

### Lomé Convention Negotiators Again Postpone Key Decisions

Ministers from the European Union and 71 developing countries in Africa, the Caribbean and the Pacific made little progress on key issues when they met from 29-30 July in Brussels to discuss the future trade and aid relationship between the EU and its Lomé Convention partners. Views continue to diverge strongly on the gradual replacement of unilateral EU preferences by reciprocal free trade areas, the need for 'good governance' and the role of civil society organisations as agents of development.

The Lomé Convention is unique in that it covers development aid as well as preferential trade terms extended to ACP countries by the EU. Many ACP goods enter the EU duty free, and special protocols have been established to guarantee favourable access to EU markets for key ACP commodities such as bananas, rum, sugar and beef. The Convention operates under a special WTO waiver because its unilateral trade concessions technically violate the WTO's most-favoured nation principle and offer ACP countries better trade terms than to other developing countries.

#### Positions Still Far Apart on Trade

The current Lomé Convention expires in February 2000, and negotiations for a successor arrangement have been underway since last September. The European Union wants to replace the Convention's trade arrangements by several Regional Economic Partnership Agreements (REPAs) – or free trade areas – that would be based on reciprocal concessions. It argues that the WTO waiver cannot be extended indefinitely, and that the Convention's commodity protocols are open to WTO challenge. As proof, the EU cites the WTO's repeated condemnations of its banana regime in favour of ACP countries (it must be remembered, however, that the WTO only condemned the quota and licensing arrangements of the regime, not the preferential tariffs).

In addition, the EU stresses that since the inception of the Lomé programme in the 1970s, trade between the EU and ACP countries has increased by only four percent while during the same period EU trade with non-ACP countries has grown by 80 percent. A reciprocal trade agreement would do more to integrate ACP countries into the world economy, the EU contends. It would like to start negotiations on the new model as early as next year, and conclude them by 2005. According to the EU, a new WTO waiver for Lomé's unilateral trade preferences would only be granted for a transitional period during which the partners would negotiate new arrangements that would be compatible with WTO rules governing regional trade agreements.

At the Brussels meeting, ACP countries continued to argue that the WTO could be more flexible than the EU suggests. A five-year waiver could be granted to cover a new Convention that

is essentially similar to Lomé IV, they maintained. Negotiations for a different arrangement could start in 2006, and those arrangements would not need to enter into force until 2010 at the earliest. 'The EU is wrong in saying the WTO would not accept a ten-year extension [of the current waiver],' said Rajkeswur Purryag, the Foreign Affairs and Trade Minister of Mauritius. At an African preparatory meeting held earlier in July, a WTO official speaking in his personal capacity said that he would 'expect there to be sympathy for a waiver covering the period of negotiations of the next Round – say for five years. Thereafter, the duration of any future waiver covering the period of negotiations toward a fully-fledged free trade area, or series of free trade areas, would be a political issue, not a legal question.'

ACP countries are far from convinced that the ultimate answer lies in the establishment of REPAs. 'ACP experts' analysis does not support acceptance of REPAs,' said Jamaican Foreign Affairs and Trade Minister Anthony Hylton. He emphasised that ACP economies could not sustain rapid liberalisation. Among other problems, they would have difficulties in offsetting lost income from import tariffs, and greater international competition could lead to the collapse of domestic industries. Moreover, the regional blocks suggested by the EU (four in Africa, and one in the Pacific and the Caribbean each) do not correspond to ACP interests. The lack of legal, economic and institutional structures and resources would also make the rapid integration proposed by the EU impossible.

Among EU countries, the Netherlands and the UK seem open to considering alternatives to the REPAs, although it remains unclear what those alternatives would consist of.

#### The Lomé Process in the Seattle Round

Finland's Environment and Development Minister, and meeting co-chair, Satu Hassi told the press that ACP countries should not have too high hopes for the EU's championing their cause during the forthcoming WTO trade negotiations. 'Lomé co-operation is not the EU's sole concern at the WTO. ACP countries' interests will be taken into account to a certain extent, but the process is also influenced by the fact that not all developing countries are Lomé Convention members,' Ms Hassi said.

In a joint statement, EU and ACP negotiators called on the WTO to take into account the 'different economic and social situations and developmental needs' of ACP countries in the next round of global trade talks. The statement also said the WTO had 'an obligation to take due account of the developmental needs' of the world's least-developed countries, and called on WTO Members to take measures

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to assure favourable trade treatment for 'virtually all products exported by the least developed countries.'

**Good Governance**

'Good governance' – a term often used as a euphemism for fighting corruption – is another thorny issue. The EU wants to make 'good governance' one of the 'essential elements' of the future framework treaty (the other essential elements are promotion of democracy, respect for human rights and the rule of law). The violation of an 'essential element' can lead to the suspension of official development assistance (ODA) under the so-called 'non-execution clause'. ACP countries consider the inclusion of good governance in the non-execution clause paternalistic, as well as superfluous as the other three essential elements already cover the area. ('Democracy, respect for human rights, protection of the rule of law we accept. "Good governance" with all its subjectivities and variances is another matter; we believe it appropriate for political dialogue – on both sides, good governance in Europe no less than in ACP countries. We will not have it hung around our necks as a conditionality collar fashioned for the ACP countries alone,' Anthony Hylton, cited in Bridges Year 3 No.1, page 12.)

At the Brussels meeting, ACP countries said that they were willing to consider a reference to good governance in the new treaty only if it was not added to the essential elements of the non-execution clause. According to the meeting's second co-chair, Benin's Culture and Information Minister Séverin Adjovi, the inclusion of good governance to the non-execution clause would allow the EU to suspend aid in case of wrongdoing by a single minister. 'The suspension of assistance is justified when the aid recipient is guilty of institutional corruption or extortion. Nevertheless, the suspension must be based on consultation and not on a unilateral determination,' Minister Adjovi said.

Otherwise discussions on development aid were relatively problem-free. Both sides had already agreed that development co-operation should essentially be targeted at poverty alleviation (see Bridges Year 3 No.1, page 9). However, discussions have not yet started on the level of EU aid to Lomé Convention partners. Minister Hassi warned that EU assistance to ACP countries was likely to decrease due to the Union's important participation in the reconstruction of Kosovo and other former Yugoslavian republics, but stressed that ways must be found to keep up aid levels at least for the poorest Lomé Convention members.

**Role of civil society**

At the conclusion of the two-day meeting, Minister Adjovi said that ACP countries agreed with the EU on the need for civil society to participate in the EU-ACP dialogue. Representatives of civic groups will be invited to the next ministerial-level meeting on the post-Lomé arrangements, currently scheduled for November in Brussels (exact date not available yet). According to Finnish officials, these representatives will have the right to make statements.

Civil society organisations are also supposed to become important actors in the implementation of the post-Lomé treaty, but the modalities for this remain hazy. Most ACP governments are wary of development aid being channelled directly to non-governmental entities. Among the reasons, they cite the unaccountability of unelected bodies, as well as the need for government supervision to ensure that ODA is used to further the development of a country as a whole rather than for the benefit of special interest groups. For a civil society view, see box opposite.

**Civil Society Considers Lomé Partnership**

One hundred and eighteen representatives of civil society organisations, business and media from the ACP and EU countries participated in a Hearing on Civil Society and Political Partnership in Post Lomé from July 8-10 in Brussels.

The fact that civil society will now fully participate in the EU-ACP partnership was considered as an expression of the new democratic quality of international relations but also a reflection of the growing role and responsibility civil society has assumed in the development processes at the national level.

In order to respond to the new challenges posed upon civil society in both ACP and EU countries, conscious and streamlined efforts would have to be undertaken. Modalities should be put in place which will allow civil society to participate in policy formulation, programme and project design and implementation and monitoring at national and international levels.

Civil society involvement in the post Lomé process will provide an important resource for development enthusiasm. It will improve the targeting of the development process, add to the monitoring capacities and provide for political support to the development process on the one hand and to the governmental agencies on the other. Ultimately civil society is an important reinforcement of governmental efforts.

Civil society participation will require a change of political and administrative culture. A 'culture of dialogue' will require more openness, divulgence of documents and accessibility on the part of decision-makers.

An enhanced involvement of civil society in the post Lomé process will not be possible without adequate capacity-building. Capacity-building should relate to all levels of civil society involvement, strengthening its inter-sectoral communication, regional and inter-regional co-operation and its full and effective participation in the new EU-ACP partnership. This partnership should also include an exchange of views and co-operation with regard to the broader global agenda as it relates to the issues of development.

Information and communication are key elements in this capacity-building process. Only through effective information and divulgation systems can civil society be empowered, thus becoming a partner and not an object of international co-operation. An informed civil society is a precondition for an informed public.

The participants in the Hearing concluded that appropriate institutional provision should be made in the design of the post Lomé process and that support should be provided to civil society both in ACP and in EU countries in order to fulfil their new tasks and to assume co-ownership in this participatory partnership.

*Excerpted from the Chairman's Summary Report on the Hearing. The Summary, as well as the reports of panels dealing specifically with the environment, gender, human rights and social development, trade, good governance and access to the post Lomé process are available at <http://www.oneworld.org/euforic/ips/ips99sum.htm>*

# The Dilemma of the Precautionary Principle in International Trade

By Konrad von Moltke

GATT Articles XX(b) and XX(g) played a central role in the early stages of the trade and environment debate. It was widely assumed that appropriate application of these provisions would address most of the emerging problems. In practice, Article XX has been of marginal utility, both in the dispute settlement process and in the broader analytical debate. This somewhat surprising result may be attributed in large measure to two factors:

- Article XX assumes that the exceptions it lists will be beyond dispute. It arises from a general obligation of governments to protect their territory and their citizens from recognizable dangers.
- Article XX addresses measures taken by member states of the GATT/WTO. In practice much of environmental policy involves either subnational jurisdictions or international agreements.

Fifty years after Art. XX and similar provisions in other trade agreements were adopted, governments find themselves increasingly confronted with dangers that are difficult to identify and almost impossible to quantify. They must balance conflicting priorities: on the one hand, opaque scientific messages must be interpreted to assess and avoid any major threats to their citizens. At the same time they wish to remain supportive of researchers and commercial interests, which expect to benefit from the innovations that gave rise to the dilemma in the first place. This is a different activity than that protected by Article XX, so it is not surprising that the Article's normative provisions have not proven particularly useful in dealing with the resulting dilemmas for the trade regime.

Governments have responded differently to the problem of risks to public health and the environment that can only be identified by scientific research, but which scientific research is unable to characterize in an unambiguous fashion. The two approaches that have now clashed in the WTO reflect the fundamental differences in governance structure in the United States and Europe. The US response to uncertain risks that required government action was to develop risk assessment techniques, a formalized method to build a comprehensive record in support of specific actions by public authorities. Such techniques are universal insofar as they systematize the process of assessing scientific information. Nevertheless, they are particularly adapted to the disjointed character of US government, which requires the constant construction of a formal record at one level or in one branch of government since any decision is liable to be reviewed at another level or in another branch that functions independently. In particular, decisions based on relatively ambiguous scientific findings are liable to be questioned over and over again, as an issue wanders under public pressure and the play of interests from Congress to the Administration, from there to the courts and to the states, and ultimately back to Congress where the cycle begins anew.

Most other countries do not have this extent of separation of powers, and few have states that are as independent of federal supervision as those which make up the United States. In these countries, balancing conflicting interests requires streamlining the resources of policy-making. Moreover, the citizens of most of these countries are willing to accept a much higher level of government

intervention than is the rule in North America. The countries of Europe have consequently moved towards a different approach to the problem of deciding the extent of government regulation, encapsulated in the precautionary principle.

The precautionary principle was first articulated in the German air pollution act of 1968 (*Bundesimmissionsschutzgesetz*), which doubled as an act of general environmental policy. It was known as the *Vorsorgeprinzip*, and explicitly addressed the problem of government action that goes beyond the prevention of known dangers. In the legalistic German system, it provided essential support to government action in the face of systemic scientific

uncertainty, in particular with regard to environmental processes. It became central to German environmental policy in the early 1980s, as the government needed to justify its sudden conversion to environmental activism after vast tracts of forest were found to be dying.

It is never possible to transpose instruments without adjustment from one jurisdiction to another. Paradoxically, to achieve comparable results in different jurisdictions it may be necessary to pursue different institutional strategies. This is particularly true of the move from a national context – with a well developed institutional framework that is simply presumed to exist when new measures

are introduced – to an international one with only rudiments of a common institutional basis. The precautionary principle, with its potential for misuse without appropriate balances, will prove particularly difficult to operationalize at the international level. In many respects the tradition of risk assessment, with its emphasis on a carefully constructed record, is more appropriate for international organizations. Nevertheless, it is critical to recognize that 'risk assessment' as practiced in international fora will never be the same as 'risk assessment' practiced in a single country.

