

### Implementation Issues: the Rocky Road to Seattle

Together with the ultimate goal of the agriculture negotiations, the handling of implementation concerns has become one of the two major systemic controversies in developing the negotiating mandate for the Seattle Round. For fifty years of GATT/WTO history, 'implementation' has essentially meant compliance with negotiated obligations, but in the Seattle preparatory process developing countries have focused on addressing 'implementation of existing Agreements' to redress imbalances inherent in those Agreements, as well as in their implementation. Admitting that 'implementation of existing Agreements' means 'redressing imbalances' would lead to renegotiating existing commitments, something unthinkable in the multilateral trading system up to now.

Such action, developing countries argue, is necessary to end WTO rules' current stranglehold on their use of policy instruments for development, as well as to ensure developed countries' compliance with – and the 'operationalisation' of – provisions on 'special and differential treatment' for developing countries.

In addition, implementation of Agreements and provisions of particular interest to developing countries has been slow or non-existent. A case in point is the Agreement on Textiles and Clothing, which provides for the gradual removal of import quotas for textiles by the year 2005: major importers have systematically left liberalisation of the most commercially-meaningful items to the very end of the phase-out period. With regard to the Services Agreement, little progress has been made on the movement of natural persons, and negotiations on maritime transport are suspended, the main areas of interest to many developing countries.

#### Ministerial Declaration drafting process

Before the first draft on the Ministerial Declaration was made public on 7 October, Cuba, the Dominican Republic, Egypt, El Salvador, Honduras, India, Indonesia, Malaysia, Nigeria, Pakistan, Sri Lanka and Uganda tabled two major proposals on implementation: WT/GC/W/354 proposed that Ministers agree on a series of measures in favour of developing countries at the Seattle Conference itself, and WT/GC/W/355 listed further measures to be negotiated during the first year of the new round.

Many of these demands were included in an informal draft circulated on 6 October – albeit bracketed, denoting lack of consensus – but were absent from the draft that was presented to all WTO Members on 7 October. For instance, an entire section entitled Immediate Action (along the lines of WT/GC/W/354) was cut, as were relatively detailed proposals on reform

and renegotiation of provisions in most WTO Agreements, notably anti-dumping, textiles and trade-related intellectual property rights (TRIPs). Developing countries were incensed about the superficial treatment of their implementation concerns in the draft.

On 11 October, the Chair of the General Council released an addendum to the 7 October draft that essentially consisted of a bracketed list of the topics raised in the two developing country papers on implementation. While few countries were satisfied with the resulting text, the European Union and Japan refused outright to accept it as a basis further negotiations, objecting particularly to the off-handed treatment of their proposals on agriculture, investment and competition policy in the composite draft.

A new text that reflected the wide differences in WTO Members' approach to the upcoming round was introduced on 19 October. It attempted to present all major proposals on the Seattle Round's substance, structure and organisation – however contradictory these might be. Most of the draft was bracketed and several different versions were offered for a single paragraph.

The text included a lengthy [bracketed] section on implementation concerns, reflecting the two proposals by developing countries. The first part focused on decisions in favour of developing countries to be made in Seattle 'with immediate effect' on anti-dumping; the subsidies agreement; the agreements on sanitary and phytosanitary measures, as well as technical barriers to trade; textiles; trade-related investment measures; TRIPs; customs valuation; rules of origin; agriculture; services, and special and differential treatment. The second part concerned items to be addressed during the first year of negotiations (see page 4).

The US, whose own 'compliance-driven' implementation proposal (see Bridges Year 3 No.2, page 1) was also included in the draft as an alternative, forcefully objected to opening up existing Agreements, as well as to any blanket extensions of transition periods or exemptions from negotiated obligations. At the most, the US would be willing to consider, case-by-case, specific problems encountered by developing countries in complying with their obligations under WTO Agreements. In Washington, US Undersecretary of Commerce David Aaron complained that the two last Ministerial Declaration drafts spent 'almost as many pages discussing the need to address existing Uruguay Round Agreements as setting out the principles for the new round'. He said that while the US would be flexible, it was 'not about to turn the WTO into a two-tiered development organisation'.

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### **Anti-dumping**

There is growing support for one of developing countries' key demands: the inclusion of anti-dumping measures in the Seattle agenda. The main target of this drive is the United States, which continues its tooth and nail opposition to addressing the issue during the Seattle Round. However, Japan in October emerged as a strong *demandeur* for tightened anti-dumping rules, and Canada also came out in support of negotiating rules that would limit WTO Members' right to adopt anti-dumping measures. The EU, Korea, Switzerland and Norway have said that they are willing to consider the inclusion of anti-dumping rules in the Seattle Round if developing countries so request. As this issue of Bridges went to press, the fate of the anti-dumping issue hung in balance: WTO Members were meeting on the implementation section of the Ministerial Declaration, which includes developing countries' anti-dumping reform proposals (see box opposite).

### **Subsidies and TRIPs**

Several other detailed implementation proposals were included in the October 19 draft, including those on subsidies and trade-related intellectual property rights. On the former, developing countries demanded that they should be allowed to provide export performance-based subsidies, as well as subsidies contingent on use of domestic over imported goods (such subsidies are currently prohibited by Article 3.1 of the Agreement on Subsidies and Countervailing Measures). Developing countries also proposed that measures implemented by them 'with a view to achieve legitimate development goals, such as regional growth, technology research and development' be regarded as non-actionable.

On trade-related intellectual property rights (TRIPs), developing countries want to extend their transition periods for TRIPs compliance and exclude from patenting obligations the list of essential drugs of the World Health Organisation. TRIPs Articles 7 and 8 should be operationalised by providing for transfer of technology on fair and mutually advantageous terms. Article 27.3(b) should be amended in light of the provisions of the Convention on Biological Diversity and the FAO's International Undertaking on plant genetic resources. The mandated review of implementation of the TRIPs Agreement should include consideration of current available legal means and practices relevant to the protection of traditional knowledge, particularly of indigenous people, and folklore (see also page 4).

### **Least-developed countries**

Much of the industrialised world is essentially ready to sign off on a Ministerial Decision in Seattle that would commit developed WTO Members to extend duty-free treatment to goods from least-developed countries by the end of the Seattle Round. The US is advocating a different approach, consisting of enhanced technical co-operation and capacity building, as well as a revitalised programme for the integration of LDCs into multilateral trading system. On market access, the US would rather rely on unilateral Generalised System of Preferences (GSP) schemes than a blanket waiver of duties in favour of LDC products. On 3 November, the US Senate passed a trade bill that will give duty-free GSP access to a range of imports from eligible sub-Saharan countries and lower barriers for apparel from Central American and Caribbean countries. In spite of the different approaches, there is a near consensus between WTO Members that a significant gesture in favour of least-developed countries is one of the few 'deliverables' of the Seattle Ministerial Conference.

### **Anti-dumping**

*Highlights of developing country proposals contained in the Draft Ministerial Declaration of 19 October*

#### **Immediate Action**

No investigation shall be initiated for a period of 365 days from the date of finalisation of a previous investigation for the same product.

Under Article 9.1 the lesser duty rule shall be made mandatory.

Article 2.2 shall be clarified in order to make appropriate comparison with respect to the margin of dumping.

#### **To be addressed in the first year of negotiations:**

Provisions of the Agreement shall be improved with a view to prevent the imposition of arbitrary or primarily protectionist measures. The provisions to be revisited should include, *inter alia*, (i) the criteria, methodology, and procedures of the reviews specified in the Agreement (expeditious review for new exporters, final review, reviews upon request), (ii) the definition of the product motivating the investigation, (iii) the determination of the margin of dumping, (iv) the imposition and collection of duties, (v) the 'cumulation' clauses.

The provisions of Article 15 need to be operationalised and made mandatory.

The existing *de minimis* dumping margin of 2 percent of export price below which no anti-dumping duty can be imposed, needs to be raised to 5 percent for developing countries.

The proposed *de minimis* dumping margin of 5 percent is also applied in refund and review cases.

The threshold volume of dumped imports which shall normally be regarded as negligible should be increased from 3 percent to [5/7 percent] for imports from developing countries.

Article 5.8 shall be also clarified with regard to the time-frame to be used in determining the volume of the dumped imports. The substantial quantities test should be increased from the present threshold of 20 percent to at least 40 percent.

Article 2.4.1 shall include details of dealing with foreign exchange rate fluctuations during the process of dumping.

Article 3 shall contain a detailed provision dealing with the determination of the material retardation of the establishment of a domestic industry as stipulated in footnote 9.

There should be a provision in the Agreement, which provides a presumption of dumping of imports from developed countries into developing countries, provided certain conditions are met.

Article 17 should be modified so that the general standard of review laid down in the WTO dispute settlement mechanism applies equally and totally to disputes in the anti-dumping area.

Article 18.6 must be appropriately amended to ensure that the annual reviews are meaningful and play a role in reducing the possible abuse of the Anti-dumping Agreement.

## All Seattle Declaration Key Elements Still Open

When this issue of Bridges went to press, WTO Members appeared deadlocked on nearly all the essential elements of the Seattle Ministerial Declaration. Although trade ministers from 25 countries tried to give a political push to consensus-building at a Friends of the Round meeting held in Lausanne on 25 and 26 October – and many officials commended the participants' 'unanimous commitment' to the launch of a new round – the meeting failed to bridge the gap on any of the major outstanding issues, including the scope of the round and the balance between addressing implementation concerns and negotiating new liberalisation commitments.

To move forward, the ministers called on their negotiators to show more flexibility in the Ministerial Declaration drafting process, working through the draft subject-by-subject with a focus on identifying 'essential' elements for negotiation in Seattle. However, flexibility was conspicuously lacking during the first two weeks of negotiations after the Friends of the Round meeting.

### Agriculture

A large number of both developed and developing countries led by the Cairns Group has one central objective: to substantially reduce domestic production support and prohibit export subsidies, at least for developed countries. The Cairns Group has pushed for the inclusion of specific objectives and timelines in the Ministerial Declaration, controversially including the ultimate goal of 'bringing trade in agricultural products under the same WTO rules and disciplines as trade in other goods'. Other Cairns Group demands include spelling out interim targets, as well as the areas that the forthcoming agricultural negotiations would cover. Some Latin American Cairns Group members have said they will discuss nothing else until this is agreed.

At the other end of the spectrum, the EU and Japan insist that Article 20 of the Agreement on Agriculture (AoA) only states that negotiations should be started to 'continue the process' towards the 'long-term objective of substantial progressive reductions in support and protection resulting in fundamental reform'. They argue that, unlike the Agreement on Textiles and Clothing, the AoA is not a sunset agreement leading to the eventual integration of agricultural trade 'under the same WTO rules and disciplines as trade in other goods'. Together with Korea, Switzerland and Norway, the EU and Japan continue to stress the 'multifunctional' nature of agriculture, which justifies government support to farmers and farm exports in order to enhance environmental protection, rural employment and the 'sustained viability of rural areas'.

Developing countries have taken a position in the middle, largely advocating the Cairns Group agenda for industrialised countries while maintaining that they need special treatment in order to respond to the needs of food security, small and household farmers and rural development (see page 4).

On 15 October, Cuba, the Dominican Republic, Egypt, El Salvador, Honduras, Sri Lanka, Uganda and Zimbabwe tabled proposal WT/GC/W/374, which called for a thorough assessment of the effects of the AoA 'before further negotiations begin so as:

- to provide both developed and developing countries a clearer picture of the exact impact of agricultural trade liberalisation and hence clarify what the priorities should be in the coming agricultural negotiations; and

- to ascertain where the present imbalances and needs of countries are, so as to know how the agreement can be rebalanced such that benefits will flow equally to the developing countries, in a manner that will not exacerbate the rural poor, but will in fact raise living standards of even the small farmers.'

### Investment

*For:* The driving forces behind the investment issue are the EU and Japan, supported by Korea, Norway, New Zealand, Switzerland, Hungary and the Czech Republic, as well as a handful of developing countries (see below). The details of the *demandeurs'* negotiating objectives – with the overall aim to 'establish a multilateral framework of rules on foreign direct investment' – are included, within brackets, in paragraph 41 of the 'Subjects for Negotiation' section of the 19 October draft. Among developed country opponents are Australia, Canada and the United States.

