictions such as embargoes. In the recent precedent-setting Shrimp-Turtle case, the WTO Appellate Body ruled against a US import embargo on marine shrimp from countries that do not require a turtle exclusion

device on shrimp trawlers (AB-1998-4). The Appellate Body held that the manner in which the ban was applied constituted 'a means of arbitrary and unjustifiable discrimination' inconsistent with the requirements of the chapeau of GATT Article XX. But, the Appellate Body for the first time ruled that a trade measure aimed at the protection of 'exhaustible natural resources' – even one essentially based on a PPM, such as the harvesting method used by shrimp trawlers – could fall under the scope of the exceptions provided under GATT Article XX(g). The complainants challenged this

interpretation, with India arguing that it would 'open the floodgates to unilateral measures aimed at discrimination based on processes and production measures' (see Bridges Vol.2 No.7, page 9 and Vol.2 No.8, page 8 for more information, *ed.*)

Although the implications of these WTO rulings for forest product market access and trade are not yet clear, they provide evidence of a trend that will affect the use of voluntary ecolabels and resource labels such as forest product certification. Ecolabeling and forest product certification are potentially problematic within the context of the TBT agreement and the NT principle. The TBT seeks to ensure that product standards are not used as disguised protectionist measures and to reduce the extent to which product standards operate as barriers to market access. The environmental benefits communicated by ecolabels and resource labels are not reflected in the product's physical characteristics. Both ecolabeling and forest product certification rely on non-product related PPM criteria (i.e. environmental attributes) which are prohibited by the TBT. Ironically, even voluntary product standards which utilize PPMs can be discriminatory trade measures if motivated by protectionist intent or are arbitrarily applied.

To date, WTO dispute settlement panels have always ultimately ruled against trade measures using PPM distinctions that discriminate against 'like products'. In doing so, the WTO has sent a strong message that countries having high domestic environmental standards can not use trade policy to force their standards on the rest of the world, even if the country imposing the trade policy applies the same requirements to their domestic products. Nevertheless, differentiation of environmental product characteristics will continue to be difficult if future WTO rulings apply the broader interpretation discussed above. Ecolabeling and forest product certification could directly conflict with the TBT agreement and NT principle if future WTO panels continue to oppose non-product related distinctions of forest products.

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African Priorities for the Trade and Environment Debate

Participants to the ICTSD Regional Trade and Environment Seminar for Governments and Civil Society identified five focus areas for African policy-makers and civil society in the context of the multilateral trading system and the environment. The roundtable, held in Harare from 10-12 February 1999 in conjunction with the WTO regional trade and environment seminar for English-speaking Africa, aimed to provide region-specific input to the upcoming WTO High-level Meeting on Trade and the Environment. Among the nearly 100 participants were representatives of non-governmental and academic institutions, as well as governments, the WTO Secretariat, UNCTAD and UNEP.

African experience starkly illustrates the link between poverty and environmental degradation. In sub-Saharan Africa, the poor – in spite of frugal consumption patterns – bear the brunt of land degradation, deforestation, loss of bio-diversity and contamination of groundwater supplies, as well as increasingly crowded and polluted cities. A participant commented that while an EU study showed that 50 percent of Europeans placed a higher priority on environmental protection than on development or GDP growth, any similar exercise done in a developing country would reveal that 'the public's choice there would be economic development.'

Against this background, African nations face a particularly challenging task in ensuring that trade contributes to 'the objective of sustainable development', as required by the Marrakesh Agreement preamble. In many cases, poverty alleviation is likely to bring more palpable environmental benefits than policies aimed at environmental protection as such.

Seminar participants recognised that increased networking was needed to influence WTO negotiations, exchange experiences, raise awareness and enhance regional co-operation. Second, there is an urgent need to build capacity in a number of areas, including improving negotiating skills, raising awareness about trade and environmental issues, training in wildlife management and trade, developing expertise in trade and sustainability issues in the African context, and strengthening sub-regional trade and environment treaties.

Another major priority is the co-ordination of African policies and positions. While African countries should push for strengthening the dispute settlement mechanisms of multilateral environmental agreements, and promote policy co-ordination between MEAs and the WTO, they should uphold the WTO's 'least trade restrictive' principle, and oppose amendments to GATT Article XX, as well as denounce unilateral and extra-territorial trade measures.

Seminar participants felt that it was particularly important to make full use of civil society expertise in trade and environment-related matters as many African governments lack such expertise and the resources to develop it. The private sector should also be involved in shaping trade and environment policies. A consultative mechanism should be established with all stakeholders for better articulating African interests in intergovernmental fora.

And, finally, the importance of research, advocacy and information dissemination should not be underestimated. It is particularly important to inform the North about Southern sustainable development priorities, and to clarify the relationship between trade liberalisation, poverty and environmental degradation.

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aim to provide information and analysis on the interface between trade and sustainable development for the growing number of actors involved in the debate worldwide. ICTSD and its partner organisations gratefully acknowledge the support of the Swiss Federal Government (BAWI) for Bridges, and the John D. and Catherine T. MacArthur Foundation for Puentes and Passerelles.



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