From Germany, the precautionary principle has spread to the rest of Europe, and from there, via UNCED, to the international level. It is evoked by governments everywhere to legitimate the need to act in the absence of clear scientific evidence, particularly in the face of phenomena with a rising probability of high damage even when the starting probabilities were very low. The risk of such an approach, which relies quite heavily on social institutions to develop a consensus on the need for action, lies in situations where there is no interest group conflict to ensure the rigorous assessment of what evidence there is. This has been particularly the case in the EU Common Agricultural Policy, where fear of increased productivity helps maintain the tenuous consensus that unites all parties in resistance to new technologies.

It is critical to recognize that the precautionary principle is meaningless without a robust analysis of the economic aspects of its application in particular cases. Resources are limited and never sufficient to address all risks clamoring for attention. Moreover, application of the precautionary principle in specific situations has economic implications, which should always be made explicit. The appropriate course of action emerges only when scientific uncertainty, social consensus, and economic resources are seen together.

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The different approaches to scientific uncertainty in determining appropriate government action have led to a number of conflicts within the WTO, most notably those concerning the use of hormones in beef production and the introduction of genetically modified crops (see box). Clearly the rules used to decide on a course of action will impact the substantive outcome of the process. It is important, however, to recognize that differences in the rules used reflect different approaches to a single problem, as well as the political and administrative culture of the jurisdiction. Attempts to harmonize these differences out of existence are liable to be resisted as attacks on a way of doing things rather than a dispute about science.

The current situation is strongly reminiscent of the process the European Union went through when first confronted with the US invention of environmental impact assessments (EIAs). Like risk assessment, EIAs reflect specific aspects of US political culture as much as any general principle of environmental policy. EIAs are a solution to the need to identify environmental measures relating to specific projects but operating in the disjointed system of US administration and faced with a deplorable lack of prior land use planning. When the European Union attempted to transfer the EIA system to Europe, it was discovered that extensive modification was necessary until it could serve to complement the highly integrated structures of land use planning and project approval that already existed in Europe. As the Germans in particular found out to their dismay, their prior system was far from perfect and needed substantial adjustment to meet the new criteria of environmental assessment. In spite of such adaptations, the European version of EIA has turned out to be different in many important respects from its US template.

Similarly, it would be a mistake to assume that 'risk assessment' can be transposed from the United States to Europe (or Japan for that matter) without extensive modification; nor could the US system of governance tolerate the degree of administrative discretion implied in the precautionary principle. It was certainly a mistake to write into Article 5 of the WTO Agreement on Sanitary and Phytosanitary Measures language which could be interpreted as meaning that risk assessment is a universal tool of policy. There is also an underlying assumption that science will ultimately provide answers, so that the state of uncertainty is viewed as temporary. In many areas of environmental policy, such certainty is not available in the foreseeable future.

The WTO needs effective international organizations capable of assessing scientific evidence, understanding the different context of policy-making in different countries and able to assist in determining whether measures that have been adopted are reasonable. That is a daunting task, and one that will require a good deal of time and effort. There are interesting parallels in the process UNEP has gone through in developing an approach to persistent organic pollutants – a process that has taken almost twenty years. To cope with risk assessment and the precautionary principle, the Millennium Round needs to promote the creation of effective organizations outside the WTO and must address the interface between the trade regime and these organizations. These organizations will operate differently from the WTO, according to different principles and utilize different institutional mechanisms. In this respect adapting the precautionary principle to the context of international trade resembles much of the environmental agenda.

*Konrad von Moltke is a Senior Fellow at the International Institute for Sustainable Development in Winnipeg, Canada.*

The European Union's import ban on beef treated with growth hormones is the best-known example of a trade restriction based on the precautionary principle. The EU argued that international standards on the hormones' safety were questionable, and that in the light of the resulting uncertainty the ban was justified. The WTO's Appellate Body ruled that there was no risk assessment to support the EU's allegation, and therefore the ban violated provisions of Article 5 of the Sanitary and Phytosanitary Agreement. The EU consequently undertook scientific studies that it hoped would constitute a WTO-compatible risk assessment but refused to rescind the import embargo until the results of those studies were known, probably early next year (for an update on the dispute, see separate article on page 10).

As the EU studies have not yet been presented to the WTO, it remains an open question how conclusive a risk assessment must be to justify trade restrictions or – in other words – what degree of scientific uncertainty would constitute an acceptable basis for trade measures taken under the precautionary principle.

A dispute involving genetically modified organisms (GMOs) would test the WTO's acceptance of the precautionary principle to the hilt. No such case has been brought yet, but Members with biotechnology export interests could attack trade barriers arising from other Members' precautionary legislation aimed to counter a risk to human, animal or plant life/health that *could* exist even if currently available scientific evidence does not allow to quantify it.

For example, a dispute could be brought against the EU's or Japan's mandatory labelling schemes for food products containing genetically modified components. Both have come under fierce criticism at the WTO's Committee on Technical Barriers to Trade. Tests have shown that genetically modified crop varieties have no ill-effects on human health, and therefore no scientific reason exists to label products containing them, biotechnology exporters argue. A GMO product labelling requirement could be an arbitrary and non-science-based trade barrier, particularly since only separate production, transport and processing systems for GMO- and non-GMO crops could guarantee that any food product is GMO-free. Crop segregation is currently neither required nor practiced by the major GMO producers.

Countries' approval procedures for new GMO varieties could also come under attack. The US has already considered bringing a case against the EU's 'broken down' approval process as a violation of the requirement to undertake and complete such procedures 'without undue delay'.

### Further Reading

Konrad von Moltke. 1988. 'The Vorsorgeprinzip in West German Environmental Policy', in: Royal Commission on Environmental Pollution, *Twelfth Report: Best Practicable Environmental Option*. London, HMSO. (Also: London: Institute for European Environmental Policy, 1987).

Ortwin Renn, et al. May 1999. *On Science and Precaution in the Management of Risk*. Final Report of a Project for the EC Forward Studies Unit.

## Update on Seattle Ministerial Preparations

Although the 'proposal-driven' preparatory phase of the Seattle Ministerial officially finished in July, Members are still submitting papers both regarding their goals during the upcoming round of multilateral trade liberalisation negotiations, and the wording of the Ministerial Declaration that will launch the new round.

Between September and November, Members will continue Seattle preparations on two parallel tracks: tabling and discussing further proposals, and working on the draft Ministerial Declaration. The Declaration is expected to set the broad outline for the negotiations, as well as timelines for progress. Most observers predict that it will be of general nature, and probably give less precise guidance to negotiators than many would wish. The Seattle Ministerial Conference will take place from 30 November to 3 December, 1999.

**Hardening Positions**

Some new proposals and other statements, either submitted at the last two preparatory meetings in July or in the course of August, indicate a certain hardening of positions.

On the scope of the negotiations, several developing countries – led by India, Pakistan and Egypt – are fighting a rearguard action to limit the talks to the WTO's built-in agenda of agriculture and services, as well the revision of certain Agreements and provisions to ensure that they get a better deal out of existing commitments.

It will be an uphill battle to get their priority issues on the Seattle Agenda, however. For instance, the United States this summer announced that it will oppose re-opening the Agreement on Textiles and Clothing, and is not willing to discuss its quota removal commitments made during the Uruguay Round. Other developing country priorities considered off-limits by the US are anti-dumping rules and re-opening the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) or the Agreement on Trade-related Intellectual Property Rights (TRIPs).

Early in the preparatory process, developing countries identified developed countries' excessive recourse to anti-dumping measures as a key issue to be addressed during the Seattle Round. They have also made several proposals to amend the TRIPs Agreement, *inter alia*, to ensure that developing countries can grant licenses to domestic companies to manufacture essential patented drugs, and to protect traditional knowledge, as well as prevent bio-piracy (see separate article on page 7). Developing countries have also sought to address export constraints caused by the SPS Agreement, particularly with regard to equivalency requirements, technical assistance, transparency in adopting SPS measures, and the non-implementation of special and differential treatment provisions. Many have also called for extending the compliance timeframes of the two treaties.

For more information on developing country priorities and positions, see page 12 for excerpts of the Chairman's Summary of the G-15 Ministerial Meeting held in Bangalore, India, on 17-18 August in preparation for the Seattle Ministerial.

**Trade and Environment**

Switzerland has suggested the following elements for a draft Seattle Declaration: 'Negotiations shall aim to strengthen the coherence between trade and environmental policies (i) by clarifying the relationship between the multilateral trading system and multilateral

environmental agreements through the establishment of appropriate principles, rules or procedures and (ii) by elaborating instruments to take better account of basic principles of environmental protection and of current issues stemming from the interdependencies between trade and environment' (WT/GC/W/265).

The United States has put forward a proposal on Trade and Sustainable Development (WT/GC/W/304) that suggests including in the Seattle Declaration a call upon the Committee on Trade and Environment 'to serve as a forum for the identification and discussion of links between elements of negotiating agenda and the environment and public health'. The CTE would not reach conclusions or negotiate on any issue, however. The paper also calls for an 'articulation of disciplines to eliminate subsidies that contribute too over-capacity in the fisheries sector', as well as elimination of agricultural export subsidies and 'continued transition from those domestic subsidy programmes that encourage degradation of natural resources and distort trade'.

Earlier papers from the EU (WT/GC/W/194) and Norway (WT/GC/W/176) have also addressed trade and environment (see Bridges Year 3 No.4, page 4). For the G-15 position, see page 12.

**Labour**

The US is virtually alone in pressing labour issues on the Seattle agenda. Speaking to the WTO General Council on 29 July, Deputy US Trade Representative Susan Esserman said that 'more attention to the intersection of trade and labour standards is warranted as governments and industries wrestle with the complex issues of globalisation and adjustment'. Concretely, the US is seeking the establishment of a working group – or, in proposal language, 'a forward work programme' – to address issues relating to labour standards, such as abusive child labour and the operation of export processing zones. Other industrialised countries have approached the red-hot issue with caution, calling at the most for increased co-operation between the ILO and WTO Secretariats. Developing countries reject any links between trade and labour (see page 12).

**Industrial Tariffs**

Industrial tariffs seem a more and more likely addition to the built-in agenda negotiations during the Seattle Round. Outlining South Africa's negotiation position to parliamentarians on 19 August, Trade Minister Alec Erwin said South Africa would press for liberalisation of some industrial sectors, notably steel, where South Africa had a large competitive advantage but was penalised by protectionism in rich developed nations. South Africa will formally submit its position to the WTO in September. Other WTO Members who have called for tariff negotiations include the EU – which has said it will put all of its tariffs on the table – and several Eastern and Central European countries, as well as Korea, Japan, Hong Kong, Singapore and the US.

New Zealand, with support from most APEC countries, is pushing for prioritising eight industry sectors during tariff liberalisation talks. This Accelerated Tariff Liberalisation Initiative (ATL) has drawn opposition on two counts: it aims at 'early harvest' results and includes forestry products. The supporters of the 'single undertaking' approach to the Seattle Round reject the idea of 'early harvest' negotiations on any sector at all. Opposition is also growing with regard to forest tariff elimination, which critics say

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**Trade and Development, LDC Committees Discuss Small Economies, Special Treatment & Technical Assistance**

The WTO Committee on Trade and Development met from 7-8 July to examine the particular concerns and problems of small economies. The issue has been on the CTD's agenda since last November when Barbados, Jamaica, Lesotho, Mauritius, Sri Lanka and Trinidad and Tobago tabled a paper requesting the WTO to pay more attention to the difficulties encountered by vulnerable economies such as small island states and landlocked developing countries, perhaps through the establishment of a 'small economies group'. The Dominican Republic and Honduras have submitted a similar proposal to the Ministerial preparation process.

An official 'small economies' status could help its members obtain 'special and differential treatment' exemptions geared to their specific needs in future negotiations and, possibly, some readjustment of existing Agreements. Currently, the WTO recognises four groups of countries (developed, developing, least-developed and countries in transition). Some of the existing Agreements have different implementation deadlines (and other provisions) based on the country categories.

At the CTD meeting, Members discussed a new World Bank/Commonwealth Secretariat report entitled *Making Small States Less Vulnerable: Supporting Development During Globalisation*, which highlighted four areas for WTO action:

- Recognition of small economies' difficulties;
- Accelerated and simplified accession procedures for small states;
- Reduction of the cost of access to the dispute settlement system; and
- Reduction of small economies' contributions to the WTO's budget.