While most developing countries are against elaborating investment rules at the WTO, Costa Rica actively seeks negotiations on the topic during the Seattle Round. Venezuela, Chile, South Africa and Hong Kong are also interested. Brazil has expressed a willingness to consider the issue, but recently said that investment negotiations should not be started yet.

**A deep division persists over whether the ultimate goal of the agriculture negotiations should be 'bringing trade in agricultural products under the same WTO rules and disciplines as trade in other goods'.**

*Against:* A bracketed paragraph (56) of the draft Declaration that reflects the position of many developing countries opposed to investment negotiations states that the Working Group on the Relationship between Trade and Investment should 'focus on issues of interest to developing countries, in particular, the effects of foreign direct investment, positive and negative, on the development objectives of host countries, the obligations of foreign investors to host countries, and the obligations of home countries in respect of disciplines on their investors'. The paragraph is included in the 'Other Elements of the Work Programme' section of the draft Declaration, indicating that the working group should continue its examination from a more pronounced developing country perspective, but not start negotiations on the issue.

On 28 October, the United States tabled a proposal that seemed to leave the door open for addressing investment in 2001. It suggested that the existing Working Group on the Relationship between Trade and Investment explore possible rules on obligations of countries that receive foreign investment. Among the items the working group should consider, the US proposed non-discriminatory treatment of investors – including the absence of performance requirements – and the need of host governments to regulate for health, safety and environmental purposes. Unlike paragraph 56, the US proposal did not include references to issues of interest to developing countries, the effects of foreign direct investment on the development objectives of host countries, or the obligations of foreign investors to host countries. The working group would report on its work to the WTO Ministerial Conference of 2001.

Civil society organisations are strongly resisting investment negotiations in the WTO. Their reasons include concern about diminishing governments' ability to regulate for public health and environmental reasons, fuelled by several high-profile cases where a corporation has sued a foreign government for compensation

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## Highlights from the Implementation Concerns Section of the 19 October Seattle Declaration Draft

**Sanitary and Phytosanitary Measures***Immediate action:*

- The provisions in Article 10 (Special and Differential Treatment, *ed.*) shall be made mandatory, including that if an SPS measure creates a problem for more than one developing country, then the country which has adopted it shall withdraw it.
- International standard-setting organizations shall ensure the presence of countries at different levels of development and from all geographical regions, throughout all phases of standard-setting.

**Technical Barriers to Trade***Immediate action:*

- Means have to be found to ensure effective participation of developing countries in setting of standards by international standard-setting organizations.
- Article 11 shall be made obligatory so that technical assistance and cooperation is provided to developing countries.
- A specific provision to be introduced in Article 12 that developing countries shall be given a longer time-frame to comply with measures regarding products of export interest to them.

**Textiles***Immediate action:*

- [Importing] [Developed] [Restraining] countries shall, on the first day of the 85th month that the WTO Agreement is in effect, integrate products which accounted for not less than 50 percent of the total volume of the Member's 1990 imports.
- The importing countries to apply growth-on-growth for stage 3 with effect from 1 January 2000 instead of 1 January 2002.
- A moratorium shall be applied by importing countries on anti-dumping actions until two years after the entire textiles and clothing sector is integrated into the GATT.
- Any change in rules of origin shall be examined in the CTG for its possible impact on market access of exporting countries, before it is applied.
- The growth rate in quotas for small suppliers shall be substantially increased.
- The restraining countries should apply the methodology employed by the EU in implementing the growth-on-growth for small suppliers and extend the same treatment to least-developed countries.
- Any resulting growth rates lower than 6 percent should be increased to that percentage.
- In order to avoid double jeopardy to the exporting countries concerned, restraining Members should agree not to initiate anti-dumping actions against products under quota restrictions.

**Trade-Related Investment Measures***Immediate action:*

- The transition period mentioned in Article 5 paragraph 2 shall be extended [until such time that their development needs demand][for a further period of five years].
- Developing countries shall have another opportunity to notify existing TRIMs measures which they would be then allowed to maintain till the end of the new transition period.

*To be addressed in the first year of negotiations:*

- The provisions of Article 5.3 must be suitably amended and made mandatory.
- Developing countries shall be exempted from the disciplines on the application of domestic content requirement by providing for an enabling provision in Articles 2 and 4 to this effect.

- Specific provisions shall be included in the Agreement to provide developing countries the necessary flexibility to implement development policies (intended to address, among others, social, regional, economic, and technological concerns) that may help reduce the disparities they face *vis-à-vis* developed countries.

**Trade-Related Aspects of Intellectual Property Rights***Immediate action:*

- A clear understanding in the interim that patents inconsistent with Article 15 of the Convention on Biological Diversity shall not be granted.
- The TRIPs Agreement shall be understood not to prevent developing countries from issuing compulsory licenses for drugs listed by the World Health Organisation as essential in the interests of their supply at reasonable prices.
- The transitional period for developing countries provided for in Article 65.2 shall be extended.

*To be addressed in the first year of negotiations:*

- Articles 7 and 8 of the TRIPs Agreement to be operationalized by providing for transfer of technology on fair and mutually advantageous terms.
- Article 27.3(b) to be amended in light of the provisions of the Convention on Biological Diversity and the International Undertaking. Also, clarify artificial distinctions between biological and microbiological organisms and process; ensure the continuation of the traditional farming practices including the right to save, exchange and save seeds, and sell their harvest; and prevent anti-competitive practices which will threaten food sovereignty of people in developing countries, as permitted by Article 31 of the TRIPs Agreement. See also page 2.

**Agriculture***Immediate action:*

- Developing countries with predominately rural agrarian economies shall have sufficient flexibility in the green box to adequately address their non-trade concerns, such as food security and rural employment.
- If in the calculation of the AMS, domestic support prices are lower than the external reference price [...] thereby resulting in negative product specific support, then Members shall be allowed to increase their non-product specific support by an equivalent amount.
- The Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries (NFIDCs) shall be revised, before 1 January 2001, in order to ensure its effective implementation.

**Special and Differential Treatment***Immediate action:*

- All S&D provisions shall be converted into concrete commitments, especially to address the constraints on the supply side of developing countries.
- Preferential treatment by developed countries in favour of developing countries shall, in accordance with the Enabling Clause, be implemented in a manner which is generalised, non-discriminatory, and non-reciprocal.
- Having regard to the significant role played by preferential trading agreements between developing and developed countries, Members agree to consider favourably [...] the granting/extension of waivers to Article I of GATT 1994 covering such agreements.

## Sustainable Development and WTO Transparency Likely to Be Backburner Issues

An unprecedented number of civil society organisations is following the Seattle preparations closely, and many are planning massive protests during the WTO Ministerial Conference. Their concerns range from the environmental and development impacts of trade liberalisation to social issues such as labour rights and increasing the power of multinational corporations.

At the time of this writing, issues of particular concern to civil society looked unlikely to figure prominently in the Seattle Declaration, although the preambular paragraphs of the 19 October draft include short references to sustainable development and the need to ensure that trade and environmental policies are 'mutually supportive and enhance policy co-ordination at the national and international levels'. Other references to sustainable development and the inclusion of environmental concerns in the Seattle Round are based on proposals made by WTO Members, but all are bracketed and still subject to negotiation.

On 12 October, Canada tabled a paper entitled Canadian Approach to Trade and Environment in the New WTO Round (WT/GC/W/358). The document highlights the importance of 'mainstreaming', i.e. each Seattle Round negotiating group should 'take environmental issues into consideration to make certain that liberalised trade is consistent with, and supportive of, the achievement of sustainable development'. Along the lines of an earlier US proposal (WT/GC/W/304), Canada proposes that the Committee on Trade and Environment should serve 'as a focal point for the integration of environmental considerations in the WTO negotiations without coming to conclusions or negotiating the issues'. These proposals are reflected in a bracketed paragraph in the 'Structure, Organisation and Participation' section of the 19 October draft Declaration.

The European Union and Norway and Switzerland have put forward more ambitious proposals on how to handle environmental concerns during the Seattle Round (WT/GC/W/194 and WT/GC/W/176, respectively). They have suggested that Members agree *à priori* to consider trade measures taken under multilateral environmental agreements as WTO-consistent and that the relationship between WTO rules and non-product-related process and production methods (PPMs) be clarified. The Norwegian submission also proposes carrying out environmental reviews of all new WTO agreements while these are still in draft form. The proposals have been described in detail in earlier issues of Bridges and are available at the WTO ministerial preparations homepage.

Developing countries in general are wary of addressing environmental issues in the WTO because stronger provisions could easily be used by developed country Members as a disguise for protectionist trade measures. However, many WTO Members, including developing countries, have pointed out that reducing agricultural or fisheries subsidies would result in a win-win situation where both trade and the environment would benefit.

The 'Principles Governing the Negotiations' section of the 19 October draft includes a bracketed clause (with more brackets towards the end) on sustainable development that reads: 'negotiations shall address environmental concerns with a view

to achieving sustained economic growth and sustainable development, and enhancing the synergies between trade liberalization, environmental protection and economic development. Negotiations shall consider the needs and concerns of Members at different levels of economic development, and ensure that measures to address environmental concerns are not used for protectionist purposes. Negotiations shall aim to pursue win-win-win opportunities where trade liberalization holds particular potential to yield trade, environment and development benefits. [Negotiations shall consider clarification, as appropriate, of the relationship between the multilateral trading system and multilateral environmental agreements.][WTO Agreements recognize the rights of countries to establish and achieve those levels of health, safety and environmental protection as they deem appropriate.]]

### Fisheries and forestry

Several countries, including the Philippines, the US, Iceland and New Zealand, have proposed negotiations to reduce government subsidies to the fisheries sector. Rapid elimination of tariffs on both fisheries and forestry products is also one of the goals of the eight-sector Accelerated Tariff Liberalisation initiative championed by a number of APEC members (see page 16). Although they

are APEC members, Japan and Korea do not support the inclusion of fisheries and forestry into the initiative.

Instead, they advocate the creation of a separate negotiating group on forestry and fisheries. The Korean paper (WT/GC/W/368) says such a group is necessary because '[f]ishery and forestry products have special characteristics different from other industrial goods and fishery and forestry sectors perform unique social and environmental functions. Forestry resources help land conservation and preserve water sources, both indispensable parts for our daily life. Fishery sectors serve as an important base for maintaining social cohesion in poor rural areas. These products, by their nature, are susceptible to quick depletion when co-ordinated efforts to conserve them are absent'.

The EU's negotiating mandate on fisheries includes a provision that 'any decision on the liberalisation of trade shall take due account of compliance with the United Nations Convention on the Law of the Sea and the objectives of international agreements on environmental protection and the management of natural resources, and international fisheries agreements'.

Many non-governmental organisations support reductions in fisheries subsidies because they contribute to the vast over-capacity of the global fishing fleet, thought to be the main reason for declining fish stocks worldwide.

Eliminating tariffs or other barriers to trade in forestry products is another matter, however. Environmental groups oppose rapid tariff cuts arguing that they would increase deforestation. A recent US government study estimated that tariff removal would increase trade in forestry products by two percent worldwide, with biggest trade growth accruing to developed countries. See separate articles on pages 6 and 7.

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*Sustainable Development, continued from page 5*

### Transparency

The Ministerial Declaration draft preamble states that WTO Members 'recognise that the multilateral trading system must work for the benefit of all its Members and their peoples, and it must be seen and understood to do so. With this in mind and respecting the intergovernmental character of the organisation, we are committed to make the WTO's operations more transparent and to improve dialogue with the public'. Bracketed language in the 'immediate decisions at Seattle' section of the 19 October draft suggests 'more regular outreach activities [such as symposia and workshops]', a proposal that seems command broad support.

A much bolder proposal (WT/GC/W/350) was tabled by Canada on 11 October. The paper calls for funding 'regular outreach activities' from the WTO's core budget and – a controversial topic among Members – circulating as unrestricted documents Secretariat working papers, formal contributions from Members, as well as draft meeting agendas and minutes as soon as these are available in the WTO's three working languages.

