

Wide Disagreement Persists on Agricultural Negotiations Goals, Implementation Issues Review Outcome Remains Hazy

The papers tabled by WTO Members for the first substantive session of the agriculture negotiations (29-30 June) reveal that the seven months since Seattle have not brought key players any closer to a meeting of the minds. The EU and the US continue to differ radically on export and 'blue box' subsidies, developing countries want more leeway for development-oriented agricultural policies, and the Cairns Group is threatening immediate disputes against agricultural subsidy programmes when the 'peace clause' expires in 2001 unless significant progress is made in the negotiations before then.

Special and Differential Treatment and a Development Box

'Real, robust and operational special and differential treatment provisions in agriculture are even more critical, firstly because food security is integrally related to broader security issues and secondly, because of the special place of agriculture in most developing countries' economies.' This is the key tenet of a 12-page proposal entitled *Agreement on Agriculture: Special and Differential Treatment and a Development Box* (G/AG/NG/W/13) submitted by 11 developing countries to the June session.

In the proposal, Cuba, the Dominican Republic, El Salvador, Haiti, Honduras, Kenya, Nicaragua, Pakistan, Sri Lanka, Uganda and Zimbabwe argue that 'key products, especially food staples, should be exempted from liberalisation, and the domestic production capacity of developing countries must be encouraged and helped along to become more competitive, rather than destroyed on the basis of non-competitiveness'. They note that 'existing AoA rules seem to bestow special and differential treatment on developed rather than developing countries', a phenomenon amply documented by civil society organisations as well.

Citing FAO case studies indicating that, so far, far from benefiting from agricultural liberalisation, many developing countries face deteriorating socio-economic situations, the eleven request that a 'systematic review of implementation, that seeks to re-balance the rules and implement measures and reforms to address the existing problems and loopholes' be part of the agricultural negotiations.

The paper suggests the creation of a 'development box' that would exempt from WTO disciplines measures and policies aimed at:

- enhancing food security and production capacity;
- sustaining employment for the rural poor; and

- regulating cheap imports and stopping 'the dumping of cheap, subsidised imports on developing countries'.

In its proposal on the agriculture negotiations, the United States suggests the creation of 'additional criteria for exempt support measures deemed essential to the development and food security objectives of developing countries to facilitate the development of targeted programs to increase investment and improve infrastructure, enhance domestic marketing systems, help farmers manage risk, provide access to new technologies promoting sustainability and resource conservation and increase productivity of subsistence producers'. It also proposes 'intensified' technical assistance, and that 'all WTO members consider products of interest to developing countries, in particular least-developed countries, when making tariff reductions'.

Green and Blue Box Subsidies

Another submission by the same group of developing countries (G/AG/NG/W/14) focuses on non-actionable 'green box' subsidies, which are not subject to ceilings or reduction commitments. The paper claims that the green box has contributed to a higher overall support level in OECD countries, and that it meets the non-trade concerns of developed but not developing countries. The eleven propose collapsing all domestic support categories into one 'general subsidies' box with new qualifying criteria, and a special and differential treatment 'due restraint' clause that would protect developing countries' policies in the general subsidies and development boxes.

The United States also suggests simplifying the domestic support disciplines into two categories, but along different lines: measures that have no, or at most, minimal trade distorting effects or effects on production would be exempt from reduction, while all other support would be considered non-exempt and be subjected to a reduction commitment. This proposal would effectively eliminate 'blue box' subsidies aimed at limiting production.

In contrast, the European Union concludes its proposal on domestic support measures to agriculture: 'Considering the considerable reduction in trade impact brought about by this new type of policy support and its success in meeting domestic concerns in the process of agricultural reform, the EC wishes to stress that the concept of the blue box, like that of the green box, must be maintained' (G/AG/NG/W/17).

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Export Subsidies

The most controversial issue within the contentious topic of agricultural liberalisation is export support. At Seattle, Members arrived at a tortuously-worded compromise that tried to gloss over the fact the US and the Cairns Group wanted the negotiations to lead to the elimination of export subsidies, while the EU insisted that the talks cover 'substantial reductions' in all forms of export support, including export credit guarantees. The Seattle compromise is now off the table, and the export subsidy debate is back to square one, with all of the protagonists holding on to their pre-Seattle positions.

