

### Quad Offers Weak Starting Point for Confidence-building Package

In the aftermath of the Seattle Ministerial Conference, which revealed the depth of many developing countries' disappointment in the results of the Uruguay Round and the WTO as an institution, 'confidence-building' emerged as the new buzz word: measures would be taken to convince those whose faith was flagging that the system was responsive to their concerns. WTO Director-General Mike Moore was to report to Members on his efforts regarding all pending post-Seattle issues before Easter, and the General Council is expected to review the results on 3 May.

A proposal by influential WTO Members gives an indication of what is in store for that meeting. On 31 March, the United States, the European Union, Japan and Canada agreed on a 'Quad Package on a WTO Work Programme', which would result in virtually no change in least-developed countries' situation within the multilateral trading system, and offers few concessions in other key areas of interest to developing countries. Quad members have been at pains to explain that the 'package' is an outline for discussion by WTO Members rather than a bottom-line offer, but it remains to be seen how much flexibility they are willing to exercise. Many think that no significant progress can be made on key issues without a broad-based round of new negotiations.

The package consists of two parts: proposals on implementation and enhancing transparency; and a draft decision on market access and technical assistance for least-developed WTO Members.

#### Transition Periods

Developing countries have sought, before and after Seattle, a general agreement on prolonging the grace periods before full compliance is expected of them for several WTO Agreements. The Quad Package contains no such blanket extensions. Instead, it suggests that 'Members should be ready to act sympathetically and flexibly in response to duly substantiated requests from developing countries for an extension of transition periods' under the Agreement on Trade-related Investment Measures (TRIMs) and the Agreement on Customs Valuation. The Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs) is not mentioned at all. Any extension requests would be considered on a case-by-case basis. As this process is in fact already underway in the Committee on Customs Valuation and the Council for Trade in Goods (see separate story on page 4), the Quad proposal arouses scant enthusiasm. At most, it offers the following specifically for LDCs: 'In recognition of their capacity constraints, special consideration should be given to the extension of transitional periods for least-developed countries under the Customs Valuation Agreement'.

One way to reconcile developing countries' demand for an across-the-board solution for expired transition periods and the Quad's case-by-case approach could be to develop general guidelines for decision-making regarding extensions, but so far little has transpired on whether this would be acceptable to Members.

Three extra years could be granted, the Quad suggests, to least-developed countries for the elimination of their existing measures that are inconsistent with the Agreement on the Application of Sanitary and Phytosanitary Measures 'where such application is prevented by lack of technical expertise, technical infrastructure or resources'. Assistance could also be offered with regard to problems faced by developing country Members in international standards and conformity assessments. A Special Mechanism under the General Council could be instructed to 'work out mechanisms designed to improve the effectiveness' of the Marrakesh Ministerial Decision on mitigating possible negative effects of agricultural liberalisation on net food-importing developing countries.

#### Other Implementation Concerns

Beyond these proposals, the Quad notes that 'an implementation work programme could be established in which different committees will consider issues relating to implementation raised by Members and report to the General Council', which 'should include a point on implementation in its agenda'. This is a far cry from developing countries' pre-Seattle demand for a Special Mechanism under the General Council to address the imbalances in existing WTO Agreements and their implementation. The work programme proposed by the Quad would deal with issues raised by any Member, and thus presumably provide an additional avenue for examining developing countries' compliance with WTO rules, rather than focus exclusively on their unmet expectations rising from the Uruguay Round Agreements.

As one of its priorities, the Special Mechanism was to look into the question of expiring transition periods; other items included a review of special and differential treatment provisions in the WTO Agreements. The Quad Package does not address the latter issue, and it remains highly uncertain where in the system developing countries' implementation concerns can be addressed in a comprehensive manner, or whether some of them will be addressed at all.

#### Fixing the Transparency Gap

Many WTO Members now downplay the role of institutional problems and decision-making procedures as a major

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cause for the failed Ministerial, but the subject is still on the WTO agenda. Director-General Mike Moore characterised a late March informal General Council session on internal transparency as 'constructive, focused and practical', saying it yielded 'some very serious ideas [...] on how we can improve our play'. At the meeting, most industrialised countries, as well as several developing countries, stressed that relatively minor changes would suffice to improve the inclusiveness of decision-making.

The Quad Package follows this line of argument, proposing that informal meetings 'should be broadly representative of the WTO membership at different levels of development and reflect the breadth of substantive views on the issue being discussed. Such meetings should be followed by open-meetings in which a report is made on progress achieved, and all members are given an opportunity to express their views. [...] Within the context of the new programme for capacity building and technical assistance, enhanced priority should be given to supporting developing country participation in negotiations, particularly LDCs'.

Some developing countries, however, clearly disagree. At the March General Council meeting, Pakistan, Cuba, Egypt, Uganda and Zimbabwe submitted a proposal for an 'open-ended' process, with all negotiations taking place in plenary sessions. A workshop for African trade policy officials and negotiators, convened by the Southern and Eastern African Trade Information and Negotiations Initiative (SEATINI) in late March, issued a strong call for a 'reformed WTO' that should 'first and foremost be development-oriented and based on transparency, inclusiveness and representativeness'. To achieve that goal, the workshop recommended that African countries focus on 'ensuring full transparency and opportunity for full participation by all developing countries at all stages of negotiations and ensuring a Secretariat with equitable geographic representation' (see also page 15).

The Quad Package also outlines some steps, which 'could be considered' to enhance external transparency. These include, 'with a few limited exceptions', the immediate derestriction of working documents, Secretariat background papers, meeting minutes and agendas, as well as panel reports; enhanced contacts and exchange of information between the WTO Secretariat and NGOs; more regular symposia and other forms of informal dialogue with civil society on a broader range of WTO issues; and a review of the guidelines for consultations with NGOs. Up to now, proposals along these lines have met with a cool response from many developing countries and the Secretariat, which clearly consider internal transparency a priority over external opening.

#### **Market Access and Technical Assistance for LDCs**

The need to improve the lot of least-developed countries within the multilateral trading system is *the* confidence-building measure that WTO Members have most widely agreed about. Accordingly, the Director-General has held consultations among Members on what concessions they would be willing to provide to least-developed countries. Not very many, it transpires, if the Quad Package is anything to go by.

The greatest disappointment resides in the deliberately vague language of the 'Draft Decision Establishing a Plan of Action in Favour of Least-Developed Countries and a Revitalised Program for Technical Co-operation'. In it, the four major trading powers propose that developed countries grant least-developed Members 'enhanced market access by according and implementing tariff-

free and quota-free treatment *consistent with domestic requirements and international Agreements, under their respective preferential schemes for essentially all products originating in least-developed countries so far as they remain in that category*' (editor's italics).

The italicised language gives the game away: '*consistent with domestic requirements and international Agreements*' would allow developed countries to exclude concessions in such areas as textiles, where the phase-out of quotas is already bound under the Agreement on Textiles and Clothing and the corresponding domestic legislation of restraining countries. Equally deliberately, the draft decision does not define what '*essentially all products*' would entail, leaving each Member free to interpret the wording in a way that would protect domestic producers from competition from 'sensitive' LDC products, such as agricultural commodities. The requirement that the goods must '*originate*' in least-developed countries adds an administrative hurdle designed to ensure that no trans-shipment takes place.

And finally, the reference to developed countries '*respective preferential schemes*' makes it clear that the duty- and quota-free access would remain in the realm of enhanced but non-bound unilateral trade concessions. Many LDC goods already enjoy such preferences, and would be little better off if the Quad draft decision were adopted. Although the initiative could be marginally helpful to some least-developed countries whose products currently remain outside Quad members GSP schemes, the many qualifications in the proposal would make it easy for developed WTO Members to restrict access whenever the need arose. In contrast, least-developed countries had demanded '*bound* duty-free and quota-free market access conditions for *all* products from LDCs to developed countries', as well as favourable rules of origin and the elimination of other non-tariff barriers.

The Quad's own weak commitments, at least as they currently stand, have made many developing countries scornful of the Quad's proposal that they also provide least-developed Members with enhanced market access 'to the maximum extent possible'. In addition, some developing country Members, such as Brazil and Pakistan, have expressed concern about trade diversion if least-developed countries are granted significantly better access to industrialised country markets.

On technical assistance, the major problem with the Quad draft decision is its lack of funding commitments. Although the four suggest that Members agree to 'establish an improved programme for capacity building and technical assistance undertaken by the WTO', they only promise to '*undertake to work to devote adequate resources for these efforts*' (editor's italics), instead of the US\$10 million increase in the WTO's regular budget that Mike Moore had sought to improve the organisation's technical assistance delivery. Short of a firm commitment on funding, it seems self-serving to commit to the promotion of a 'better understanding and use of WTO rules so that recipients are able to exploit to a maximum the opportunities offered by the multilateral trading system and enhance the capacity of recipients to adopt and implement domestic laws and regulations to fulfil their WTO obligations and participate in the system'.

It is difficult to escape the conclusion that while the world's leading trading powers eagerly grabbed the chance to 'talk the talk' of confidence-building and reform in the wake of the failed Ministerial Conference, they are no closer to 'walking the walk' than in the acrimonious pre-Seattle days.

## The Canadian Generic Medicines Panel A Dangerous Precedent in Dangerous Times

By Robert Howse

Among the most important criticisms of the WTO that echoed loudly in the protests in Seattle last November, was that the World Trade Organization unduly constrains the regulatory autonomy of Member states, defeating or frustrating democratic choices in important areas of social, economic, environmental and cultural policy. When properly interpreted and applied, many WTO rules do, however, permit a considerable amount of regulatory diversity, provided the domestic policies in question do not discriminate against foreigners.