### Dispute Settlement

The Canadian proposal also calls for major changes in the availability of dispute settlement documents, including an obligation to make panel and Appellate Body submissions public, circulating the Findings and Conclusions portions of dispute settlement reports as unrestricted as soon as these are available in the three languages, and simultaneously making available the Descriptive portion of the reports in the original language.

The transparency of the WTO's dispute settlement system has become a major stumbling block of the Dispute Settlement Understanding (DSU) review, with the United States in particular pushing for making country submissions public, opening dispute settlement hearings to observers and granting non-governmental actors the right to submit friends-of-the-court briefs to panels. These demands ground the DSU review to halt in September (Bridges Year 3 No.7, page 4). In early November, it seemed that the US could be satisfied with smaller gains in order to have a DSU review package adopted in Seattle.

A new DSU reform proposal was presented to WTO Members on 27 October but countries continued to disagree not only on its contents but on the need to continue the review or to make any changes at all (see separate article on page 8). In any case, beyond faster distribution of panel findings, transparency concerns did not figure in the proposal because discussions among Members 'were not conclusive enough' for their inclusion, according to Yoichi Suzuki of Japan who introduced the proposal.

It is not yet clear how – or whether – the Dispute Settlement Understanding review will fit into the Seattle process. In the 19 October draft, the DSU review appears bracketed under the headings of 'Other Elements of the Work Programme' and 'Immediate Decisions at Seattle' but no text is proposed under either title. After their meeting on 27 October, US President Bill Clinton and EU President Romano Prodi said that they 'anticipated ratifying at Seattle a package of improvements to the Dispute Settlement Understanding'.

See also separate articles on page 10 on the civil society-WTO symposium in Seattle, page 13 on the sustainability assessments of the new round, and pages 12 and 16 on biotechnology.

*Excerpts from the conclusions of the USTR-CEQ study on*

### Accelerated Tariff Liberalisation in the Forest Products Sector: A Study of the Economic and Environmental Effects

This study's central findings include that the ATL initiative will likely:

- lead to an increase in world trade in forest products by a maximum of 2 percent in 2010 and in world production and consumption of forest products by less than one percent over the same time frame;
- lead to an increase in global timber harvest of not more than 0.5 percent over baseline predictions for 2010;
- lead to greater changes in the composition and patterns of trade than in the aggregate volume of trade in forest products at the worldwide level;
- affect geographic patterns of trade;
- marginally accelerate the baseline trend away from natural forests toward harvesting of secondary managed forests and plantation forests; and,
- result in more efficient use of raw materials based on increased competitiveness in the value-added forest products sector, such as processed wood products.

### Environmental Considerations

Environmental effects of the ATL are likely to be mixed (both positive and negative) and small.

On a global scale, the initiative will likely increase annual timber harvesting by not more than 0.5 percent in 2010, compared to the baseline. This expected change in timber harvesting is the net effect of projected increases of as much as 9 percent in some countries and decreases of more than 11 percent in other countries. These general conclusions are accompanied by uncertainty regarding specific changes in production, consumption, and trade that can be reasonably attributed to implementation of the ATL. On balance, it appears likely that decreases in timber harvesting will be concentrated in secondary forests and plantations.

Increased timber harvest in countries that rely largely or exclusively on plantations may lead to expansion of the area of plantations, or the use of more intensive management practices. From a biodiversity conservation perspective, the shift over time from harvest of primary forest to plantation forest may be a positive environmental consequence. The net environmental consequences of these trends are uncertain. For example, reforestation for plantation use may result in restoration of degraded land and watershed protection. However, increases in plantation forestry may also increase pesticide and fertilizer use, and may lead to water and habitat impacts.

The environmental consequences of increased timber harvest (such as habitat and biodiversity loss) may be a concern, especially in countries with poorly developed forest protection regimes; however, increased harvest in managed, secondary forests and plantations is likely to account for more than half of any net increase in timber harvests due to the ATL. For developing countries, such concerns should also be placed in the context that on average only five percent of timber harvest (including fuelwood) in developing countries enters international trade.



## Environmental Groups Challenge US Government Recommendations on Forestry Product Liberalisation

By David Downes

The United States and several other WTO Members have proposed an agreement to accelerate tariff reductions on forest products at the Ministerial Conference in Seattle. The US originally proposed this initiative as part of a broader effort to accelerate trade liberalization in several sectors in the Asia Pacific Economic Cooperation (APEC) forum. Discussions continue in APEC on the removal of non-tariff measures (NTMs).

US environmental groups oppose the forest product initiative, arguing that trade in forest products will intensify economic pressures for overharvesting as long as the framework of laws and policies to ensure forest conservation and sustainable management remains weak. Of the world's remaining intact forests ("frontier forests") at risk, nearly three-quarters are threatened by logging. While international trade accounts for only 6-25 percent (depending on the product category) of total forest product production, in some regions over half of production is exported, including countries such as Malaysia and Indonesia whose forests are rich in biodiversity and inhabited by diverse local cultures traditionally dependent on the forests for survival.

After vigorous advocacy from environmental groups, the US government agreed to carry out a review of the environmental impacts of its proposal. The government published a request for public comments in June. On November 2, an interagency team – headed by the United States Trade Representative and the Council on Environmental Quality – released its resulting report, now available on the USTR web site at [www.ustr.gov/releases/1999/11/](http://www.ustr.gov/releases/1999/11/) (see also box on page 6, *ed.*).

The report predicts complex and mixed effects on the extent and source of production as well as the composition of product types in specific countries, regions and localities. At the same time, it acknowledges a high degree of uncertainty given the difficulty of separating out the effect of tariff reductions from the many other relevant variables. Yet the study concludes that the impact on aggregate global levels of forest product production, consumption would be minimal.

The study predicts significant impacts on geographic trade patterns. In certain countries, the study predicts measurable increases compared to the baseline, including Malaysia and Indonesia. Meanwhile, decreases are projected in other countries such as Mexico and Russia.

The USG study concludes that a separate domestic policy response to the tariff reduction initiative is not warranted in light of the small projected impact on US harvesting. One "valuable insight," however, is the importance of improving baseline data in order to make future analysis more useful and increase understanding of relationship between forest product trade and sustainable forest management. This conclusion is consistent with environmental groups' call for a retrospective assessment of the environmental impacts of trade before commencing further liberalization. Yet the US study concludes that trade liberalization can go forward in the absence of such data.

A second policy conclusion is that bilateral, regional and multilateral cooperation are important, including "continued technical assistance to help countries develop environmentally sound national forest management policies and practices." Yet the study does not assess whether current assistance and other forms of cooperation are adequate.

A forthcoming report prepared by the World Resources Institute (WRI) and the Center for International Environmental Law (CIEL) takes a different approach. That report supports some (but not all)

of the US study's findings about projected impacts. For instance, both studies find that tariff reduction could cause significant increases in harvesting in important forested countries such as Indonesia and Malaysia.

The WRI/CIEL report, however, emphasizes that trade liberalization should be accompanied by international cooperation to strengthen frameworks for forest protection. Unlike the US study, their report reviews the adequacy of these frameworks in key timber exporting countries, and finds them lacking in many respects.

They also note that cooperation under international instruments such as the Convention on International Trade in Endangered Species (CITES) falls short of what can and should be done. More generally, a recent IUCN study concludes that the current international forest regime fails to create the conditions for "conservation, sustainable management and sustainable development of all types of forests."

In this context, the CIEL/WRI report argues that the US must promote parallel progress on forest protection with the same vigor that it promotes forest product liberalization. Such efforts are now sorely lacking. One example is the government's recent refusal to propose a listing of big-leaf mahogany under CITES, despite the fact that many scientists believe the species to be exploited unsustainably and the US is the world's largest importer of its wood.

Many NGOs also argue that the US effort focused on an excessively narrow slice of the overall trade liberalization agenda that affects forests. They call for analysis of the tariff reduction effort in the broader context of the NTM discussions in APEC and the existing WTO disciplines that apply to NTMs in the forest product sector.

In carrying out its review of potential economic and environmental impacts in advance of concluding the agreement, the USG has taken a significant step forward to improve trade policy. This is an important response to the call from environmental groups around the world for governments to assess the environmental impacts of past and proposed trade agreements.

Yet flaws in the procedure and its results highlight the need for further improvements. Too much energy was spent on arguing over whether to do the study; the public had only a brief period to comment; and there was little public debate over the scoping of the study.

*Continued on page 18*

## Dispute Settlement Review Update

Although US President Bill Clinton and EU President Romano Prodi confidently said on 27 October that they 'anticipated ratifying at Seattle a package of improvements to the Dispute Settlement Understanding', the WTO process toward that goal remained confused and controversial in early November.

Officially, the review of the Dispute Settlement Understanding (DSU) ended in July. Several interested delegations have continued to meet informally to forge a text that could be presented to ministers in Seattle, but many WTO Members have not taken part in those discussions. India, Mexico, Malaysia and Egypt are among those who consider the review finished, with no consensus achieved on recommendations for changes. The latter two blocked an attempt to introduce a text on amendments as a Chairman's draft at the Dispute Settlement Body meeting on 27 October. Canada, Costa Rica, Japan, Korea, New Zealand and the US are likely to submit it as a formal proposal at a General Council meeting in order to get the issue on the Seattle agenda. If the EU manages to settle its remaining differences (see below) on the draft, several other countries could also join in sponsoring the text.

The current draft – available on ICTSD's web site – focuses mostly on sequencing the procedural steps that must be taken before trade sanctions can be imposed, and in speeding up dispute settlement proceedings eliminating some proceedings, such as the requirement to issue the descriptive part of a report to parties. Those involved in the elaboration of the text have reached a consensus that multilateral non-compliance finding must precede the right to impose sanctions.

According to delegates involved in drafting the DSU amendment, the principal issue currently blocking consensus in the small group is the modification of retaliation lists, i.e. the range of products affected by trade sanctions. The EU – which faces a possible rotation of goods under US sanctions (see opposite) – is trying to tighten DSU rules so that in the absence of agreement between parties, the WTO would need to approve both the original list and any later changes to it. Under existing rules Members can establish and change their retaliation lists independently as long as the value of the affected goods stays within agreed limits.

The United States, which earlier insisted that greater openness to the public of the dispute settlement procedures must be part of the reform, seems to have considerably scaled down its demands. There never was much of a chance that WTO Members would agree to open panel meetings to observers, or back an explicit provision on non-governmental groups' right to submit unsolicited *amicus* briefs to dispute settlement proceedings. However, only a month ago US insistence on these issues led to the suspension of a DSB session amid solid criticism from developing countries (Bridges Year 3 No.7, page 4).

With the Seattle conference only a month away – and with a Ministerial Decision on DSU reform among the key 'deliverables' there – US Trade Representative Charlene Barshefsky admitted in early November that a speedier release of dispute settlement panel reports might be the closest the US will get to its transparency goals. She added that NGOs already had a *de facto* right to submit *amicus* briefs after the Appellate Body controversially ruled in the shrimp-turtle case that panels had a 'discretionary authority' to consider or reject unsolicited information from non-governmental sources (see also page 6).

## Dispute Settlement Briefs

- When this issue of Bridges went to press, the European Union was expected to outline a new proposal on a 'compensation package' for the financial damage caused to the US and Canadian beef industries by its import ban on beef treated with growth hormones. The WTO's Appellate Body ruled in February 1998 that the ten-year old embargo was not based on a scientific risk assessment showing that the hormones had adverse effects on human health.

The European response was to keep the ban in place while waiting for the completion of 17 new scientific studies, now expected to be available in mid-2000. Negotiations on interim compensation to the complainants broke down when the EU refused to establish a firm date for the removal of the import ban. Last July, the WTO authorised the complainants to impose trade sanctions worth US\$116.8 million and C\$11.3 million respectively because the EU had not implemented the Appellate Body findings.

If the EU comes up with a solution that is acceptable to the US and Canada in the long-term, the latter now say they will consider accepting interim compensation in the form of increased high quality beef quotas, without hormones of any kind.

