

WTO Holds First-ever High-level Meetings on Sustainable Development But Environment and Development Agendas Still Don't Mesh

Three themes echoed persistently throughout the high-level symposia on trade and environment and on trade and development convened by the WTO Secretariat in March: regret that two separate meetings were held instead of one on sustainable development; the imperative need for greater policy coherence within governments and between intergovernmental institutions; and a strong demand for a thorough assessment of the impacts of the Uruguay Round before embarking on a new broad-based round of trade liberalisation. Above all, however, governments used the well-attended meetings to reiterate their initial negotiation positions regarding the upcoming round of WTO negotiations.

The Rio Bargain

Many participants from both governments and civil society expressed disappointment that the symposia focused on environment and development separately, and thus did little to dispel developing countries' distrust of 'trade and environment' as an essentially Northern agenda, and one which competes with the Southern 'trade and development' agenda. They noted that the industrialised countries' failure to keep up their end of the 'Rio bargain' had bred scepticism about their seriousness in promoting sustainable development.

The necessary transfers of financial resources and technology to developing countries – estimated at the time of the Rio Earth Summit at US\$125 billion a year – have not even partially materialised. Rather than bring environment into the WTO 'through the back door', Ecuador and Malaysia called on industrialised countries to review their commitments to Agenda 21, the environment and development blueprint adopted in Rio. Many speakers noted that eliminating poverty would be the greatest contribution to sustainable development worldwide and that the Rio consensus was based on the principle that countries had 'common but differentiated responsibilities' for restoring the earth's ecosystem in view of their different contributions to global environmental degradation.

Calls for Assessment

A large number of developing country governments called for an assessment of the anticipated and actual benefits of the Uruguay Round before starting new negotiations. They pointed out that income disparities between and within nations had widened, and that most nations still faced grinding poverty, with more than a billion people lacking basic services such as sanitation, safe drinking water, housing and education.

Cuba, the Dominican Republic, Honduras, Indonesia and Pakistan said

in a joint statement: 'The argument is not that trade is responsible for the discouraging development situation. Rather, the contention is that this situation exists in the context of increasing liberalisation of trade. And, hence, there is an obvious need to critically examine the role of the global trade regime in development.' Together with India, Egypt and many other developing countries, they regretted that all WTO Members had not accepted their request for an 'empirical cross check of [the Uruguay Round's] anticipated benefits' by the WTO Secretariat.

Several non-governmental organisations requested a study of the environmental and social impacts of the Uruguay Round. Many, including the Third World Network, the Research Foundation for Science, Technology and Ecology, and Friends of the Earth, called for a moratorium on future liberalisation at least until the Uruguay Round had been assessed and its adverse effects rectified.

While they did not back the call to delay further liberalisation talks until the Uruguay Round had been analysed, some industrialised countries – and most notably the United States, the European Union and Canada – said they would conduct a study on the future round's likely impact on sustainable development.

Policy Coherence

Governments, as well as non-governmental and intergovernmental organisations, nearly unanimously called for greater coherence between international monetary and trade policies. 'Trade is not an autonomous force acting in a vacuum,' said UNCTAD Secretary General Rubens Ricupero, pointing out that the spreading Asian financial crisis had underlined the need for 'a new financial architecture'. He suggested it was not reasonable to 'stubbornly refuse to acknowledge that there is something wrong with the system itself' when significant parts of the developing world had seen the fruits of decades of economic growth and poverty reduction evaporate in a matter of weeks (see also comment on page 3). Alec Erwin, South Africa's Minister of Trade and Industry, called for debt relief and financial policy reforms to be handled concurrently with trade negotiations.

No Shift in Negotiating Positions

Beyond these three themes, most governments reiterated positions already stated in the preparatory sessions for the next round of WTO negotiations. India, Pakistan and Egypt strongly advocated limiting further trade liberalisation negotiations to agriculture and services, and focusing the major part of the forthcoming talks on correcting imbalances in existing Agreements and their implementation. *Continued on page 2*

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In this regard, developing countries singled out the Agreements on agriculture, textiles and clothing, trade-related intellectual property rights and anti-dumping, as well as reviewing and 'operationalising' special and differential treatment provisions in favour of developing countries across all Uruguay Round Agreements.

The European Union, Canada, Japan and others, argued that a broad-based 'single undertaking' was the only way to adequately address developing countries' concerns. In such context, the EU said it would put all its industrial tariffs on the negotiating table, and urged developing countries to embrace the round to address their concerns about special and differential treatment, the difficulties they were experiencing in implementing the Uruguay Round Agreements, as well as correcting some of their imbalances through reviews of existing Agreements.

The initial negotiation positions and priorities of WTO Members have been reported in detail in the four previous issues of Bridges.

Summaries of the main points made specifically concerning trade, environment and development can be found on pages 7 to 10.

Cross-cutting issues: TRIPs

Some issues, such as the review of the Agreement on Trade-related Intellectual Property Rights (TRIPs) cut across both seminars. In general, developing countries felt that during the Uruguay Round they had been coerced into accepting a treaty that placed them at a considerable disadvantage. Professor Srinivasan of Yale University called on developing countries to work for the removal of TRIPs from the WTO altogether and to place it in the World Intellectual Property Organisation instead. India stressed the need to reconcile TRIPs provisions on the protection of plant varieties and life forms with those of the Convention on Biological Diversity (CBD), which requires that benefits arising from the conservation and sustainable use of biodiversity be equitably shared between those who conserve the resource and those who exploit it commercially.

Many developing countries called for a revision of the TRIPs provisions regarding environmentally sound technology and products. According to India, the objective of disseminating these could be met 'either by reducing the patent term or by imposing an obligation on intellectual property owners to sell these technologies and products on affordable terms to any interested party which has an obligation to adopt them under national law of another country or under international law.'

Transparency and Civil Society Participation

Governments' views on public participation in the WTO offered no surprises. The US said it would continue efforts to build consensus on document derestriction and opening dispute settlement panel and Appellate Body sessions to civil society observers (including the private sector), as well as press for the right of non-governmental groups to submit friend-of-the-court briefs to panels. It also called for a broad-based civil society consultative forum or advisory committee to 'provide regular and continuous input to help guide further evolution of the WTO.'

Canada, Norway and several EU member countries also highlighted the importance they attached to improving the WTO's accountability. 'To have legitimacy, the trade system must also have the support and understanding of all of us, experts and non-experts,' Sir Leon Brittan said, adding that the EU was active in 'putting forward ideas to improve transparency.'

Brazil, Bolivia and India stressed that it was up to governments to ensure that the views of all citizens were taken into account in the development of trade policy. Colombia called government the 'purest expression of civil society', and India stated that 'given the contractual nature of the WTO embodying legal relationships between sovereign governments, there would be no place for NGOs or civil society playing a direct or indirect role in things such as

negotiations or the dispute settlement procedure. We, however, stand ready to consider availability of information to civil society through early de-restriction of documents and such like measures arrived at by consensus within the WTO.' Egypt and Cuba said they would support granting NGOs observer status at the Committee on Trade and Environment provided this could be done in a manner that would not alter the contractual character of the WTO. Japan expressed doubts about whether NGOs really were representative of the poor or consumers at large.

A large number of civil society organisations said the WTO needed to be more responsive to their concerns. David Runnalls of IISD suggested the creation of a multi-stakeholder group to advise the WTO Director General, as well as the establishment of a standing conference on trade and environment composed of both government and civil society representatives. Hungary said

the proposal deserved discussion, but due to the WTO's overcrowded agenda, the topic should be dealt with in UNCTAD.

The Third World Network called the WTO 'probably the most non-transparent of international organisations', not least because 'its key decisions are worked out in informal meetings' between powerful delegations. It also drew attention to the need to circulate to the public, at least six months before decisions are taken, any proposals for changes to the rules, or new agreements/commitments 'so that in each country civil society (including groups representing labour, business, consumers, the environment, health and all other interests) have a full opportunity to study them and influence their parliaments and governments' (see related article on page 13).

Dispute Settlement

More equitable access to dispute settlement – a topic frequently brought forward in both seminars – was perhaps the issue of concern to both developing and least-developed countries that gathered the most support from developed countries. Many of them endorsed the Colombian proposal to set up an independent Advisory Centre on WTO Law for developing countries, for which Norway has already pledged US\$1 million. The European Commission, however, continued to advocate the creation of an autonomous unit within the WTO Secretariat to enhance the latter's ability to 'provide case-specific legal advice to developing countries, without undermining its impartiality.' This proposal was not backed by any other delegations (see also Bridges, Year 3, No.1, page 5).

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The most important issue to be addressed by the international community, if it is to facilitate sustainable development, is that of poverty alleviation. Increased market access would mean increased resources which can foster sustainable development by being directed towards environmental protection through appropriate domestic policies.

Indian Submission to the High-level Symposium on Trade and Environment

Trade and Development: Towards a New Consensus

By José Manuel Salazar-Xirinachs

From 15 to 18 March, the WTO convened two symposia in Geneva to reflect on some of the major challenges confronting the world today: the linkages between trade, development and finance, and between trade and the environment, and more generally about the future of the world trading system. Simultaneously, the Inter-American Development Bank was holding in Paris its annual meeting and associated conference, which focused largely on the financial crises and the policy responses to overcome it. The intellectual climate at these symposia reflected a variety of different perceptions about what is going on in the world today, and provided a preview of the debate that will take place in the next round of multilateral trade negotiations. These short notes select some of the issues discussed in these events for further comment.