However, the Cairns Group (G/AG/NG/W/11) proposes to include 'concrete special and differential treatment provisions' to export subsidy commitments. According to Cairns, the final provisions should 'take into account the outcome of the negotiations on export subsidies and will aim to provide developing countries with useful and effective tools to cushion the impact of the reform process and help them to adapt to change'. These could include:

- a longer implementation timeframe; and
- extension of existing special and differential treatment for developing countries under AoA Article 9.4 until the elimination and prohibition of export subsidies are completed.

Animal Welfare and Biotechnology

Two other proposals are certain to raise lively reactions. One is the EU's paper on animal welfare and trade in agriculture (G/AG/NG/W/19), where the EU acknowledges that it has often been 'strongly criticised for referring to animal welfare' and 'accused of hidden protectionism', but refutes the charge. Instead, the EU proposes that WTO Members consider 'the development of multilateral agreements dealing with the protection of animal welfare', but notes that their effectiveness would require the achievement of 'greater legal clarity on the relationship between WTO rules and trade measures taken pursuant to provisions of multilateral animal welfare agreements'. Other means of addressing the issue could be 'appropriate' labelling to designate products produced in compliance with certain animal welfare standards or – and this is an innovative approach – some kind of WTO-authorised 'compensation to contribute to the additional costs where it can be clearly shown that these additional costs stem directly from the higher standards in question'.

The other proposal is likely to oppose the EU to the United States, which included in its agriculture paper a proposal that negotiations 'focus on disciplines to ensure that processes covering trade in products developed through new technologies are transparent, predictable, and timely'. The EU has previously opposed addressing biotechnology approval processes in the WTO.

Non-Trade Concerns

As a small concession to the EU's 'multifunctionality' argument, the US paper notes the government's 'commitment and support' for policies that address 'non-trade concerns, including food security, resource conservation, rural development and environmental protection'. However, the US maintains that 'these objectives are best met through non-trade-distorting means', which avoid passing the cost to 'other countries by closing markets, or

introducing unfair competition, or both'. The US also notes that although 'trade measures may be used to address legitimate health and safety concerns', it will oppose opening the Agreement on Sanitary and Phytosanitary Measures to negotiation.

As for developing countries' non-trade concerns, the US recognises the 'special circumstances and challenges' developing countries face and 'thus will supply proposals to help better integrate them into the world trading system'.

Implementation

On 22 June, Members met for the first special General Council session to 'address outstanding implementation issues and concerns, particularly those raised in the preparations for the Third Session of the Ministerial Conference'. According to the programme of

work adopted at the meeting, the review will focus on issues reflected in paragraphs 21 and 22 of the draft Ministerial Text of 19 October 1999. Those two paragraphs cover essentially all the points made by developing countries during the preparatory phase for the Seattle Ministerial. The purpose of the exercise is to 'assess the existing difficulties, identify ways needed to resolve them and take decisions for appropriate action'.

In addition to adopting a three-session work programme, on 22 June the General Council started consideration of developing countries'

concerns regarding the implementation of the Agreement on Textiles and Clothing, one of the most contentious issues of the preparatory phase. In essence developing countries seek substantially better access to industrialised country markets for commercially-meaningful textile products (the precise demands are laid out in paragraphs 21 and 22 of the draft Ministerial Text. See also Bridges Year 3 No.8, page 4). So far, the United States, in particular, has been adamant on making no further concessions on its implementation of the Textiles Agreement.

The first special session will continue on 3 July with the consideration of other paragraph 21 items, including, *inter alia*, anti-dumping, subsidies, SPS and TBT measures, agriculture, and the TRIMs and TRIPs Agreements. After discussion of all these issues, the work programme directs the Chairman and the WTO Director-General to consult with Members 'with a view to identifying ways' to resolve outstanding implementation concerns.

The second special session on 18-19 October will 'begin by acting on the results of the discussions and consultations on the issues referred to above', and then move on to consider concerns under paragraph 22, which deals with more long-term changes to WTO Agreements in order to make them more equitable for developing countries. Informal consultations will follow.

At the third special session on 18-19 December, Members should 'take decisions for appropriate action where possible', and determine what further work needs be carried out before the fourth Ministerial Conference, which will probably take place in 2002.