In spite of these conciliatory moves, US officials have threatened to change at least some of the products currently affected by trade sanctions in the beef and banana cases. The argument is that changing the sanctions targets, perhaps every six months, would hurt a wider range of EU exports.

- American and Mexican officials expressed satisfaction with the interim panel report on Mexico's anti-dumping duties on US high-fructose corn syrup (HFCS). According to the Mexican Chamber of Sugar and Alcohol Industries, the confidential ruling released on 6 October found that Mexico's anti-dumping proceedings were consistent with domestic law and 'agreed with WTO procedures'. The US Corn Refiners Association said its members were 'not disappointed' in the report. Both sides declined to comment in detail. The panel is expected to issue a final report in early December once it has considered both parties' reactions to the interim ruling.
- On 28 October, the United States announced its intention to appeal a September panel report, which ruled that the taxbreaks granted to US foreign sales corporations (FSCs) constituted a WTO-illegal export subsidy. The appeal was withdrawn on 3 November 'for scheduling reasons [...] conditional on the right of the United States to file a new notice of appeal'. US Trade Representative Charlene Barshefsky said in a statement that the WTO panel 'committed multiple legal errors on both substantive and procedural issues'. According to the European Union, which brought the WTO case, the tax-breaks amount to subsidies worth almost US\$250 billion a year, the largest amount of money ever involved in a WTO dispute. For more details, see Bridges Year 3 No.5, page 10.
- Two eagerly-awaited panel reports have been postponed: one on the French (and now EU-wide) ban on white (chrysotile) asbestos, and the other on the US 1916 Anti-dumping Act. The asbestos report is now expected in March, and the anti-dumping ruling in December.



## Dispute Settlement Corner

**Ecuador Seeks Cross Retaliation in Banana Dispute**

On 9 November, Ecuador requested the WTO to authorise trade sanctions against the European Union for the latter's continued failure to come up with a WTO-consistent banana import regime. The Ecuadorian move came when contents of the European Commission's latest proposal for modifying the regime became known (see below). 'Not a single one of Ecuador's concerns has been taken into account by the Commission in its latest intent to continue with its protectionist approach', Ecuador said.

Citing its current economic crisis and high dependence on banana exports, Ecuador said it would ask the DSB on 19 November to 'authorise the imposition of sanctions equivalent to annulment and impairment of benefits caused by the EC valued at US\$450 million a year'. As Ecuador's 'ability to strike with the imposition of sanctions is seriously limited due to the fact that a small developing country can hardly make a dent on the economic might of the EC ... Ecuador has chosen to make effective its right to cross-retaliate and withdraw concessions in the intellectual property and services sectors', Ecuador said in a press release on 9 November. It proposes to 'suspend concessions and obligations' in the following categories of the TRIPs Agreement: copyrights and related rights (Article 14), geographical indications and industrial designs; as well as wholesale distribution services under the Services Agreement.

Ecuador can proceed directly to a sanctions request, as the EU's current regime has already been found WTO-inconsistent by a compliance panel.

US officials also criticised the EU proposal for continuing discrimination against Latin American bananas through the allocation of import licenses and tariff preferences.

**The EU Proposal**

The EU proposal was eagerly awaited, with hope for a speedy solution expressed on all sides of the banana dispute. Commission officials had repeatedly stressed that they would give serious consideration to reform proposals from the five claimants in the case (the US, Ecuador, Guatemala, Honduras and Mexico), while the latter seemed more open to compromise solutions and the particular concerns the EU faces with regard to protecting the banana trade of its Lomé Convention partners in Africa, the Caribbean and the Pacific (ACP countries).

The proposal adopted by the Commission – but not yet approved by the EU Council of Ministers – therefore came as a considerable surprise. It explains that through 'extensive contacts with all the interested parties a widespread preference for a tariff rate quota system has emerged. However, the Commission has concluded that the acceptance of such a system, if it can be achieved, can only be achieved on a transitional basis, leading to a flat tariff system'.

The Commission proposes a transitional tariff-rate quota regime that is only slightly, one could say technically, different from the EU's existing banana import rules that were condemned by the WTO. This regime, which could run until 2006, would nominally open all the present quotas to all suppliers, but the tariff structure is such that it would have few effects on suppliers'

market access. Instead of reserving the current 857,000 tonne annual quota to APC producers, the proposal would open a new 850,000 tonne quota to 'all suppliers and a preference of €275/tonne would be accorded to ACP bananas (implying that the tariff on ACP bananas would be zero as long as the tariff within the quota does not exceed €275/tonne)'. The tariff level would be set through a bidding process.

To administer the quota regime, the Commission proposes an import licensing system, preferably based on a 'historical reference period, but only if agreement of all parties on a mechanism compatible with EU law can be found. Since such an agreement appears unlikely at this stage the alternative solution would be an appropriate form of a "first come first served" system'.

The Commission said it would continue discussions with interested parties on the TRQ system while the Council of Ministers and the EU Parliament examine the proposal, but if 'no feasible solution which resolves the dispute has been found, the Commission will not be able to maintain its proposal for a transitional regime'. In that case, the Commission will seek a negotiating mandate to 'immediately initiate negotiations under Article XXVIII of GATT with a view to replacing the current regime with a flat tariff'.

If the quota regime is accepted, the Commission proposes that a tariff-only system would automatically enter into force on the 1st of January 2006, at the latest. The level of the flat tariff would have to be negotiated under GATT Article XXVIII, and ACPs should be given a tariff preference and perhaps other support measures that 'may be appropriate, in particular for the most vulnerable countries, most heavily dependent on bananas'.

**Latin American and US Proposals**

The Latin American complainants had proposed a tariff quota system where they would have a 2.6 million tonne quota at a €75 per tonne tariff. 'Traditional suppliers' would keep their duty-free quota of 857,000 tonnes, but would have to pay a €150 tariff per tonne if the fruit were sourced outside their territories.

The US proposal for a WTO-consistent EU banana regime contained two options: a tariff-only system and a transitional quota regime. The quota-free system would have imposed a €115/tonne tariff on Latin American bananas, up from the current €75/tonne, but far below the €275/tonne that the Commission has suggested would be necessary to maintain ACP market access. ACP bananas would continue to enter the EU duty-free, with perhaps some variation according to the vulnerability of the producer country.

The transitional system would have established a common quota of 3.45 million tonnes for both Latin American and ACP bananas, with a 'first tier' of 2.7 million tonnes at zero tariff for all suppliers, and a €115/tonne tariff level for Latin American bananas in the 'second tier' of 750,000 tonnes.

US trade sanctions in the banana case currently double the price of a range of European exports worth US\$191.4 million. See opposite page for developments regarding changes to the retaliation list.

## Seattle Symposium on International Trade Issues

In response to the growing concern about the effects of globalisation in general – and the WTO's role in it in particular – as well as the widely-announced civil society demonstrations during the Ministerial Conference, the WTO Secretariat will host a Symposium on International Trade Issues in the First Decades of the Next Century on 29 November in the Plenary Hall of the Washington State Convention and Trade Center in Seattle. All non-governmental organisations accredited to the Seattle Ministerial Conference are invited to attend.

The symposium will focus on two main themes: trade and development prospects for the next twenty years (from 9 a.m. to 12.20 p.m.) and evolving public concerns and the multilateral trading system (from 3 to 5 p.m.). The first session will be chaired by Alec Erwin, South Africa's Minister for Trade and Industry, and the second by Mark van Putten, President of the US-based National Wildlife Federation. Speakers include a mix of representatives of governments and intergovernmental agencies, academia, civil society and the private sector, with opening remarks by WTO Director-General Mike Moore, US Trade Representative Charlene Barshefsky and EU Trade Commissioner Pascal Lamy. The keynote address on trade and development prospects will be delivered by Clare Short, UK Secretary of State for International Development.

According to the WTO General Council, the symposium will be held with three main goals in mind:

- to enhance awareness of the issues involved;
- to provide a forum for the exchange of ideas; and
- to increase the understanding of the WTO's contribution in these areas.

As with previous WTO symposia, the outcome of the meeting will be a 'Chairman's Summary' or closing remarks with no formal conclusions. The meeting will take place outside the formal structure of the WTO and the Ministerial Conference, but a factual record of the proceedings and background papers will be made available via the internet.

Before the Chair sums up the main points of each session, the floor will be opened for general discussion for about an hour and a half. For the morning session, three specific items are proposed for discussion: the role of international trade in poverty elimination; the effects of globalisation on developing country economies; and the integration of least-developed countries into the multilateral trading system. The afternoon session is expected to discuss public concerns towards 2020; trade and sustainable development; and trade and technological developments.

The time allocated for discussion is short considering the number of accredited NGO participants (nearly 800), delegates and journalists likely to attend the meeting. In addition – not counting social functions – the symposium is the only Seattle event that will provide a forum for interaction between representatives of governments and civil society, and that at a particularly crucial time just before the Ministerial Conference starts. There is little doubt that time will prove short for those interested in questioning government representatives on their negotiating positions.

The symposium will be closed by Ali Mchumo, Chair of the WTO General Council.

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## WTO News in Brief

- The United States warned WTO Members at the 15 October meeting of the Council for Trade in Goods that developing countries may face dispute settlement proceedings if they have not complied with their obligations under the Agreement on Trade-related Investment Measures (TRIMs) by 1 January 2000. To avoid such proceedings they should initiate bilateral negotiations with the US on extending their transition periods for compliance. Among measures that developing countries need to take are the removal of domestic content requirements and import-export balancing requirements. Developing countries have requested an 'immediate decision' in Seattle that the compliance deadline be extended for at least five years, but the United States in particular is opposed to the extension of deadlines, except on a case-by-case basis. Developing countries have also proposed that the Seattle Round negotiate an enabling clause in the TRIMs Agreement that would allow them to retain domestic content requirements (see related articles on pages 1 and 4).
- India and the United States clashed at the 20-22 October meeting of the Council for Trade-related Intellectual Property Rights (TRIPs) on how – or whether – to amend Article 27.3(b) of the TRIPs Agreement. The review has been underway for more than a year, and WTO Members still do not agree whether the exercise is about substantive changes to the Article's patenting exemption rules or about Members' implementation of those rules (see Bridges Year 3 No.6, page 7).

At the October TRIPs Council meeting, India tabled a paper highlighting the need to exclude from patenting obligations products and processes based on traditional knowledge. As neither patents nor UPOV rules are suitable for the protection of varieties developed through centuries of traditional oral knowledge, developing countries need time to come up with their own *sui generis* systems that will provide compensation for traditional knowledge and recognise community rights. India also said that patents on all life forms should be excluded – or, at the very least, patent applicants on biological materials should obtain prior informed consent from the country of origin. Kenya on behalf of the African Group stressed that Article 27.3(b) must be further clarified as to what can and what cannot be excluded from patenting obligations. The United States argued that patents or UPOV protection were necessary to stimulate innovation, research and development, and that there was no conflict between TRIPs Article 27.3(b) and the Convention on Biological Diversity, as many developing countries have alleged.

- On 14 October, the WTO released a report on Trade and Environment which, after 60 pages of analysing the linkages between the two areas, concluded that the most obvious contribution WTO Members could make for the environment would be to 'address the remaining trade barriers on environmentally-friendly technologies and environmental services in order to reduce the cost of investing in clean technologies and environmental management systems. Another potential contribution would be to seek reductions in subsidies that harm the environment, including energy, agricultural and fishing subsidies.' According to the authors Håkan Nordström and Scott Vaughan, the key message of the study is that 'the ongoing dismantling of economic borders reinforces the need to co-operate on environmental matters, especially on transboundary and global environmental problems that are beyond the control of any individual nation.' The report is available on the WTO website at <http://www.wto.org/wto/new/press140.htm>.