The area where the WTO interferes most explicitly with the ability of governments to strike a balance in their policies between diverse public values, is that of intellectual property. The TRIPs Agreement prescribes substantive standards of intellectual property protection, limiting the ability of democratic polities to strike their own balance between the provision of incentives for innovation on the one hand, and consumer welfare on the other; nor are these the only public values at stake, as debates surrounding biodiversity and intellectual property clearly illustrate. Moreover, on a conventional economic analysis, unlike the removal of tariffs, quotas and other overtly discriminatory trade barriers, raising intellectual property protection may actually reduce total domestic and even global economic welfare. For example in the case of increased patent protection, the additional monopoly rents to producers may generate little additional (efficient) innovation, while creating substantial welfare losses to consumers, who are deprived of cheaper imitations of patented products.<sup>1</sup>



Nevertheless, thanks particularly to the persistent resistance of developing countries to the annihilation of regulatory diversity in TRIPs, the agreement does contain a balance of rights and obligations that provides some scope for Members to circumscribe intellectual property rights in the name of competing public values. For instance, Article 7 of the TRIPs Agreement provides that the protection and enforcement of intellectual property rights should contribute not only to the promotion of technological innovation but also the “transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations”.

The recent decision of a WTO panel in the Canadian generic medicines<sup>2</sup> case, however, ignores these words about balance and mutual advantage, interpreting the patent provisions of the TRIPs Agreement primarily from the perspective of intellectual property rights holders, largely dismissing competing social interests, and reducing considerably the range of regulatory diversity permitted under TRIPs.

At the first glance, the decision may appear a victory for those concerned about limiting intellectual property rights for compelling reasons of public policy; one of the measures at issue in this dispute, a Canadian provision that allowed competing generic manufacturers to test patented products before the required period of protection expired, was upheld as consistent with the TRIPs

Agreement. The companion measure, however, that permitted manufacture and storage (“stockpiling”) of patented products before the expiration of the patent, so they can be available for sale immediately upon expiration of the patent, was struck down. Most importantly – even if Canada’s generic medicine industry is largely satisfied by the *result* of the ruling – the *legal interpretations* of the TRIPs Agreement constructed by the panel in this case, if followed in future cases, will have very harmful impacts, particularly on developing countries.

Both Canadian measures were aimed at achieving Canada’s longstanding policy goal of providing relatively low cost medications to consumers as soon as possible, consistent with its

basic legal obligation under the WTO Agreement to provide 20 years of patent protection. The TRIPs Agreement provides that patent rights extend to the ability to prohibit the non-authorized manufacture and use of a patented product (Art. 28(1)(a)), and on the other hand reflects the decision of Members to limit the required period of “protection” from a patent to 20 years (Art. 33). The “protection” that a patent holder receives from a patent is, fundamentally, the protection against competition, i.e. a right to monopoly rents. If it

were necessary to prohibit manufacture and use of a patented product by a competitor for the full 20 year term, the result would be that the stream of monopoly rents to the patent holder extend beyond the 20 year period to the time after the patent had expired that it took the competitor to engage in testing for regulatory approval and manufacture for the market.

In defending its measures, Canada relied on the Article 30 exception in the TRIPs Agreement. This provision states that: “Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the rights holder, taking account of the legitimate interests of third parties.”

In applying this provision to the Canadian experimental testing measure, the panel found that the testing exception was “limited”. However, it considered the meaning of the expression “limited” solely from the perspective of the rights holder, and without regard to the policy goals or purposes of the exception.<sup>3</sup> It never asked what scope the exception might require to achieve the social purposes at issue. It thus failed to interpret Art. 30 in light of the context, purpose and object of the TRIPs Agreement, as reflected in Art. 7, referring to the mutual advantage of producers and users, and a balance of rights and obligations. Moreover, the panel concluded that the stockpiling exception was not “limited”, even though there was a time limit on the exception, that allowed it to be used only in the final six months before expiration of the patent, and only by those availing themselves of the testing exception. While the panel had to admit that the six month cap constituted some kind of limitation (para. 7.37), it adopted the complainant’s view that a narrower rather than broader meaning of “limited” should be applied: for “limited” read “small”.

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## EU-ACP Partnership Agreement Waiver Raises Questions

On 5 April, the European Union tabled a request at the WTO Council for Trade in Goods, seeking an exemption from the most-favoured nation obligation for almost all trade preferences contained in the fourth Lomé Convention, which expired on 29 February. The Lomé Convention will be replaced by a new Partnership Agreement, which will be signed in Suva, Fiji, in June.

The EU requested a waiver from its obligations under GATT article I.1 to permit the EU to provide preferential treatment for products originating in former Lomé Convention developing country members 'as provided for in the new Partnership Agreement for the duration of the preparatory period, 1<sup>st</sup> March 2000 – 31<sup>st</sup> December 2007.'

The eight-year 'preparatory period' referred to in the request will serve to negotiate future WTO compatible arrangements between the EU and its 71 Lomé Convention partners in Africa, the Caribbean and the Pacific (ACP countries). These 'economic partnership agreements' will build on regional integration initiatives in ACP countries and gradually lead to reciprocal free trade, which will replace the unilateral trade preferences the EU has granted to ACP countries under a succession of Lomé Conventions for decades (Bridges Year 4 No.1, page 12).

The 39 least-developed ACP countries have been assured that their present trade preferences will remain intact under the EU's General System of Preferences (GSP), and even improve slightly after the EU grants duty-free and quota-free access for 'essentially all' their products in 2005. Twenty-seven of these countries are WTO Members, but some LDC WTO Members, such as Bangladesh, the Maldives and Myanmar, do not belong to the ACP group. Non-ACP least-developed countries currently in process of accession to the WTO include Cambodia, Laos and Nepal.

These countries requested the EU to extend the same treatment to all least-developed countries. There was no immediate response, but the EU, the United States, Japan and Canada have circulated a draft decision that would grant duty- and quota-free market access to 'essentially all' products originating in least-developed WTO Member countries (see page 2).

A major difference between the Partnership Agreement and Lomé IV is that the new arrangement does not contain a banana protocol, although the requested waiver would cover preferential access under the other three Lomé protocols on rum, sugar and beef. According to the EU, bananas were left out of the Agreement so as not to prejudice ongoing negotiations on the EU's banana import regime (see page 5). Nevertheless, at the Council for Trade in Goods meeting, the US, Colombia, Ecuador, Guatemala, Honduras and Panama sought a clarification that the EU would not use the new Agreement to avoid its obligation to comply with WTO rulings in the banana dispute. The US also expressed concern over the lack of the exact language for the waiver. The EU said a draft would be submitted to the WTO in a matter of days.

Brazil and Malaysia said they needed time to digest the 600-page Partnership Agreement before commenting in detail, and India sought assurances that its own GSP preferences would not be diminished by the new waiver.

Consultations will take place between the EU and interested Members, and the General Council will probably consider the waiver at its 7 July meeting.

## Slow Progress for Customs, TRIMs Extensions

Uruguay was granted a one-year extension for compliance with the Customs Valuation Agreement when the Council for Trade in Goods met on 5 April. The extension concerns minimum values for imported sugar and textile products. Requests from the Dominican Republic, Jamaica, Kuwait, Peru, Sri Lanka and Tanzania had been granted earlier. However, the requests for extended transition periods of 11 other countries are still pending while Members consult bilaterally. The countries are Bahrain, Colombia, Cuba, Egypt, El Salvador, Guatemala, the Ivory Coast, Mauritius, Myanmar, Senegal and Tunisia.

No progress has been made in extending transition periods under the Agreement on Trade-related Investment Measures (TRIMs). Argentina, Chile, Colombia, Malaysia, Mexico, Pakistan, the Philippines and Romania were to have their requests examined at the same Council for Trade in Goods meeting, but that did not happen as Pakistan and Mexico pressed for a multilateral solution to expired compliance deadlines rather than the case-by-case approach adopted by the Council. The eight countries' requests were submitted already in January, and most concern measures in the car manufacturing sector. Colombia sought a seven-year extension for its food processing sector (Bridges Year 4 No. 1, page 9).

## Services Negotiations Schedule Set

On 14 April, the WTO Council for Trade in Services adopted a meeting schedule for the services liberalisation negotiations that were launched last February (Bridges Year 4 No.2, page 1). The negotiations will be conducted during four special 'services weeks' during which all the committees involved in different facets of the talks will meet. In the end of each week, the Council for Trade in Services will hold a special session on the negotiations.

In related news, the seven-member ASEAN group has drafted a concept paper on possible approaches to a safeguard mechanism under the GATS Agreement. The ASEAN paper proposes a safeguard clause similar to those contained in the GATT and the Anti-dumping Agreement, but also raises several questions. In particular, it flags the question of whether established foreign-owned firms should be subjected to safeguard measures in case of an import surge, or whether the measures should only concern new entrants. The first option could violate the national treatment principle, and the second the MFN principle, the paper notes. The paper is still confidential but copies can be requested from ASEAN member governments.

## The 2000 Services Programme

	Special Sessions Negotiations	Services Council Reviews
<b>Week of 22 May</b>	25 or 26 May	29-30 May MFN exemptions
<b>Week of 10 July</b>	13 or 14 July	6-7 July MFN exemptions
<b>Week of 2 October</b>	5 or 6 October	28-29 September Air transport
<b>Week of 4 December</b>	7 or 8 December	30 Nov.-1 Dec. Air transport



## Dispute Settlement Corner

## Heading for Tuna-Dolphin III?

What goes around, comes around: just two months after new standards for 'dolphin safe' labelled tuna went into effect in the United States, a District Court Judge in California ruled on 11 April that the Secretary of Commerce could not change the criteria for the label. The old label's chief requirement was that no encircling purse-seine nets be used in fishing operations. In 1996, the US and Eastern tropical Pacific Ocean tuna fishing countries agreed to reduce dolphin kills through monitoring encircling operations rather than banning the method outright. The National Marine Fisheries Service developed the new regulations to implement that agreement. They require an on-board observer to certify that no dolphins were killed or seriously injured during the tuna catch.