For the moment, it is difficult to judge what the implementation review really entails. No negotiations took place on 22 June, and it seems likely that any 'ways to resolve' outstanding implementation concerns will be found through informal consultations between Members rather than during the General Council's special sessions, which thus far appear as mere replays of the implementation discussions held before Seattle.

Environmental Implications of China's Accession to the WTO: Preliminary Policy and Law Considerations

By Richard J. Ferris Jr., Changhua Wu and John Barlow Weiner

The environmental implications of China's accession to the World Trade Organization (WTO) are complex, contested, and difficult to clarify using empirical data and analysis. As WTO accession draws nearer, it seems inevitable that the Chinese trade establishment will pay more attention to the intersection of trade and environmental issues. Better understanding of this interface is urgently needed in order for China to craft effective policies to control environmental deterioration, as well as to facilitate its evolution into an environmentally responsible Member of the WTO.

The authors have prepared this article with the hope that it will serve as the springboard for additional discussion on this critical topic and, by illuminating certain facts, encourage strengthened constructive engagement with the Chinese government and citizen representatives on the issue of trade and environment. As a "springboard," this article does not address the wide spectrum of complex and controversial issues associated with WTO accession, such as the development of the rule of law in China, the sustainability of the current trading regime or other dimensions of sustainable development. However, in keeping with the goal of nurturing discussion, the article highlights key issues associated with China's looming WTO membership and the significant environmental challenges and advantages that these issues could represent: 1) the potential domestic and global impacts of China's WTO accession; and 2) the possible influence of WTO agreements on Chinese environmental law and policy.

I. Chinese and Global Environmental Impacts

China's accession to the WTO will likely precipitate lower market barriers and increased market access for trading partners. However, enhanced trade does not necessarily result in environmental protection. For China and many other developing countries, the urgent need of new capital flows from foreign investors may compromise the environment and national long-term goals of sustainable development. What is needed are sound mechanisms for ensuring mutually supportive trade and environmental policies. Without such mechanisms, China's policymakers face membership in the global trading regime without key tools to address looming trade and environment tensions, such as those associated with China's struggle to sustain its natural resource base.

For example, as a member of the WTO, China would likely increase its imports of various natural resources. Some scholars argue that China may benefit from this import surge in terms of protecting its own natural resource base. The import of rich iron ores and other rare mineral resources could avoid environmental impacts associated with mining in China. A lowering of timber tariffs could protect forests. Food imports could slow the conversion of lands to agricultural uses. And the import of natural gas could help adjust China's current, heavily coal-reliant energy structure.

However, the "burden shift" theory raises some rather serious issues for the global community. Let's take the forest sector as a case in point. Between 1979 and 1990, global forest products imports increased at 5.84 percent per year, while China's imports of such products increased at 11.85 percent per year. During the same period of time, the world forest product exports increased by 7.4 percent each year, and those for China were only 1.7 percent.¹

With a fast-growing economy and a population that is rapidly increasing its consumption of paper goods, China could soon become one of the largest importers of forest products.

II. WTO Agreements and Chinese Environmental Law and Policy

The primary purpose of the WTO is to promote fairer, freer trade. However, WTO obligations also promote greater public participation in standard setting and clear and effective notice of environmental standards, as well as the strengthening of these standards in developing countries such as China. In this respect, the impacts of China's accession to the WTO are more evident and clearly beneficial.

The Agreement on Sanitary and Phytosanitary Measures ("SPS Agreement") and the Agreement on Technical Barriers to Trade ("TBT Agreement") in particular establish such obligations. The SPS Agreement addresses measures taken to protect humans, animals and plants from certain risks to life and health, including risks arising from additives, contaminants or toxins in foods. The TBT Agreement addresses all voluntary and mandatory standards for products, other than any that qualify as SPS measures, which indirectly impact free trade (i.e., create technical barriers to trade without directly regulating trade as such). TBT standards might include product content, packaging and labeling measures. The General Agreement on Tariffs and Trade ("GATT") also establishes some parallel requirements. As a general matter, the rules established under the GATT apply to all trade in goods, unless GATT rules conflict with those established under another WTO Agreement, in which case the provisions of the latter Agreement prevail.²