## Social Issues in International Trade Discussions

By Julius Nyerere

*Tanzania's former president Julius Nyerere died of leukemia on 14 October. In memory of the statesman and eloquent spokesperson for developing countries, Bridges publishes below excerpts of Mr Nyerere's speech on 'Are Universal Social Standards Possible?' given in Berne on 26 May 1998.*

The demand to include 'social issues' in international trade discussions is not being made in the context of a holistic approach to improving the human condition. On the contrary, the demand hides protectionist tendencies in the developed countries of the North. For it is being justified on the grounds that fair and free competition demands a 'level playing field' for the participants in international trade: all countries, for instance, must have the same labour costs. This subtle argument for shutting off Northern markets to so-called cheap goods from the South is paraded as a fight for the rights of the workers of the South.

Within a country, or any other economic unit, problems of relative poverty – of unequal social standards – can be dealt through redistributive taxation. When an economic union seeks to establish common standards among its members, it does not just require that each member state undertake to meet those standards. It also lays down other obligations on members which will enable the poorer members to do so.

Yet the idea that the rich should be legally-bound to help the poor countries to meet their social standards is rejected. Proposals for an international tax of any kind are dismissed as absurd. Indeed, the poor countries come under immense pressure even to cut back on domestic redistributive taxation.

The sheer impossibility of poor countries meeting social standards set at levels fixed by the rich has, however, now been generally accepted. The demand that labour standards be a factor in trade policy has therefore been amended. It has now become a proposal that all countries implement 'core labour standards'. These require an acceptance of freedom of association, the abolition of child and forced labour, and a ban on discrimination in employment practices. Most of these requirements are already included in ILO Conventions or other international agreements which have been accepted by almost all countries.

Nonetheless, breaches in these core labour standards do often occur. Usually a country's failure to implement the Convention its government has signed is connected with its national poverty – and the concurrent existence of gross inequalities of income both at the international and at the national level.

Within democratic (developed and developing) countries, the need of the poor or less-rich cannot always be ignored with impunity by the government or the ruling class. Even in dictatorships the rulers can find it necessary to respond to strong protests from their people. The same is true within a community of nations; if the community is to survive, the need for some kind of consensus among rich and less-rich member nations gives some leverage to the less-rich members.

In the world at large, however, there is neither international democracy nor any clear centre of power at which the poor can direct their protests. For example, when the world price of copper halves in a week, the national income of Zambia drops like a stone; its workers will protest (perhaps violently). But they direct their

anger against the government of Zambia, which has no power in the matter at all. What else can the workers do? They cannot affect the decisions of this vague thing called the international market, even although what Zambia has lost other – and wealthier – countries have gained.

It is worth remembering that governments of the South are not always overthrown because they do not care about the plight of the poor in their countries. Very often, popular protests which lead to the resignation (or overthrow) of a Southern government are 'IMF bread riots', the people are condemning their government because it has been unable to resist demands from the IMF either to fulfil some universal standards established by the rich North, or to cut the living standards of the poor still further.

**Universal social standards are not possible unless they are linked to, and are conditional upon, the parallel implementation of a coherent, and internationally-consistent anti-poverty programme.**

The reality is that universal social standards are not possible, and certainly would be incompatible with justice, unless there are linked to, and are conditional upon, the parallel implementation of a deliberate, coherent, and internationally-consistent anti-poverty programme – both nationally and internationally.

Further, before there can in justice be any question of having 'universal social standards' (however defined) the equality of all sovereign nations must be recognised in more than nominal and theoretical terms, it must be the actual basis for all economic, social and political relations between states. Nor will universal social standards be possible while international financial movements remain chaotic and unregulated. Indeed, universal social standards are not compatible with unfettered competition in the global market.

For if there is no effective restraint upon the strong – which in economics means the wealthiest – then what is in their interest will be what happens, regardless of the needs (let alone the interests) of the poor.

In this fact lies the almost unanimous Southern hostility to the proposal that trade-related social standards be brought into the orbit of the WTO rather than (or as well as) the ILO. For compared with the WTO, the ILO is democratic in structure, and does not seek to usurp the national sovereignty of any state.

Developing countries see no need for further international intervention beyond the existence, and the present powers of, the ILO. Furthermore, past experience has demonstrated that if the WTO is given powers to apply sanctions on this matter (as well as on all the other grounds on which it already has such a power), they will be used exclusively against the developing countries – and even then not with any consistency. They will become another stick to use against a developing country (democratic or otherwise) which tries to determine its own domestic policies in any area, and to implement them. It does not take much imagination to see how such powers in the hands of the WTO could be used by the United States against Cuba; it takes a great deal of imagination, however, to believe they would be used against the United States on any grounds at all.

## Biotechnology Working Group Proposal Draws Much Opposition

While biotechnology products and genetically modified organisms (GMOs) are widely expected to be discussed during the Seattle Round, it is still unclear how this will happen.

The four major players that have proposed talks on the issue have each taken a different approach: the EU is leaning towards a clarification of the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement); Canada has proposed the establishment of a working group 'with a fact-finding mission to consider the adequacy and effectiveness of existing rules as well as the capacity of WTO Members to implement these rules effectively'; Japan seeks 'an appropriate forum to address new issues, including GMOs' as a sub-group of an independent negotiating group on agriculture; and the United States wants 'transparent, predictable, timely and science-based' approval systems for genetically-modified crop varieties to be among the objectives of the agricultural negotiations (see also box on page 16).

The EU advocates a clarification of SPS rules – which require trade restrictions to be based on sound science – to acknowledge the 'precautionary principle' so as to give WTO Members more leeway in rejecting GMO products on the basis of scientific uncertainty. The SPS Agreement already recognises that temporary trade restrictions may be taken to protect human, animal or plant health/life even 'where scientific evidence is insufficient', but these measures must be based on 'available pertinent information' and, to make them permanent, Members must carry out a 'more objective assessment of risk [...] within a reasonable period of time.' A reference to the precautionary principle would undoubtedly lessen the degree of scientific proof needed to justify trade restrictions, as well as extend the 'reasonable period of time' during which scientific evidence must be presented to maintain provisional measures.

Japan, which also takes a cautious approach to genetically engineered products, proposes that the biotechnology sub-group consider, among other items, whether 'the relevant WTO Agreements, such as SPS, TBT and TRIPs ... are capable of responding to (GMO-related) matters'.

The United States and Canada seek to open markets for their bio-engineered products. Both claim that the European Union's approval system for new varieties has 'broken down' – it is, indeed, likely that no new varieties will be approved until 2002 – and that the EU's existing and planned labelling requirements for foods that contain GMOs are both unnecessary and technically unfeasible on a commercial scale.

The US is resisting opening up the SPS Agreement for fear that renegotiation or interpretation of its provisions would weaken rather than strengthen it. The US also finds the proposed working group's mandate too broad, and fears that the group's deliberations could slow down market opening for genetically-engineered products. Instead, the US has proposed that 'the objectives for the (agriculture, *ed.*) negotiations include addressing disciplines to ensure trade in agricultural biotechnology products is based on transparent, predictable and timely processes'. A more specific proposal was expected in November.

The Cairns Group will meet just prior to the Seattle Ministerial to try and develop a common stand on biotechnology. This will be a difficult task as the group's 15 members have widely divergent approaches to GMOs at the national level.

Developing countries have not made proposals on biotechnology, but most of them are in favour of stringent rules for transboundary movements of living modified organisms in the Biosafety Protocol talks slated to resume in January. In those negotiations, they are seeking provisions that would protect their regulations on GMO imports from WTO challenges, while the so-called Miami Group (consisting of the US, Canada, Australia, Argentina, Chile and Uruguay) is pushing for a treaty narrowly-focused on biodiversity conservation and containing the fewest possible trade restrictions (Bridges Year 3 No.7, page 9).

Informal discussions in Geneva during the first week of November revealed that the majority of WTO Members were against creating a WTO working group on biotechnology and WTO rules. Most developing countries who spoke said that genetically modified organisms should be discussed under the Convention on Biological Diversity and not in the WTO. The US appeared to have overcome its objections to a WTO working group, which was generally supported by the Miami Group, while the EU and Brazil declined to take a position. The US proposal to include timely approval processes for GMOs in the agriculture negotiation objectives was not discussed.

### Other developments

In related news, some of the transatlantic tension surrounding biotechnology was defused by EU President Romano Prodi's announcement on 4 October that the European Commission would draft a proposal for EU ministers to set up a Union-wide food safety regulatory agency. 'We intend to establish a coherent and up-to-date body of food legislation by 2002,' Mr Prodi said, adding that the public needed to be assured that scientists were acting independently from policy-makers. However, some EU countries are expected to resist the creation of a food safety agency that would override national legislation.

The European Commission is also expected to release new guidelines for applying the precautionary principle against imports in December. Judging by Commission officials' comments, the guidelines would be consistent with the Agreement on Sanitary and Phytosanitary Measures. They would require preliminary scientific evidence that a product might damage human/animal/plant health before imports could be restricted. In addition, the measures would have to be temporary and 'proportional' to the perceived risk. However, EU Trade Commissioner Pascal Lamy insisted that the Commission's negotiating mandate included putting into WTO legislation the 'necessary clarification so that the extent to which the precautionary principle applies is clear [...] we have to have a margin of security in order to protect the interests of the population.'

While these two initiatives seem conciliatory, the EU's latest GMO labelling requirements have angered biotechnology exporters. One of the draft directives sets a labelling threshold for GMOs accidentally introduced into foods: if any individual ingredient of a foodstuff contains more than one percent of genetically-modified material, the product has to be labelled as containing GMOs. The other draft directive would make it obligatory to label foodstuffs that contain GMO-derived additives and flavourings in the same way as foods that contain other genetically modified ingredients. Both measures were approved by the EU's Standing Committee on Food Safety in October and are expected to be adopted by the Commission before the end of the year.

## Update on Sustainable Development Assessments of the WTO Seattle Round

In the run-up to the Seattle Ministerial, four WTO Members – the European Union, Canada, the United States and Norway – made a commitment to conduct an assessment on the new round's likely impacts on sustainable development. As Bridges was unable to confirm the status of the Norwegian assessment at press time, the review below will look at progress on the other three initiatives.

### **The EU's Sustainability Impact Assessment**

As the European Commission decided to conduct its study even before the Seattle Round's exact scope was known, its assessment process is the most advanced of the three. Unlike the other governments engaged in the exercise, the Commission contracted an outside institution – the University Manchester – to carry out the assessment. The latter issued a 176-page report of the first phase of 'WTO New Round Sustainability Impact Assessment Study' in October. That report presents the methodology to be applied in assessing the complex interaction between trade liberalisation and its social, economic and environmental consequences. The report is available on the EU Trade Directorate's website at <http://europa.eu.int/comm/trade/pdf/repwto.pdf>.

Because the scope of the negotiations was not clear when the assessment was carried out, the authors based their study on the EU's own negotiating objectives and their potential 'significant effect – positive or negative – on sustainable development' worldwide.

The following indicators and criteria were used to measure the EU mandate's sustainability impacts on the new round:

#### *Indicators*

- average real income; net fixed capital formation; employment
- equity and poverty; health and education; gender inequalities
- environmental quality (air, water, land); biological diversity; other natural resource stocks.

#### *Significance Criteria*

- extent of existing economic, social and environmental stress in affected areas
- direction of changes in base-line conditions
- nature, order of magnitude, geographic extent and duration of changes
- regulatory and institutional capacity to implement mitigatory measures

The EU study was to conclude in mid-November with the release of a second report (not yet available at press time) that would apply the methodology to the EU's negotiating goals in order to arrive at a 'broad qualitative assessment' of their global sustainability impacts of the new round, based on 'possible sectors and issues for negotiation'. The second phase report was also to contain proposals relating to the development of a more detailed form of SIA 'for use of subsequent stages of the new round negotiations after the Seattle meeting'. The authors recommended that the European Commission conduct a follow-up meeting with civil society to 'discuss the conclusions of the final report in the light of the outcomes of the Seattle meeting, and the desirability of further development of the SIA methodology for more detailed application in subsequent phases of the new round negotiations'.

After the release of the first phase report, European environmental organisations were quick to point out that the EU study would not address their long-standing request to 'properly assess the envi-

ronmental implications' of existing WTO Agreements, and ignored the fact that 'the underlying economic principles of the world trade system are flawed'. For instance, the study does not address 'the need for equal access right to resources and resources use within the carrying capacity of the earth', Friends of the Earth Europe charged. Other shortcomings included how – or whether – controversial issues such as biotechnology or forestry tariff elimination would be treated in the second phase of the assessment (see related article on page 7).