The challenge against the new rules was brought by Earth Island Institute and nine other conservation groups, which claimed that the rules would lead to undetected or unreported dolphin kills (Bridges Year 4 No.1, page 5). The organisations have also requested the US Court of International Trade (CIT) to issue a temporary restraining order regarding the Commerce Department's lifting of a long-standing import ban on Mexican tuna on 12 April. Should the embargo be re-introduced, Mexico could take the case to the WTO, whose predecessor, the GATT, condemned US import bans on Mexican tuna in 1991 and 1994. Even if the restraining order were not granted, few US importers are expected to purchase fish that does not meet 'dolphin safe' criteria, which now again prohibit the use of encircling nets. The CIT was to rule on the injunction in the week of 16 April.

The Secretary of Commerce had justified changing the 'dolphin safe' criteria by a lack of sufficient scientific evidence of adverse impacts that might be caused by the new standard, but Judge Thenton Henderson ruled that he did not comply with the International Dolphin Conservation Programme Act's requirement to take into account preliminary results from stress studies on dolphins. Defending the new standard, Secretary of Commerce William Daley said: 'The United States cannot unilaterally protect dolphins from fishing practices in high seas', adding that 'international problems require international solutions'.

A Mexican government press release called the ruling 'not only unfair but totally misinformed' and concluded with a call to the US to 'spare no effort to overturn Judge Henderson's ruling, including taking the case to the US Supreme Court to overturn rulings which, in addition to being unfounded, may significantly violate the protection of the ecosystems and the environment in general.' The Justice and Commerce Departments are considering whether to appeal the ruling.

The litigation between the conservation organisations and the government in the tuna-dolphin case resembles that in the shrimp-turtle dispute, which has been in various courts since 1994. The CIT has yet to issue a definitive ruling on the government's new import regulations for wild-caught marine shrimp. If those regulations are overturned, the complainants in the WTO dispute are likely to request a panel to examine US compliance with the WTO ruling, which condemned the government's implementation of the import restrictions in place before the regulations were changed (Bridges Year 4 No.1, page 5).

## Ecuador May Announce Cross-retaliation in May

Unless Ecuador receives an EU response to its request for compensation in the banana dispute before 5 May, it will present a list of European goods, services and intellectual property rights that will be affected by trade retaliation to the Dispute Settlement Body on 18 May. Ecuador made WTO history, when it obtained the right in March to impose sanctions worth US\$201 million under GATS and TRIPs Agreements rather than solely in the goods sector, which was the one affected by the EU's WTO-inconsistent banana import regime (Bridges Year 4 No.2, page 7).

In a statement to the Dispute Settlement Body on 7 April, Ecuador noted that its sole motivation for requesting the cross-retaliation right was to induce the European Union to comply with its WTO obligations. 'How,' the statement read 'is it possible to re-establish a balance of rights and obligations in a situation where a relatively small developing country faces an economic giant like the EC?' As amending the banana import regime did not 'seem to be on the immediate agenda of the EC', Ecuador had 'no other option' than to seek redress through the suspension of concessions that would be 'practicable and effective'. In this case, Ecuador argued that measures taken in the goods sector would not be effective in inducing EU compliance – and would hurt Ecuador's import-dependent domestic economy besides. Thus Ecuador is currently drafting a retaliation list that will consist of non-respect for certain copyrights and related rights, such as sound recordings and broadcasts, geographical indications and industrial designs, as well as restrictions in wholesale distribution services under the GATS Agreement.

Ecuador has also suggested to the EU that compensation in the form of lower tariffs for some products, such as shrimp, could be considered, although the gains of such measures would accrue to all shrimp exporters as the tariffs would have to be offered on a most-favoured nation basis. Other forms of compensations could include more development assistance or debt relief. So far, the EU has not responded to these proposals.

Any recordings or other products made under the retaliation package will not be exported, as they would be considered counterfeit in third countries. The licensing arrangements and how to collect the revenue of the IPR portion of the goods must still be worked out by Ecuadorian authorities.

The panel ruling, which raises several tricky legal questions, will undoubtedly engender much commentary. In the May issue of Bridges, Christian Espinosa of the Ecuadorian Mission in Geneva will comment on Ecuador's innovative use of the cross-retaliation tool, initially included in the Dispute Settlement Understanding at the insistence of developed countries, which primarily sought a way to sanction violations of other WTO Agreements by raising tariffs on goods under GATT.

Meanwhile, the European Parliament refused in April to amend the EU's proposal for reforming the banana regime (for details, see Bridges Year 3 No.8, page 9). The Commission has indicated that a rival proposal from Caribbean nations could serve as a basis for further negotiations (Bridges Year 4 No.1, page 6), but Ecuador finds this proposal unacceptable.

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## Dispute Settlement Briefs

- Pakistan has requested a dispute settlement panel to rule on the United States' safeguard measure restricting imports of Pakistani combed cotton yarn. The measure was condemned last June by the Textiles Monitoring Body (TMB), which oversees the implementation of the WTO Agreement on Textiles and Clothing (Bridges Year 3 No.5, page 9), but the US notified the TMB in August that the safeguard would not be lifted. Because the measure has already been found WTO-inconsistent by the TMB, no consultations are necessary before a panel can be established.
- The United States is considering a dispute settlement case against Argentina, which it claims violates the TRIPs Agreement with regard to patent protection for pharmaceutical and agrochemical products, as well as exclusive marketing rights. At issue is an Argentine law enacted in 1995, which allows domestic drug manufacturers to copy patented foreign medicines without paying royalties. The law is set to be phased out in October 2000, but Argentine manufacturers want to keep it in place or, failing that, amend it so foreign companies would have to produce their drugs in Argentina in order to collect royalties. As a developing country, Argentina is supposed to have fully TRIPs-consistent intellectual property laws in place as of 1 January 2000.
- A border dispute between Nicaragua, Colombia and Honduras may end up in the WTO. At the April 7 Dispute Settlement Body meeting, Colombia complained about Nicaragua's cancelling of fishing licenses and imposing 35 percent tariffs on products that previously had none. Nicaragua claims that the measures were taken in the interest of national security, due to threats to Nicaraguan fisheries from Honduran and Colombian encroachments on its maritime borders.
- The final dispute settlement report on the US Anti-dumping Act of 1916 confirmed interim findings that the Act violates WTO rules (Bridges Year 4 No.1, page 7). The panel agreed with the European Union that the Act was inconsistent with GATT Article VI.1 'to the extent that it provides for the identification of an "intent" by the defendant rather than for the injury requirements of Article VI', i.e. the Act does not require the existence of a threat of material injury to domestic industry before imposing anti-dumping measures. The Act also violates GATT Article VI.2 because it allows other penalties than anti-dumping duties to be used against offenders. US authorities said the panel erred in its judgement, and called the Act 'more akin to an antitrust statute than the anti-dumping statutes maintained pursuant to the Anti-dumping Agreement against which the 1916 Act was measured'. Trade officials said they would wait for the release of a second ruling on Act, requested by Japan, before deciding on an appeal.
- According to trade sources, an interim dispute settlement report has rejected US claims that South Korea violated the WTO Agreement on Government Procurement when awarding contracts for building Seoul's new airport. Korea had argued that airport construction was not covered by its schedule of commitments under the Agreement. Korea is also pursuing a compliance case against the United States, which it claims has not properly implemented panel findings that condemned US anti-dumping measures on Korean semiconductors

## China Deal Elusive, US Protests Grow

The European Union and China are still trying to finalise a bilateral agreement on the conditions of the latter's WTO entry. In late March, EU Trade Commissioner Pascal Lamy failed to convince the Chinese government to open its markets for automobiles, insurance and mobile telephones further than already agreed with the US last November. Another seven WTO Members also still need to conclude bilateral deals with China, but none have the clout to substantially alter the conditions agreed by major trading nations, of which the EU is the last to finalise its negotiations.

While the United States and China have agreed the terms of China's joining the WTO, the US Congress must approve permanent normal trading relations (PNTR) between the two countries before US exporters can reap the benefits of China's WTO membership. The House of Representatives vote on PNTR on 22 May is expected to be close, with Republicans generally in favour but many Democrats either against or undecided. The Senate vote in June is expected to pass without difficulty.

Currently, Congress reviews China's trade status every year, and trade unions and environmental and human rights groups intend to keep it that way. To tip the balance their way, the Sierra Club – a conservation organisation with hundreds of thousands of members – has joined forces with the labour union AFL-CIO in mobilising grassroots activists against the PNTR bill. They claim that the WTO/PNTR package 'could worsen, rather than improve, human rights abuses, undermining the ability of Chinese citizens to fight for workers' rights, environmental protection and other social goals'. Some 10,000 demonstrators are expected on Capitol Hill when the House vote takes place.

Although the Clinton Administration, which has made obtaining PNTR its number one trade priority, earlier said that it would seek to pass the bill with no conditionalities, it is now considering 'companion legislation' that would establish a Congressional Executive Commission to review of China's human rights, labour and trade practices on an annual basis. Officials said, however, that the legislation would not contain unilateral sanctions provisions.

At the WTO, the next meeting of the working party on China's accession is scheduled for 8-15 May. China is expected to provide more technical information on how it plans to bring its laws and regulations into conformity with WTO rules.