Sources said the report was well-received, but that it remained unclear what exactly a special 'small economies' status would entail, and how such a status could concretely be reflected in the WTO's work. Some Members also think that the creation of a new category would be unnecessary as – in spite of some unique features – small economies' concerns can be subsumed in those of developing or least-developed countries. The CTD will return to this issue in future meetings.

The other major item on the Committee's agenda was the review of application of special and differential treatment provisions in WTO Agreements in favour of developing countries, and the problems encountered. The Secretariat introduced a note based on the seven replies it had received to the questionnaire it circulated in November. Observers said the scarcity of the responses was probably due to the fact that many poorer developing countries lacked the financial and human resources to undertake such a complex assessment. In addition to compiling the seven responses, the Secretariat note highlights the provisions that exist in the different Agreements; an update will be prepared if more answers come in. Members agreed to carry out the application review as a compromise after some developed countries objected to India's request that the Secretariat conduct an analytical study on the effects of the special treatment provisions on developing countries' trade and economies. This issue will also be kept on the CTD agenda.

At its June 1999 meeting, the Committee initiated discussion on the role the CTD could play to assist governments in preparing for the upcoming trade negotiations (see Bridges Year 3 No.5, page 5). When they met in July, Members reviewed a short note on the subject prepared by the Secretariat. It was agreed that the

Secretariat would prepare second draft containing a more detailed work plan for the Committee's next meeting on 15 October.

The Secretariat will also prepare a note on the participation of least-developed countries (LDCs) in world trade.

Jean-Maurice Léger, Director of the WTO's Technical Co-operation Division appealed to Members to replenish the trust funds set up for technical assistance activities. Most of the WTO's technical assistance is funded through voluntary contributions by a handful of countries. In a proposal dated 21 July 1999 (WT/GC/W/259), Canada, Denmark, Netherlands, Norway, Sweden and Switzerland suggested that the Seattle Ministerial Conference decide that technical assistance 'in principle shall be financed through the regular budget', and that the additional funding 'shall be made possible through an increase in the existing regular budget and not through reallocations'. The necessary increase in the budget to meet at least the current annual demand for technical assistance, i.e. SF10 million, should be phased in over a period of three years starting from year 2000.

Contact: Chiedu Osakwe, WTO Trade and Development Division, tel: (41-22) 739-5250, fax: 739-5774.

**Sub-Committee on LDCs**

At its meeting on 12 July, the Sub-committee on Least-developed Countries reviewed progress in the implementation of the Integrated Framework for Trade-related Technical Assistance (IF). According to observers, the programme is having some difficulty in moving past its first phase, which consisted of identifying least-developed countries' technical assistance needs and carving out responses to those needs between six intergovernmental agencies involved in trade-related technical assistance activities. Although country-specific trade-related technical assistance plans have been developed for most IF participants, many least-developed country delegates say that, so far, they have seen few concrete results from the exercise.

The next stage of implementation should see the development of Multi-year Programmes of Trade-related Technical Assistance Activities for each of the LDCs involved in the initiative. While no such programmes (involving the six technical assistance agencies, the government concerned, as well as donor countries) have yet been developed, meetings to get the process started are scheduled in a large number of countries for the latter half of this year and the beginning of the year 2000.

The Integrated Framework was adopted at the conclusion of the High-level Meeting on Integrated Initiatives on Least-developed Countries' Trade Development in October 1997. Follow-up of this meeting is a standing item on the Sub-committee's agenda. For more information on the IF and the programme's implementation status in individual least-developed countries, please see <http://www.ldc.org/> or contact: Annet Blank, WTO Technical Co-operation Division, tel: (41-22) 739-5349, fax: 739-5764.

The Sub-committee's future work will focus on four main issues: market access, capacity-building, implementation and coherence. Its next meeting is scheduled for 29 September.

Contact: Ingela Nilsson, WTO Trade and Development Division, tel: (41-22) 739-5230, fax: 739-5774.



## Discussion Launched on TRIPs Article 27.3(b) Review but Relationship with Biodiversity Convention Remains Unclear

The WTO Agreement on Trade-related Intellectual Property Rights provides for some exceptions to patenting requirements, notably with regard to plants, animals and biological processes for their production (Article 27.3(b), see box). Lukewarm to the exception relating to plant patenting when it was adopted during the Uruguay Round, the US successfully lobbied for a mandatory review of the provision after four years, i.e. in 1999. Observers say that at the time the US wanted to ensure it had not 'signed away' its right to require patenting of plant inventions and wanted to keep open the possibility of renegotiating the Article in 1999.

It is thus ironic that during the review now underway, developing countries and NGOs are the ones calling for renegotiation of Article 27.3(b) – proposing that the exception to the requirement of patenting plant varieties be further broadened – while indications are that the US and the EU as well as commercial interests such as the International Chamber of Commerce would be happy to leave the text of Article 27.3(b) stand as is.

### Plant Patenting and the WTO

With new developments in biotechnology and genetic engineering over the last few years, Article 27.3(b) is increasingly moving to centre stage at the WTO, as well as in other fora such as the Convention on Biological Diversity and the UN Food and Agriculture Organisation. At the WTO, it is currently being considered both in the TRIPs Council and in the General Council sessions dedicated to preparing the Seattle Ministerial Conference.

Article 27.3(b) of the TRIPs Agreement provides that animal and plant inventions – with some exceptions – do not need to be given patent protection, but that plant varieties have to be protected either by patents or a *sui generis* system of intellectual property protection. In practice, most countries who have adopted *sui generis* systems have modelled them on the International Convention for the Protection of New Varieties of Plants, developed in the context of the International Union for the Protection of New Varieties of Plants (UPOV).

developed and developing countries as to whether the 1999 exercise was intended to be a review of implementation or of the provision itself. Several developing countries have argued strongly that the review should be of the substance of Article 27.3(b) itself, pointing out that when a WTO Agreement calls for a review of implementation of a provision, the provision specifically says so, as is the case in Article 71.1 of the TRIPs Agreement.

The Kenyan paper to the General Council referred to above makes this point forcefully, adding that developing countries should be given a five-year implementation deadline starting from the completion of the substantive review.

At the TRIPs Council meeting of 7-8 July, Members had before them an informal Secretariat paper which compiles the – approximately thirty – replies to a questionnaire circulated late last year, on how countries are applying Article 27.3(b). Many developed countries (led by the US and EU) noted that the document showed a convergence in the way countries were handling the Article – either through patents or *sui generis* laws based on UPOV 1991 and UPOV 1978.

The most significant development of the meeting was an Indian statement which effectively set the stage for a substantive review of the 27.3(b) provision. The statement was supported by a number of countries, including the Philippines, Malaysia, Indonesia, Pakistan, Singapore, Egypt, Kenya, Brazil, Costa Rica, the Dominican Republic and Costa Rica.

### General Council

The June issue of Bridges presented highlights of a non-paper submitted to the General Council's session on preparations for the Ministerial Conference by Zambia and several other developing countries. This document contains recommendations on TRIPs Article 27.3(b), which seek compensation for the use of indigenous knowledge, and limiting patentability of micro-organisms to genetically modified micro-organisms.

On 29 July, Kenya tabled a comprehensive proposal on TRIPs on behalf of the African Group (WT/GC/W/302) in the Ministerial preparatory process. It suggested, *inter alia*, that the review should seek to harmonise Article 27.3(b) with the provisions of the Convention on Biological Diversity and FAO's International Undertaking on Plant Genetic Resources 'in which the conservation and sustainable use of biological diversity, the protection of rights and knowledge of indigenous and local communities, and the promotion of farmers' rights, are fully taken into account.'

### Council on TRIPs

In the TRIPs Council, the US (and the EU) have so far argued that this year's review should consist of no more than a survey of the way Article 27.3(b) has been implemented by different countries. Although the issue was only dealt with superficially at the TRIPs Council last December, as well as at the TRIPs Council's first two meetings of 1999, discussions revealed disagreement between

Among industrialised countries, the EU said that India's statement contained some 'interesting ideas' and Switzerland indicated that it was prepared to look at the issues covered by the proposal, while Canada and Japan said that they needed time to react. Although India's intervention did not lead to an in-depth substantive discussion, it put the issue on the table, and many WTO Members expect the TRIPs Council to start tackling a review of the provision itself at its next session on 20-22 October.

Several industrialised countries argued that since decisions on life forms were essentially based on commercial motivation, the review of Article 27.3(b) should focus on that. The US also said its experience in patenting life form inventions showed patents to have given a substantial boost to biotechnology, safer agriculture and improved yields. But India and others argued that not all countries and civilisations would agree that commercial motivation was a deciding element in life patenting. Governments everywhere would have to look at other elements in taking their decisions.

Another part of India's statement to the TRIPs Council dealt with possible conflict between the commercial orientation of the TRIPs Agreement and non-commercial traditional indigenous rights, as well as the relationship between the TRIPs Agreement and the Convention on Biological Diversity (CBD). Australia and other countries rejected the view that there is a conflict between the TRIPs Agreement and the CBD.

*Continued on page 8*

*Ministerial Preparations, continued from page 5*

would increase logging and hasten deforestation. See separate articles on potential effects of forestry product tariff elimination on page 15 and the ATL initiative on page 16.

**Agriculture**

Canada on 19 August outlined its negotiating position with regard to agriculture. As other Cairns Group members, Canada calls for the complete elimination of export subsidies for agricultural goods and an overall limit on, and reduction to, all forms of domestic production subsidies. It will also seek the 'elimination of those elements of the "peace clause" that restrict Canada's rights to pursue dispute settlement in cases where trade-distorting domestic support and export subsidies cause nullification and impairment of access or disrupt sales in third country or import markets'. While Canada said it was willing to 'discuss any practical trade concerns identified by our trading partners', it is expected to defend its marketing boards for wheat, dairy and poultry as competitive and in compliance with international trade rules.

The EU's agriculture position paper (WT/GC/W/273) outlines four main areas for negotiation: specific instruments provided in the Agreement on Agriculture; market access, support for exports, and commitments to reduce support; non-trade concerns, notably the multifunctional role of agriculture, food safety and quality, policies to protect the environment and animal welfare; and special and differential treatment for developing countries. The EU considers that only minor adjustments are required in the blue and green boxes of allowed subsidies, and no changes are needed in the peace clause, which protects domestic support measures from challenges, or the Special Safeguard Clause. The EU says it is prepared to negotiate on market access improvement and export subsidies, but reminds that reducing trade barriers in agriculture 'is to be seen as an on-going process resulting in fundamental reform, and not something which can be completed in the next round'. On the multifunctional role of agriculture, the EU stresses that it will be 'essential to ensure that progress on trade issues does not damage the ability those employed in agriculture to supply public goods, in particular as regards the environment (including combating desertification), and the sustained vitality of rural areas'. Special and differential treatment for developing countries will be 'of considerable importance' in the agriculture negotiations, the EU acknowledges, highlighting its GSP and Lomé preferences which might be further improved.

**Biotechnology:** The United States and Canada have ruled out opening the SPS Agreement as a means to address trade in biotechnology products. Instead, they will seek to secure greater market access for such products in the context of the agricultural negotiations (see separate article on page 14).

**Government Procurement**

In a proposal dated 13 August (WT/GC/W/305), Venezuela suggested that the Seattle Declaration state that 'the stage of studying government procurement practices has been completed and the negotiating stage should commence', adding that it had 'the impression that there could be a majority opinion in favour of negotiating a multilateral transparency agreement within the WTO'. Chile, Costa Rica and Korea have also expressed support for launching negotiations on this topic, as have Australia, Canada, the EU, New Zealand, Switzerland and the United States. India, Pakistan and Egypt lead the opposition to starting negotiations on the transparency of government procurement rules.

*TRIPs Review, continued from page 7***TRIPs-CBD: conflict or poor communication?**

Potential conflicts between the Biodiversity Convention and TRIPs were also discussed at the inter-sessional meeting of the Parties to the Biodiversity Convention, which took place from 28-30 June in Montreal (see also page 12, and Bridges Year 3 No.5, page 13).

On behalf of the African group, Cameroon submitted a strong position paper on the relationship between the TRIPs Agreement and the CBD, which said that African countries could now clearly see that the TRIPs Agreement threatened local communities, and that the international trade regime jeopardised application of the Biodiversity Convention. Cameroon recommended that the TRIPs Council be invited to take advantage of the review of Article 27.3(b) to clarify the rights of countries to make exceptions and to extend the Agreement's exceptions to patenting in the field of plant inventions and genetic materials.