For more information on the EU assessment project, see the website of the Institute for Development Policy and Management of the University of Manchester at <http://fs2.idpm.man.ac.uk/sia/>

### **Developments in the United States and Canada**

Canada and the United States have chosen to wait until the Seattle Round's scope is known before launching their studies on its potential impacts on sustainable development. In Canada, authorities are still setting the parameters for a Strategic Environmental Assessment (SEA), which will be co-ordinated by the International Environmental Affairs Bureau (IEAB) of the Department of Foreign Affairs and International Trade. According to officials in that office, once the SEA gets underway, it will 'certainly involve public consultations'.

The civil society organisations that have been demanding an evaluation of how the existing WTO Agreements have affected sustainable development are awaiting with interest the release of the IEAB's 'retrospective' of the 1994 Canadian Environmental Review of the Uruguay Round. The retrospective, due out 'shortly before the Ministerial', was undertaken in preparation for the SEA work that will follow the Seattle Ministerial. It will be made available on request from the Department of Foreign Affairs, as well as at the website <http://www.dfait-maeci.gc.ca/sustain/menu-e.asp>.

For more information on the SEA process, contact Thomas Gillmore at: [thomas.gillmore@dfait-maeci.gc.ca](mailto:thomas.gillmore@dfait-maeci.gc.ca)

In the United States, intense discussions have been held between various government agencies on how to go about the assessment. On 16 November, President Clinton issued an Executive Order on the environmental review of trade agreements, which commits the Administration to 'a policy of careful assessment of the environmental impacts of trade agreements' and to factoring environmental considerations into the development of its trade negotiation objectives. Environmental reviews shall be required for comprehensive multilateral trade rounds, bilateral or plurilateral trade agreements, and major new trade liberalisation agreements in the natural resource sector. They must be undertaken 'sufficiently early in the negotiating process to inform the development of negotiating positions, but shall not be a condition for the timely tabling of particular negotiating proposals'.

The US Trade Representative and the Chair of the Council on Environmental Quality (CEQ) are to oversee the implementation of the Executive Order, but the reviews themselves must be conducted by the Trade Representative 'through the interagency Trade Policy Staff Committee'. Citizens' groups have argued that an environmental agency, such as the CEQ, should take the lead. Public comment and information will be sought throughout the review process, which is to focus on impacts in the United States, although the reviews 'may also examine global and transboundary impacts'.

*Key Questions, continued from page 3*

for measures ‘tantamount to expropriation’ under the NAFTA investment chapter’s investor-state rules (see, for instance, Bridges Year 3 No.5, page 12). Others fear that multinational investment rules would weaken developing countries’ right to regulate foreign direct investment according to national development priorities.

**Competition policy and government procurement**

The split between WTO Members for and against the negotiation of competition policy rules during the Seattle Round is largely similar to that on investment, although US opposition is firmer on competition due to links between anti-competitive practices and trade remedy laws, such as anti-dumping.

Government procurement is a different case. The United States is pushing for an agreement at Seattle to negotiate a multilateral agreement on transparency in government procurement, while the EU and Japan want to go beyond transparency rules to ultimately arrive at a market access agreement on government procurement.

Most developing countries are wary of adding any ‘new issues’ to the Seattle agenda, but a few – including Venezuela and Costa Rica – would welcome government procurement transparency rules. No developing country has requested negotiations on market access commitments in this area, and most would vehemently object to opening their government procurement markets.

**Services**

Trade officials reported some progress in narrowing down the 19 October draft Declaration’s alternative paragraphs on the services negotiations in the last week of October. Delegates still disagreed, however, on whether negotiations for new concessions should be based on a country’s Uruguay Round commitments or its ‘current regime’ of market access – which often exceeds the bound commitments in the General Agreement on Trade in Services (GATS) schedules. Another open question was whether benchmarks should be included in the draft Declaration. The issue of deadlines and benchmarks is also divisive with regard to other negotiations, and in particular those on agriculture.

WTO Members were also considering proposals by Indonesia, Singapore, Korea, India, Brazil, Egypt, and Kenya on behalf of Africa group (included as paragraph 31(i) in the 19 October draft) that countries receive ‘credit’ during the negotiations for any previous liberalisation taken unilaterally since the Uruguay Round.

The EU’s and Canada’s determination to keep their cultural sectors, and audio-visual services in particular, protected from foreign competition was not reflected in the 19 October draft.

**US Labour Proposal Finally Tabled**

One issue unites developing countries with different priorities on other topics in solid opposition: addressing links between trade and labour in the WTO. So far, drafts of the Ministerial Declaration have not mentioned labour, perhaps because formal proposals were lacking on the issue. This could now change, as the United States finally presented its long-expected proposal on trade and labour at a WTO heads of delegations meeting on 30 October. While the actual proposal is relatively short, the details of the working group’s agenda in the ‘background’ section of the paper go well beyond examining the relationship between trade rules and core labour standards (see box for excerpts).

As the paper was tabled at the end of the meeting, WTO Members did not have the opportunity to formally discuss the proposal. However, developing countries’ resolve to oppose any encroachment of labour issues in the multilateral trading system was undiminished in trade officials’ comments after the meeting. If anything, the unexpected details of the proposal made it even less palatable to them (see related article on page 11).

US Trade Representative Charlene Barshefsky said the proposed working group was ‘very limited’ in scope and would not discuss the enforcement of labor rights with trade sanctions. Trade diplomats expected detailed discussions on the proposal to start in the second week of November.

If, in spite of the vigorous opposition developing countries are certain to mount, labour does make it to a consecutive draft, it is likely to come in two bracketed versions: one reflecting the US proposal and the other an EU proposal to set up a Joint ILO/WTO

*Continued on page 16*

**Excerpts from the US Proposal on a  
WTO Working Group on Trade and Labour**

*Proposal:* At their 1999 meeting [in] Seattle, WTO Ministers should agree to the establishment of a WTO Working Group on Trade and Labour. The proposed group would have a clearly delineated mandate, operate under the supervision of the General Council, and produce a report for consideration by Ministers.

*Background:* In particular, we see the work of the Group as being limited to the following issues:

- trade and employment – examination of the effects of increased international trade and investment on levels and composition of countries’ employment;
- trade and social protections – examination of the relationship between increased openness in trade and investment and the scope and the structure of basic social protections and safety nets in developed and developing countries;
- trade and core labour standards – examination of the relationship between economic development, international trade and investment, and the implementation of core labour standards;
- positive trade policy incentives and core labour standards – examination of the scope for positive trade policy incentives to promote implementation of core labour standards;
- trade and forced or exploitative child labour – examination of the extent of forced or exploitative child labour in industries engaged in international trade; and,
- trade and derogation from national labour standards – examination of the effects of derogation from national labour standards (including in export processing zones) on international trade, investment and economic development.

The objective of the Working Group in the first two years will be to produce a report on its discussions for consideration by WTO Members at the Fourth Ministerial Conference. In accomplishing its work, the Group would benefit from consultation and collaboration with the ILO, international financial institutions, and UNCTAD. To facilitate collaboration of this kind, the WTO would welcome a request by the ILO for observer status.



## FTAA: United on Export Subsidies, Divided on Civil Society

Ministerial and other high-level meetings were held around the globe as countries engaged in coalition-building during the home stretch before Seattle. Agriculture ministers from thirty-four countries of the Western Hemisphere met from 28-30 October in Salvador, Brazil, to reinforce their position on the goals of the Seattle Round's agricultural negotiations. The meeting had the scarcely-concealed objective to increase pressure on the European Union to make deep cuts in its support for domestic production and exports.

The ministers issued a declaration calling for 'the liberalisation of international trade in agriculture (and) reduction of trade- and production-distorting policies', but 13 countries of the Caribbean Community (Caricom) formed a 'regional negotiation mechanism', and noted at the end of the Salvador declaration that they were 'unable to participate in the drafting of any document emanating from the meeting on the subject of the forthcoming WTO negotiations'. Most Caricom countries have a preferential trade status with the European Union under the Lomé Convention.

Trade ministers from the same 34 countries met in Toronto from 1-4 November to chart the way forward for the Free Trade Area of the Americas (FTAA), expected to enter into force in 2005. They agreed on a tentative framework for the future treaty, which will guide the negotiations for the next 18 months, as well as a series of trade facilitation measures designed to cut red tape in customs proceedings and the like.

However, like other regional integration processes, the FTAA negotiations are overshadowed by the upcoming WTO talks. The strongest commitment undertaken by the ministers in Toronto concerned the WTO agricultural negotiations: 'With respect to the future multilateral negotiations on agriculture, we agree:

- To work towards the objective of reaching an agreement, during the next WTO Multilateral Negotiations on Agriculture, on the elimination of export subsidies on agricultural products and on the prohibition of their reintroduction in any form;
- To work towards the earliest compliance of all commitments under the Uruguay Round Agreement on Agriculture;
- To work towards having disciplines on other trade distorting practices and measures in the next WTO Multilateral Negotiations on Agriculture.

Civil society participation in the FTAA process continued to be divisive. Meeting from 12-13 October, the Committee of Government Representatives on the Participation of Civil Society failed to achieve a consensus on how to handle submissions made by non-governmental groups. Mexico, the Andean nations and Costa Rica argued that the 72 submissions from business, labour and environmental groups, as well as academia, were not representative of the views of the hemisphere, and wanted references to non-trade concerns such as the environment, labour or gender to be deleted entirely. In the end, the Committee forwarded a short descriptive report – with no analysis or recommendations as to the next steps – to the Toronto ministerial meeting. The US had prepared a fuller and more analytical alternative report, but was prevented from tabling it.

Bilateral consultations between the US and Mexico were necessary to secure even the continuation of the Committee, which will be chaired by Bolivia. In the Toronto Declaration, trade ministers directed the Committee to 'obtain ongoing input from Civil Society

on trade matters relevant to the FTAA through written submissions, using the San José Declaration as the frame of reference, and to provide a report outlining the full range of views received for our consideration at our next meeting'. Some observers wondered what purpose the Committee would serve, as its terms of reference and mandate remain unchanged, and few civil society organisations are likely to respond to a new call for submissions if it only results in a repeat performance of the current exercise.

## Company Files Case under NAFTA Environment Agreement

Methanex, a Canadian company that produces the methanol-based fuel additive MTBE, has added a new twist to the ongoing debate on the investor-state provisions of the North American Free Trade Agreement (NAFTA): it has filed a petition under the North American Agreement on Environmental Co-operation (NAAEC), alleging a failure by the US Environmental Protection Agency (EPA) and California authorities to properly implement the state's underground storage tank regulations.

On 14 June 1999, Methanex notified its 'intent to file' a US\$970 million compensation claim against the US government, alleging that California's ban on the use of MTBE in reformulated gasoline amounts to 'an expropriation of [Methanex's] business interests' (see Bridges Year 3 No.5, page 12). The actual filing is expected before the end of the year.

The Methanex claim is not the first challenge to environmental or health regulations filed by a company under NAFTA's Chapter 11, which allows corporations to sue foreign governments for measures '*tantamount to expropriation*'. Such cases have united much of civil society against developing multilateral investment rules (see Bridges Vol.2 No.6, page 8).

Methanex's latest move is a novelty, however. First, it marks the first time a business has had recourse to the NAAEC, which does not contain financial compensation clauses. Second, the company is claiming damages caused by an environmental regulation under NAFTA, while simultaneously alleging a violation of the NAAEC, whose Article 5 provides that 'each Party shall effectively enforce its environmental laws and regulations through appropriate governmental action'.

According to Methanex, if Californian regulators had properly enforced state legislation on underground storage tanks – and upgraded it if necessary – there would have been no leakage of gasoline containing MTBE into the groundwater system, and thus no need to ban the substance. While the Chapter 11 filing seeks to compensate Methanex's stockholders, the NAAEC case was filed for 'purely environmental' reasons and was intended address the 'real problem', i.e. leakage of gasoline into the environment, Methanex officials said.