## WTO in Brief

- An informal session of the Council for Trade in Goods, scheduled for 18 April, was cancelled as WTO Members failed to reach consensus during consultations on who should chair the negotiations on agriculture that were formally launched in March. The EU objects to the nomination of Brazilian Ambassador Celso Amorim on the grounds that a Cairns Group representative could not provide sufficiently objective leadership to the negotiation process (Bridges Year 4 No.2, page 1).
- The first post-Seattle meeting of the Working Group on the Interaction Between Trade and Competition Policy will take place from 15-16 June. The Working Group on Transparency in Government Procurement held its first informal meeting since Seattle on 17 April.

## Southern Leaders Call for Trade Negotiations Focused on the Development Dimension



Heads of State and other high-level representatives of developing country governments met in Havana for the first G-77 South Summit on 12-14 April. They issued a 14-page Declaration of the South Summit, which covers a wide range of priority issues for the South including globalisation, marginalisation, international finance and debt, AIDs and trade.

In the Havana Programme of Action that accompanies the Declaration, South Summit participants committed themselves to convening a High-Level Advisory Group of Eminent Personalities from the South to prepare a report on globalisation and its impact on developing countries. The report should include a comprehensive assessment of the North-South dialogue that the leaders propose to revitalise. That dialogue should serve, *inter alia*, to convey developing country concerns to the Group of Eight developed countries, as well as initiate action for strengthening existing institutional arrangements within the UN system in co-ordination with other groupings from the South.

On the South's trade agenda, the leaders promised to 'intensify efforts to review and reform the WTO regime' and to 'ensure that countries whose economies depend heavily on trade preferences be accorded the necessary transition period by the World Trade Organisation to adjust to the new liberalised regime'. They will also oppose 'application of all disguised protectionist measures, such as labour standards and the attempt to widen the environmental windows currently existing under the rules', so as to ensure that developing countries' comparative advantages are not 'eschewed in the WTO'. Instead, labour issues should be dealt with in the ILO, and solutions to global environmental problems should be based on the recognition of the North's 'ecological debt' and the principle of common but differentiated responsibilities 'highlighting the need to gain access under preferential terms to the appropriate financial resources and technologies in order to ensure sustainable development as provided in Agenda 21'.

Developing countries are invited to hold consultations prior to meetings related to the TRIPs review in order to develop common positions on such issues as technology transfer – TRIPs Articles 7 and 8 – and benefits that could accrue to developing and least-developed countries from operationalising them. They will also work to ensure that TRIPs curtails neither the proprietary rights and benefit-sharing arrangements related to traditional knowledge and conservation of biodiversity, nor developing countries' access to essential medicines, particularly those that mitigate AIDS.

Noting that various services-related Agreements have already opened financial markets, without a corresponding opening of industrialised country labour markets, developing countries will press for the freer movement of natural persons in the WTO services negotiations.

The leaders of the South expressed their support for addressing national, international and systemic issues relating to financing for development during a high-level United Nations conference planned for next year (see related article on page 13).

The South Summit documents are available on the Group of 77 website: <http://www.g77.org/>

### Highlights of the Havana Declaration's Trade Proposals

We underline the urgent need to redress the imbalances in the present WTO Agreements in particular with regard to the right of developing countries to promote their exports, which have been curtailed by the abuse of such protectionist measures as anti-dumping actions and countervailing duties, as well as tariff peaks and escalation.

Meaningful and expedited liberalisation of the textiles sector, which is of particular interest to developing countries, is another important market access issue which should be addressed by the multilateral trading system as a matter of priority. [...] In agriculture the objectives should be to incorporate the sector within normal WTO rules. We also call for the full and faithful implementation of the Marrakesh decision on measures related to the possible negative effects of the reform programme on least-developed countries and net food-importing developing countries.

The WTO Agreements should be implemented taking into consideration the need to extend the implementation period of particular Agreements that pose problems to developing countries.

The review of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs) as mandated in Articles 27 and 71 should make them more responsive to the needs of the South and to ensure access of developing countries to knowledge and technology on preferential terms. We will work towards harmonising the TRIPs Agreement with the provisions of the sustainable use and conservation of biodiversity in the Convention on Biological Diversity.

We also call upon developed countries fully to implement special and differential treatment (SDT) for developing countries, to strengthen the system of preferences and to give the products and services of special export interest to developing countries free and fair access to their markets. In this context, we urge all WTO Members to grant the request of the European Union and the ACP countries for a waiver for the provisions of Article I.1 of the General Agreement on Tariffs and Trade (GATT). We call upon the developed partners also to recognise the need to formulate appropriate measures to address the concerns of other eligible countries through strengthening the Generalised System of Preferences (GSP).

Future trade multilateral negotiations should be based on a positive agenda and should take full consideration of the development dimension of trade and of the specific needs and concerns of developing countries.

While recognising the value of environmental protection, labour standards, intellectual property protection, indigenous innovation and local community, sound macro-economic management and protection of all universally recognised human rights and fundamental freedoms, including the right to development, and the treatment of each issue in its competent international organisation, we reject all attempts to use these issues for resisting market access or aid and technology flows to developing countries.

*Canadian Generic Medicines, continued from page 3*

In justifying its choice of the narrower interpretation, the panel relied on the character of Art. 30 as an “exception”, and appears to have let assumptions about “exceptions” being by their nature grudging or confined influence its reading of the modifying adjective “limited”. However, in the *Hormones* case, the Appellate Body held: “merely characterizing a treaty provision as an ‘exception’ does not by itself justify a ‘stricter’ or ‘narrower’ interpretation of the provisions than would be warranted by examination of the ordinary meaning of the actual treaty words, viewed in context and in light of the treaty’s object and purpose [...]”<sup>4</sup>

As is suggested in this passage, the presumption that exceptions must be read narrowly may be connected to a failure to consider the words of the treaty in light of its object and purpose. This is precisely the case with the panel here, which assumed that the “basic” purpose of the TRIPs Agreement “was to lay down minimum requirements for the protection and enforcement of intellectual property rights” (panel ruling, para. 7.25). However, as indicated by Art. 7 of the TRIPs Agreement the basic purpose is *not* protection and enforcement of these private rights as such, but rather in a manner so as to achieve the *mutual* advantage of both producers and users and a *balance* of obligations and rights.

To do justice to this purpose, the panel would, at a minimum, have had to consider the scope implied in the word “limited” from the perspective not only of how much rights holders’ interests were being curtailed but also from the perspective of consumer interests.

This said, it is something of a mystery how the panel could find the testing exception sufficiently narrow but not the stockpiling exception. In fact the testing exception could actually curtail much more substantially rents that the patent holder might receive after the end of the 20 year period than the stockpiling exception; the period of testing required as a preliminary for regulatory approval of pharmaceuticals in Canada was three years, much longer than the six month period for stockpiling. But for the testing exception, the patent holder might have three additional years past the 20 year period of protection because the competing generic manufacturer would have to wait until the end of the 20 years to begin testing for regulatory approval, thus delaying by three years or so the moment the generic product would be competing in the actual marketplace.

This mystery is partly resolved when we move on to consider another criterion in Art. 30 – that the exception not “unreasonably conflict with a normal exploitation of the patent”. In explaining why the testing exception could meet this criterion, while the stockpiling exception did not, the panel made the following observation: “Some of the basic rights granted to all patent owners, and routinely exercised by all patent holders, will typically produce a certain period of market exclusivity after the expiration of a patent. For example, the separate right to prevent ‘making’ the patented product during the term of the patent often prevents competitors from building an inventory needed to enter the market immediately upon expiration of a patent. There is nothing abnormal about the more or less brief period of market exclusivity after the patent has expired” (panel ruling, para. 7.56).

“The Panel considered that Canada was on firmer ground, however, in arguing that the additional period of de facto market exclusivity created by suing patent rights to preclude submissions for regulatory authorization should not be considered ‘normal’. The

additional period of market exclusivity in this situation is not a natural or normal consequence of enforcing patent rights. It is an unintended consequence of the conjunction of the patent laws with product regulatory laws, where the combination of patent rights with the time demands of the regulatory process gives a greater than normal period of market exclusivity to the enforcement of certain patent rights” (panel ruling, para. 7.57).

This distinction is artificial, if not tendentious. The time required to build an inventory for sale subsequent to the expiry of the patent may well reflect the need to use production methods that respond to requirements for safety and quality in production, the *same* regulatory concerns that, ultimately, underlie a lengthy period of testing prior to regulatory approval. Moreover, the ability of producers to build inventory rapidly, *while ensuring quality and safety*, may well differ depending upon levels of economic development. In the Canadian case, the time needed was apparently around three weeks but one could not assume the same for generic producers in developing countries, where (ironically) – given the weak purchasing power of the vast majority of consumers – any delay in the marketing of generic products at lower cost might have significant health consequences, if not in certain cases deadly ones.