India pointed out that the role of intellectual property rights (IPRs) was overrated as a mechanism for benefit-sharing under the CBD and that IPRs overlooked biopiracy. The Indian delegate proposed that Article 29 of the TRIPs Agreement be amended to make disclosure of the country of origin of genetic materials compulsory and thus allow public scrutiny and the operationalisation of a Prior Informed Consent procedure in this context. These suggestions echo those made in the non-paper tabled at the WTO General Council by Zambia and other developing countries, i.e. that right-holders declare the origin of plant or gene materials used in their inventions, and pay compensation to the country of communities that had the material or the knowledge used to develop the new plant variety (see Bridges Year 3 No.5, page 2).

At the inter-sessional CBD meeting, some industrialised countries such as the US, the EU and Canada, reaffirmed their view that TRIPs and the CBD were mutually supportive. However, the EU said that the CBD should invite the WTO to acknowledge Convention's provisions and give special consideration to indigenous peoples. The CBD Conference of the Parties next May will decide whether such action would be appropriate. Norway stood out among other industrialised countries by affirming that it opposes granting patents on plants and animals.

Several developed and developing countries mentioned the need for better communication between the CBD, WTO and the World Intellectual Property Organisation (WIPO). Brazil proposed *inter alia* that formal relations between the CBD, WTO and WIPO be created, and that a formal mechanisms for information-sharing and technical co-operation be established.

Unfortunately, the CBD discussions and conclusions did not appear to have been transmitted to WTO representatives in Geneva, so the July TRIPs Council did not take them into account. It is also worth noting that the TRIPs Council still has not granted observer status to the CBD Secretariat. While this is due to the general situation with regard to observer status of inter-governmental organisations in the WTO rather than to a specific conflict between Members on biodiversity-related trade issues, it exacerbates the poor transmission of information between the two bodies, whose agendas clearly cover many of the same issues.

Contact: Matthijs Geuze, WTO Intellectual Property and Investment Division, tel: (41-22) 739-5418, fax: 739-5790; or, for more information on the CBD: CBD Secretariat, tel: (1-514) 288-2220, fax: 288-6588, e-mail: secretariat@biodiv.org, web: <http://www.biodiv.org>.



## Dispute Settlement Review Peters Out



The WTO's Dispute Settlement Understanding (DSU) review appears to have died a quiet death: the 29 July informal meeting of the Dispute Settlement Body (DSB) that was to wrap it up ended inconclusively without Members adopting any recommendations regarding amendments to the DSU or even a factual report of their work so far. As India, Mexico and Malaysia refused to continue the review next fall, only informal consultations between interested Members are expected to take place before the DSB meets again on 21 September to consider what conclusions to report/recommend to the General Council.

Underway since June 1998, the review surprised both trade diplomats and the WTO Secretariat by the large number of amendment proposals tabled by Members (more than 30 so far) when the dispute settlement system was generally considered to be working well. The deadline for completing the review was extended until July 1999 after it became clear that it could not be concluded by February as originally planned. Members held intensive informal discussions during the weeks preceding the July meeting but reached no agreement on how to proceed. At the meeting itself, the EU and the United States argued that it was premature to make recommendations and requested the continuation of the review after the summer break. The proposal was rejected by India, Malaysia and Mexico.

Thus – in spite of the many submissions tabled – the only concrete result of more than a year of frequent meetings is a compilation of proposals that Members now wonder what to do with.

**Mildly controversial**

Some of the proposed changes/clarifications are relatively uncontroversial and relate to such matters as the right to private counsel, enhancing the role of pre-panel consultations, notifications of mutually agreed solutions and adjudication of disputes involving perishable goods. The composition of panels and the role of the Appellate Body have roused more debate, in particular the EU's suggestion to establish a group of professional panelists, and Pakistan's proposal that the Appellate Body should refer to the General Council in cases where it considers new interpretations of WTO rules in light of 'contemporary developments'.

Developing countries have focused on amending the DSU so that no cross-sectoral retaliation can take place against them in cases of non-compliance with WTO rulings, as well as enhancing the procedures for financial compensation. Their concern about the costs of litigation will be at least partially answered by the establishment of an independent Advisory Centre on WTO Law later this year (see Bridges Year 3 No.1, page 5 and No.4, page 7).

Other issues raised include third party rights and multiple complaints regarding the same violation. Proposals on all these topics have been described in detail in previous issues of Bridges (see box).

**Highly controversial**

'Sequencing' the steps that must be taken when implementation of WTO dispute settlement rulings is challenged became a central focus of the review after the US and the EU clashed over the relationship between Articles 21.5 and 22 in the banana dispute. This first recourse to the DSU's compliance procedures revealed a confusion around the order in which the two articles should be applied (see Bridges Vol.2 No.8, page 7).

The EU maintains that sanctions can only be imposed once the WTO has made a finding of non-compliance under Article 21.5 and arbitrated the amount of sanctions under Article 22.6. This sequencing is incompatible with the timelines of US Section 301 legislation (currently under investigation by a WTO dispute settlement panel, see Bridges Year 3 No.5, page 8). Clearly isolated on this issue, the US continued to claim in the run-up to the July meeting that nothing in the DSU indicates that Article 21.5 is a precondition to Article 22.6, flatly refusing to give up what it sees as its right to impose sanctions before the WTO-compatibility of contested implementation has been established by a panel.

**Wildly controversial**

Opening up the dispute settlement proceedings to greater public scrutiny is the issue on which Members are the least likely to reach a consensus. So far, the US has maintained its calls for the release of country submissions to panels or the Appellate Body (AB); opening dispute settlement hearings to the public; and the right of panels and the AB to receive amicus briefs (often submitted by non-governmental advocacy organisations).

While the EU and Canada have expressed support for these proposals, most other Members are strongly opposed. They maintain that the WTO is an intergovernmental forum which should remain free from pressure from special interest groups, and therefore only the protagonists should attend panel hearings. They also stress that both the hearings and the written country submissions frequently deal with confidential business information, and that not even WTO Members that are not parties to the dispute can attend hearings or submit written views.

The issue of amicus briefs has also raised vehement opposition. When the shrimp-turtle Appellate Body report was adopted in November 1998, an unprecedented number of countries put on record their grave reservations regarding the AB's interpretation that DSU Article 13 allowed panels and the AB to take non-solicited friend-of-the-court briefs into account during their deliberations (see Bridges Vol.2 No.8, page 8). Several countries, including Thailand and Pakistan, have called for an amendment that would clearly prohibit panels from considering unsolicited information, including amicus briefs from private parties. Among their chief arguments is that panels would be faced with an unfair burden of deciding which materials they should consider when sorting out 'a deluge of unsolicited information'.

Some developing country delegates said after the July meeting that it would only make sense to continue the DSU review if the US showed some flexibility. One US demand that Members might compromise on is the earlier release of panel findings.

**Previous reports of the DSU review have appeared in**

Bridges Vol.2 No.4, page 7  
Bridges Vol.2 No.7, page 7  
Bridges Vol.2 No.8, page 9  
Bridges Year 3 No.1, page 6  
Bridges Year 3 No.2, page 6  
Bridges Year 3 No.3, page 8  
Bridges Year 3 No.4, page 7



## Dispute Settlement Corner

## Sanctions Authorised in Beef Hormone Case

For the second time in its five-year history, the Dispute Settlement Body on 26 July authorised the imposition of punitive duties in retaliation for non-compliance with a WTO ruling. The decision followed WTO arbitrators' determination that the European Union's import ban on beef treated with growth hormones caused the United States' and Canada's beef exports losses worth US\$116.8 million and C\$11.3 million, respectively. The US had estimated the losses at US\$202 million and Canada at C\$75 million. EU agricultural products are most affected by the 100 percent duties, including luxury goods such as truffles.

The deadline for compliance with the Appellate Body ruling against the ban was 13 May, but the EU refused to rescind the embargo before the final results of its risk assessment on the hormones' safety were known sometime around the end of the year. The Appellate Body ruled that countries could maintain trade restrictions based on higher food safety norms than those warranted by international standards if a risk assessment showed that the higher standards were justified. The EU had failed to back up its beef ban with such scientific evidence, the AB said.

The EU has offered to lower its 20 percent tariff on hormone-free beef imports and to increase its 11,500 tonne quota for such imports in compensation for the US and Canadian trade losses, but the beef industry in those countries has shown little enthusiasm for the proposal.

## EU's New Banana Regime Proposal Postponed

In the other non-compliance case, the DSB on 19 April authorised the US to levy punitive taxes on EU exports worth US\$191.4 million after a compliance panel ruled that the EU's banana import regime still was WTO-inconsistent. The EU should have brought the regime in line with WTO rules by 1 January. In all, European goods now face more than US\$315 million in retaliation duties in the North American market.

The European Commission was expected to present a new proposal for a WTO-compatible regime in July, but that has now been postponed until September. The Commission released an options paper on ways to modify the regime on 26 May (see Bridges Year 3 No.4, page 6), but according to its latest status report on the matter, 'so far no single WTO-consistent solution has emerged on which all the most interested parties can agree'.

Negotiations are underway with the complainants in the case, i.e. five Latin American banana producers and the US, as well as ACP banana producers (i.e. developing country members of the Lomé Convention), who reaped the benefits of the quota arrangements of the condemned regime. Some progress has reportedly been made towards a 'transitional' regime that would still retain separate quotas for ACP and 'dollar' bananas, but disagreement persists on the duration of any transitional system, and the terms of the permanent regime that would replace it. The US wants the EU to eventually have a single banana import quota open to all suppliers. It also wants the EU to drop rather than modify the old regime's import licensing system. Preferential tariffs could continue to apply to ACP bananas, consistent with the waiver granted by the WTO to the Lomé Convention.

## Dispute Settlement Briefs

- Canada and Brazil must eliminate or radically restructure their government subsidy programmes for aircraft, the Appellate Body ruled on 2 August. Brazil's Pro-ex and Canada's Technology Partnerships were both found to be WTO-inconsistent export subsidies and should be either scrapped or substantially modified within 90 days of the AB reports' adoption. The countries attacked each other's subsidy schemes in a battle for market share between Brazil's Embraer and Canada's Bombardier, both of which make middle-sized aircraft.
- The United States also appears to have lost an important subsidy case. An interim panel report, circulated to the parties in the dispute in July, ruled that tax breaks granted by the US to foreign sales corporations (FSCs) constituted an illegal export subsidy. Many US businesses export goods and services through FSCs they set up abroad, often in tax havens such as the Bahamas. The FSCs are exempt of US income tax, allowing corporations to reduce their taxes on foreign profits by as much as 30 percent. The monetary value of the goods exported through FSCs is about US\$150 billion, the EU contends.

Having established that the tax break was an export subsidy, the panel requested the US to withdraw the FSC subsidies 'without delay' for industrial goods (the Agreement on Subsidies and Countervailing Measures prohibits export subsidies for industrial goods). The panel also found that the US had used the scheme in excess of its obligations under WTO Agriculture Agreement. The US had exceeded its committed level of subsidised wheat exports, as well as violated Article 3.3. of the Agreement, which prohibits export subsidies to agricultural products not subject to specific export subsidy limits. The final ruling will be circulated on 8 September.

- Canada has requested the establishment of a panel to determine whether the measures taken by Australia to implement the DSB's recommendations regarding its import restrictions on salmon are WTO-consistent. The Appellate Body found in November 1998 that Australia's import ban on fresh or frozen Pacific salmon was scientifically unjustified and discriminatory. Australia presented a revision to its current policy on 19 July, but Canada maintains that the revision does not go far enough.

This is only the second time that a panel has been established to determine whether a Member has properly implemented DSB findings (the first was the banana case, where the compliance panel found that the EU's revised import regime still was WTO-inconsistent). The WTO will also arbitrate the amount of trade sanctions that Canada may impose on Australian exports if the compliance panel agrees that Australia has not implemented the DSB recommendations. Canada is seeking C\$45 million.

- Turkey has notified its intention to appeal the panel report that condemned its textile quotas in May (see Bridges Year 3 No.5, page 9). Turkey had claimed that the quotas were necessary to harmonise its trade regulations with those of the European Union, but the panel found that GATT Article XXIV does not allow the establishment of quantitative restrictions as a result of forming a customs union.