In its Chapter 11 filing, Methanex had already claimed that rather than MTBE, the problem was 'wider gasoline and water resources issues'. Methanex also denied that MTBE – classified as a potential human carcinogen by the EPA – had 'any adverse effects on human health at reasonably expected exposure levels'.

Since June, other US states have also expressed concern about MTBE's growing importance as a groundwater pollutant because of the chemical's persistence in water. A change in federal legislation that would eliminate MTBE as a component of reformulated gasoline is under consideration.

### Substantive Issues Surrounding the Creation, Use and Trade in GMO Products

Proposals to consider GMO issues at the WTO must be viewed in their broader context, including the need for strong regulation to protect a range of non-trade concerns. The issues surrounding trade in GMO products are complex and raise particular concerns for developing countries, including:

*Biodiversity protection* – as recognized in the Biosafety Protocol negotiations, the transboundary movement of GMOs may threaten biological diversity. Genetically modified plants and animals may, for example, transfer genetic material and associated traits to traditional varieties, creating weeds, threatening ecosystems and harming biological diversity. These impacts are of special concern to many developing countries, which are home to a large share of the world's biodiversity, an asset that, among other things, promises significant economic benefits.

*Intellectual property, traditional knowledge and benefit sharing* – many developing countries are concerned that companies from industrialized countries are patenting genetic material developed by developing countries without sharing the benefits as required by Article 8(j) of the Convention on Biological Diversity.

*Food security* – may be affected in a number of ways. First, biotechnology may change the nature, structure and ownership of food production systems. Real food security problems are caused not by food shortages, but by inequity, poverty and the concentration of food production. Unless carefully regulated, biotechnology is likely to further consolidate control in the hands of a few large firms. Second, biotechnology, by increasing the herbicide resistance of crops, may boost the use of chemicals to kill weeds, and harm the environment. Third, while biotechnology is promoted as a way to increase crop yields, the results are, at least currently, inconclusive. Finally, GMOs may also reduce crop diversity. New technologies such as 'terminator technology', which renders a crop's seeds sterile, could lead to serious food security consequences.

*Ethical and religious concerns* – as biotechnology allows scientists to move genetic material across species boundaries and allows, for example, animal genes to be placed in plants, it raises new ethical and religious concerns. The privatization of life, human cloning and other possible applications likewise raise major ethical concerns

*Human and animal life or health* – genetic modification may change the toxicity, allergenicity or nutritional value of food, and alter antibiotic resistance, with implications for human and animal life and health. Testing GMO products is complex and expensive. Developing countries may require improved capacity for testing and authorization of these products.

*Consumer's right to know* – many consumers prefer not to consume products that are genetically modified and have a valid claim to being fully informed.

*Excerpted from a CIEL Discussion Paper on the implications of proposals to consider trade in biotechnology products in the WTO. For copies contact Matthew Stillwell at [cielms@igc.apc.org](mailto:cielms@igc.apc.org).*

### Key Questions, continued from page 14

Standing Working Forum on Trade, Globalisation and Labour issues to 'promote a better understanding of the issues involved through a substantive dialogue between all interested parties (including governments, employers, trade unions and other relevant international organisations). This dialogue should include an examination of the relationship between trade policy, trade liberalisation, development and fundamental labour rights. This Forum would also prepare for a ministerial-level meeting which should take place no later than 2001'.

### Industrial tariffs and the ATL Initiative

Reducing tariffs on industrial goods appears a likely addition to the built-in negotiations agenda of agriculture and services. However, this is not yet a 'done deal': several developing countries led by Pakistan continue to resist any add-ons to the built-in agenda unless their concerns about the implementation of existing WTO Agreements are meaningfully addressed. At the time of this writing, discussions were deadlocked on how to deal with those issues (see cover story).

Some developing countries, including South Africa, Hong Kong and Singapore, are interested in negotiating tariff cuts in certain industrial sectors, such as steel.

The United States has proposed – and the EU, Japan and Korea have opposed – merging talks on industrial and agricultural tariffs into 'comprehensive' market access negotiations 'covering all goods'. Within those negotiations, the Accelerated Tariff Liberalisation (ATL) initiative should be considered as a starting point that could yield 'early harvest' results. Such results could be implemented even before the end of the Seattle Round, although the tariff reductions would only become binding as part of the round's concluding overall 'single package'.

ATL covers eight sectors: forestry and fisheries products, chemicals, gems and jewellery, environmental goods and services, toys, medical equipment and scientific instruments, and energy. ATL was negotiated by the 21 APEC member countries and is now championed by the US, New Zealand, Canada, Australia, Hong Kong and Singapore as a starting point for industrial tariff negotiations.

APEC members Japan and Korea do not support fast-track negotiations on the fisheries and forestry sectors, and have requested setting up a separate working group to deal with those sectors in the Seattle Round. Environmental organisations oppose rapid cuts in forest product duties (see pages 5 and 7).

There are signs that the EU's resistance to prioritising the ATL industrial tariff sectors may be weakening. A high-level European Commission official said in late October that the Union was 'ready to consider advance reductions' on condition that the ATL package was adjusted to reflect the interests of European exporters. However, numerous developing countries and countries in transition opposed the inclusion of the ATL package in the Seattle Declaration during WTO discussions in early November.

See also separate articles on implementation concerns on page 1; biotechnology on page 12; sustainable development, WTO transparency and dispute settlement on page 5; and the assessments of the new trade round's impacts on sustainable development undertaken by Canada, the European Union, Norway and the United States on page 13.

## Small Progress in Climate Change Talks

As this issue of Bridges went to press, negotiators from 168 countries were meeting in Bonn for the fifth Conference of the Parties (COP-5) to the Framework Convention on Climate Change. The meeting was largely seen as a stepping stone, as real decisions on several key issues are slated for COP-6 in November 2000 in the Hague. In particular, delegates tried make headway in defining the scope and content of the Kyoto Protocol's three 'flexibility mechanisms' – international greenhouse gas emissions trading, the clean development mechanism and joint implementation – as well as compliance procedures.

### Positions on key issues unchanged

Developing country participation and the extent of reductions through emissions trading have been major sources of controversy throughout the Protocol's negotiation history, and it was immediately evident in Bonn that country positions had not shifted since the Conference of the Parties in Buenos Aires in November 1998 (Bridges Vol.2 No.8, page 11). The US reiterated that it would not present the Protocol to Congress for ratification unless two conditions were fulfilled: 'meaningful participation' of developing countries and the right to unlimited trade in 'emission reduction units' between developed countries or Annex I Parties (see box).

Developing countries were equally adamant on not taking on commitments under the Kyoto Protocol, referring to the Climate Change Convention's recognition that 'developed country Parties should take the lead in combating climate change' in the light of Parties' 'common but differentiated responsibilities'. Argentina, the only developing country to have taken on a voluntary emissions reduction commitment under the Protocol, announced at COP-5 that it would reduce its emissions by between two and ten percent below a business-as-usual level during the period 2008 to 2012.

On emission rights, the European Union continued to advocate a cap of 50 percent on trading, i.e. half of emissions reductions should be achieved through domestic measures rather than buying 'pollution rights' from other countries. Several former East block countries, and particularly Russia, have an excess of 'emission reduction units' as many of their heavily polluting industries have ceased operations since 1990. Activists call these units 'hot air' since they do not reduce actual here-and-now emissions. At press time, consultations were taking place in Bonn on Kazakhstan's request to be included in Annex I amid concern about another source of 'hot air', as well as setting a precedent for modifying the Protocol's Annexes.

### Clean development mechanism

The Kyoto Protocol's Article 12 establishes a 'clean development mechanism' (CDM) whose purpose is to 'assist Parties not included in Annex I in achieving sustainable development and in contributing to the ultimate objective of the Convention', i.e. 'stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system'. One of the goals of COP-5 was to flesh out this rather vague Article, which is generally expected to encourage technology transfers from industrialised to developing countries. Both sides would get 'certified emission reductions' as a result of CDM project activities but it is not yet clear how those reductions would be divided. Neither is it clear whether afforestation projects would count as CDM activities. Uncertainty also prevails as to what exactly would be considered an activity

that would assist in achieving sustainable development while helping stabilise greenhouse gas concentrations, particularly in poor countries that emit little and have major economic and social problems. At press time progress on the clean development mechanism seemed slow, but Canada had made a highly controversial proposal that emissions reduction credits could be granted for the transfer of nuclear energy technology.

### Compliance procedures

Trade officials often point out that environment-related conflicts should not be resolved at the WTO but within multilateral environmental agreements (MEAs). However, establishing stringent compliance, liability or compensation procedures under MEAs has proved notoriously difficult. The climate change treaties are no exception. Article 18 of the Kyoto Protocol directs the Parties to approve, at their first meeting after the Protocol's entry into force, 'appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance with the provisions of this Protocol, including through the development of an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance'. At press time, discussion on the issue had hardly started in Bonn, with some countries in favour of financial fines for non-compliance and others, notably the United States, advocating a system where countries could borrow pollution credits against their future allotments.

### Sinks and sources

Another question facing delegates in Bonn was the definition of greenhouse gas sinks, since a country's emissions will be calculated not only on the basis of GHG emissions, but also on their 'removal by sinks'. At press time it was decided that harvested wood could not be considered as a GHG sink. A study by the University of Wageningen on the impacts of including potential new sinks in Annex I targets revealed that enlarging the categories of allowable sinks beyond land-use change and afforestation, could lead to a *de facto* right to actually increase emissions while still meeting reduction targets.

On sources, delegates looked into bunker fuels, which according to the IPCC Special Report on Aviation and the Global Atmosphere account for 3.5 percent of the total contribution of man-made greenhouse gases to global warming, i.e. half a percent more than the whole of Africa.

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### The Kyoto Protocol Reduction Commitments

The Kyoto Protocol binds the 36 Annex I countries to reduce their collective emissions of six greenhouse gases by 5.2 percent from 1990 levels between the years 2008-2012. Annex I comprises OECD countries and countries in transition. Developing countries have no greenhouse gas emissions reduction commitments under the Protocol.

Individual Annex I country commitments vary from eight and seven percent reductions from 1990 levels for the EU and the US to stabilisation at 1990 levels for Russia and New Zealand) and even a permissible increase of eight percent for Australia and ten percent for Iceland.

### Latin American Policy Dialogue on Globalisation, Trade Liberalisation and Sustainable Human Development

The Policy Dialogue organised by ICTSD in Santiago, Chile, from 8-10 November 1999, aimed to provide region-specific inputs to UNCTAD X's task of crafting new policy approaches and helping developing countries to manage the globalisation process in a way that supports sustainable human development objectives. The meeting, hosted by the UN Economic Commission for Latin America and the Caribbean (ECLAC), was convened under the aegis of the 'UNCTAD/UNDP Programme on Globalisation, Liberalisation and Sustainable Human Development' launched this year and initially set to run to 2001 (see Bridges, Year 3 No.1). Among the 30 participants were representatives of NGOs, academic institutions, governments, UNCTAD, UNDP and ECLAC.

Most participants pointed out that there were no automatic links between global economic integration – through trade liberalisation and opening to FDI – and long-term economic growth and sustainable human development. While most Latin American countries have undertaken structural reforms based on the so-called Washington consensus (fiscal discipline, tax reform, market based interest rate, privatisation, free investment flows, trade liberalisation, etc.), their per capita GDP growth rates have been very low and sometimes negative. At the same time, environmental degradation and inequalities in income distribution have significantly increased over the last decade.

According to many participants, the globalisation process creates new opportunities but also challenges. In that context, Latin American countries should manage the various risks associated with globalisation – environmental risks, macroeconomic instability, public debt, social risks, etc. – and identify responsibilities for managing such risks in national and/or local government, civil society and the private sector. In practice, this requires better institutions, increased public participation and transparency to achieve more coherence in the policy-making process and building consensus around national priorities. Participants also stressed the need for active policies and complementary measures to ensure that both global integration and economic growth support sustainable human development. These policies include, among others, better education and health programmes, incentives for export diversification, and support to infant industries, including training and technical assistance to SMEs.