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**The panel’s interpretation of the legal implications of the TRIPs Agreement could have harmful impacts on developing countries, where any delays in the marketing of generic drugs might cause serious health effects.**

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It is significant in this respect that while most of the developed countries who intervened as third parties in the litigation, most notably the US and Japan, viewed the stockpiling provision as different from the testing provision, and not justifiable under Art. 30, the developing country intervenors (including Brazil, Ecuador, Cuba, and Thailand) generally saw the two provisions as linked, and viewed *both* as acceptable under Art. 30. Finally, by limiting early working exceptions to those for regulatory approval purposes, the panel’s reasoning excludes exceptions for basic research, including research that may improve on the patented product – in fact, in some instances, the only way to understand the possibilities of such improvement may be to reproduce or manufacture the product. There may be important social gains from allowing such research activity during the period in which the rights holder is enjoying monopoly rents from the patent.<sup>5</sup>

Perhaps most damaging of all to the legitimate balance of rights and obligations in the TRIPs Agreement is the panel’s finding (despite textual silence on the matter) that the non-discrimination provisions in Art. 27.1 of the TRIPs Agreement apply to any exception granted under Art. 30. These non-discrimination provisions are very different from those found typically in other WTO treaties, which prohibit discrimination between domestic and foreign products and services. Art. 27.1 of the TRIPs Agreement prohibits discrimination, *inter alia*, with respect to “field of technology.” However, based on legitimate social and economic objectives, a Member may well wish to limit intellectual property rights in one particular industrial sector – generic medicines is, of course, a classic example. The importance of health concerns in this sector, might well argue in favor of limits that it would be inappropriate to impose across the board on all sectors. Such imposition might create unnecessary costs for both domestic and foreign industries in those sectors – unnecessary in terms of the policy purposes of the exception in question. The panel entirely missed the implications of its treatment of manufacturing under Art. 30 for research and development, because of its general indifference to the purposes that underlie the taking of exceptions under that Article.

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## Biodiversity Convention Parties to Address Traditional Knowledge and Agricultural Trade

The Fifth Meeting of the Conference of the Parties to the Convention on Biological Diversity (CBD-COP5) will look into several issues that are of concern to the international trade regime. On the agenda of the meeting, which will take place from 15-23 May in Nairobi, are the protection of traditional knowledge, access to genetic resources and benefit-sharing, agricultural biodiversity, and the status of the Biosafety Protocol.

In the context of the Article 27.3(b) review, the WTO Council on Trade-related Aspects of Intellectual Property Rights (TRIPs) agreed in March to seek a more structured approach to dealing with biodiversity issues, including the patenting of life forms and the protection of traditional knowledge, taking into account work underway in other fora, such as the CBD (Bridges Year 4 No.2, page 6). The relationship between the TRIPs Agreement and the Biodiversity Convention was also discussed at the February/March session of the WTO Committee on Trade and Environment (Bridges Year 4 No.2, page 5). Agricultural biodiversity and the Biosafety Protocol are closely related to international trade in genetically-modified seeds and commodities, as well as to the WTO debate on agricultural non-trade concerns, including the controversial concept of multi-functionality.

### Access, benefit-sharing and traditional knowledge

Delegates to COP5 will discuss the report of an expert panel that met last October to develop recommendations on access and benefit-sharing arrangements for the implementation of the CBD (UNEP/CBD/COP/5/8). The panel did not draw any conclusions on the role of intellectual property rights beyond acknowledging that they 'may have an influence on the implementation of access and benefit-sharing arrangements and may have a role in providing incentives for users to seek prior informed consent'. However, the experts recommended that the Conference of the Parties consider how to facilitate progress on:

- The definition of relevant terms including subject matter of traditional knowledge and scope of existing rights;
- Determining whether existing intellectual property rights regimes can be used to protect traditional knowledge; and
- Options for the development of *sui generis* protection of traditional knowledge rights.

In addition, the panel highlighted the 'need to study the relationship between customary laws governing custodianship, use and transmission of traditional knowledge, on the one hand, and the formal intellectual property system, on the other', taking into account the work of 'all relevant bodies', including the World Intellectual Property Organisation (WIPO) and the WTO.

According to the experts, the COP could also consider the following 'as guiding parameters for contractual agreements':

- Regulating the use of resources in order to take into account ethical concerns;
- Making provision to ensure the continued customary use of genetic resources and related knowledge;
- Provision for the exploitation and use of intellectual property rights to include joint research, obligation to work any right on inventions obtained or provide licenses; and
- Taking into account the possibility of joint ownership of intellectual property rights.

Their report also states that 'traditional knowledge may be protected as a trade secret or as a form of know-how as appropriate and may be subject to licensing. Potential parties to an access and benefit-sharing agreement may consider the usefulness of licenses to secure continued control by providers over genetic resources.'

Government representatives will also consider the recommendations of a working group on the Biodiversity Convention's Article 8(j), which deals specifically with the preservation and maintenance of the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles and encourages the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices. Among the working group's recommendations were calls for the development of 'guidelines for the creation of mechanisms, legislation or other initiatives ensuring equitable benefit-sharing'; conducting an 'assessment of instruments, particularly IPR instruments, that may impact traditional knowledge with a view of harmonising these instruments with Article 8(j); and the development of guidelines in the establishment of legal mechanisms to implement Article 8(j), which could include *sui generis* systems (UNEP/CBD/COP/5/5).

### Agricultural trade and biotechnology

Draft recommendations call for governments to 'cautiously explore the potential of appropriate and safe biotechnology for enhancing food security as well as sustainable agricultural techniques and practices, taking into account the need to enhance food security for all and sustainable agriculture and rural development'. Governments should base their actions on the 'precautionary approach, as articulated in Principle 15 of the Rio Declaration on Environment and Development, and take into account concerns about possible adverse effects on the environment and human health'. In addition, governments are urged to ratify the Cartagena Protocol on Biosafety and to finalise the negotiations on the International Undertaking on Plant Genetic Resources for Food and Agriculture as soon as possible.

Governments are also urged to 'work towards liberalisation of trade in agricultural products, taking into account non-trade concerns, including food security and the need to protect the environment, as well as country-specific conditions, and to avoid unjustifiable trade distortions or trade barriers, in particular those that do not allow small-scale farmers access to industrialised country markets'. Another draft recommendation encourages 'all relevant parties [...] to identify and pursue opportunities for trade liberalisation in agricultural products, including addressing trade distorting subsidies and measures, which holds particular promise for promoting sustainable agriculture and rural development'.

Reflecting WTO developments, as well as text forwarded to the consideration of the UN Commission on Sustainable Development, the agriculture paper recommends that governments give 'urgent consideration [...] to the proposal for a possible commitment by developed countries to grant duty-free and quota-free market access for essentially all products originating in LDCs, coupled with efforts of more advanced developing countries to improve market access for these countries' (see page 2).

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*CBD, continued from page 9*

The Conference of the Parties is also expected to adopt a programme of work for the Intergovernmental Committee for the Biosafety Protocol. A Secretariat draft proposes that the Committee prepare for the first meeting of the Protocol Parties by establishing:

- procedures and mechanisms to facilitate Parties' decision-making with regard to imports of living modified organisms;
- modalities for the operation of the Biosafety Clearing-House;
- a process to elaborate international rules and procedures for liability and redress for damage resulting from transboundary movements of living modified organisms; and
- procedures and institutional mechanisms to promote compliance and to address cases of non-compliance.

Contact: CBD Secretariat, tel: (1-514) 288-2220, fax: 288-6588, e-mail: [secretariat@biodiv.org](mailto:secretariat@biodiv.org), web: <http://www.biodiv.org/cop5/>

### Africans of Two Minds on Benefits of Biotechnology

In related news, African scientists and politicians speaking at a pro-biotechnology workshop in March, called biotechnology a 'development issue'. They emphasised its potential to boost food production and berated the European anti-GMO lobby for spreading fears about biotechnological processes and products, to an extent that might stifle the continent's efforts in acquiring them. 'The debate on what is good or bad for Africa has been driven by people and groups outside the continent, some without adequate knowledge of the situation and the needs of the continent', Kenya's Education, Science and Technology Minister Joseph Wamukoya said.

Tewelde Behran Egzhiaber, the spokesman for the Like-minded Group of developing countries during the Biosafety Protocol negotiations, begs to differ. In early April, he circulated a sign-on letter protesting against claims in British media that – citing African scientists – seemed to suggest that 'biotechnology could solve Africa's rural poverty and could eliminate malnutrition and under-nutrition if the development of their genetic engineering were not rejected in Europe'. Arguing that 'it is not shortage of food that is the problem, but its distribution', the strongly-worded letter concludes: 'At the heart of the inequity that maintains the present poverty of the South is the inherited positive advantage that the Northern transnational corporations enjoy. We consider the use of the South's rural poverty to justify the monopoly control and global use of genetically modified food production by the North's transnational corporations not only an obstructive lie, but a way of derailing the solutions to our Southern rural poverty. It is the height of cynical abuse of the corporations' position of advantage. Channel Four Television and The Times newspaper should be ashamed for allowing themselves to be so manipulated into trying effectively to emotionally blackmail the UK public into using GE.'

### Global Biodiversity Forum

A group of 24 non-governmental and intergovernmental organisations will convene the 15<sup>th</sup> session of the Global Biodiversity Forum in Nairobi just prior to the CBD Conference of the Parties. Under the overall theme of Sharing the Benefits of Biodiversity, participants will focus on three broad topics: biodiversity and poverty alleviation; instruments for access and benefit-sharing from genetic resources; and agricultural biodiversity and sustainable livelihoods in dryland ecosystems.

Contact: Caroline Martinet, IUCN, tel: 999-0001, fax: (41-22) 999-0025, e-mail: [ccm@iucn.org](mailto:ccm@iucn.org), web: <http://iucn.org/themes/gbfl/>

### CITES Prohibits Ivory and Whale Trade Until Further Notice

When this issue of Bridges went to press, nearly all the most controversial issues regarding wildlife trade appeared solved at the Conference of the Parties to the Convention on International Trade in Endangered Species (CITES) in Nairobi. Although the meeting addressed many other important issues, such as strengthening the Convention and curbing illegal trade, most of the attention was focused on decisions on listing species in the Convention's two appendices. International trade is prohibited in species and products of species listed in Appendix I, while those listed in Appendix II can be traded internationally provided that export and import controls are in place and the export is guaranteed as non-threatening to the species' survival.