Trade and finance

One issue on almost everybody's mind and concerns is the relationship between trade and finance. 'A crisis, yes, but what should we call it? Asian, financial, economic, global?', asked UNCTAD's Secretary General Rubens Ricupero. His preference is to call it a 'crisis of development', for various reasons: it has largely so far reserved its malignant force for the developing or transition regions of the world, it has reversed the trend towards a narrowing of the gap between rich and poor and it has thus provided grounds for questioning the process of development in its present form. Also, because events have paradoxically shaken some of the most advanced among developing countries, not the extremely weak and poor. If development is a process that should steadily reduce the degree of vulnerability of economies to external shocks, how then can one explain that some of the worst affected have been precisely countries in the avant-garde of development?

Ricupero is right in pointing out that this is not what traditional development theories told us. But is this really a crisis of development? The 'vulnerability paradox' is easily explained. The answer lies in the new forms of interdependence that characterize the global economy, precisely the relatively most advanced sectors and countries. The present crisis adds to the lessons we had learned from previous episodes. The Tequila crisis taught us that liberalization plus macroeconomic discipline is not enough to reap the benefits of financial integration, and that the composition of consumption and of capital flows is important. That crisis started in Mexico and claimed Argentina as a victim, but, partly as a result of the rapid international reaction in support of Mexico, and the back-up funds provided, the rest of the world was largely unaffected.

The Asian crisis began in Thailand and spread all over Asia. However, while at least initially it had important real effects throughout Latin America through increased competition by cheaper goods and reduced demand for exports, it did not cause major capital outflows from Latin America. This partly reflected the fact that Latin America has been working hard over the years pursuing economic reform and strengthening its economic fundamentals. It was not until the Russian crisis that the immune system of Latin America succumbed to the contagion. The analysis of contagion has fallen on a combination of symptoms, including credit booms and asset-price bubbles, excessive accumulation of short term debt by corporations and poor quality of the loan

portfolios of banks, and high unhedged foreign currency exposures. Elements such as these restricted the capacity of monetary authorities to respond with the traditional confidence building package to defend their currencies with interest rate increases. And when the interest rates finally increased, this provoked economic slowdown, collapse in asset prices and bankruptcies. The analysis of contagion has underlined the critical role of sound institutions governing the private sector. The attention has also focused on institutional issues related to corporate governance, bankruptcy laws, prudential regulation and supervision.

Market optimists seem to have discovered that, just as many parts of the world were getting to the promised land of financial integration, there is a worrying side to it. This is leading to some revision of the conventional wisdom on capital markets liberalization and sequencing, and to restating the case for sound institutions and appropriate regulatory frameworks. In particular, Chilean style taxes on short term capital inflows have acquired new esteem. But this is no paradigm change, only a re-balancing of the most extreme forms of free market optimism.

This is not the first time that the financial component of the global economy disrupts the growth of trade. In the 1930s, countries erected barriers to protect themselves against the international economy. This resulted in what we now know as the Great Depression. The main lesson for present circumstances is that protectionism would be a serious mistake. Maintaining a free flow of goods and investment is the best way to ensure an early recovery. Recently, we have seen an example of a country facing a financial crisis that did not turn inward. In the wake of the 1994 peso crisis, Mexico, partly because of its NAFTA obligations, did not raise barriers towards its North American partners. By all counts, export growth to the United States in the next year helped bring Mexico rapidly out of its 1994-95 crisis and resume normal growth.

Solutions to the financial and demand management issues fall under the jurisdiction of international financial organizations and the coordination among the major industrial countries, not under the WTO or regional trade negotiations. But, given the prospect of initiating a new round of global trade negotiations and the vitality of regional trading arrangements, a key question is: what is the role of trade and trade policy in overcoming the crisis and more largely in development? How could the agenda of the new round of multilateral trade negotiations be defined to better promote the objectives of all WTO member countries, and of developing countries in particular? These were basic concerns of many interventions in the symposia.

Trade and Development

As regards the role of trade in development, there is no major disagreement on the fundamental proposition that international trade and investment are the major engines of growth for developing countries through many mechanisms: foreign exchange earnings, learning, technology transfer, innovation, and productivity improvement. International trade rules could also have a positive effect for market development, transparency and good governance.

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Conclusion

The many high level officials from capitals and missions in Geneva who participated in the meetings attested to the importance governments attached to the symposia, as did the record number of statements made from the floor. Although the meetings did not involve negotiations or produce final conclusions, the four days provided a welcome occasion for the expression of a broad range of views from invited speakers, governments and civil society participants. Considering the controversial subject matter, that in itself was a positive achievement, and as such deserved much of the praise many participants bestowed on the meetings' initiators and organisers. Nevertheless, two elements in particular kept the high-level symposia from achieving their full potential: the fact that their inextricably inter-linked themes were split into two meetings instead of merged into one on sustainable development; and the timing of the two events.

By casting environment as an essentially Northern priority, and development as a basically Southern concern, the meetings may well have contributed to mutual distrust about linking sustainable development goals with the multilateral trading system. To overcome misgivings about green protectionism and the use of unilateral and extraterritorial trade measures on environmental grounds, WTO Members must address environmental concerns within a broader sustainable development framework that also includes structural concerns such as equity, economic development, increased market access and poverty alleviation.

Both sides – and too often it was a question of sides – were perhaps inclined to take inflexible positions because the two events took place during the period when the WTO's post-2000 negotiation agenda is being shaped: the vast majority of government interventions clearly consisted of pre-negotiation statements rather than an open-minded exploration of different interests. As a possible way forward, South Africa's Minister of Trade and Industry Alec Erwin called on the international community to 'disentangle the different objectives of the various negotiations that are possible in the coming round and in the coming years.' For instance, while the world's financial system and debt relief are not matters for the WTO, they need to be handled concurrently with discussions about the trade system in order to achieve the overall objective of sustainable development.

'In the overall objectives of the world economy, we will have to deal with the fundamental questions of the systemic equity of the world economy and the sustainability of the world economy,' Minister Erwin said. This would require addressing labour and labour rights, social development and environmental protection. 'These are matters of common interest but if they are perceived to be matters of negotiating advantage for the commercial or economic benefit of one group of countries against another, we will make the serious error of not achieving agreement on these crucial aspects which underpin the very existence of the world trading system.'

Detailed information on the Symposia, including copies of statements, summaries prepared by the International Institute for Sustainable Development and videos of both sessions can be found at the WTO's internet site:

<http://www.wto.org/wto/hlms/highlevel/htm>

NGO Views on WTO and Sustainable Development

The framework that I think all of us should be adopting is that of trade, environment and sustainable development and not just the narrow topic of trade and environment. This, of course was the whole spirit of Rio. Some members of the environment community call this the principle of fair shares in the environmental space, that is: the rich nations and the elite of the South should bear the cost of changes in production and consumption patterns while poor people everywhere and developing countries should be given the economic and environmental space to fulfil their right to development.

If the aim of the WTO is sustainable development, then liberalisation should be only a means when appropriate – and when it is not appropriate, it should not be pursued. A deep understanding of the conditions required for liberalisation to have positive effects is urgently required. When those conditions are not present, liberalisation should not be pursued.

In cases where there are negative effects, synergy can not be claimed between liberalisation, environment and development. A deep and honest review of the Uruguay Round Agreements is required, and sections of these Agreements should be amended when it is found that they impede or undermine sustainable development. In the meanwhile we should have a moratorium on any new round or any new issues in the WTO if civil society is to be convinced or if the developing countries – or least many of them – are to be convinced that we are serious about changing the WTO towards sustainable development and not have a WTO that is obsessed only with liberalisation as an end in itself.

Martin Khor, Third World Network

Perhaps the most unfortunate aspect of these meetings is the physical separation of the issues of trade and environment from trade and development. Those of us believe that – unlike trade – sustainable development is an end in itself, believe that it is not possible to separate the environmental issues from the sustainable development issues.

I would argue that trade liberalisation with proper safeguards can contribute to the achievement of sustainable development. In some cases the income generated by increased market access and trade could be critical to finding the large sums of money which developing countries will require to make the transition to sustainable development. But the trade community is in danger of losing its constituency for liberalisation with both the environment and the development communities North and South.

Much has been made of the failure of the Rio bargain. I think the Rio bargain failed principally because the countries in the North failed to take the Northern agenda particularly seriously. The Northern Agenda of climate change, deforestation and biodiversity has not been a high priority for most Northern governments since the time of Rio. As a result, the other part of the bargain, which is trade, access to markets, technology transfer and finance has also fallen off the table. If we are right that trade liberalisation is not on its last legs but on shaky ground in many Northern countries, Northern governments will be pressured to include sustainable development considerations in the next round; I would suggest to Southern colleagues that that offers a real possibility for a new bargain.

David Runnalls, International Institute for Sustainable Development

Dispute Settlement Corner

Conditional Sanctions Applied in Banana War

The United States on 3 March followed through on its threat to start imposing 100 percent import tariffs on a wide range of European products worth US\$520 million in retaliation to what it considers the European Union's non-compliance with WTO rulings on the EU's banana import regime. Technically, the tariffs are called a 'contingent liability' or 'bonds' exporters must post with US customs while waiting for a WTO arbitration on the appropriate level of US trade sanctions against the European Union in the banana dispute.