At the multilateral trading system level, some participants highlighted the need to preserve spaces for policies to allow developing countries to implement national development strategies as well as the need to reinforce the provisions on special and differential treatment for developing countries. The conclusions of this first meeting will be presented in the form of a short report at a side event during UNCTAD X, in February 2000.

A second Regional Policy Dialogue to be held under the aegis of the UNCTAD/UNDP programme on globalisation will be organised by ICTSD in Bangkok, Thailand, from 24-26 November 1999. It will focus on globalisation, liberalisation and sustainable human development in the Asian context and will address particularly the social impacts of Asia's financial meltdown. Finally a third Regional Policy Dialogue will be held in Africa early next year.

For more information, contact Ali Dehlavi at ICTSD, tel: (41-22) 917-8352, fax: 917-8093, e-mail: [adehlavi@ictsd.ch](mailto:adehlavi@ictsd.ch) and/or download the programme, list of participants and papers from <http://www.ictsd.org/html/dialogues.htm>

*Climate, continued from page 17*

### Adverse trade effects

As at previous climate meetings, the oil-exporting OPEC countries insisted that negotiations on implementing commitments proceed simultaneously on all issues, including the Climate Change Convention's Article 4.8. This article provides the basis for funding for developing countries who will suffer from the effects of climate change, including small island countries and countries with low lying coastal areas. But, they also contain a provision for funding, insurance and technology transfer to meet the specific needs of developing countries arising from the 'impact of the implementation of response measures' on 'countries whose economies are highly-dependent on income generated from the production, processing and export, and/or on consumption of fossil fuels and associated energy-intensive products'.

Many delegates and non-governmental observers were skeptical of OPEC's claim that energy taxes or other incentives to reduce fossil fuel consumption in industrialised countries would cause them to lose US\$63 billion in annual revenue by the year 2010. Saudi Arabia, Kuwait and Libya suggested that developed countries should remove market distortions in the energy sector. Other developing country fossil fuel exporters, such as coal-rich Colombia, could also be adversely affected by climate change mitigation measures taken under the Protocol.

It is precisely these 'response measures' to climate change, left to each country's discretion in the Protocol, that hold the potential of conflicts between trade and environmental priorities, and thus between WTO rules and Climate Change Convention. Admittedly, the possibility is remote while the Kyoto Protocol remains ratified by only 16 countries, all of which – with the exception of El Salvador, Georgia, Guatemala, Paraguay and Uzbekistan – are developing small island states.

However, if countries do take their targets for the 2008-2010 commitment period seriously, measures with significant trade effects are likely to be taken in the next few years. If a WTO dispute against such response measures were brought by a non-Party (for instance Saudi Arabia) against a Party to the Protocol (such as the EU, say), it would provide the first test of the respective strengths of the multilateral trade and environmental regimes.

Contact: UNFCCC Secretariat, tel: (49-228) 815-1000, fax: 815-1999, e-mail: [secretariat@unfccc.de](mailto:secretariat@unfccc.de), web: [www.unfccc.de](http://www.unfccc.de)

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### *Environmental Groups Challenge, continued from page 7*

As mentioned, baseline data on forest status and threats were lacking, as were data on the adequacy of forest protection measures needed to balance the economic pressure for overharvesting to which trade contributes. Critics argue that the policy recommendations are inadequate in light of the global crisis confronting forests. The US government is currently considering the establishment of guidelines for assessment procedures of trade agreements likely to have significant environmental impacts, which could be an even bigger step forward if built on the experience with the forest product tariff review.

*David Downes is an attorney with the Center for International Environmental Law, Washington, D.C. He co-authored the WRI/CIEL report with Nigel Sizer. The report is available on request from [nigels@wri.org](mailto:nigels@wri.org) and will shortly be posted on the WRI website at <http://www.wri.org/>*

### Capacity-building News from Mozambique and Venezuela

As a result of the ICTSD Regional Symposium for governments and civil society which took place in Harare, Zimbabwe in February 1999 (see Bridges Year 3 No.1), the government of Mozambique requested UNCTAD to provide it with technical assistance to build capacity in the area of trade, environment and sustainable development. Following a fact-finding mission in July 1999 and a national workshop involving several ministries and national NGOs, a capacity-building programme has been established.

This UNCTAD/ICTSD capacity-building project will focus on the following key themes identified by national institutions:

- international negotiations on trade and environment in the context of the new WTO Round and SADC;
- responding to environmental requirements and increasing export competitiveness of Mozambique's traditional and non-traditional exports,
- promotion of environmental preferable products with significant export potential, and
- strengthening national co-ordination on Multilateral Environmental Agreements (MEAs), as well as their implementation at the national level, in particular with regard to supportive measures available under MEAs (capacity-building, technology transfer).

Through dialogues, information dissemination and training, the programme aims to create sustainable development capacities with respect to trade promotion and natural resources management in order to foster social and economic development, poverty eradication and improved environmental management.

A national seminar on implications for the country of the WTO Seattle Ministerial Conference and the eighth session of the UN Commission on Sustainable Development is planned for early 2000. Training courses on WTO and SADC Agreements, as well as a series of national studies (e.g. on market access, timber certification, TRIPs and the Convention on Biological Diversity), will be prepared in the next two years. Finally, training of trainers, course development and adaptation will result in course deliveries in Maputo and the provinces where most of the export activity takes place.

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Under the aegis of the IADB-funded Capacity Building programme for Venezuelan trade negotiators, ICTSD organised a national seminar on trade, environment and sustainable development issues in Caracas on 13-14 October 1999. The seminar was opened by Venezuela's Environment Minister Jesus Arnaldo Perez. Experts included representatives of UNCTAD, UNEP, ECLAC, the North-South Center and ICTSD. Participants – trade, environment and production ministry officials, as well as business associations, UNDP and academics – discussed issues of consensus and dissent related to trade and environment at the WTO, such as a summary of positions and proposals submitted on these issues during the preparations for Seattle, the relationship between WTO rules and the Climate Change regime, the use of financial instruments for sustainable development and the reformulated gasoline dispute at the WTO. Among hotly debated topics were issues likely to be raised at Seattle with regard to the WTO's Agreement on Agriculture, as well as trade and environment issues in the context of the FTAA negotiations and the role of civil society in the international and national debate on trade and environment.

The seminar was hosted by the Ministry of External Relations and the Centre for Development Training of PDVsa. The initiative is likely to be followed by a capacity-building programme for countries of the Andean Community.

## BRIDGES

Between Trade and Sustainable Development

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## MEETINGS IN SEATTLE

*For a complete listing, see Bridges Calendar of Events in Seattle at <http://ictsd.com/html/seattlecalendar.htm>*

- |                           |   |
|---------------------------|---|
| November 29<br>Seattle    | Seattle Symposium on International Trade Issues in the First Decades of the Next Century<br>Contact: Bernard Kuiten, tel: (41-22) 739-5676, fax: 739-5777, e-mail: <a href="mailto:bernard.kuiten@wto.org">bernard.kuiten@wto.org</a> |
| Nov. 30-Dec. 3<br>Seattle | <b>Third WTO Ministerial Conference</b><br>Contact: See above   |
| December 1<br>Seattle     | CRG/IATP: No Patents on Life: Biotech in the Global Economy<br>Contact: Phil Bereano, tel: (1-206) 543-9037, e-mail: <a href="mailto:phil@uwtc.washington.edu">phil@uwtc.washington.edu</a>   |
| December 1<br>Seattle     | CUTS: The Vexed Issue of Linkages (trade, labour and environmental standards)<br>Contact: Raghav Narsaley, tel: (91-141) 20-2940, fax: 20-2968, e-mail: <a href="mailto:cutsjpr@jpl1.dot.net.in">cutsjpr@jpl1.dot.net.in</a>          |
| December 1<br>Seattle     | IISD/RIIA: Science and Precaution in the Trading System<br>Contact: Aaron Cosbey, IISD, tel: (1-403) 270-2700, e-mail: <a href="mailto:acosbey@canuck.com">acosbey@canuck.com</a>   |
| December 2<br>Seattle     | IATP/IFA: Food and Agriculture Day<br>Contact: Renske van Steveren, tel: (1-612) 870-3423, e-mail: <a href="mailto:rvansteveren@iatp.org">rvansteveren@iatp.org</a>   |
| December 2<br>Seattle     | CUTS: Anti-dumping and the WTO Dispute Settlement System<br>Contact: K.S. Sajeev, tel: (91-141) 20-5820, fax: 20-3998, e-mail: <a href="mailto:cutsjpr@jpl1.dot.net.in">cutsjpr@jpl1.dot.net.in</a>                                   |
| December 3<br>Seattle     | IISD/RIIA: The Kyoto Protocol and the WTO<br>Contact: See IISD/RIIA meeting above   |

## OTHER MEETINGS

- |                                  |   |
|----------------------------------|---|
| November 15-26<br>Recife, Brazil | Third Session of the Conference of the Parties to the UN Convention to Combat Desertification<br>Contact: CCD Secretariat, tel: (49-228) 815-2800, fax: 815-2899, e-mail: <a href="mailto:secretariat@unccd.de">secretariat@unccd.de</a> , web: <a href="http://www.unccd.de">http://www.unccd.de</a> |
| Nov. 29-Dec 3.<br>Beijing        | Eleventh Meeting of the Parties to the Montreal Protocol<br>Contact: Secretariat of the Montreal Protocol, tel: (254-2) 62-1234, e-mail: <a href="mailto:ozoneinfo@unep.org">ozoneinfo@unep.org</a>   |
| December 6-10<br>Basel           | Fifth session of the Conference of the Parties to the Basel Convention on Transboundary Movements of Hazardous Wastes<br>Contact: Basel Convention Secretariat, tel: (41-22) 917-8218, fax: 797-3454, e-mail: <a href="mailto:sbc@unep.ch">sbc@unep.ch</a>  |
| December 6-10<br>Ottawa          | About Legally-binding Instruments for Forests<br>Contact: Jacques Gagnon, Costa Rica/Canada Initiative, tel: (1-613) 947-9100, fax: 947-9033, e-mail: <a href="mailto:jgagnon@nrcan.gc.ca">jgagnon@nrcan.gc.ca</a>  |

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ICTSD/IUCN. 1999. Fish for Thought: Fisheries, International Trade and Sustainable Development. ICTSD/IUCN. Geneva/Cambridge

Könz, Peider et al, ed. 1999. Trade, Environment and Sustainable Development: Views from Sub-Saharan Africa – A Reader. ICTSD and UNU Institute of Advanced Studies. Geneva/Tokyo

## OTHER PUBLICATIONS

Correa, Carlos. 1999. Intellectual Property Rights and the Use of Compulsory Licenses: Options for Developing Countries. Trade-related Agenda, Development and Equity Working Paper No.5. South Centre. Geneva

International Institute for Sustainable Development and UNEP. 1999. Environment and Trade: A Handbook. IISD. Winnipeg

Landa, Stephen. 1999. Can the FTAA Move Ahead after the Millennium Round Is Launched? North-South Center. Miami

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Sizer, Nigel; Downes, David and Kaimowitz, David. 1999. Free Trade Liberalisation of International Commerce in Forest Products: Risks and Opportunities. WRI/CIEL. Washington, D.C.

United Nations Environment Programme. 1999. Trade Liberalisation and the Environment. A Synthesis Report: Lessons learned from Bangladesh, Chile, India, the Philippines, Romania and Uganda. United Nations. Geneva/New York

## ON-LINE RESOURCES

Center for International Development of Harvard University. Global Trade Negotiations. URL: <http://www.cid.harvard.edu/cidtrade/>

International Centre for Trade and Sustainable Development. Seattle WTO section. URL: <http://www.ictsd.org/html/seattleministerial.htm>

Seattle Ministerial Conference Host Committee. Practical information for conference participants and other visitors. URL: <http://www.wtoseattle.org/>

WTO. Ministerial information page. Includes live plenary web casts and documents. URL: <http://www.wto.org/wto/minist/seatmin.htm>