The ivory trade debate cooled considerably when African range states reached a compromise that lists the elephant populations of Botswana, Namibia, Zimbabwe and South Africa in Appendix II, but sets ivory export quotas at zero until the next CITES Conference of the Parties in 2003, which will decide whether monitoring programmes are effective enough to resume trade.

In June 1997, CITES Parties agreed to the experimental one-time sale of stock-piled ivory from Botswana, Namibia and Zimbabwe to Japan (Bridges Vol.1 No.2, page 1). At this year's CITES meeting, the three countries requested the establishment of continued annual ivory sale quotas, and South Africa asked that its elephant population be transferred to CITES Appendix II prior to a first experimental shipment of 30 tonnes of stock-piled ivory.

These proposals were opposed by numerous conservation groups, as well as India, Kenya and Zambia, which proposed to transfer Botswana's, Namibia's and Zimbabwe's elephant populations back to Appendix I. These stocks do not in fact meet the criteria of being threatened with extinction, but the proponents argued that only an Appendix I listing – and the resulting complete ban on international ivory trade – would protect elephants in all range countries from wide-spread poaching.

Delegates voted overwhelmingly in against Japanese and Norwegian proposals to transfer certain populations of gray and minke whales from Appendix I to Appendix II. The decision avoided a potential conflict between CITES and the International Whaling Commission, which has set a moratorium on commercial whaling until a global management scheme has been agreed. Japan and Norway continue to argue that the stocks in question are not threatened with extinction and thus do not fulfil the criteria for an Appendix I listing, and delegates from the two countries said Norway and Japan might resume bilateral whale meat and blubber sales in spite of the CITES Appendix I listing.

Cuba's request for the international sale of hawksbill turtle shells stockpiled during a national management programme between 1993 and March 2000 was also rejected by 67 votes against 41.

In an ironic twist, while delegates were preparing to adopt a resolution aimed at curbing illegal trade in shahtoosh in Nairobi, a London court imposed only a £1,500 fine on a trading company that illegally imported 138 shahtoosh shawls into the UK. Up to a thousand critically-threatened Tibetan antelope – listed in CITES Appendix I since 1975 – were killed to make the shawls, whose market value was estimated at US\$565,000. The CITES resolution requests, *inter alia*, that consumer states implement strict law enforcement measures and 'severely punish relevant selling and smuggling activities' (Bridges Year 4 No.2, page 10).

## Sustainable Development and Social Well-being: Which Approach for Fish Trade?

By Sebastian Mathew

Concerned by developing countries' inability to control the negative impact of bottom trawling in tropical waters, the International Collective in Support of Fishworkers (ICSF) in 1994 highlighted the need to devise effective protective measures through consumers to prevent sale of fish produced in unsustainable and socially irresponsible manner<sup>1</sup>. Since then, both the Marine Stewardship Council (MSC) – a joint initiative of the World Wide Fund for Nature and the multinational giant Unilever – and the German Fair Trade organisation have started consumer-oriented fisheries programmes, the first aimed at encouraging sustainable fishing and the second at improving living and working conditions of fishworkers in developing countries.

### Marine Stewardship Council

The MSC was launched in early 1996 to design and implement market-driven incentives for responsible, environmentally-appropriate, socially-beneficial and economically-viable fisheries practices, while maintaining the biodiversity, productivity and ecological processes of the marine environment. Principles and Criteria, with the main emphasis on biological

aspects, were developed through an international consultation process to ensure that the fish a fishery sells to processors, retailers and consumers originated from a sustainable and well-managed source. Fisheries that meet the standards set by the MSC are eligible for certification by independent, accredited certifying firms, and their products are sold under the MSC 'fish forever' logo.

The first seafood products from MSC-certified fisheries were launched in March 2000. They include herring from the UK Thames-Blackwater herring fishery, which uses drift-nets, and lobster from an Australian rock lobster fishery, caught in waters up to 60 km. depth using pots/traps. Only a couple of thousand people are employed in the combined production, processing and marketing operations of these fisheries. An Alaskan salmon fishery (using trolls and nets) is likely to be certified in a matter of months.

Several fisheries from developing countries have expressed an interest in MSC certification, including the Galapagos lobster and mixed fishery in Ecuador, the Ceara lobster fishery in Brazil, an artisanal hake fishery in Chile, the PhaNgá mixed fishery in Thailand and the Sulu Sea blue crab fishery in the Philippines. The Ecuadorian Government has publicly endorsed MSC. Sainsbury's Supermarkets Ltd., which has an annual turnover of over US\$300 million in fish and fish products alone, is now working with the suppliers of tuna in the Maldives with a view to achieving MSC certification. But it is yet to be seen how such fisheries will meet all requirements and qualify for certification.

In 1998, the International Collective in Support of Fishworkers articulated its concerns about the implications of MSC certification process for artisanal and small-scale fisheries in developing countries<sup>2</sup>. ICSF's first concern was 'the practicability of a private accreditation programme such as the MSC, claiming to promote

sustainable fishing, based on universal standards that are developed without due consultation with fishworker organisations and that do not take into consideration the diversity of fisheries in the developing countries'. It would, in fact, be almost impossible to show, as required by the MSC Principles and Criteria (P&C), that a developing country fishery is subject to an effective management system. Although the P&C claim to be a product of an 18-month worldwide consultation process, there were no consultations whatsoever in regions with the largest number of fishworkers and the largest production of food fish in the world. Moreover, the list of signatories and supporters of MSC mainly includes wholesalers, retailers, environmental groups and consultancy companies; there are no fishworker organisations from any developing country.

Second, ICSF is concerned about how the MSC approach could potentially limit the autonomy of fishers in the small-scale artisanal sector, who may feel compelled to seek MSC certification. Unilever has already publicly announced that only fish carrying the MSC logo will be sold through its outlets by the year 2005.

The third concern we have is about the potential impact of MSC label on

market access. Even when fisheries are potentially certifiable, the current certification process is so elaborate and expensive that it is difficult to imagine how many of the fisheries in the Third World could actually qualify for the MSC logo. Lack of financial means to undertake the necessary documentation could make a fishery in a developing country unable to defend its claim that it is indeed sustainable and that it allows for the integrity of the ecosystem to be maintained. Should demand for eco-labelled fish become a reality, many fear that the MSC certification process will restrict developing countries' access, especially to Europe and the United States, the biggest markets for fish and fish products after Japan.

The 'chain-of-custody' audit could present another problem. In fact, the P&C visualise the MSC certification programme working in conjunction with other certification programmes such as the ISO 14000, which could impose additional costs on Third World fisheries and exacerbate market access problems.

The fourth concern is about the implications of undergoing MSC certification without any clear signal from the market that the price it is willing to pay for eco-labelled fish could more than compensate for the costs of certification.

The fifth concern is that, since the unit of certification under the MSC scheme is a fishery in its entirety, there is no hope to reward responsible artisanal fishing methods and to reprimand destructive large-scale fishing activities if these co-exist in the same fishery. In such fisheries, unless the artisanal and large-scale fisheries co-operate, there is no way of obtaining MSC certification.

The sixth concern is that, except in very specific fisheries that are already well-managed, we do not see the MSC certification programme rewarding sustainable fishing. We are also doubtful

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*Which Approach for Fish, continued from page 11*

about how realistically it could contribute to reversing unsustainable fishing practices. The seafood firms that have endorsed the MSC seem to be interested in the MSC logo mainly to improve market access and their own public image. Speaking at the Asian International Seafood Show in May 1999, David Carter, General Manager of Kailis and France Group, Australia, gave three reasons for supporting the MSC initiative; (1) reduction in tariffs on Australian products entering the EU; (2) potential to increase market share; and (3) an opportunity to improve the general public's perception about the fishing industry. Several of the firms who have endorsed the MSC, including Unilever and Sainsbury's, also have interests in other businesses. Associating with high profile environment campaigns could certainly provide a better façade for marketing highly-profitable, not-so-green, non-fishery products as well.

**Fairly-traded Fish and Seafood**

After a biennial preparatory phase, German Fair Trade launched the Fairly-traded Fish and Seafood initiative at the Bremen Fish Fair in March 2000. The initiative aims to improve the living and working conditions of marine artisanal fishworkers through better economic incentives by establishing as direct a link as possible with Fair Trade buyers.

It is based on a partnership arrangement between Fair Trade and marine fishworker associations in developing countries. To qualify for partnership, the fishworker association has to comply with four sets of criteria. The first set – common to all Fair Trade partners – requires the association to be independent, democratic and transparent, and to uphold the five core labour standards of ILO (i.e. no discrimination on the basis of politics, religion, caste, race or sex; no use of forced labour; no employment of child labour; and respect for the rights to unionise and bargain collectively).

The other three sets of criteria were developed through informal consultations with fishworker organisations and support groups in developing countries. The first of these requires the association members to fish with un-motorised, wind-powered, outboard-powered or inboard-powered vessels at the lower-end of the horse power spectrum. Fishing operations must be undertaken from the beach, cove, lagoon, estuary, or the piers, using fishing gear and techniques that avoid 'unnecessary' by-catch and discards. The use of poisons or explosives is prohibited.

Second, the promotion of fair trade should not lead to negative externalities: it should threaten neither the nutritional security of the place of origin through higher prices or reduced supply to the local population, nor traditional processing and marketing structures, especially where women play an active role.

And third, only 15 percent, or less, of the members' total catches will be brought under the scope of Fair Trade. This percentage will consist of only those low-value species that are in surplus after meeting local demand and high-value species that are not normally consumed by the poor.