The arbitrators' decision was to be delivered on 2 March, and the US was expected to request authorisation to start levying duties on European exports on the following day. But, instead of determining the dollar amount of damage to US banana companies, the WTO arbitrators issued an 'initial decision' to the parties asking each side to provide more information by 15 March. The arbitrators also said they could not determine the proper level of retaliation 'before we have reached a view on whether the revised EC regime is, in light of our and the Appellate Body's findings in the original dispute, WTO consistent.' The compliance ruling is expected on 12 April.

The panel asked the US to submit a new calculation on the business lost to its companies in the EU due to the alleged WTO inconsistency of the EU's banana import regime. It also requested the EU to justify its assertion that the amended regime does conform with WTO rules, particularly with regard to the maintenance and the level of separate quotas for Latin American bananas and those from African, Caribbean and Pacific (ACP) countries. In addition, the arbitrators asked the EU to provide more details regarding the new import licensing regime, which the US says still favours distributors of ACP bananas. This information, the arbitrators wrote in a short communiqué, 'should enable us to take a final view on the level of nullification or impairment based on the WTO inconsistency, if any, of the revised EC banana regime, and, if relevant, to determine the level of suspension of concessions or other obligations equivalent to the level of such nullification or impairment.'

Procedural Confusion Continues

The arbitrators – the same three individuals who make up the compliance panel – seemed to side with the Europeans when they declined to rule on an appropriate level of trade retaliation before determining whether the European Union had changed its import licensing and quota rules enough to comply with the September 1997 Appellate Body ruling that these discriminated against the complainants in the dispute, i.e. the United States, Ecuador, Guatemala, Honduras and Mexico.

The US had argued that WTO dispute settlement rules required the arbitration to be made by 2 March, while the EU had maintained that the level of trade sanctions could not be determined before a compliance panel had ruled on the consistency of the revised banana regime with WTO rules. These contradictions arise from inconsistencies between Articles 21 and 22 of the Dispute Settlement Understanding (DSU), whose relationship is now expected to become a major focus of the ongoing DSU review (for more details, see Bridges Year 3, No.1, pages 6 and 7).

Rules and Reactions

The US has repeatedly insisted that the dispute 'is not really about bananas, it's about rules'. The US Trade Representative said the Administration's actions were 'consistent with US rights under the WTO Agreements', and that the decision to impose liability for 100 percent duties 'affords the arbitrators time to complete their work, ensures that the EU's failure to implement WTO rulings in accordance with WTO time schedules is not without consequence, and will also prevent surges in imports pending the completion of the arbitration proceedings.'

Angered by the US decision, members of the Caribbean Community – which stand to lose the most if the EU's trade preferences for ACP bananas are curbed – on 8 March said they were suspending a drug control treaty with the US. The EU immediately lodged a WTO complaint against what it termed to be 'unlawful and unacceptable' sanctions that were 'totally unilateral in nature'. It also requested an emergency meeting of the WTO General Council, which took place on 8 March. At the meeting both sides in the dispute stuck to their positions, and while some Members deplored the US action, most urged the parties to the dispute to strive for a negotiated solution. The WTO's part in the long-running dispute is likely to be over when the compliance panel hands its verdict to the parties on 12 April.

Dispute Settlement Briefs

- On 22 March, the US issued a preliminary list of European exports – worth nearly a billion dollars – that could be hit by 100 percent tariffs unless the two sides reach an agreement about the EU's implementation of the Appellate Body's February 1998 ruling against its import ban on beef treated with growth hormones. The EU has launched a number of studies which it hopes will show that there are legitimate scientific reasons for the embargo, but these will not be completed by 13 May when the 'reasonable period of time' for compliance expires. EU members are currently discussing alternatives for lifting the ban on 13 May (see Bridges Year 3 No.2, page 7), as well as negotiating with the United States. The most likely compromise would be labelling, but the parties disagree whether the label should simply indicate the country of origin or also specify that the meat comes from cattle treated with hormones.
- On 25 March, the US State Department published in the Federal Register (Vol.64, No.57) an outline for implementing the November 1998 Appellate Body ruling, which condemned the US import ban on marine shrimp caught without turtle protection devices (see Bridges Vol.2 No.7, page 9). According to the Notice of Proposed Revisions to the Guidelines for the Implementation of Section 609 of Public Law 101-162, the US plans to continue the country certification programme while making the criteria and justification of eventual refusals more transparent and predictable. Imports of shrimp harvested by vessels using TEDs in non-certified nations will be allowed, although it is not clear how this will be monitored. In addition, 'the Department shall take fully into account other measures that the harvesting nation undertakes to protect sea turtles', provide more training in TED use, and continue to negotiate for a multilateral agreement on sea turtle protection. The US must comply with the WTO ruling by 6 December 1999.

Seattle Ministerial: Second Preparatory Phase Starts

From 24-26 March, the WTO General Council held the first special session of the second phase of preparations for the Seattle Ministerial Conference, which will adopt the agenda for the next round of trade liberalisation talks. The second phase is supposed to yield concrete proposals for future negotiations rather than the general position papers many governments put forward during the first phase (for details, see cover stories in the four previous issues of Bridges). The second phase undoubtedly represents the best opportunity for civil society organisations to lobby for the inclusion of their concerns in national negotiation objectives.

At the March meeting, delegates were expected to table specific proposals regarding the implementation of existing Agreements and the built-in agenda, but the session was short and inconclusive. A number of Members either indicated what their positions might be or announced that their proposals were in preparation. Uruguay suggested a methodology for dealing with the issues at stake, dividing the issues into three categories: (1) issues that can be dealt with in the system as it is, (2) those that can be dealt with in the system as it is but require clarification, and (3) those that need to be solved by negotiations.

Australia presented proposal setting out the Cairns Group objectives for the negotiations on Agriculture (WT/GC/W/156), but there was no substantive discussion of it.

Second Phase of the Preparatory Process for the 3rd WTO Ministerial Meeting (30 November to 3 December 1999)

April 12-13	Informal Meeting of the WTO General Council
April 22-23	WTO General Council Special Session. Suggested focus: Singapore work programme, follow-up to the High-level Meeting on Least-Developed Countries and other issues suggested by Members.
May 3-4	Informal Meeting of the WTO General Council
May 20-21	WTO General Council Special Session. Suggested focus: All subjects of the preparatory phase (i.e. implementation, the built-in agenda and the issues of the April session).
7-8 June	Informal Meeting of the WTO General Council
June 21-22	WTO General Council Special Session. Suggested focus: proposals on organisation and management of the future negotiations, including the scope, structure and time-frames.
July 6-7	Informal Meeting of the WTO General Council
July 9	WTO General Council Special Session. Suggested focus: proposals regarding all items above (i.e. March, April, May & June meetings).
July 28-29	WTO General Council Special Session. Suggested focus: proposals regarding all items above and organisation of future work, i.e. phase three of the preparatory process and drafting of the Seattle Ministerial Declaration.

Review of the Dispute Settlement Understanding

The Dispute Settlement Body (DSB) met on 16 March to consider the implementation of DSB decisions in the context of the ongoing review of the WTO Dispute Settlement Understanding. The dispute between the US and the EU over bananas has highlighted procedural inconsistencies in the DSU regarding the correct sequencing of measures that can be taken when a winning party doubts that the losing party is implementing a WTO dispute settlement decision (see page 5).

Most WTO Members considered that the losing party is not under obligation to consult or negotiate with the winning party when devising new policies or laws to replace those found WTO-incompatible. They also favoured the view that once the 'reasonable period of time' for implementing a DSB decision had expired, there could be an appeal for advice from the original panel.

Most Members agreed that there should be consultations before setting up a compliance panel under Article 21.5, although the majority of those who spoke on this point thought that the time allowed for these consultations should be less than the 60 days provided for in normal panel proceedings. There seemed to be agreement that, to avoid delay, the panel should be set up after the first request at a DSB meeting. Almost all Members thought that there could be a right to appeal a 21.5 panel ruling.

There was agreement that once the DSB had adopted a ruling under the 21.5 procedure, there should be no 'reasonable period of time' for implementing the decision. At this point the challenging Member could go straight to the authorisation – as set out in Article 22.6 of the DSU – to suspend concessions.

Members did not reach an overall conclusion about how the DSU's implementation provisions should be modified. The issue will further be discussed at forthcoming DSU Review meetings. For more details, please see Bridges Weekly Trade News Digest, Vol.3 No.11.

Committee on Agriculture

At an informal meeting of the Committee on Agriculture, held from 24-25 March, WTO Members tabled a number of papers designed to strengthen their negotiation positions during the forthcoming negotiations on agriculture (see also Bridges Vol.2 No.8, page 1).