## Dispute Settlement Corner

**Implementation Status of the Shrimp-Turtle Ruling**

On 26 July, the United States presented the Dispute Settlement Body with its first status report regarding the implementation of the November 1998 Appellate Body (AB) decision on the shrimp-turtle dispute. The AB condemned the US import embargo on shrimp and shrimp products from countries that do not require their shrimp trawling vessels to use turtle excluder devices (TEDs). The ban has been in force since 1996.

In order to ensure compliance with the WTO ruling, the State Department has revised its guidelines for implementing Section 609 of Public Law 101-162, which requires the government to certify that all shrimp imported into the country were caught with methods that protect endangered marine turtles from incidental drowning in shrimp trawling nets. Under the old guidelines, shrimp could only be imported from countries certified by the State Department as having – and enforcing – national legislation requiring shrimpers to use TEDs.

The main element of the new guidelines, issued on 8 July, is an acceptance of shrimp imports from ‘uncertified’ countries on a shipment-by-shipment basis. For a shipment to be allowed in, the exporting government must certify that the catch was made by shrimpers employing TEDs. The change seeks to remedy to one of the main faults the WTO found with the embargo: it discriminated against exporters who used TEDs in uncertified countries. The Appellate Body also found that requiring foreign countries to adopt legislation similar to that of the US had an unjustifiably ‘coercive affect’ on policy decisions made by other governments (see Bridges Vol.2 No.7, page 11).

According to the status reports, the new guidelines will also increase the transparency and predictability of the certification process. In addition, the US has ‘redoubled its efforts’ to negotiate an agreement with the governments of the Indian Ocean region on the protection of sea turtles.

**A Difficult Balancing Act**

Although the complainants in the case (India, Pakistan, Malaysia and Thailand) welcomed the shipment-by-shipment certification exception as step in the right direction, they told the US that ‘good faith implementation’ of the WTO ruling would require lifting the ban entirely.

The US is under pressure to do the opposite from domestic conservation groups, who view the case as a test of government resolve to uphold national environmental laws. The shipment-by-shipment exception undermines the goal of turtle conservation by discouraging countries from adopting nation-wide mandatory TEDs programmes, these groups argue.

Led by Earth Island Institute, they have brought the case to the US Court of International Trade (CIT), charging that the new implementation guidelines do not adequately fulfil the purpose of Section 609, i.e. the effective protection of sea turtles (the original ‘nation-by-nation’ certification scheme was established in 1996 after the same groups won a ruling from the CIT condemning shipment-by-shipment certification as incompatible with the law’s ultimate purpose).

In early April 1999, the CIT issued a preliminary ruling on the revised guidelines, again finding that the shipment-by-shipment exception was ‘on its face not in accordance’ with congressional intent in passing the law (see Bridges Year 3 No.3, page 6). Both sides submitted additional evidence to the court in early July. The date for making a final ruling has not yet been announced.

The Appellate Body specifically condemned policies that were ‘more concerned with effectively influencing other WTO Members’ than with ensuring that shrimp actually imported in the US were caught in a turtle-friendly manner. If the CIT’s final decision rules out the shipment-by-shipment exception, the administration could have a tricky time attempting to satisfy both the US court and WTO rulings.

The United States must bring its regulations into conformity with WTO rules by 6 December 1999.

**Canada Criticises EU Decision to Ban White Asbestos**

The European Commission banned the use of white (chrysotile) asbestos on 27 July except in a few special cases where no alternatives have yet been found and where asbestos is considered to represent a negligible risk. As of 2005, white asbestos can no longer be used in cement products, brake and clutch linings, seals or gaskets. The decision does not call for the removal of asbestos from buildings, where it is frequently used as fire insulation. According to EU statistics, 6,700 people died in 1995 of asbestos-related diseases.

Canada criticised the decision citing concern about its impact on an ongoing WTO dispute initiated by Canada against French legislation banning white asbestos. A panel was established on the case last November and constituted in March.

Canada claims that, properly handled, white asbestos is safe to use, and that the French white asbestos ban is unnecessarily trade-restrictive (violation of Articles 2 of the Agreement on Technical Barriers to Trade and the Agreement on Sanitary and Phyto-sanitary Measures). It also alleges violations of Article 5 of the SPS Agreement (assessment of risk and determination of the appropriate level of protection) and of the prohibition to establish quantitative import restrictions (GATT Article XI).

In solid form asbestos is relatively safe, but it becomes a powerful carcinogen if the fibres are breathed, as frequently happens when workers saw asbestos slabs or otherwise come into contact with airborne asbestos particles.

The heyday of asbestos is already past in industrialised countries, most of which have banned brown and blue asbestos and severely regulate the use of white asbestos. Developing countries, which often cannot afford alternatives, face a more serious public health risk, particularly for construction workers.

The International Confederation of Free Trade Unions welcomed the EU ban, saying that many trade unions were convinced that ‘a ban is the only sure way to prevent deaths. The EU’s action will encourage trade unions in many other countries to press for similar measures to phase out the use of white asbestos.’

## Excerpts from the Chairman's Summary of the G-15 Ministerial Meeting in Preparation for Seattle

Delegates attached utmost importance to redressing the difficulties faced by developing countries in the implementation of the WTO Agreements. They noted that developing countries are facing difficulties in effective and timely implementation of their commitments because of resource and institutional constraints and lack of adequate technical assistance. Several delegates also referred to many specific implementation problems. Non-operationalization of the transfer of technology provisions and lack of benefit sharing on biological resources and traditional knowledge accessed for innovations under the TRIPS Agreement, inability of developing countries to use regulations necessary to accelerate their industrialization process because of the TRIMS provisions and inability to use subsidies for development and diversification and upgradation due to the Subsidies Agreement were pointed out. Similarly, special provisions in the Anti-dumping Agreement, the Dispute Settlement Understanding and the SPS and TBT Agreements meant to benefit developing countries have been virtually ignored by the developed countries. In this regard, reference was made to the repeated and unreasonable imposition of anti-dumping and countervailing duties by developed countries. Also, lack of meaningful implementation of the Agreement on Textile and Clothing and non-reduction of tariffs in areas of interest to developing countries showed lack of concern of developed countries for the core interests of developing countries.

On mandated negotiations in the Agreement on Agriculture, the delegates observed that any delay in pursuing their liberalization is unwarranted. They highlighted the need to work towards introducing greater equity and balance in the Agreement and dismantling of trade-distorting measures. The importance of providing necessary flexibility to developing countries for the adoption of domestic policies with the intention of improving the general levels of production for achieving food security and enhancing the income levels of the rural poor through assured rural employment was recognized. The delegates expressed serious concern about the lack of implementation of the decision taken at Marrakesh regarding net food importing developing countries.

The delegates agreed that in the services sector, there was need to maintain the existing structure of the Agreement on Trade in Services and emphasized the importance of the concept of progressive liberalization already incorporated in it. Importance was laid in the discussions on the liberalization of areas of interest to developing countries, particularly the need for more substantial commitments by developed countries under mode 4, namely, movement of natural persons.

Several delegations felt that the study and analysis carried out by the [WTO] working group had so far not been able to establish the need to develop a multilateral set of rules on investment in WTO. A few delegations, however, said that while they were not demandeurs of a multilateral regime in this area they could go along with a consensus.

On competition policy, delegates were of the view that it would be premature to talk of a multilateral competition framework at present, given the complexities of the issue shown during the discussions in the WTO working group, which was still in an analytical phase. Delegates also emphasized the need to address the issue of restrictive business practices by transnational corporations as well as anti-competitive effects of certain trade remedial measures. The delegates rejected any move to gradually multilateralize the existing Plurilateral Government Procurement Agreement.

Some delegations were not in favour of a new round of tariff negotiations. Certain delegations stated that [...] they would favour negotiations on industrial tariff reductions, without excluding any industrial sectors. Some delegations said that while they were not demandeurs of such negotiations, they were not opposed to it either. Certain other delegations said that while tariff peaks and tariff escalations were a matter of concern to them they were not very sure whether the developed countries would be willing and able to dismantle tariff peaks and tariff escalations even in a new round of tariff negotiations. It was observed that the issues of tariff peaks, tariff escalations and non-tariff barriers in the developed countries overhanging from the Uruguay Round must be addressed effectively for market access to be meaningful.

Most delegates agreed that environment is *ab initio* a non trade issue, and that all legitimate environmental concerns can be accommodated within the existing WTO provisions, including Article XX of GATT 1994. Delegates agreed that the work programme in the Committee on Trade and Environment (CTE) should continue. Since trade is seldom at the root of environmental problems, they were particularly concerned with attempts to give legitimacy to protectionism in the garb of environmental concerns. Delegates urged the Ministers at Seattle to clearly recognize that environmental standards differ from country to country and that the solution lies in mutual recognition of only product-related standards rather than harmonization of environmental standards. In order to show the mutual supportiveness of trade and environment, trade distortive agricultural export subsidies should be removed by the developed countries and biological resources and traditional knowledge of indigenous communities should be respected in WTO rules and benefits arising out of their use equitably shared with them. The delegates should also recommend that in cases of proprietary technologies or substances mandated for use by international agreements or national environmental laws, owners of intellectual property should be required to sell them at fair and most favourable terms and conditions.

It was noted that some WTO members are pressing for institutional reforms and greater 'transparency' in the dispute settlement proceedings of WTO and for unrestricted access to WTO documents. It was observed that the dispute settlement process is a Government to Government exercise and therefore, there is a need to maintain confidentiality at all stages of the proceedings. Allowing observers to be present in the meetings of the Panel and the Appellate Body, making it obligatory to publicize the various submissions of the parties during the hearing and allowing submission of *amicus curiae* briefs would prejudice an objective and legal examination of issues as well as result in a situation where non-members acquire better rights than members not parties to the dispute. Thus, the issue here is not as much of 'transparency' as of the timing of disclosure of documents and of dispute settlement proceedings.

The delegations rejected any linkage between trade and core labour standards. They recalled that this issue had been finally settled in the Singapore Ministerial Declaration. They decided to resolutely oppose any renewed attempt to raise this issue in the WTO.

*The Ministerial Meeting of the Group of Fifteen, in preparation for the Third Ministerial Conference of WTO at Seattle, was held at Bangalore, India on 17-18 August 1999. G-15 members include Algeria, Argentina, Brazil, Chile, Egypt, India, Indonesia, Kenya, Jamaica, Malaysia, Mexico, Nigeria, Peru, Senegal, Sri Lanka, Venezuela and Zimbabwe.*

# Animal Welfare Likely to Be on the WTO Negotiating Menu

By Chris Fisher

Among the many issues affected by the WTO, animal welfare is one which has taken many by surprise. At first, many WTO officials and Members failed to see its significance or to realise that, at least within the European Union, it is a serious political concern.

The potential for real WTO conflict first became apparent in 1995 when the EU prepared to introduce a ban on the import of certain furs from nations that continued to use leghold traps – a cruel and indiscriminate trapping method outlawed in more than sixty nations. Those principally affected were Canada and the US. When they threatened a WTO dispute, there was serious political fall-out. At the height of the Helms-Burton saga, the European Commission (EC) was keen to avoid another high profile dispute with the US, particularly one it was not sure that it would win. But strong resistance from the European Parliament and some Member States made it difficult for the EC to cut a deal to establish so-called 'International Humane Trapping Standards'. Eventually, after more than 18 months of effort – and much to the anger of animal welfare NGOs – bilateral agreements that allowed the continued use of leghold traps were concluded with Canada, Russia and the US.

Commissioner Sir Leon Brittan's hope that this would be an isolated example for animal welfare was soon dashed: the Commission was already faced with implementation of a 1993 Directive (93/35/EEC) which proposed to ban the marketing of cosmetics tested on animals in cases where suitable non-animal tests could be used. Once again, the EC deferred implementation of the ban due to fears regarding WTO rules.

In the same period, the EC's Agriculture Directorate was drafting proposals to improve the conditions of hens used for egg production. In its explanatory Communication (COM(1998) 135 final) the EC considered the impact of improved welfare in terms of the competitive position of EU producers in a market liberalised under WTO Agreements. In doing this, the Commission sought to predict the point at which the increased costs of higher welfare and future tariff reductions might cross to make EU-produced eggs uncompetitive. The EC also concluded that a parallel labelling scheme to distinguish different egg production methods would be required and that it should be mandatory. However, fearing that a comprehensive labelling scheme might contravene WTO rules, the EC plans to limit the scheme to EU-produced eggs. The EC also said it would consider the 'possibility of amending WTO rules to address welfare concerns more generally [...] in the context of the determination of the Union's negotiating objectives for the next stage of WTO negotiations'.