Clear and Effective Notice of Environmental Standards

WTO Agreements requiring publication of laws likely to affect international trade could provide the Chinese government with an incentive to boost present, limited initiatives in China addressing public notice of proposed environmental laws. WTO Members must publish laws likely to affect international trade, including measures to regulate the import, export, and sale of goods, in a way that allows other Members and entities participating in international trade to become acquainted with these requirements. WTO Members also must provide a reasonable interval between publication and entry into force of these requirements to give trading partners time to adjust their products and manufacturing methods accordingly. These publication requirements apply to environmental laws and regulations that may affect international trade, such as import quarantines, product specifications, and packaging requirements. In addition, these requirements are enforceable under the WTO's dispute settlement process, which may grant Members permission to impose trade sanctions to compensate for the effects of failure to comply with WTO obligations.

Currently, China does not consistently publish environmental laws or standards in a manner that facilitates notice to WTO Members and other entities. A number of recent initiatives indicate the Chinese government's emerging acceptance of the importance of enhancing "transparency" of the legal regime, but a great deal of progress is needed. Recent examples include the publication of draft versions of the new, national Land Administration Law (1998)

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and Economic Contract Law (1999), as well as Guangxi Autonomous Region Land Administration Regulations (1999), to solicit public comments. Additionally, the "Law on Legislation" adopted in March of this year stipulates, among other provisions, that the Standing Committee of the National People's Congress shall distribute draft laws to concerned organizations and individuals to "solicit opinions." The Law also provides that rules promulgated by State Council ministries and related administrative organizations must be published in national newspapers. Nonetheless, as is often the case in China, implementation of this Law might prove to be inconsistent and slow. The publication requirements established under WTO agreements should prompt more rapid action under these and other efforts in China aimed at building a more transparent and predictable environmental legal regime.

Greater Public Participation in the Development of Environmental Standards

WTO Agreements requiring notification to Members of proposed requirements that might significantly affect international trade could significantly intensify pressure on China to expand current initiatives aimed at increasing public access to and participation in the environmental rulemaking process. A WTO Member must notify all other Members of proposed requirements that might significantly affect international trade, allow other Members an opportunity to make written comments and to discuss these comments upon request, and must take these comments and discussions into account when finalizing the proposed requirements. WTO Members also must publish notice of these proposed requirements in a manner that will allow interested parties in other Member countries to become acquainted with the proposed rules and, potentially, to comment upon them through their governments. These notification and comment requirements are also enforceable through the WTO dispute settlement process.

Current efforts to promote public participation in the development of environmental laws are sporadic in China, although a number of initiatives are underway. In addition to the examples of publication provisions and the requirements of the Law on Legislation mentioned above, the State Environmental Protection Administration (SEPA) – China's "environment ministry" – is reportedly also considering other initiatives aimed at increasing interested stakeholder access to information on proposed and existing rules, as well as SEPA guidance on the implementation of existing rules.³

WTO Members are not required to publish proposed legal requirements domestically to enable interested parties to become familiar with them and to comment upon them. However, WTO agreements that require that interested parties in other Member countries are provided with this opportunity might encourage the Chinese government to expand or strengthen initiatives aimed at granting this same opportunity to domestic interests, and might motivate interested parties in China to demand this opportunity if it is not promptly granted. As in the United States, such public participation can be expected to encourage increased efforts to ensure sustainable use of natural resources and the pursuit of other environmental objectives.

Strengthening of Environmental Standards

WTO agreements encouraging Members to base domestic requirements upon international standards could considerably expand China's consideration and use of international standards in the domestic environmental regulatory regime. WTO agreements

encourage Members to base domestic requirements upon effective, appropriate international standards and grant a presumption of validity to domestic measures that are based on international standards. WTO Members can also establish national requirements that are more stringent than international standards, so long as these requirements otherwise conform to WTO rules.⁴ In addition, as noted above, WTO membership may encourage sounder environmental policies by promoting greater public participation in the development of these policies.

Efforts to incorporate international and developed-country standards in China are still at an early stage and continue to progress slowly. China's Environmental Standards Management Measures (1999) do, however, reflect the growing importance and influence of international or developed-country environmental standards with respect to the domestic regulatory regime. These Measures provide, among other things, that Chinese regulatory bodies may use existing international standards and standards of developed countries when formulating certain new environmental standards.