The EU reaffirmed its view that 'blue box' subsidies are not temporary and Norway retabled its CTE paper on the 'multi-functionality' of agriculture (WT/CTE/W/100). Cairns Group members, the US and India maintained the opposite and said such subsidies should be eliminated. Countries in favour of drastically reducing agricultural protection argued that the 'peace clause' – which prohibits Members from launching countervailing investigations under the Subsidies Agreement – should be allowed to expire in 2003 as foreseen, while the EU, Eastern European countries, Japan, Mexico and Mauritius supported its extension. India argued that subsidies should be allowed to guarantee food security, and countries with economies in transition said they should be provided more latitude while adjusting to a market economy. Many Members, including New Zealand and Thailand, agreed with Uruguay that tariff peaks were a problem, particularly with regard to staple foods exported by developing countries.

For more details and a report of the formal session on 25-26 March, see Bridges Weekly Trade News Digest, Vol.3 No.12 (subscription details on page 15), as well as the WTO website (www.wto.org).

In mid-March, the WTO organised two high-level symposia; one on trade and the environment and the other on trade and development. Participants included senior government officials from capitals and missions in Geneva, and representatives of intergovernmental organisations, civil society, the private sector and academia. In the cover story, we highlighted overarching issues frequently raised in both symposia. Without listing all those who expressed similar views or, indeed, all views expressed during the four days, the reports below attempt to summarise the more specific points made by participants concerning trade and environment, and trade and development.

High-Level Symposium on Trade and Environment 15-16 March 1999

In his opening address, WTO Director-General Renato Ruggiero called for the establishment of a World Environment Organisation – ‘a similar multilateral rules-based system for the environment to be an institutional and legal counterpart to the World Trade Organisation.’ The proposal was not generally endorsed by subsequent speakers, many of whom said that greater coherence between environmental and trade policy-making would better be achieved through enhanced co-ordination between those in charge of environmental, economic and trade policies, both within governments and across existing international institutions. In this context, UNEP’s Executive Director Klaus Töpfer highlighted his organisations’s strong new mandate to ‘assume a key role on environment and trade’, and said he was exploring modalities for enhanced institutional co-operation between the WTO and UNEP. Other speakers, including the Canada, the Center for International Environmental Law, the European Union, Finland, the International Confederation of Free Trade Unions and the Worldwide Fund for Nature called for mainstreaming sustainable development concerns across all negotiating groups in the ‘Seattle Round’.

Role of the CTE

The three panel discussions largely followed the agenda of the WTO Committee on Trade and Environment. On the role of the CTE itself, the US suggested that in embarking on the next round of WTO negotiations, ‘it would be useful to provide a forum where WTO members can identify and discuss links between elements of the negotiating agenda and the environment.’ Such discussions could take place in the CTE to ‘help ensure that these links receive the attention that they deserve during the negotiations and help delegations to look at what they are negotiating from a broader perspective.’ The US stressed that the CTE ‘would identify and discuss issues, but not try to reach conclusions or negotiate these issues in the CTE itself. Rather, it would provide a report of its discussions to Members and the relevant negotiating groups.’

India urged the CTE to focus on harmonising the TRIPs Agreement with the Convention on Biological Diversity (see page 2); market access; trade in domestically prohibited goods; and ensuring that unilateral trade measures are not taken by individual countries ‘imposing their environmental values and standards upon other countries with different values, needs, standards and priorities.’ Professor Srinivasan of Yale University called on WTO Members to wind up the CTE and move discussion on the subject to UNEP.

Linkages between trade and the environment

Mexico’s Vice Minister for International Trade Negotiations, Luis de la Calle, warned against a ‘new kind of alliance’ composed of some members of the environmental community on one the hand, and of ‘protectionist groups that seek to undermine the liberalisation of world markets’ on the other. He spoke against attempts to reach

high levels of environmental protection through the trade agenda, arguing that harmonisation of environmental standards would not significantly contribute to ‘levelling the playing field’ between foreign and domestic businesses, but it would further deepen the North-South divide.

The EU’s Trade Commissioner Sir Leon Brittan said a new interpretation or ‘even a textual amendment’ to WTO rules might be necessary to increase confidence that they do accommodate trade measures taken under multilateral environmental agreements (MEAs); Canada also called for an ‘interpretative statement’ clarifying the relationship between WTO rules and MEAs. Sir Leon urged Members to agree, formally or informally, not to raise WTO disputes against actions taken under MEAs that command wide support among Members.

Most developing countries agreed that multilateral environmental agreements offered the best protection against unilateralism. However, they pointed out that no disputes involving trade measures taken under MEAs had ever been brought to the WTO, and that

existing rules and practices allowed countries sufficient leeway to adopt and maintain legitimate national policies. ‘If it’s not broken, why fix it?’ an Indian delegate asked. A Japanese business representative said conflicts were possible in the future: for instance, new pollution regulations for motor vehicles adopted to reach emissions reduction targets under the Kyoto Protocol could lead to WTO disputes if countries required imported cars to conform to the standards.

David Runnalls of the International Institute for Sustainable Development (IISD) and Daniel Esty of Yale University, called on the WTO to urgently tackle the issue of trade discrimination based on non-product related process and production methods (PPMs). Many suggested that GATT Article XX – which allows countries to take measures contrary to other trade rules for environmental or public health reasons – be modified to accommodate PPMs. Civil society views were not unanimous, however: the US National Manufacturers’ Association said that PPM-based trade discrimination could only be justified when allowed under an MEA. In a veiled allusion to the Biosafety Protocol, he said a WTO ‘waiver’ should only be extended to MEAs based on ‘sound science’ and specifically addressing transboundary environmental damage.

Sir Leon Brittan emphasised the difference between unilateral measures taken by one state to reject another’s production methods in the name of ‘subjective and arbitrary’ criteria and the adoption of ‘international standards on a particular production method or use of a particular substance, such as CFCs’. The US noted that the Appellate Body report in the Shrimp/Turtle dispute belied the notion that PPM-based measures were *a priori* out of bounds under WTO rules, although the report made clear that such measures must meet the rules of the trading

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system which guard against abuse. Malaysia and Mexico, among others, supported India's view that 'to the extent that the production practices do not incorporate themselves into the product itself, any requirements in the importing country would not only be unnecessary for environmental protection but would also be trade-restrictive, thus acting as an avoidable trade barrier.' Malaysia, Mexico, Pakistan, Thailand and the Philippines also objected to any changes in Article XX.

Sound Science vs Precautionary Principle

In addition to PPMs, a new controversial issue seems to loom on the trade and environment horizon: the precautionary principle. This principle is usually evoked as a justification for protective measures taken in the absence of full scientific certainty, such as potential health hazards of a pesticide. The European Union pleaded for a clarification and expansion of the precautionary principle in the WTO context, while obtaining assurances that the principle not be invoked abusively. While agreeing that countries had the right to take provisional protective measures in the name of the precautionary principle, the United States stressed that sanitary and phytosanitary (SPS) measures should above all be based on 'sound science'.

To date, the WTO has condemned the European Union's import ban on beef treated with growth hormones, the Australian embargo of Pacific salmon, and Japanese testing requirements for fruit varieties on the grounds that the measures were not warranted by scientific evidence. The issue is likely to grow in importance if the WTO is called to establish rules or resolve trade disputes involving genetically modified organisms (GMOs). A US trade official said at a press briefing during the WTO meetings that in the absence of a Biosafety Protocol (see separate article on page 11), trade in GMOs would have to be dealt with under WTO rules, 'and on that we would hope that the WTO rules would make the kind of balance and the kind of decision that respects the environmental concerns as well as the trade concerns.' The American Farm Bureau said the Biosafety Protocol was contrary to US agricultural interests and that the WTO SPS Agreement already provided a venue to address health and safety concerns. Other US business associations also cautioned against 'over-dependence on the precautionary principle' which could 'undermine sound science'.

Developing countries expressed concern over the use of sanitary and phytosanitary standards or technical regulations as disguised protectionism. Greater transparency in their development and application, as well as technical assistance and flexibility for compliance would be needed to ensure that SPS standards do not raise unnecessary non-tariff barriers for developing and least-developed countries.

Synergies between Trade and Sustainable Development

Most speakers agreed that synergies were possible but by no means automatic between trade liberalisation, environmental protection and sustainable development. Arguing that the trade community was rapidly losing civil society support, David Runnalls of IISD said efforts must be made to convince ordinary citizens that trade liberalisation can lead to real gains in sustainable development. Another speaker warned that the multilateral trading system would have a 'crisis of legitimacy' unless it addressed civil society's legitimate aspirations, particularly in developing countries.

Vandana Shiva of the Research Foundation for Science, Technology and Ecology said that biodiversity offered the most obvious example of lack of synergies, particularly in light of the TRIPs Agreement and the collapse of the Biosafety Protocol negotiations in Cartagena. Many non-governmental organisations agreed with her views, including Friends of the Earth, Greenpeace and ENDA-Tiers Monde.

At the governmental level, the session on synergies echoed CTE discussions on the environmental benefits of removing trade distortions. Predictably, many countries called for the future negotiations to prioritise 'win-win' solutions, such as reduction/removal of agricultural and fisheries subsidies, and most particularly export subsidies. Their statements largely reflected previously-stated negotiating positions: the Cairns Groups of agricultural exporters, the United States and Canada, for instance, focused strongly on agricultural subsidies; while Iceland, New Zealand, the Philippines and the US urged the next negotiations to address fisheries subsidies. Denmark said WTO Members should seek 'win-win-win' solutions where trade liberalisation would not only enhance environmental protection but also improve economic and social development in developing countries. A number of both developed and developing countries identified liberalising trade in environmental goods and services as another win-win solution.