Unlike the MSC, the Fair Trade fisheries initiative is not a labelling scheme and does not require certification by third parties. Fishworker associations that enter into Producer Support Agreements with Fair Trade consent to the verification of their documentation process if Fair Trade so requires. There are currently two such agreements: one with the Collectif National des Pêcheurs Artisanaux du Sénégal, and the other with the South

Indian Federation of Fishermen Societies. Once such an agreement is signed, Fair Trade promotes the products of its partner amongst potential buyers who will pay the fishworker association a Fair Trade premium, fixed at one Euro for every kilogramme of raw fish. The premium should guarantee the basic needs of members, employees and workers of the producer association. The cash surplus after meeting this objective may be used to strengthen fishworker associations; to set up an emergency fund; to contribute to community welfare; or to develop better environmental safeguards in fisheries.

The Fair Trade system will mainly depend on self-monitoring by the fishworker association based on detailed documentation. Fair Trade, however, will get involved if the arrangement lacks credibility with consumers, and it can withdraw from the programme if the sustainability of fisheries resources under the arrangement is perceived to be under threat.

**A Comparison of MSC and Fair Trade**

If the goal of MSC is to promote sustainable fishing, that of Fair Trade is to improve living standards of those who are already practicing responsible fishing in developing countries. Although both initiatives emphasise 'sustainable fishing', the Fair Trade definition of what comprises sustainable fishing is more practical and something developing countries can comply with.

While a fishery has to approach the MSC for certification, it is the job of Fair Trade to identify appropriate Fair Trade partners. Where the MSC uses an independent certification programme, Fair Trade believes in self-monitoring. When the MSC uses international standards, or standards developed specifically for it, Fair Trade uses national standards, which can vary from country to country and provide greater flexibility for the producer.

On the other hand, several significant seafood dealers have already committed themselves to sourcing only MSC-certified fish, whereas it is unclear how consumers could promote fairly-traded fish in the absence of a label to identify the product. There is also no third party certification to lend credibility to the claim that the product is fairly-traded. And, the Fair Trade initiative is less clear than the MSC scheme on the programme's potential benefits to the seafood import industry.

The nature of the two schemes' economic incentive also is different. The MSC-certified fishery is expected to fetch a better price for its products, although there is no guarantee to this effect. Fairly-traded fish, on the other hand, will be sold at the prevailing market price with an additional fixed premium, which is linked to the turnover. Even if all the fish are sustainably-produced, only a small percentage of the total production of the fishworker association members would qualify for Fair Trade support, whereas all the output of an MSC-certified fishery could benefit from better prices. Moreover, there are conditions attached to the use of the premium on Fairly-traded fish, which is not the case with the potential additional income from the MSC-certified fishery.

Taking into account the need for protecting the local nutritional security and employment opportunities, the Fair Trade arrangement shows greater sensitivity to the concept of right to life and livelihood at the village level in developing countries, although the requirement to comply with the ILO core labour standards could be problematic. The specificities of the labour market in fisheries are different from other sectors, especially in

*Continued on page 14*

## Codex Debates Precaution in Risk Analysis

The Codex Alimentarius Committee on General Principles met in Paris April on 10-14 to consider, *inter alia*, the role of precaution in setting international food safety guidelines. In response to the Secretariat's Draft Codex Working Principles for Risk Analysis (CX/GP 00/3), the EU submitted its paper on the precautionary principle, which states that the precautionary principle should 'not be confused with the element of caution that scientists apply in the assessment of scientific data'. In the end, the acceptable level of risk for a given society is a political rather than scientific decision, the paper argues. It also stresses the importance of political decision-makers being aware of available scientific information before taking decisions (Bridges Year 4 No.1, page 12).

This approach was rejected by US negotiators, who tabled a list of questions regarding the definition and application of the precautionary principle as outlined by the EU, including the following: 'How can the Commission ensure that its proposed precautionary principle is not used to justify the adoption of arbitrary decisions when a clear definition has not been provided and when political decisions will determine its use?' and 'How does the Commission draw the distinctions between its proposed precautionary principle and the WTO SPS Agreement's concept of "appropriate level of protection"?'.

### CODEX ALIMENTARIUS

In a post-meeting press release, US Under Secretary of Agriculture Catherine Woteki said that the United States had not in any way endorsed the precautionary principle, which 'as proposed by a number of advocates [...] generally would require banning products – such as genetically engineered Bt corn – even if there is no definitive scientific proof of harm'.

Malaysia proposed that Codex adopt language in line with Article 5.7 of the SPS Agreement: 'Where relevant scientific evidence is insufficient, precaution can be exercised as an interim measure to protect the health of consumers. However, additional information for a more objective risk assessment should be sought and the measures taken reviewed accordingly within a reasonable time frame.'

A Chair's proposal, reflecting views expressed by several delegations read: 'When relevant scientific evidence is insufficient to objectively and robustly assess risk from a hazard in food, and where there is reasonable evidence to suggest that adverse effects on human health may occur, the nature and extent of which are difficult to evaluate, precautionary measures may be taken by risk managers in the interim to apply precaution to protect the health of consumers, without awaiting additional scientific data and a full risk assessment'.

The Committee could not reconcile these differences. Instead, it established a drafting group to work throughout the next year via e-mail to develop new proposals on 'the definition and criteria for application of precaution when scientific evidence is insufficient to objectively and fully assess risk from a hazard in food'.

The risk analysis paper that contained the precaution issue will be recirculated for comment by all Codex members. It will be considered by a working group that will meet immediately before the Committee's 2001 meeting, which will review the resulting document.

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## Poverty Reduction, Debt Relief and Trade Liberalisation

The governing bodies of the International Monetary Fund and the World Bank met amid protests on 16 and 17 April in Washington. Both institutions stressed that their efforts were geared towards poverty reduction, but many questioned how genuine the shift in focus really was, saying it was 'too little, too late'.

The chief item on the IMF's Monetary and Financial Committee's agenda was debt relief. Ministers urged all those with a stake in the HIPC (highly-endebted poor countries, *ed.*) Initiative to 'work for faster and effective implementation, and to give the HIPC process the highest priority'. They agreed to increase the number of countries targeted by the HIPC Initiative from five to 20.

Noting the need for rapid intensification of international action on the global AIDS crisis, the Bank's Development Committee urged the institution to intensify its HIV/AIDS work on a global basis, and called on the Bank and the Fund to take full account of HIV/AIDS in their poverty reduction strategies and the HIPC Initiative.

In their final communiqués, both the Bank and the Fund emphasised the 'critical importance' of trade for development and poverty reduction. The Bank noted that 'evidence suggests that substantial benefits could be gained from further liberalisation of trade regimes in both developed and developing (including transition) countries', and the IMF expressed support 'the early launch of a new round of multilateral trade negotiations, which would bring benefits to all countries, including the poorest'. Ministers at the Bank's Development Committee also recognised that 'developed countries have much to do to improve market access for developing countries' exports (e.g. agriculture, textiles)'. The IMF's Finance Committee called on the institution to 'continue to work with the World Bank, the WTO, and other interested parties to improve the effectiveness of trade-related technical assistance and to build institutional capacity'.

A high-level United Nations meeting called Financing for Development will address some of the concerns expressed at different fora regarding coherence between international financial institutions, debt relief and the level of funding available for development (see related article on page 7). The event will take place sometime in 2001, but the exact dates are not set yet.

The UN General Assembly has agreed the following agenda:

- Mobilising domestic resources for development
- Mobilising international private financial flows for development
- International financial co-operation for development
- External debt (bilateral, multilateral and commercial)
- Financing for development and trade
- Innovative sources of financing
- Governance of the international monetary, financial and trade systems
- Interrelationship between major elements and other special topics

In addition to UN member governments and agencies, the World Bank, the IMF and the WTO are expected to participate in the preparatory process, as well as the meeting itself, although the modalities for this are still unclear. Civil society and the private sector will also be involved. The first substantive Preparatory Committee session will be held in New York from 15-26 May.

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*Which Approach for Fish, continued from page 12*

the case of artisanal fisheries: children work at an early age alongside their relatives and earn a share of the gross earnings, and collective bargaining is not relevant because artisanal fisheries have a stipulated sharing system.

**Conclusion**

The export of fish and fish products is very important for many maritime developing countries. When about 40 percent of global fish production enters international trade, only about six to eight percent of forest products enter international trade (FAO, 2000. *Globalisation and Implications for International Fish Trade and Food Security*)<sup>3</sup>. The net foreign exchange earnings of developing countries in 1997 from fish and fish products stood at about US\$16 billion, which, according to FAO, is more significant than the combined net export earnings from coffee, tea, rice and rubber.

It is still unclear or too early to say how the market will respond to both eco-labelled and fairly-traded fish. In the light of growing interest in linking environment and labour standards to international trade, these developments could be seen as an opportunity as well as a matter of concern. Environmental and labour standards could complement the standards for food safety, which are strictly adhered to in the US, EU and the Japanese markets. (In fact, the greatest denial of market access for fish and fish products from developing countries is under the mantle of food safety standards).

Environment and labour standards and those concerning food safety could complete the triangle of external concerns about fish production and consumption. One can actually speculate a situation where a fish product imported from a developing country, sold in an EU supermarket, will carry three logos: one for food safety, the second for its origin from a sustainable fishery and the third, for being exported by an association of fishworkers that complies with the core labour standards of the ILO!

Many fishers in developing countries could benefit from these developments, including those using environmentally selective fishing methods and practices, as well as those belonging to genuine fishworker cooperatives or associations. While making all efforts to profit from such developments, fishworker organisations and national governments should exercise sufficient caution to prevent such standards from acting as technical barriers to trade. National or provincial fisheries authorities, together with fishworker organisations and the scientific community, could develop realistic and practical sustainability criteria and a management mechanism, and implement them effectively.

Well-managed and well-organized fisheries are becoming important marketing opportunities in international trade. Unlike many other developing country exports, fish is not a commodity easily substitutable with fish from the North. This realisation, coupled with a proactive engagement with the concerns of consumers, could very well promise a better future for both fish and the fishworker.