In June 1998, the EU Agriculture Council of Ministers adopted a new Directive on the Protection of Animals Kept for Farming Purposes (98/58/EC) which effectively extends welfare legislation to all animal species kept for food production. The Council further agreed that the EC should prepare a report to compare the farm animal welfare standards of its major trading partners; assess the possibility of gaining international acceptance of the EU's farm animal welfare standards (with the aim of eliminating distortions of competition); and to review whether the EU's farm animal welfare objectives could be compromised if third countries exporting to the EU operated lower welfare standards. The Council also declared

that the EC should explore alternatives to import restrictions, in particular the prospects for a multilateral consensus; promoting equivalence through future bilateral trade agreements; and the options available to the EU under WTO rules.

At the High Level Symposium on Trade & Environment held in Geneva in March 1999, Sir Leon Brittan specifically mentioned animal welfare as an issue to be considered. On 15 June 1999, the EU Agriculture Council finally decided to prohibit the use of battery cages by 2012. However, the EC was also mandated to make proposals in 2005 taking account of 'socio-economic implications', as well as 'the result of the WTO negotiations'. Yet, in its strongest statement of intent so far, the Council also declared that there was a 'need to take into account, at an international level, rules governing the wellbeing of animals, which should constitute one of the fundamental points of the negotiation mandate for the 'Millennium Round' of the WTO negotiations'.

On 8 July 1999, the EC published its 'Communication to the Council and the European Parliament – The EU Approach to the Millennium Round'. The fourth pillar of the proposed EU agenda is 'to ensure that the WTO continues to address, and is seen to address, issues of concern to the broader public, such as health, environment and social concerns'.

Concerning agriculture, the EU will have in mind: '(c) the need to ensure compatibility of certain rural and environmental policies in agriculture, through a recognition of the 'multifunctional' role of agriculture, and the need to address certain new issues, which could include animal welfare.' These issues are expected to fall under the heading 'non-trade concerns' as foreseen in Article XX of the Agriculture Agreement. The EC notes that animal welfare is among a range of other issues relevant to agriculture which are 'of increasing relevance to the public and have an important place under EC law'.

It is likely that the EU will approach new WTO negotiations with animal welfare added to its list of objectives, specifically with regard to agriculture. This fact, together with the EU's stated desire to make progress on the issue of non-product related production and processing methods (PPMs), and an improved disposition towards mandatory labelling, offers some encouragement to animal welfare NGOs who feel that their cause has suffered disproportionately due to fears about WTO rules – not least because nearly all animal welfare concerns are non-product related PPMs.

However, animal welfare groups also believe that the EC has been too cautious in its approach and that WTO rules could offer more scope for animal welfare measures than imagined. They are therefore urging EC to press forward with implementation of both new and existing measures, including the ban on animal-tested cosmetics and mandatory labelling of eggs. As Seattle approaches, it seems increasingly likely that animal welfare will be on the menu for the future WTO negotiations that will follow.

*Chris Fisher is Consultant to the Royal Society for the Prevention of Cruelty to Animals (RSPCA) and the Eurogroup for Animal Welfare on matters relating to the WTO.*

For further reading contact: [international@rspca.org.uk](mailto:international@rspca.org.uk)



## Biotechnology: North America vs. Europe and Japan

Trade in genetically modified organisms and products thereof will undoubtedly become one of the flashpoints of the Seattle Round. After many months of reflection on how to introduce this topic into the trade talks, the United States and Canada have ruled out seeking to re-open the SPS Agreement in order to specifically address trade in biotechnology products. Both countries are keen to limit any further encroachment of the precautionary principle in the Agreement so as to preserve its 'focus on decisions based on science and risk assessment and greater use of international standards'.

Instead, Canada will strive to establish a working party on biotechnology in the context of the agricultural negotiations to 'determine the adequacy of existing rules and to report to the steering body for the negotiations on whether negotiations are required within the WTO in this area'.

The US proposal on biotechnology focuses on approval processes: 'That the objectives for the [agricultural] negotiations include addressing disciplines to ensure trade in agricultural biotechnology products is based on transparent, predictable and timely processes.' In its rationale for the proposal, the US argues that 'the Agreement on Agriculture identifies the long-term objective 'to provide for substantial progressive reductions in agricultural support and protection [...] and establishes specific disciplines on non-tariff measures. More generally, the WTO agreements are predicated on reducing trade restrictions in agriculture and on ensuring all measures are transparent and do not create unnecessary or arbitrary barriers to trade.' This objective seeks to ease US frustration with the EU's 'broken down' approval processes for new GMO varieties, as well as to ensure that various labelling schemes do not constitute new trade barriers (see related article on page 18).

The US has also decided against seeking changes in the TRIPS Agreement – whose Article 27.3(b) deals with patenting of life forms – lest the provision be weakened rather than strengthened. A strong advocate for intellectual property protection and patents, the US reportedly fears that developing countries would call for lengthening their phase-in periods for patent and copyright protection, as well as seek recognition of/compensation for 'indigenous knowledge' in line with the Biodiversity Convention (see separate article on page 7).

### EU Leans towards More Precaution

Meanwhile, the EU has made some progress in the revision of directive 90/220 on the deliberate release of genetically modified organisms. Started more than two years ago, the revision aims to amend the procedures that EU members and the Commission must follow when deciding whether to approve new GMO varieties or not. The stated objective of the latest 75-page draft, dated 6 July, reflects the increasingly risk-averse stand of European countries: 'In accordance with the precautionary principle, the objective of this Directive is to approximate the laws, regulations and administrative provisions of the Member States and to protect human health and the environment'.

The directive applies only to genetically modified organisms that are still living and can germinate. The Council of Environmental

Ministers is expected to vote on it in October. Before the directive can take effect, it must also be approved by the European Parliament. No new varieties will be approved until the revision is complete, because five EU members have announced that they will block all new applications at the Council of Ministers until then. It has been nearly two years since the EU last approved a GMO variety. Moreover, several member countries have blocked approvals at the national level even for varieties approved at community level.

**Keen to preserve the 'science-based' focus of the SPS Agreement and to limit any further application of the precautionary principle, the United States and Canada will not seek to re-open the Agreement in order to specifically address trade in biotechnology products.**

The new draft contains detailed procedures and requirements for those applying to plant GMO crops, as well as those wishing to place on the market (i.e. 'make available to third parties') genetically modified organisms within the EU. It directs EU governments to 'ensure [...] traceability, at all stages of the placing on the market of GMOs'. Together with labelling requirements, this clause would make it easier to trace GMO content in food and other products, although it is not clear how the Commission envisages 'traceability' to work in practice. (The EU's controversial regulation 1139/98 requires food products that contain modified soya/

corn DNA – or proteins resulting from it – to be labelled as 'produced with genetically modified soya/maize'. At the WTO, biotechnology exporter countries have repeatedly criticised the regulation as unnecessary and technically unfeasible. See box on page 4).

Anyone wishing to plant a GMO crop must notify the competent authority of the country in question, and provide, *inter alia*, a plan for monitoring the effects of the GMOs on human health or the environment; information on control, remediation methods, waste treatment and emergency response plans, and an environmental risk assessment with 'bibliographic reference and indications of the methods used'. The directive also contains an obligation for member governments to consult with the public.

The draft directive proposes time limits for each step of the process, both at the national and the community levels, but critics say that approval could be delayed through a clause that would allow members and the Commission to consult 'any committee [they have] created with a view to advising it on the ethical implications of biotechnology'. Biotechnology exporters are also unhappy with the requirement that the risk assessments accompanying applications for new GMO varieties must cover 'indirect' as well as 'delayed' risks, which some liken to gazing into a crystal ball.

### Japan Prepares to Follow Suit

To the gall of biotechnology exporters, Japan is considering a labelling scheme for GMO foods, as well as new mandatory guidelines for GMO crop cultivation.

A special commission set up by the Ministry of Agriculture, Forestry and Fisheries (MAFF) recommended on 10 August that Japan establish a mandatory labelling scheme for 30 food products that could contain traceable amounts of genetically modified DNA, including tofu and several corn-based preparations. Foodstuffs containing identifiable GMO traces would have to be labelled as such; products made with a mixture of GMO- and non-GMO ingredients would be labelled as 'GMO inseparable'; and voluntary

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## The Potential Environmental Impacts of Trade Liberalisation in Forest Products

By David Kaimowitz

The environmental impacts of liberalising forest product trade will vary significantly among countries, regions, and types of forests involved. Trade liberalisation – the lifting of tariffs and non-tariff barriers to trade on both the import and export side – tends to increase domestic log prices in producing countries and reduce prices in consuming countries. This, in turn, typically promotes both greater consumption and production of forest products.

Generally speaking, international demand for forest products is rather price-inelastic. That means even if prices fall a fair amount demand will only rise slightly. Economic growth, population increases, technological changes, and long-term shifts in consumer preferences have all had a much greater influence on the level of demand. In keeping with this, Maureen Smith, the vice-president of the American Forest & Paper Association, recently estimated that the elimination of all tariffs on forest products would only increase consumption three to four percent (Environmental News Service, July 1, 1999).

Forest product supply, on the other hand, typically is more price-elastic, at least in developing countries. This means that relatively small rises in forest product prices can greatly stimulate increased production. Supply elasticities should be higher for products that come from natural forests and locations with limited government regulation and for products that require limited fixed investment to produce (such as logs or sawnwood).

To some, it might appear self-evident that greater forest product production and consumption will lead to greater pressure on forests, further encouraging existing problems of degradation. That, however, does not necessarily hold for two main reasons. First, forest products can come from either un-managed mature natural forests or from plantations and managed natural forests. While in the first case one can expect higher forest product prices to simply run-down existing stocks of forest, in the second they may lead to greater investment in forest management and new plantations – actually increasing forest area and having an indeterminate effect on forest quality.

Second, higher prices will tend to promote technological change designed to grow, harvest, and process timber more efficiently. This also may have contradictory effects on forest conditions. It should lead to less waste and more recycling, but it can also lead to companies shifting to smaller diameter logs and non-traditional species, which can potentially put additional pressure on forests. The net effects of these different processes differ greatly depending on the type of forest, forest products, and companies involved, the level of government regulation, the property regimes that affect access to forest products, and whether the country is a net importer or exporter. In addition, in many cases the environmental impacts will involve trade-offs with gains in certain aspects related to biodiversity, carbon sequestration, watershed regulation, and other environmental services and losses in other aspects.

Precisely because of the great diversity in anticipated environmental impacts, across-the-board trade agreements that reduce all trade barriers in a uniform fashion are almost certain to

cause adverse effects in numerous specific situations. Such agreements greatly reduce the flexibility of national and local policy-makers to take decisions that are appropriate for their specific contexts. While tariff liberalisation may help countries like Chile and New Zealand convert degraded agricultural lands to timber plantations, they could also lead to accelerated logging from non-managed forests in Brazil, Central Africa, Indonesia, and other regions.

At present, developed-country tariffs are already low and reducing them further as currently proposed in the World Trade Organization negotiations would probably have a relatively minor short-term effect on forest condition. Existing tariffs tax mostly high value-added products such as furniture and veneers. Developed countries would be wise, however, not to lock themselves into a

low-tariff situation permanently. The environmental regulations those countries impose have tended to increase their unit costs of production and, in the medium-term, tariff protection could be the only way for forest producers in those countries to compete with producers exporting from countries with weaker systems of forest regulation.

This situation raises the important issue of what might be called 'environmental dumping'. WTO regulations have always allowed countries to protect themselves from imports being sold in their country for less than the cost of production, a practice typically used by exporting countries to gain market share or in situations where their industries have high fixed costs but low marginal

costs. In the case of forest products, the issue arises of whether producers who treat their forests as renewable resources (thus internalising the true 'costs' of producing the resource) should have to compete with those who treat their resources as non-renewable.

That said, in the short-term the major potential environmental dangers of trade liberalisation to forests come not from tariff reduction in developed countries but rather from existing and potential agreements to eliminate environmental non-tariff trade barriers on both the import and export sides. On the import side, it remains uncertain whether countries will have the right to prohibit the import of products coming from non-sustainable production systems or even to label products based on the type of system they come from. In recent years, forest certification has been one of the more promising alternatives for promoting sustainable forest management; however, WTO rules could potentially prohibit even completely voluntary certification in the future. Moreover, a great deal of the success to date with voluntary certification has arisen thanks to government threats to take regulatory action through their trade and procurement policies if the industry does not succeed in regulating itself. Eliminating governments' options in that regard would greatly weaken the outlook for voluntary certification.