World Wildlife Fund-USA strongly supported reductions of fisheries subsidies, while Sierra Club Canada cautioned that a difference should be made between subsidies that further the goals of MEAs, and the Institute for Agriculture and Trade Policy said that a new round of agricultural negotiations may be premature as governments still need to review their subsidies policies from the perspective of sustainable development.

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Renato Ruggiero provided the tone for many subsequent comments when he said that 'the idea that billions are mired in poverty, while millions grow richer, is not just unsustainable. It is unconscionable.' Speaking particularly of the least-developed countries (LDCs), he called on WTO Members to respond to the challenge through three main ways: granting quota- and duty-free access for LDC exports, increasing funding for capacity-building, and providing debt relief, even if the latter 'is not in the mandate of the WTO'.

UNCTAD Secretary General Rubens Ricupero focused strongly on the 'crisis of development' brought about by the broadening financial turmoil that started in South East Asia almost two years ago. 'It was the global economy, or at least its financial component, that felled the growth of world trade,' he said, adding that Europe and Japan with their large trade surpluses could play an important role in providing 'a direct liquidity injection' to developing countries 'in order to revive global demand, boost trade and accelerate growth.' To confront a global economy driven by rapid technological change, Mr Ricupero called for 'a re-invigoration of special and differential treatment', as well as 'a massive programme of trade-related technical assistance.'

Most participants agreed that trade was an important – albeit not sufficient – component of growth and development: in order to have a positive development impact, trade liberalisation must be complemented by appropriate national social and economic policies, as well as a stable and favourable macro-economic

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framework. The international trade regime could respond to developing countries' needs by providing more market access – particularly for textiles and agricultural products – as well as increased labour mobility and greater flexibility regarding technical and sanitary standards.

The imperative need for debt relief was a recurring theme of all the sessions of the trade and development symposium. Benin called it the number one priority of least-developed countries, and France pointed out that debt servicing amounted to four and a half times the value of most LDCs' annual exports. Mr Ricupero called for a rapid write-off of highly-indebted poor countries' unpayable official and multilateral debt, and congratulated Germany for its recent debt forgiveness proposal. The United States and France also highlighted their recent debt relief initiatives, with the latter advocating a 30-year suspension for the poorest countries' debt payments. The United Kingdom expressed support to providing relief to heavily-indebted poor countries.

Curbing abusive anti-dumping actions was another call that rang through the symposium. Professor Srinivasan called anti-dumping measures the 'chemical and nuclear weapon in the armoury of trade policy', and together with panel speakers Fred Bergsten and Paul Collier called for their removal from 'the arsenal of permitted trade policy instruments in the next round.' Brazil suggested the development of multilateral disciplines to restrict abusive recourse to anti-dumping investigations. Hong Kong and India pointed out that the Uruguay Round had led to an unbalanced world trade agenda, where subjects of interest to industrialised countries – telecommunications and information technology, for instance – were pursued with zeal, while developing country priorities, such as anti-dumping and technology transfer, met with foot-dragging. Norway said that anti-dumping abuses should be curbed in both developed and developing countries.

Contrary to some expectations, the United States did not bring up its proposal that the WTO establish a 'forward work programme' to address trade issues relating to labour standards (see Bridges, Year 3, No.1, page 1). Several developing country governments strongly stated that discussion of labour standards belonged to the ILO, not the WTO. In contrast, Sierra Club Canada urged the WTO to start addressing the 'the third pillar of sustainable development': human and workers' rights. The International Metalworkers' Federation and other trade union representatives called for WTO rules to be adjusted so they promote environmentally and socially sustainable development, workers' rights and stakeholder participation.

Most OECD countries endorsed the Director-General's call with regard to least-developed countries and described on-going efforts to open markets to LDC exports, provide debt relief, as well as funds for technical assistance or other types of capacity-building activities. While views converged to a remarkable degree on facilitating least-developed countries' integration to the multilateral trading system, other developing country concerns met with a more varied response, including the need for special and differential treatment and the revision of existing Agreements. However, some degree of consensus seemed to emerge on the need to address tariff peaks, tariff escalation and the special situation of net food-importing developing countries.

Linkages between Trade and Development Policies

Perhaps surprisingly, the most heated exchanges of the four days did not have to do with trade and environment. It was a panel discussion on the linkages between trade and development policies that angered civil society participants, as well as many government representatives. Criticism focused particularly on the Chair's summing up, which only partially reflected the afternoon's discussions. Paul Collier, Director of the World Bank's Development Research Group, picked up several points made by the main speaker, Fred Bergsten, Director of the Washington-based Institute of International Economics. Mr Bergsten urged developing countries to support a comprehensive new round of multilateral trade negotiations in order to, among other reasons, counterbalance rising protectionism in the United States and Europe.

In the discussion that followed, many developing countries – and most vocally Egypt and Malaysia – spiritedly maintained that they

would not be coerced into new trade concessions under the threat of protectionism in industrialised countries, nor should new concessions be necessary to ensure that developed countries fully implement their commitments under existing Agreements.

Mr Collier partly based his concluding comments on views expressed by María Livanos Cattau, Secretary General of the International Chamber of Commerce, and Professor Srinivasan of Yale University who addressed a previous panel. Drawing from these and Mr Bergsten's comments, Mr Collier provocatively concluded that, by not participating actively in the WTO

and by encouraging 'capital-hostile' economies, African countries had contributed to their own marginalisation. This hostility had contributed to capital flight, as well as consigned African countries to trade largely in primary commodities and made them vulnerable to external shocks. Uganda, Tanzania and several other countries, as well as a group of non-governmental organisations, expressed their strong disapproval of these conclusions. Mr Collier later apologised 'for any offence that my actions in this panel may have caused'. He explained that his intention was 'to stimulate discussion and debate about these issues [...] which I consider to be absolutely vital for the overall prospects of developing countries.'

The Chair also suggested that special and differential treatment would not meet the needs of developing countries. Instead, to improve the 'low credibility' of their liberalisation commitments and thus attract investment, they should 'lock in' these commitments. More in line with views expressed by other participants, Mr Collier proposed that in the upcoming negotiations developing countries should focus on eliminating anti-dumping provisions, make sure that labour or environmental concerns do not hijack the agenda in protectionist interests, and defend their interests vigorously with regard to agriculture and textiles.

Trade and Development Prospects of Developing Countries

Practically all interventions during this session brought up the continuing difficulty for developing countries' agricultural and textile exports to access industrialised country markets. Many speakers agreed that the treatment of textiles and agriculture in the multilateral trading system amounted to 'reverse special treatment' in favour of industrialised countries and should be rectified in the forthcoming trade talks.

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Together with agriculture, textiles and 'special and differential treatment', restricting abusive anti-dumping investigations – 'the chemical and nuclear weapon in the armoury of trade policy' – is emerging as a major Southern priority for the new round of WTO negotiations.

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The main speaker, UNIDO Director-General Carlos Margariñas, urged developing WTO Members to pay close attention to the timing, sequencing and degree of market opening. In a new round where ‘everything is put on the table’, it should be possible to obtain special and differential treatment that would go beyond extended adjustment periods. Developing countries would also benefit from binding Generalised System of Preferences (GSP) concessions, and multilateral monitoring of GSP schemes, as suggested by Brazil. Mr Margariñas predicted that total dismantling of industrial tariffs should be possible, and Sweden proposed their elimination by the year 2010, a proposal supported by the Netherlands, which also suggested doing away with rules of origin.

Arjun Sengupta of the Centre for Policy Research of New Delhi challenged the claim that trade liberalisation was a *necessary* condition for growth, but conceded that it could contribute to sustainable development if accompanied by increased domestic savings and inward investment. He called for more financing for well-designed adjustment programmes, arguing that many IMF and World Bank programmes had failed because they were underfunded. Mr Sengupta also disagreed with previous speakers who had suggested that special and differential treatment had encouraged developing economies not to adopt outward-oriented development strategies, which would have led to ‘faster and better growth’.

GSP schemes and other forms of special treatment were essential to trade between unequal partners, he maintained, adding that they could bring ‘tremendous advantages’ to a number of countries and be extended from tariff concessions to subsidising investment in least-developed countries. Bolivia and the Netherlands were among of the many countries that supported making special and differential treatment provisions binding.

The Philippines suggested the identification of a special ‘green box’ – i.e. an understanding on allowable subsidies – for developing countries without renegotiating existing Agreements. Several other speakers also stressed that, in addition to making special and differential treatment an overall negotiating strategy, developing countries should identify specific details in all Agreements and pursue them throughout the negotiations.

John Whalley of the University of Western Ontario proposed that rather than focus on special rights to protect their economies, developing countries could identify forms of special and differential treatment that would help them integrate into the global economy. Such treatment could be designed to respond to special needs arising from institutional weaknesses; for instance, countries lacking domestic capacity to legislate and enforce environmental regulations could be granted the right to screen foreign investment from an environmental point of view.

Professor Whalley also reviewed factors that could affect the trade outlook over the next 20 years. These included the increasing share of processed agricultural products in comparison to primary commodities in world trade; rapid changes in the main textile suppliers; and the potential increase of barriers due to new factors such as labour or the environment (for instance, implementing the Kyoto Protocol could increase the price of energy intensive manufactures). He counselled developing countries to assess the potential advantages of the projected exponential growth of trade in services and predicted that South-South trade would become increasingly important.