*Sebastian Mathew is Executive Secretary of the International Collective in Support of Fishworkers (ICSF) in Chennai, India.*

## ENDNOTES

<sup>1</sup> *Samudra Report* No. 9 February, 1994

<sup>2</sup> *Fish Stakes*, ICSF, 1998

<sup>3</sup> Agenda item 6. Sub-Committee on Fish Trade, Seventh Session, Bremen, 22-25 March 2000.

*Canadian Generic Medicines, continued from page 8*

The panel's reasoning on this issue is totally perverse – it claims that Art. 27.1 limits the Art. 30 exception, because there is nothing in Art. 30 that says otherwise. Where there is no explicit qualification to an exception, one should assume that the exception applies generally to its explicit subject matter, which is, in this case, patent rights. Throughout the TRIPs Agreement, where the parties wished to qualify a right or obligation in a particular provision by making it conditional on some *other* provision of the agreement, they employed the formula that the right or obligation is “subject to” that other provision.<sup>6</sup> The approach used in the generic drugs case leaves it up to the panel to determine on a case-by-case basis when a general non-sector specific exception applied in practice to only one sector constitutes a sham in respect of the non-discrimination obligation in Art. 27.1. This reduces the legal security of both rights holders and those social interests seeking to limit intellectual property protection, and increases the scope for panels to make intuitive, sniff-test type judgments about when inappropriate discrimination is occurring.

By failing to interpret the TRIPs Agreement in a manner that does justice to the delicate balance of social and economic interests reflected in the stated purposes of that agreement, the panel has crafted a set of readings that unduly curbs the regulatory autonomy of Members, and tends to undermine the legitimacy of the WTO in the eyes of its critics, at a difficult point in the Organization's history.

Despite the far-reaching implications of this decision, particularly for the systemic concerns of developing countries about TRIPs, critics should not allow this ruling to obscure other developments in WTO jurisprudence favorable to a balanced and sensitive reading of TRIPs. For instance, the recent panel on Section 301 of the US trade legislation took a sensitive view of the extent to which WTO panels should micro-manage the choices of Members in reflecting WTO obligations in their domestic law, suggesting that one could not consider whether a statute adequately implemented WTO obligations, without looking at other elements in a Member's domestic legal and administrative landscape, such as constitutional rules, and declarations of the authorities as to how the statute might be read or applied. That panel's analytical optic was much less intrusive of domestic sovereignty than the one through which the panel in the Indian Patents case viewed the evidence of compliance with WTO law. Thus, not all the recent news from Geneva is bad.

*Robert Howse is Professor of Law at the University of Michigan Law School and member of the faculty, World Trade Institute, Berne, Switzerland. A much-expanded and revised version of this text will be published in the “Journal of World Intellectual Property”.*

## ENDNOTES

<sup>1</sup> A.V. Deardorff, “Should Patent Protection be Extended to all Developing Countries?”, reprinted in R. Howse, ed., *The World Trading System: Critical Perspectives on the World Economy, Vol. IV* (London and New York: Routledge, 1998), pp. 37-48.

<sup>2</sup> *Canada-Patent Protection of Pharmaceutical Products*, Report of the Panel, WT/DS114/R, 17 March 2000. Adopted on 7 April.

<sup>3</sup> “... ‘limited’ is to be measured by the extent to which the exclusive rights of the patent holder have been curtailed”, para. 7.31.

<sup>4</sup> *EC Measures Concerning Meat and Meat Products (Hormones)*, Report of the Appellate Body, WT/DS26/AB/R, WT/DS48/AB/R, 16 January 1998, para. 104.

<sup>5</sup> R. Eisenberg, “Patents and the Progress of Science: Exclusive Rights and Experimental Use”, (1989), 56 *University of Chicago Law Review* 1017.

<sup>6</sup> This formula is employed in Arts. 6, 27.1, 36, and 65.1.

## African Trade Officials Set Post-Seattle Priorities

The Southern and Eastern African Trade Information and Negotiations Initiative (SEATINI) held a workshop on Strengthening Africa in World Trade in Harare, Zimbabwe, 27-31 March. Senior and middle level trade policy officials from 20 Eastern and Southern African countries, as well representatives of NGOs and the private sector, reviewed the outcome of the 3<sup>rd</sup> WTO Ministerial Conference and developed recommendations for common critical negotiating positions for the year 2000 and beyond.

Participants noted the need for 'a comprehensive rethink on the WTO's mandate' and proposed several institutional reform, including ensuring full transparency and participation by all developing countries at all stages of negotiations and ensuring a Secretariat with equitable geographical representation.

On intellectual property rights, participants supported the Africa Group's proposal on TRIPs (WT/GC/W/302), including calls to prohibit patenting of plants, animals, micro-organisms and all other living organisms, as well as the processes that produce them; to harmonise the TRIPs Agreement with the Convention on Biological Diversity; and to allow Members to use automatic compulsory licensing for essential drugs under TRIPs Article 31.

Participants also recommended a rejection of any 'new issues' in the post-Seattle negotiation process, including, *inter alia*, investment, competition policy, transparency in government procurement, electronic commerce, a new round of industrial tariff cuts and special treatment for biotechnology. 'Before the resumption of discussion on these new issues and proposals, the WTO must satisfactorily resolve the overwhelming problems of implementation faced by developing countries', the meeting report states.

Like every other Southern trade-related forum, the workshop urged developing countries to continue to resist attempts to introduce either labour or the environment in the mandate of the WTO. While labour provisions were rejected outright, the participants recommended that African countries participate effectively in the discussions of the Committee on Trade and Environment, particularly with regard to the negative effects of TRIPs on developing countries' efforts to acquire environmentally-sound technology, to conserve biodiversity or to protect traditional knowledge on the sustainable use of biodiversity.

In the context of the regional free trade agreements that will negotiated under the new EU-ACP Partnership Agreement (see page 4), participants noted that 'African regional integration agreements should not be subject to restrictive WTO provisions but should rather be consistent with developmental objectives and goals of these regional agreements'. They recommended that African governments take a more proactive role in discussions of these issues within the WTO and stressed that time frames on national agreements must be achieved through negotiations and according to criteria set within regional processes rather than arbitrarily determined and imposed from without.

They also called on WTO Members to improve least-developed countries' productive capacities and supply side constraints, and to grant bound duty-free and quota-free market access for all products from LDCs to developed countries, as well as favourable rules of origins and the elimination of other non-tariff barriers.

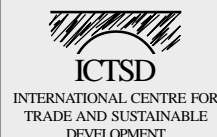
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May 1-5	WTO Committee on Anti-dumping Practices Contact: Luis Ople, tel: 5374, fax: 5458
May 2-4	WTO Trade Policy Review Body (Bangladesh) Contact: Lucie Giraud, tel: 5075, fax: 5458
May 3	WTO General Council Contact: Bernard Kuiten, tel: 739-5676, fax: 5777
May 4-5	WTO Committee on Balance of Payments Contact: Hans-Peter Werner, tel: 5286, fax: 5458
May 4-5	WTO Working Party on GATS Rules Contact: Nuch Nazeer, tel: 5393, fax: 5458
May 8	WTO Committee on Market Access Contact: Luis Ople, tel: 5374, fax: 5458
May 8	WTO Committee on Safeguards Contact: Luis Ople, tel: 5374, fax: 5458
May 9-11	WTO Committee on Subsidies and Counter-vailing Measures Contact: Luis Ople, tel: 5374, fax: 5458
May 15-17	WTO Textiles Monitoring Body Contact: J.-P. Lapalme, tel: 5223, fax: 5765
May 15-23 Nairobi	Fifth Meeting of the Conference of the Parties to the Convention on Biological Diversity Contact: CBD Secretariat, tel: (1-514) 288-2220, fax: 288-6588, e-mail: <a href="mailto:secretariat@biodiv.org">secretariat@biodiv.org</a> , web: <a href="http://www.biodiv.org/cop5/">http://www.biodiv.org/cop5/</a>
May 15-26 New York	First substantive session of the UN Preparatory Committee for Financing for Development Contact: Financing for Development Secretariat, tel: (1-212) 963-4690, fax: 963-1061, e-mail: <a href="mailto:ffd@un.org">ffd@un.org</a> , web: <a href="http://www.un.org/analysis/ffd">http://www.un.org/analysis/ffd</a>
May 16-18	WTO Dispute Settlement Body Contact: Gabrielle Marceau, tel: 5519, fax: 5788
May 19	WTO Committee on Technical Barriers to Trade Contact: Hans-Peter Werner, tel: 5286, fax: 5458
June 5-7	WTO Trade Policy Review Body (Peru) Contact: Lucie Giraud, tel: 5075, fax: 5458
June 15-16	WTO Working Group on the Interaction between Trade and Competition Policy Contact: Robert Anderson, tel: 5198, fax: 5790
June 19	WTO Dispute Settlement Body Contact: Gabrielle Marceau, tel: 5519, fax: 5788

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### ON-LINE RESOURCES

The Cartagena Biosafety Protocol: Opportunities and Limitations Article by Michelle Swenarchuk, Canadian Environmental Law Association. URL: <http://www.web.net/cela/Trad&Env/biosafe.htm>

EC & WTO – Suggestions for a way forward. EU post-Seattle strategy papers on *WTO New Round*; *Trade-related Technical Assistance*; *Improving the Functioning of the WTO*; and *Implementation Issues and Other Decisions*. URL: [http://europa.eu.int/comm/trade/2000\\_round/ecwto.htm](http://europa.eu.int/comm/trade/2000_round/ecwto.htm)