Log export bans and taxes present a more mixed picture. Even though national governments have often used environmental

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**In the short-term the major potential environmental dangers of trade liberalisation to forests come not from tariff reduction in developed countries but rather from existing and potential agreements to eliminate environmental non-tariff trade barriers on both the import and export sides.**

## US Urged to Drop Support for Early Forestry Tariff Liberalisation during Seattle Round

Opposition to tariff elimination for forestry products is growing rapidly, particularly in the United States. On 23 July, 16 environmental organisations sent a letter to US Trade Representative Charlene Barshefski requesting the US to withdraw its support for the initiative. Five days later, a bi-partisan group of 48 congressmen wrote to President Clinton expressing concern about the environmental impacts of eliminating tariffs on forest products, as well as the lack of transparency in developing the Administration's negotiating position.

Both letters cite concern that tariff reduction would increase logging and hasten deforestation, and request the government to study the environmental impacts of rapid tariff liberalisation before proceeding with negotiations on the forestry sector.

In response to these concerns, USTR and the Council on Environmental Quality have undertaken a written analysis of the initiative, and are currently seeking public comment on its 'economic and environmental effects'. However, the conservation organisations maintain that that it would not be possible to conduct 'sufficient analysis in the time remaining before the Seattle Ministerial, and so we urge the Administration to suspend its participation in the forest products negotiation until such an analysis has been completed'.

In addition, a coalition of conservation organisations has sued USTR and the Department of Commerce for violations of the Federal Advisory Committee Act, which requires membership of such bodies to be 'fairly balanced in terms of the points of view represented'. The litigants allege that every member of the two Industry Sector Advisory Committees for the forestry sector is 'either an executive of a wood or paper products company or a representative of a wood or paper products association', and that these committees 'have privileged access to information and opportunities to influence governmental decision-makers on subjects that affect the extent to which forestry policies and practices will promote sustainable and healthy forests.'

The complaint makes a direct reference to the government's support for forestry product tariff liberalisation and claims that the plaintiffs' ability to advocate effectively against the government's stand is impaired by the exclusion of any environmental representatives from the two advisory committees. The plaintiffs request the suspension of committee meetings until at least one environmental expert has been appointed to each.

At the international level, activist groups from 14 countries have launched a campaign aimed at derailing forest tariff liberalisation during the Seattle Round. According to these groups, the WTO is 'bad for forests. Measures to expedite trade in forest products will increase consumption without concurrently implementing conservation measures. In the WTO, trade provisions are supreme over the laws of nations, taking power away from local communities and governments and giving it to corporations. This makes it a direct threat not only to the world's remaining forests, but also to basic individual and states' rights.'

### The ATL Initiative in the Seattle Round

The tariff elimination initiative is part of an eight-sector accelerated tariff liberalisation (ATL) proposal that also covers environmental goods and services, gems and jewellery, medical equipment and scientific instruments, chemicals, energy, fish and toys. The ATL

initiative was initially developed by APEC countries, which now propose the eight sectors as a priority package for the industrial tariff negotiations that are likely to take place during the Seattle Round. With the notable exception of Japan, most APEC countries would like to see sectoral negotiations on the ATL initiative to yield 'early harvest' results that could be adopted before the conclusion of the entire round (see Bridges Year 3 No.5, page 4). While some APEC members regard agreement on the ATL initiative as a 'deliverable' for the Seattle Ministerial, the European Union strongly opposes prioritising the eight sectors either before, during or after the meeting. Since the EU and Japan both advocate a 'single undertaking' approach to the post-Seattle talks, they reject the idea of 'early harvest' negotiations on any sector at all.

While not against liberalisation of the forestry sector as such, farmers in the United States have called on the government to abandon its insistence on early results during the Seattle Round. They, as well as dozens of members of the House and Senate Agriculture Committees, have communicated to USTR their strong support for conducting the Seattle Round as a 'single undertaking' because early sectoral results would reduce the pressure for meaningful gains in the agriculture negotiations, likely to be concluded at the very end of the round.

### Change in US Position Unlikely

The US Administration's reluctance to embrace the 'single undertaking' approach has delayed the tabling of a US position paper on industrial tariffs. However, the proposal is still widely expected to recommend conducting 'early harvest' negotiations on the ATL sectors. Deputy US Trade Representative Richard Fisher on 3 August stressed that it was important to consider all eight ATL sectors as a package. 'If we take one part of the package out, there is a danger that the package could unravel,' Mr Fisher told the House Committee on International Relations. It thus looks unlikely that the US will yield to demands to drop support for forest product tariff elimination.

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### *Trade Liberalisation in Forest Products, continued from page 15*

rhetoric to justify such policies, in general, they have been adopted mostly for economic and social reasons, without seriously taking into account environmental considerations. From a strict efficiency stand-point most of these policies have not achieved the economic benefits they were designed to produce and have offered great opportunities for rent-seeking by powerful national processing companies. Their environmental impact remains rather uncertain in most cases.

In summary, forest product trade liberalisation offers both potential dangers and benefits for the environment and its specific effects can be expected to differ greatly from one context to the next. Nevertheless, strong arguments exist against across-the-board trade liberalisation that removes governments' ability to adopt policies most suited for their specific conditions. Often trade restrictions of different types represent one of the only tools governments have at their disposal to compensate for the fact that existing markets do not fully reflect the environmental and social externalities and public goods forests produce.

*David Kaimowitz is Leader of the Program on Causes of Deforestation, Forest Degradation and Changes in Human Welfare, Center for International Forestry Research (CIFOR) in Bogor, Indonesia*

### Interim Chemical Review Committee Established for Prior Informed Consent Procedure

From 12 to 16 July, representatives of 121 countries met in Rome to discuss questions related to the Prior Informed Consent (PIC) procedure for hazardous chemicals and pesticides in international trade. The meeting was the sixth session of the PIC Inter-governmental Negotiating Committee (INC-6), and the first to be held after the signing of the Rotterdam Convention in September 1998. The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade covers 22 pesticides and five industrial chemicals; more chemicals are expected to be added to the list as the provisions of the Convention are implemented (see article in Bridges Vol. 2, No.3, page 19).

The Convention will enter into force once 50 states have ratified it, that is in about three years. The intent of INC-6 was to establish interim procedures for the continuation of PIC while the ratification process continues in the capitals.

Delegates at INC-6 considered four central agenda items: outline draft decisions on the definition and provisional adoption of PIC regions; the establishment of an Interim Chemical Review Committee (ICRC); draft Decision Guidance Documents for already identified chemicals; and the inclusion of chemicals in the interim PIC procedure. Delegates also discussed preparations for the Conference of the Parties, the status of signature and ratification of the Rotterdam Convention, the location of the Secretariat, and issues arising from the Rotterdam Convention, including support for implementation, dispute settlement, illicit trafficking, and responsibility and liability.

On the issue of PIC regions, delegates agreed to group countries into regions based on the current Food and Agriculture (FAO) regions (there are six in all: Asia, Europe, Latin America and the Caribbean, Near East, North America, and Southwest Pacific); non-FAO states and regional economic integration organisations were allocated to appropriate regions based on their natural geographical affinities. Article 5 of the Convention establishes that a ban or severe restriction of a pesticide or chemical for health or environmental reasons in any two regions will qualify it for the list of substances subject to the PIC procedure.

In their discussion on the Decision Guidance Documents, participants also agreed to bring two additional pesticides – binapacryl and toxaphene – into PIC. Delegates decided to conduct a further review of the four remaining chemicals (ethylene dichloride, ethylene oxide, maleic hydrazide and bromacil) before including them in PIC; some developing countries indicated their preference for a precautionary approach that included more chemicals. Other countries advocated only including chemicals that posed a risk to human health or the environment.

The discussions leading to the Rotterdam Convention had concluded that the Interim Chemical Review Committee (ICRC) should be comprised of government-nominated experts, limited in number and geographically balanced. At INC-6, countries agreed to select ICRC members from each of the six regions, though there was some tension over how many from each region could be selected. Non-governmental organisations will be able to attend meetings of the ICRC as observers. As in the voluntary PIC procedure, there will be a balance between industry representatives and NGOs: delegates decided that observers should apply self-restraint, and that 'attention should be paid to maintaining balanced participation'.

One concern of NGOs is the lack of transparency on pesticide trade statistics. International trade statistics often only reflect trade in formulated pesticide products and seldom indicate the individual technical products exported.

Some developing countries emphasised the need for technical assistance and capacity-building in efforts towards successful implementation of PIC. On behalf of the African group, Gambia identified addressing the issue of stockpiles of obsolete pesticides as a priority.

Formal recognition of the INC's interim work will have to wait until the Conference of the Parties (COP-1), expected to be convened in 2003. At that point the COP will consider the chemicals in PIC and confirm the list, 'provided that it is satisfied that all the requirements for listing...have been fulfilled' (Article 8). In the meantime, countries will seek to clarify and streamline the scope of the Convention in terms of how many chemicals are included in the procedure.

Participants asked the PIC Secretariat to draw up criteria to help decide the location of the Rotterdam Convention Secretariat. The German government is lobbying hard for Bonn, and the Swiss government is pushing for Geneva, where the interim Secretariat is already based.

The timing of the next meeting will depend on both work and budget. Due to a gap in funds, it was suggested that September-November 2000 might be appropriate.

Contact: UNEP Chemicals, tel: (41-22) 917-9111, fax: 797-3460, e-mail: [chemicals@unep.ch](mailto:chemicals@unep.ch). For further information visit: <http://www.fao.org/ag/agp/agpp/pesticide/pic/pichome.htm>

#### Basel Convention Liability Protocol to Be Concluded

Parties to the Basel Convention on Transboundary Movements of Hazardous Wastes will meet from 30 August to 3 September in Geneva to try to finalise the liability protocol they have been working on for six years. Delegates will discuss a new German compromise draft, which drops an earlier controversial requirement to create an international fund for clean-up of spills when the liable party is unknown or unable to cover the costs. Up to now, developing countries have considered such a fund as an essential element of the protocol. The new draft suggests that the issue be re-examined within one year of the protocol's entry into force.

The German text also proposes that liability will apply from the point where the exported waste is loaded for transport in a contracting party. Compensation claims under the protocol would be capped at US\$66.8 million for any one incident, excluding interest or costs awarded by the competent court.

If it is concluded in September, Basel Convention Parties will adopt the protocol at the fifth meeting of the Conference of the Parties, scheduled for 6-10 December 1999. The protocol would be the first legal instrument to deal with liability and compensation ever adopted under a multilateral environmental agreement.

Contact: Iwona Rummel-Bulska, Basel Convention Secretariat, tel: (41-22) 917-9111, e-mail: [bulsakai@unep.ch](mailto:bulsakai@unep.ch)

## Codex Sets up Task Forces on GMO Food Labelling, Animal Feeds

The Codex Alimentarius Commission met in Rome from 28 June to 3 July to consider a range of issues with impacts on trade. Codex food safety standards are recognised as legitimate reasons for trade restrictions in the WTO Agreements on Sanitary and Phytosanitary Measures and Technical Barriers to Trade.

Last April, the Codex Committee on Food Labelling agreed to set up a working group on biotechnology after it became clear that no consensus could be reached regarding labelling of GM foods (see Bridges Year 3 No.4, page 1). The Commission confirmed the mandate of the Biotechnology Task Force, which is to 'develop standards, guidelines, or other recommendations, as appropriate, for foods derived from biotechnology or traits introduced into foods by biotechnology, on the basis of scientific evidence, risk analysis, and having regard, where appropriate, to other legitimate factors relevant to the health of consumers and the promotion of fair trade practices.' Exporters of bio-engineered foodstuffs and ingredients wanted the task force to base its considerations solely on the health and nutritional aspects of genetically modified foods. A Codex recommendation could be used by WTO Members to develop WTO-consistent labelling schemes for GM foods.

Another task force was established to speed the development of a Code of Good Animal Feeding Practices. The mad cow disease and the recent dioxin-related food scare were both traced to animal feeds, and countries are looking for guidelines on safe practices. Trade friction already exists: fearing a WTO challenge from the US, the EU postponed the adoption of new standards – recommended by the Commission's Animal Feedstuffs Committee – for the ingredients of certain animal feeds. The EU's proposed standards could potentially ban more than US\$1 billion of US exports of processed vegetable oils and fish meal used, among other things, to manufacture animal feed in the EU.

The EU's prohibition on the use of antibiotics in animal feed, which may lead to a ban on meat imports treated with them, has also caused transatlantic trade tension. The antibiotics were banned due to concerns that overexposure would make bacteria resistant to antibiotics used to treat human diseases. European Novel Feeds legislation for animal feed produced with biotechnology, currently under development, could spark another dispute.