Integration of Developing Countries in the Multilateral Trading System

‘The next round must ensure that we achieve structural changes both in the developed world and the developing world,’ said Alec Erwin, South Africa’s Minister of Trade and Industry. Integrating developing countries into the global economy would require ‘developed countries to engage in a serious discussion with their societies about the structural adjustment their economies need to undergo’, particularly with regard to the location agricultural production and resource-intensive industries where developing countries have a natural competitive advantage. He suggested treating the agricultural negotiations ‘as a structural negotiation about the distribution of agricultural production in the world economy as a whole’. He also called for the development of a system to allow easy, automatic market access to LDCs and redefining the role of government in promoting industrial and economic development. Chile also urged WTO Members to recognise the role of the state and the limits of the market.

If the next round were seen as negotiations designed to level the playing field, rather than an attempt to pry open markets in the developing world, Minister Erwin said, WTO Members could have ‘a more serious, systematic and correct discussion about precisely what special and differential treatment means’. The goal of ‘level playing field type agreements’ would help gather support for negotiations on new forms of trade, such as electronic commerce, information technology and genetically modified organisms.

Industrialised country representatives’ interventions in this panel session tended to revolve around actions in favour of least-developed countries, and particularly the three pillars suggested by Mr Ruggiero: market access, debt relief and technical assistance. Bangladesh and Uganda said that the new round should bring no new obligations to LDCs. A number of other speakers emphasised that while technical assistance and capacity-building were necessary for the least-developed countries, much more was needed to truly integrate disadvantaged countries in the world trading system, in particular through addressing supply-side constraints. Sweden made a SF1 million contribution for technical assistance.

Canada, Finland and Uganda stressed the need to gear technical assistance to improving negotiations skills as well as implementation of Agreements. Germany announced a ‘special purpose’ DM1 million contribution to the WTO Trust Fund to assist poor developing countries in securing their own interests in the multilateral trading system. Part of the contribution could be used for an in-depth analysis of provisions on safeguarding developing country interests, particularly with regard to the TBT, SPS and Anti-dumping Agreements. Such provisions should be made contractual during the next round of WTO negotiations, the German representative said.

The Bangladesh Institute for Development Studies urged developed countries to provide duty-free access for LDC exports immediately after the Seattle Ministerial – rather than at the end of the next round of negotiations – inviting them to consider it ‘a down payment or early harvest of the benefits you assure us will accrue from the next round.’ The Economic Commission for Africa suggested that while different facets of a development-oriented international agenda would be negotiated in different fora, there should be mandatory links between the negotiations. The International South Group Network cautioned against further trade liberalisation, as it would further increase multinational corporations’ ability to influence national policies to the detriment of citizens.

Concern about Trade Impacts Block Adoption of the Biosafety Protocol

In spite of round-the-clock negotiations, delegates failed to conclude the Biosafety Protocol in Cartagena, Colombia, at their sixth meeting from 14-23 February. The session was suspended when it became obvious that no compromise was possible between the Miami Group of six leading crop and biotechnology exporters and other countries. Delegates agreed to resume the talks at the latest by the Fifth Conference of the Parties to the Convention on Biological Diversity, currently scheduled for May 2000.

The Biosafety Protocol is to be a side agreement under the Convention of Biological Diversity. In the draft text, its objective is 'to contribute to ensuring an adequate level of protection in the field of safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking into account the risks to human health, and specially focusing on transboundary movements'. However, consensus is lacking even on the objective itself, particularly regarding the reference to human health. Nor could Parties agree on which 'living modified organisms' or LMOs should be covered by the Protocol (see also Bridges Year 3, No.1, page 13).

Scope of the Protocol

The future Protocol's centrepiece is to be an Advance Informed Agreement (AIA) procedure, which will require LMO shipments to be notified to, and accepted by, the recipient government. Countries agree that genetically modified seeds intended for planting and other LMOs that will be released in the environment fall under the scope of the treaty, but they strongly disagree on what other modified organisms or 'products thereof' should be submitted to the AIA procedure.

The world's leading crop exporters – the 'Miami Group' consisting of the United States, Australia, Canada, Argentina, Chile and Uruguay – maintain that the AIA procedure should only apply to living modified organisms intended for deliberate release in the environment. In addition to its insistence on WTO compatibility, it was the Miami Group's obstinacy about excluding organisms 'intended for direct use as food or feed or for processing' from the AIA procedure that brought the negotiations to a halt.

Many developing countries, led by Ethiopia, want the treaty to cover genetically modified grains and oilseeds intended for consumption rather than planting, as well as address processed LMO products in some way. Theoretically, the latter could range from agricultural commodities to foodstuffs containing oils made from genetically-engineered soya or rape seed, fabrics woven from GMO cotton, and pharmaceuticals that contain genetically modified elements. The European Union took a middle ground, advocating that LMO commodities – but not 'non-living' products such as flour – should be covered by the Protocol.

The majority of developing countries want the Protocol to include liability and compensation provisions when transboundary LMO movements cause harm to biodiversity or human health. Most delegates agree, however, that if the Protocol is to get off the ground within the next year or so, liability provisions will be left out, possibly with an agreement to develop such regulations many years later. The Basel Convention took that approach, but six years of negotiations have failed to come up with a side agreement on liability and compensation (see Bridges Year 3 No.1, page 14).

WTO Compatibility

The Miami Group was the keenest advocate for a provision requiring Parties to the Protocol to take decisions concerning LMO imports 'consistent with their other international obligations' (Article 31). Such a provision could be used to challenge measures taken under the Protocol by Parties that are also Members of the WTO, particularly regarding measures that violate the Sanitary and Phytosanitary Agreement. This 'WTO-saving clause', the opponents felt, would give international trade rules too much sway over the Biosafety Protocol's environmental purposes. They feared that exporters would use the SPS Agreement – which requires health- or environment-related trade measures to be 'least trade restrictive', as well as based on 'sound science' – to restrict their ability to apply the 'precautionary principle', i.e. the right to curtail or prohibit LMO imports to protect biosafety or human health when scientific certainty is lacking about their potential adverse effects.

The European Union introduced a compromise proposal, which would have deleted Article 31, but contained a preambular paragraph requiring the Protocol's implementation to be 'mutually supportive of' rather than 'consistent with' other international obligations. The EU also suggested finalising most of the Protocol in Cartagena, but leaving the scope of the AIA procedure to a future high-level meeting. Although they felt that the European proposal would seriously dilute the precautionary principle, developing countries were willing to adopt it. The Miami Group, however, could not accept a weaker link between the Protocol and global trade rules. Citing objections to the EU proposal's treatment of several provisions – including the objective and the relationship with non-Parties and other international agreements – Canada asked the meeting to be suspended.

Labelling

Countries also disagree on labelling requirements for products containing LMOs or traces of LMOs. The issue is currently under debate in the WTO's Committee on Technical Barriers to Trade because of the European Union's Regulation 1139/98 which requires foodstuffs containing genetically modified soya or maize to be labelled accordingly (see Bridges Vol.2 No.6, page 2). The United States, in particular, is arguing that there is no need for such labelling because the products are safe, and that testing for traces of modified DNA would be prohibitively costly and complicated. The requirement, Miami group members claim, would ultimately require segregating genetically modified corn or soya from non-GMO crops during cultivation, transport and any consequent industrial production. None of the major producers of GMO crops currently keep them separate from other crops, and maintain the practice would entail vast unnecessary costs.

Speaking just a couple of days after the collapse of the negotiations, US Under Secretary for Global Affairs, Stuart Eizenstat, emphasised that the Biosafety Protocol was to 'deal with the issue of biodiversity, not food safety. We agreed that there should be advance notice and a number of other things, with respect to seeds that are released into the atmosphere, fish for aquaculture – things that can affect the biodiversity issue. But instead, the food safety issue got grafted on to this and there was an effort literally to label every product, which would have been unadministrable and would have delayed or halted for reasons unrelated to safety just hundred of millions of dollars of trade, and enmeshed us in tremendous red tape.'

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However, there is also a widespread consensus in recognizing that while necessary, an outwardly-oriented policy regime is not sufficient, nor could it be a substitute for sound development policy which entails a stable macro-economy; investment in education, infrastructure, and institutions; social policies and environmental protection. And all of this based on a sufficiently strong national political consensus on these strategic orientations.

In other words, the prospects for a new consensus on trade and development rest on recognizing that the relationship between openness in trade and finance and development, while positive, is not as automatic or exclusive as some recommendations seem to suggest, and that development policy is something much more complex and varied. Indeed, that development is a multifaceted transformation of societies. It is also apparent from this perspective that it would be wrong to blame trade liberalization or “globalization” for the failure to achieve development goals (living standards, equity, education, nutrition, housing) that could not reasonably be expected from trade alone in the first place, or only with an excessive optimism about its power for development.

This more sober perspective on the role of trade and trade liberalization in the development process is probably at the basis of the encouraging fact that the Asian crisis has not reversed the commitment of countries throughout the world to open trade and investment policies, and has not seriously challenged the intellectual case for outward orientation nor for having trade as the engine of growth.

While recognizing the importance of systemic openness, developing countries did reiterate a number of important messages: the need for more access to developed country markets, for more flexibility and for more technical assistance.

Access. More access to markets involves mainly, in their view: elimination of high tariffs and of non tariff-barriers in sectors in which developing countries have comparative advantage (textiles, clothing, footwear, leather, food, agriculture); elimination of tariff escalation; tougher disciplines in the application of trade remedy laws by developed countries; and further strengthening of dispute resolution mechanisms. It also entails more access for their skilled labor to global markets for services. In turn, it must be stressed that more access to international investment flows requires developing countries to improve their investment climate (from macro-disciplines, to investment protection, to the core factors of competitiveness).

Flexibility. More flexibility, a case often coded under the term “differential treatment”, is stated by developing countries as necessary to manage the transition periods, and also to be able to use a variety of policies and instruments to promote development. This is an area of heated controversy, that will benefit greatly from developing countries being specific about the nature and scope of flexibility that is deemed appropriate.

Technical Assistance. Developing countries, some international organizations and experts, frequently argue the case for massive flows of technical assistance, and also for more finance for development needs, and these symposia were no exception. Many developed countries also recognize these technical assistance needs and are in fact providing significant amounts of it. Trade-related technical cooperation is necessary even for ensuring that countries, particularly the least developed countries, implement existing commitments. The reservations some countries express

regarding the feasibility of their obtaining sufficient benefits from trade negotiations, or about being marginal participants in this process, stem partly from perceived restrictions to pursue a proactive, fully engaged, positive agenda in trade negotiations. Technical assistance is seen as essential to overcome these restrictions.

Apart from some extreme positions particularly from certain NGOs, but also from some countries, that requested a “five year moratorium” on multilateral trade negotiations, most participants saw launching a new round of trade negotiations as vital to their interests, as well as to avoid global recession, and generally agreed to focus not on the question of whether having a new round or not, but rather on how to design the new round so that it could be more beneficial for them and for the world trading system.

Trade and the environment

While protection is the ultimate goal of environmentalists, protectionism is the ultimate fear of the trade community. This reality creates a cultural gap between the two communities. However, to this observer, at least, this Trade and Environment Symposium witnessed some very specific and pragmatic proposals to help bridge this gap and to move thinking and action forward. A pragmatic agenda includes both substantive and procedural aspects. Top of the list on the substantive proposals: the refinement of Article XX – General Exceptions – in order to rebalance trade and environmental goals, flexibility to negotiate environmental standards that relate to production processes and methods (PPMs), the negotiation of the relationship of Multilateral Environmental Agreements (MEAs) to the WTO, and the elimination of environmentally harmful and trade distorting subsidies, particularly in fisheries, agriculture and energy.

Procedural proposals include aspects such as increased transparency and allowing more NGOs participation in some WTO activities. It is a fact that civil society has now emerged as a new actor in the trade dialogue. Some of these groups have led opposition movements to freer trade and spearheaded the so-called ‘globalization backlash’ in some countries. This poses a challenge not only for governments but also for the business communities to educate and to counteract globophobic attitudes with arguments and convincing evidence about the benefits of free trade and open markets. More participation and transparency could go a long way in reducing the perception of the WTO or other trade negotiations as ‘black boxes’ in which the concerns of “civil society” are not heard.

Conclusion

In conclusion, it is heartening to see that governments and international institutions are engaged in an open dialogue that revisits all these issues and that developing countries and NGOs are fully engaged in this exercise. The debates in these events strongly suggest that this is a time, not to change, but certainly to revise our paradigms, both policy and managerial paradigms, a time to think anew about the balance of free markets and regulation, about the balance of state and private sector, about international coordination and cooperation. Particularly important, it is a time to talk about international institutions, now that so many questions have been raised about the international institutional architecture, both multilateral and regional. Thus, international institutions and governments should be commended for organizing these events.

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Legitimacy: the New Frontier

By Mark Halle

Concerted pressure from civil society over the past few years has made the WTO a considerably more transparent place, with greatly-expanded opportunities for members of civil society to participate in WTO-related events. Although there is still a long way to go, today's WTO bears no comparison with the seriously NGO-hostile GATT that it has replaced. While there seems no compelling reason to keep appropriate members of civil society out of a number of WTO forums – such as the Committee on Trade and the Environment – and whereas it is important to open the dispute settlement process to outside contributions, it is only right to recognise what has been done by the WTO Secretariat, and in particular its Director-General Renato Ruggiero. He has not only taken bold steps to increase transparency and participation, he has also been creative in making the fullest possible use of the very limited mandate the Members have given him in this respect.

If further progress is to be achieved, attention will have to be directed at some of the more recalcitrant WTO Members, but also at eliminating the hypocrisy of many apparently enlightened Members who, behind the closed doors of the WTO, continue to insist on restricting access. In both cases the problem lies with national policies and practices.

If trade policy in all WTO member countries were crafted through a fully-participatory process where the views of each legitimate stakeholder were listened to, weighed, and given their due importance, and if each of the WTO Members was a model of democracy and good governance, the work of WTO could by and large be left to the governments on their own. There would be no burning case for civil society involvement. Alas, this is far from being the case. The aggressive insistence of some WTO Members that multilateral rule-making is government business, and that NGOs should not seek to influence legitimate government positions would be fine provided that government positions could genuinely boast legitimacy. To what extent can they?

At a lunch hosted by the Canadian mission to the WTO for visiting Canadians during the recent High-Level Symposium on Trade and Environment, representatives of the Federal Government came under strong attack from the NGOs present for the position they had taken during the recent Cartagena negotiations on Biosafety. In response, the government officials were obliged to admit that their position had reflected Canada's commercial interests. Indeed! That is precisely the problem.

Few of us would doubt that the positions reflected in the WTO represent national commercial interests fairly faithfully. However, it requires a considerable leap of faith to assume that commercial interests embrace the range of national interests, or even that they reflect a reasonable centre of gravity among such interests. With the conclusion of the Uruguay Round and the creation of the WTO, the reach of trade law now extends well beyond the limited concerns of the export community. Trade rules impinge on intellectual property rights, health and environmental conditions, consumer choice, labour standards and many other issues that are central to social development and environmental policy.

Since this is the case, it would make sense for these legitimate interests to be appropriately represented in the formulation of trade policy at the national level, and in the reflection of that trade policy at the WTO and other multilateral forums. Canada's position at Cartagena should have reflected not only the commercial interests of its agri-business sector, but also the legitimate interests of the consumers, environmental groups, and others who have taken a strong interest in the pros and cons of biotechnology and genetically modified organisms.

Trade officials are known to 'hide behind' the WTO, locking in trade liberalisation by arguing that WTO rules leave them no choice. Calls to restrict transparency in the WTO from countries who do not practice it at home must be regarded with considerable suspicion.

Trade officials in Chile conceded to me recently that their trade policy tends to be fixed by a very restricted group of people in the trade ministry, in close consultation with – and under the strong influence of – a small elite of export-oriented business interests. There is no public debate on that trade policy, and other relevant sectors of government are rarely consulted. The wider group of stakeholders representing civil society, resource users, and even small and medium-sized enterprises play no part whatsoever. Further, there is no formal process whereby Chilean delegates to the WTO are asked to account for

positions they have taken in Geneva, nor any wider debate on the implications of trade liberalisation on the range of Chile's national objectives. Trade policy is a closely-guarded patch and the curious are actively discouraged from coming too close.

This is not to imply that Canada and Chile stand out as being more subject to commercial pressure than other WTO members. On the contrary, it is safe to assume that Canada and Chile are fairly typical of countries in their respective groups. Indeed, they may be more open than most. Canada certainly is: in addition to a keen advocacy of public participation in the FTAA and consultative mechanisms for NAFTA, a Committee of Parliament is currently holding public hearings across the country designed to elicit Canadians' attitudes on the role of the WTO and Canada's policies toward it. However, with the exception of a few countries – including Denmark and the Dominican Republic – the elaboration of trade policy remains an extremely opaque enterprise, even in the OECD countries with a reputation for NGO-friendliness and a strong attachment to democratic practices.

What does this imply? It implies first of all that the effort by the more obstinate countries to limit transparency and participation in the WTO is probably motivated by a desire to keep trade policy a closed shop back home. Trade liberalisation benefits the economic elites everywhere, while often increasing polarisation within and among countries, and aggravating some social and environmental problems.

Further, trade officials are known to 'hide behind' the WTO, locking in trade liberalisation by arguing that WTO rules leave them no choice. This only works if trade policy is opaque both at home and in Geneva. If trade policy continues to be dominated by narrow commercial interests, this situation is unlikely to evolve, and the prospects of a backlash against the multilateral trading system could grow to become a serious threat. Calls to restrict transparency in the WTO from countries who do not practice it at home must be regarded with considerable suspicion.

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The implication for civil society is that, if it continues to focus too exclusively on WTO processes, it is unlikely to come to grips with what lies at the root of the problem, namely undemocratic practices at the national level.

Two very simple measures, if implemented, would go a long way to smoking trade policy out of the woodpile. The first is, in each country, to insist on the creation of a national forum, with the participation of all relevant stakeholders, at which a country's trade policy is debated. Such debates should take place early enough in the process of policy formulation to have an impact on the positions eventually adopted. The second measure is to hold trade officials accountable for the positions they have taken in international trade forums, by asking them publicly to report back on these positions and, if necessary, to justify them. Ideally, their positions should be justified against a formal and accessible national policy, itself the result of a broad public debate.