#### NGO Participation

The Commission also debated granting non-governmental organisations observer status at the Executive Committee that co-ordinates Codex activities. While there was considerable support for involving consumers more closely in Codex work, some industrialised countries opposed their participation in the Executive Committee because it would 'dilute' the Committee's governmental nature. Argentina, China and Nigeria also opposed NGO participation at the executive level, saying it would give industrialised countries an unfair advantage in Codex deliberations. The Codex Committee on General Principles will discuss NGO participation in the Executive Committee at its meeting in Paris next April.

#### BST: Decision Postponed but not Buried

After the meeting, the Codex Secretariat issued a clarification regarding its 'non-decision' on bovine somatotropin (BST), a synthetic hormone used to boost milk production in dairy cows that is currently banned in Europe and Canada (see Bridges Year 3 No.5, page 14). The note said that, instead of 'unanimously

upholding the EC moratorium' (as had been reported in some media), the Commission 'did not in any way reject the scientific opinion of the Joint Expert Committee on Food Additives (JECFA)'. The JECFA had earlier recommended that Codex adopt a 'no maximum residue limits necessary' standard for BST in milk, as such residues would not represent human health risks. The Secretariat said the Commission had only delayed its decision because member countries were unable to come to a consensus on whether to adopt maximum residue limits for BST in milk.

The absence of an international standard indicating that milk from cows treated with BST is safe would make any trade restrictions related to BST more difficult to attack at the WTO.

Contact: Codex Alimentarius Commission, FAO, fax: (39-06) 5705-4593, e-mail: [Codex@fao.org](mailto:Codex@fao.org), internet: <http://www.fao.org/WAICENT/FAOINFO/ECONOMIC/ESN/codex/default.htm>

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'non-GMO' labels could be applied to products that were either produced with no genetically modified ingredients or where modified DNA was dissolved or removed during processing. The last category would include soy sauce, oils, certain corn-based sweeteners and corn flakes. After implementation details are worked out, the Ministry plans to issue a directive next April. The directive would become effective in April 2001.

Japan is also planning to tighten and make mandatory its hitherto voluntary guidelines for raising GMO crops. A proposal will be presented to the parliament in January to adopt legally-binding procedures that GMO crop growers would have to follow, including wide-ranging tests on the effects of cross-pollination on wild plants and animals. The MAFF could refuse production permits if the tests showed adverse affects on indigenous fauna or flora.

#### Biosafety Protocol Negotiations to Resume in September

The effort to reach an international agreement on the safe handling, transfer and use of living modified organisms (i.e. GMOs capable of germinating) came to a halt last February in Cartagena when trade-related issues blocked the adoption of the Biosafety Protocol (see Bridges Year 3 No.2, page 11). The main sticking points were the scope of the Protocol, its relationship with WTO Agreements, as well as labelling requirements. Delegates will meet for an informal consultation from 15-19 September in Vienna to seek a way forward in the stalled negotiations.

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

The Center for International Development  
at Harvard University is organising an

**International Conference on Biotechnology in the Global Economy**  
2-3 September, 1999  
Cambridge, Massachusetts

Contact: Calestous Juma, Harvard University  
e-mail: [Calestous\\_Juma@Harvard.edu](mailto:Calestous_Juma@Harvard.edu)  
Internet: <http://www.cid.harvard.edu/cidbiotech/homepage.htm>

### World Bank, FAO Start WTO 2000 Programmes

The Trade Team of the World Bank's Development Research Group is involved in a number of initiatives to support developing countries' participation in the Seattle Round. One of the projects aims to strengthen developing countries' capacity to formulate and pursue negotiating objectives. Developing country scholars, in collaboration with international specialists, will prepare 25 papers detailing current policies of developing country governments, identifying policy options in the context of the WTO negotiations, and analysing the costs and benefits of these options. The research results will be incorporated into a set of thematic papers and reflected in recommendations on developing country interests in the negotiations.

After the negotiations begin, the project's focus will shift to assisting policymakers through workshops and other activities. A key part of this will be a handbook for trade negotiators that will include software for evaluating market access conditions and negotiating options.

Contact: Michael Finger, Lead Economist for Trade Policy, World Bank, e-mail: MFinger@WorldBank.org, internet: <http://www.worldbank.org/research/projects/trade.htm>

FAO is also intensifying its assistance to member countries to enable them to be better informed and well-prepared for the forthcoming WTO negotiations. A series of activities has been initiated, including regional capacity-building workshops, which cover issues directly related to the agreements on agriculture, sanitary and phytosanitary measures/technical barriers to trade and trade-related aspects of intellectual property rights (TRIPs).

A symposium will be held in Geneva on 23-24 September on 'Agriculture, Trade and Food Safety – Issues and options for the forthcoming WTO negotiations from the perspective of developing countries'. The symposium will examine major trends in agricultural trade and food security in recent years and analyse how the changing international policy environment may have affected those trends. It will also review the policy environment for agricultural development and food security in developing countries, and identify areas where policy changes may be needed. See contacts on page 20.

### Southern Agenda for the Next Millennium

'Environmental and social issues are an integral part of any vision of sustainable development. Trade restrictive measures are neither appropriate nor effective mechanisms to address these problems. They need to be advanced through independent policy routes supported by international co-operation,' was one of the conclusions of the International Conference on 'Southern Agenda for the Next Millennium: Role of the Civil Society'. Civil society groups from 25 developing countries attended the meeting, held on 18-19 August in Bangalore, India, in parallel to the G-15 Ministerial Meeting (see page 12). The conference focused particularly on the contribution that civil society organisations could make to the Seattle Round deliberations, so as to safeguard the interests of citizens in the G-15 and other developing countries. The full conclusions are available from the address below.

Contact: Consumer Unity & Trust Society, tel: (91-141) 202 940/205 802, fax: 202 968, e-mail: [cutsjpr@jp1.dot.net.in](mailto:cutsjpr@jp1.dot.net.in), internet: <http://www.cuts-india.org/>

## BRIDGES

Between Trade and Sustainable Development

### BRIDGES/PUENTES/PASSERELLES

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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Director: Ricardo Meléndez-Ortiz  
Editor: Anja Halle  
Associate Editor: Caroline Dommen  
Address: 13 chemin des Anémones  
1219 Geneva, Switzerland  
Tel: (41-22) 917-8492  
Fax: (41-22) 917-8093  
E-mail: [ictsd@ictsd.ch](mailto:ictsd@ictsd.ch)  
Web: <http://www.ictsd.org>



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Co-ordinator: Nicolas Lucas  
Associate Editor: María Amparo Albán  
Address: Casilla 17-17-558  
Quito, Ecuador  
Tel. and fax: (593-2) 451-822/463-503,  
and 456-521.  
E-mail: [flla@interactive.net.ec](mailto:flla@interactive.net.ec)



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Co-ordinator: Taoufik Ben Abdallah  
Address: B.P. 3370  
Dakar, Senegal  
Tel: (221) 821-7037  
Fax: (221) 822-2695  
E-mail: [syspro2@enda.sn](mailto:syspro2@enda.sn)  
Web: <http://www.enda.sn>

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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.)

September 14	WTO Working Group on the Interaction Between Trade and Competition Policy Contact: Robert Anderson, tel: 5198, fax: 5790	October 6	WTO General Council Contact: Paulo Barthel-Rosa, tel: 5095, fax: 5761
September 14-16	WTO Trade Policy Review Body: Israel Contact: Clemens Boonekamp, tel: 5226, fax: 5765	October 6-7	WTO Working Group on Transparency in Government Procurement Contact: Vesile Kulaçoğlu, tel: 5187, fax: 5790
September 15-19 Vienna	Informal Consultation on the process to resume the Extraordinary Meeting of the COP to adopt a Protocol on Biosafety Contact: CBD Secretariat, tel: (1-514) 288-2220, fax: 288-6588, e-mail: <a href="mailto:secretariat@biodiv.org">secretariat@biodiv.org</a> , web: <a href="http://www.biodiv.org">http://www.biodiv.org</a> .	October 8	WTO Committee on Regional Trade Agreements Contact: Jorge Viganó, tel: 5078, fax: 5774
September 21	WTO Council for Trade in Services Contact: A.-Hamid Mamdouh, tel: 5435, fax: 5771	October 11-15 Melbourne	Conference on International Food Trade Beyond 2000: Science-Based Decisions, Harmonisation, Equivalence and Mutual Recognition Contact: Mr. G. Orriss, Food Quality and Standards Service, FAO, tel: (39-6) 570-52042, fax: 570-54593, e-mail: <a href="mailto:Gregory.Orriss@fao.org">Gregory.Orriss@fao.org</a>
September 22	WTO Dispute Settlement Body Contact: Gabrielle Marceau, tel: 5519, fax: 5788	October 12-13 Miami	Third Meeting of the FTAA Committee of Government Representatives on Civil Society Contact: FTAA Secretariat, tel: (1-305) 381-9043, fax: 381-8390, e-mail: <a href="mailto:webmaster@ALCA-FTAA.ORG">webmaster@ALCA-FTAA.ORG</a>
September 22-24	WTO Committee on Regional Trade Agreements Contact: Jorge Viganó, tel: 5078, fax: 5774	October 12-13	WTO Committee on Trade and Environment Contact: Doaa Abdel Motaal, tel: 5875, fax: 5620
September 23	WTO General Council Special Session (for the 3 <sup>rd</sup> Ministerial Meeting) Contact: Peter Pedersen, tel: 5848, fax: 5460	October 15	WTO Committee on Trade and Development Contact: Chiedu Osakwe, tel: 5250, fax: 5774
September 23-24 Geneva	FAO Symposium on Agriculture, Trade and Food Safety – Issues and options for the forthcoming WTO negotiations from the perspective of developing countries. Contact: Olwen Gotts, Commodities and Trade Division, FAO, tel: (39-6) 570-52855, e-mail: <a href="mailto:olwen.gotts@fao.org">olwen.gotts@fao.org</a>	October 20-22	WTO Council for TRIPs Contact: Matthijs Geuze, tel: 5418, fax: 5790
September 24	WTO Working Group on the Relationship between Trade and Investment Contact: Mark Koulen, tel: 5224, fax: 5790	<b>PUBLICATIONS AND RESOURCES</b>  Edwards, Michael. 1999. <u>Future Positive</u> . Earthscan. London  Page, Sheila; Robinson, Peter; Solignac Lecomte, Henri-Bernard and Bussolo, Maurizio. 1999. <u>SADC-EU Relations in a Post Lomé World</u> . Overseas Development Institute. London  South Centre. 1999. <u>WTO Agreement on Sanitary and Phytosanitary Measures: Issues for Developing Countries</u> . South Centre. Geneva  WTO. 1999. <u>Trade and Environment Bulletin No. 29</u> . Report of the 29-30 June meeting of the CTE (PRESS/TE/29). WTO. Geneva  <b>Resources for Impacts of Forestry Tariff Elimination</b>  Barbier, E.B. 1996. <u>Impact of the Uruguay Round on International Trade in Forest Products</u> . FAO. Rome  Bourke, I.J. and Leitch, Jeanette. 1998. <u>Trade Restrictions and Their Impact on International Trade in Forestry Products</u> . FAO. Rome.  Page, Sheila. 1999. <u>Environment Benefits from Removing Trade Restrictions and Distortions: background for WTO negotiations</u> . Overseas Development Institute. London	
September 24 London	Due Process in WTO Dispute Settlement. 3 <sup>rd</sup> annual World Trade Law Assn. Conference. Contact: Cameron May, tel: (44-171) 582-7567, fax: 793-8353, e-mail: <a href="mailto:conferences@cameronmay.com">conferences@cameronmay.com</a> , web: <a href="http://www.cameronmay.com">http://www.cameronmay.com</a>		
September 27-29	WTO Trade Policy Review Body: Philippines Contact: Clemens Boonekamp, tel: 5226, fax: 5765		
September 29	WTO Sub-Comm. on Least-developed Countries Contact: Ingela Nilsson, tel: 5230, fax: 5774		
September 29-30	WTO Committee on Agriculture Contact: Paul Shanahan, tel: 5095, fax: 5760		
Sept. 30 - Oct. 1	WTO Committee on Technical Barriers to Trade Contact: Vivien Liu, tel: 5455, fax: 5774		
October 1	WTO Committee on Rules of Origin Contact: Eki Kim, tel: 5584, fax: 5770		