Civil society organisations should begin work on a number of straightforward criteria, based on testing the openness of the policy elaboration process to appropriate stakeholders and which, if applied, would enhance the legitimacy of national trade policy. Individuals and organisations interested in contributing to such a process, or in proposing specific measures which would boost the legitimacy of national trade policy, are invited to contact the author.

We should continue to counter the efforts of certain countries to keep civil society out of the WTO on the grounds that governments adequately represent their views. These same governments – indeed all governments – should be asked to specify the grounds on which they feel that the positions they take at the WTO are fully legitimate, and put themselves to an objective test of that legitimacy. The honest ones have nothing to lose.

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NAFTA Environmental Assessment Framework Released

Earlier this month, the NAFTA Commission for Environmental Co-operation (CEC) released its report on how to measure the connections between the North American Free Trade Agreement and environmental quality in the continent. According to Sarah Richardson, head of the CEC's NAFTA Effects Programme, 'Assessing Environmental Effects of NAFTA' puts forward a 'rigorous framework for understanding the linkages between trade liberalisation and environmental quality.' She added that the CEC expected the methodology to 'spill into the global discussions'. The United States, Canada and the European Union have already committed themselves to conducting sustainable development impact assessments of their proposed WTO Millennium Round agendas. The first phase of those studies should be completed in time for the the WTO Ministerial Meeting next December.

The CEC technique for identifying and measuring environmental impacts was tested on issues within the energy and agriculture sectors: maize production in Mexico, intensive cattle feedlot production in the United States and Canada, and electricity production in the three NAFTA countries. The CEC report notes that its findings are preliminary, given that NAFTA is only in its

fifth year of implementation. However, the report noted that thus far, growing reliance on imports and the use of high-yielding bio-engineered crops threaten Mexico's biodiversity and rural ecosystem. Further, under NAFTA, massive concentration of cattle production has taken place, with subsequent concentration of feed grain production. The environmental impacts thus far include increased runoff from fertilisers and pesticides in the US grain belt ending up in the Mississippi River, which could be responsible for a growing offshore 'dead zone' in the Gulf of Mexico. Concentrated feedlots also contribute to air quality problems, such as increased methane production from manure.

Separately, the CEC announced that the US, Canada, and Mexico are finishing a treaty that would require a NAFTA country to assess projects that are likely to cause significant adverse environmental effects in another NAFTA country. According to the CEC, the treaty would allow governments and citizens in the country expected to experience transborder effects to participate in the environmental assessment process of the nation planning the project in question.

The CEC was established in 1994 to foster public participation in NAFTA affairs, including the review of citizens' complaints of environmental infringements resulting from NAFTA. However, even if the CEC finds basis for a complainant, it cannot force compliance with its rulings.

Trade Sanctions for Driftnet Ban Violations?

The US Commerce Department has identified Italy as a nation that violates the High Seas Driftnet Fisheries Enforcement Act, 'because there is reason to believe Italian fishermen or vessels are using large-scale driftnets on the high seas in commercial fishing operations'. Large-scale high seas driftnets are defined as being greater than or equal to 2.5 kilometers in length. A United Nations moratorium on the use of such nets began in January 1993.

Although the finding carries a possibility of trade restrictions, the Commerce Department is confident that 'in the near future, we should be able to reach a solution that will be agreeable to both parties.' According to Commerce Secretary William M. Daley, Italy has just completed a three-year, multi-million dollar driftnet vessel conversion program that has taken more than 500 driftnet vessels off the water, amounting to 80 percent of the country's driftnet fleet. 'To date', Mr Daley said, 'the program has scrapped nearly 70 driftnet vessels, converted more than 300 vessels to other types of fishing gear, and is in the process of converting the remainder.' In addition, the European Union is phasing out the use of all driftnets, regardless of size, by 2002.

The violation finding was made pursuant to an order of the US Court of International Trade (CIT) after the Humane Society and other conservation groups won a ruling that directed the Secretary of Commerce to identify Italy as a violator of the Driftnet Act. The CIT is responsible for administering the Act, which implements the United Nations moratorium on use of large-scale high seas driftnets. According to the Act, the two nations have 30 days to commence consultations and 90 days to conclude them before Italy may become vulnerable to trade restrictions.

While the driftnet case seems open to a mutually satisfactory solution, it resembles the shrimp-turtle case which was also initiated by a CIT ruling won by a group of conservation organisations.

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Fisheries and Sustainable Development Project

The International Centre for Trade and Sustainable Development and IUCN-The World Conservation Union have embarked on a long-term project to scope the issues at the intersection of fisheries, international trade and sustainable development. The initiators envision the project to involve several policy dialogues and consensus-building efforts, including ICTSD Café and Croissants meetings and discussions in other fora, such as the FAO Committee on Fisheries and the WTO Ministerial Meeting in Seattle. The 1999 meeting of the UN Commission on Sustainable Development (CSD) in April offers another occasion for discussing the issues, particularly as the CSD is expected to make recommendations to governments on sustainable fisheries management. ICTSD and IUCN also plan to publish research papers.

If you are interested in these issues, or have knowledge of relevant research/literature, please contact ICTSD's Executive Director Ricardo Meléndez-Ortiz at ictsd@ictsd.org

BRIDGES

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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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BRIDGES Weekly Trade News Digest

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All WTO meetings take place in Geneva. Dates are subject to change, please contact the WTO for confirmation. Internet: http://www.wto.org (All WTO phone and fax numbers start with (41-22) 739. Only extensions are provided in this list.)	
April 6-8 Abidjan	Commerce international, environnement et développement en Afrique Sub-saharienne Contact: Stéphane Guenot, Solagral, tel: (33) 4 99 23 22 80; fax: 4 99 23 24 61 e-mail: stephane.gueneau@ensam.inra.fr
April 14	WTO General Council Contact: Paulo Barthel-Rosa, tel: 5095, fax: 5761
April 19-20	WTO Working Group on the Interaction Between Trade and Competition Policy Contact: Robert Anderson, tel: 5198, fax: 5790
April 19-20 New York	Sustainable Fisheries – Options for the Future Contact: Brendan May, Marine Stewardship Council, tel: (44-171) 350-4000, fax: 350-1231, e-mail: Secretariat@msc.org
April 19-23 Rome (tentative)	Sixth Extrordinary Session of the Commission on Genetic Resources for Food and Agriculture, to revise the International Undertaking on Plant Genetic Resources in harmony with the Convention on Biological Diversity Contact: José Esquinas-Alcazar, FAO, tel: (39-6) 52251, fax: 522-3152,
April 19-30 New York	Seventh Meeting of the UN Commission on Sustainable Development Contact: A. Vasilyev, tel: (1-212) 936-5948, fax: 936-4260, e-mail: vasilyev@un.org e-mail: jose.esquinas@fao.org
April 20-22	WTO Textiles Monitoring Body Contact: J.-P. Lapalme, tel: 5223, fax: 5765
April 21-22	WTO Council for TRIPs Contact: Matthijs Geuze, tel: 5418, fax: 5790
April 22-23	WTO Committee on Trade and Environment Contact: Doaa Abdel Motaal, tel: 5873, fax: 5620
April 22-23	WTO General Council Special Session (for the 3 rd Ministerial Meeting) Contact: Paulo Barthel-Rosa, tel: 5095, fax: 5761
April 23	WTO Committee on Rules of Origin Contact: Eki Kim, tel: 5584, fax: 5770
April 26-27	WTO Council for Trade in Services Contact: A.-Hamid Mamdouh, tel: 5435, fax: 5771
April 28	WTO Dispute Settlement Body Contact: Paulo Barthel-Rosa, tel: 5095, fax: 5761
April 29-30/ May 3	WTO Committee on Regional Trade Agreements Contact: Jorge Vigano, tel: 5972, fax: 5774
May 19-21	WTO Textiles Monitoring Body Contact: J.-P. Lapalme, tel: 5223, fax: 5765
May 20-21	WTO General Council Special Session (for the 3 rd Ministerial Meeting) Contact: Paulo Barthel-Rosa, tel: 5095, fax: 5761

Reader Survey: We need your feedback

Dear Reader,

We are grateful for your continuing interest in *BRIDGES Between Trade and Sustainable Development* and in the work of the International Centre for Trade and Sustainable Development. Now two years old, *BRIDGES* has acquired a wide and varied readership among policy- and opinion-makers both within governments and across different sectors of civil society; it is no longer a 'startup' publication. We therefore feel that this is an appropriate time to make plans for its evolution over the next several years.

We are also determining how we can best serve the diverse global community that aims to foster sustainable development as the objective of international trade policy-making, and participates in the ongoing debate on international trade and its impact on the environment, growth, equity, and consumption and production patterns.

We are considering a range of options for ICTSD in order to serve the needs of current and prospective readers – from refining the existing *BRIDGES*, to creating new types of printed and online publications, of varying length, which would examine the issues above in greater depth. The Reader Survey circulated with this issue will give us guidance in this respect.

Please take a few minutes to give us your comments. Thank you!

Ricardo Meléndez-Ortiz
ICTSD Executive Director