The WTO's promotion of reliance upon international standards may prompt China to meet international and similar developed-country standards, which in many cases may be higher than current domestic standards, and may promote implementation in China of existing measures that encourage the use of international standards. For China, being encouraged to require domestic compliance with international environmental standards, such as for production practices and management of natural resources, could substantially strengthen the domestic environmental regulatory regime.

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ENDNOTES

¹ See Nigel Sizer, *Tree Trade: Liberalization of International Commerce in Forest Products* (WRI, 1999) for a discussion of how trade in forest products might intensify pressures for overharvesting.

² Both the SPS and the TBT Committees may grant specific, time-limited exemptions to developing country Members from obligations under the SPS Agreement and TBT Agreement respectively. See SPS Agreement, Art.10; TBT Agreement, Art. 12. To date, no developing country Member has requested such an exemption, though some have requested assistance to facilitate their implementation of obligations under these Agreements.

³ It is also worth noting that most of China's national, and many local, government institutions are developing Chinese (and some English) Internet sites, including some traditionally "secretive" entities such as the Defense Industry and Technology Commission.

⁴ See e.g., SPS Agreement, Art. 3; TBT Agreement, Art. 2. However, developing country Members are not expected under the TBT Agreement to apply international standards that are "not appropriate to their development, financial and trade needs" (Art. 12). The SPS Agreement does not include a similar exemption for developing countries, although it authorizes the SPS Committee to grant specific, time-limited exemptions from any obligations under the Agreement.

Dispute Settlement Corner

Asbestos Ban Is Justified under Health Exception

Health, consumer and environmental groups are cautiously rejoicing at a WTO dispute settlement panel's interim verdict that France's import ban on white (chrysotile) asbestos is justified under GATT Article XX. The widely-leaked key findings of the still-confidential report confirmed that the ban was justified under Article XX(b), which allows WTO Members to take measures 'necessary to protect human, animal or plant life or health' even when such measures violate other GATT provisions.

The case was closely watched by civil society, as it involved a serious public health/environmental concern. Asbestos is a known carcinogen and most forms of it are banned, at least in industrialised countries (in the European Union, chrysotile asbestos is the only kind still allowed, and an EU-wide ban is set to enter in force in 2005).

The Canadian government argued that technical advances made chrysotile asbestos non-friable, and that proper control and management practices rendered its use safe. Canada charged that the French prohibition on the manufacture, import and sale of chrysotile asbestos was unnecessarily trade restrictive (violation of TBT Article 2) and discriminated against a Canadian good while allowing the use of 'like products', i.e. domestically-produced asbestos substitutes (violation of the national treatment principle contained in GATT Article III.4). The panel rejected the Canadian TBT violation claim, but conceded that the ban infringed on the national treatment principle. However – for the very first time in the GATT/WTO dispute settlement system – the panel ruled that the violation was justified under the exception listed in Article XX(b).

On the face of it, the asbestos case seemed relatively straightforward. Scientists agree that asbestos is a dangerous substance and, in many countries, the asbestos once widely-used in construction as a fire-insulator has been removed from building walls. The panel had to weigh these facts against Canadian claims that chrysotile asbestos – used in brake linings, clutch pads and underground pipes, among other things – did not represent the same dangers as older products (defending the government position, the Montreal-based Asbestos Institute said that modern asbestos products were as different from old low-density insulation materials as 'night and day').

In its interim decision, the panel seems to have erred on the side of caution, but environmental groups warned against reading too much into the decision. Unlike in the beef hormones dispute, or potential cases involving genetically-modified organisms, there is no scientific uncertainty surrounding asbestos, said Greenpeace's René Parmentier, and therefore the report should not be regarded as a test case of the application of the precautionary principle in the WTO.

The panel ruling was repeatedly delayed, and the final report is only expected to be delivered to the parties in the dispute in late July. It will be released to the public in mid- to late August. While the parties in the dispute have the opportunity to comment on the preliminary ruling, and the panel has the discretion to modify it, to date no panel has substantially altered its findings following the interim report review.

New Trouble over Amicus Briefs

The US was the sole defender of non-governmental groups' right to submit friend-of-the-court briefs to the Appellate Body at the 7 June DSB meeting called to adopt a report condemning US countervailing duty practices with regard to British Steel.

When acceptance of amicus briefs first came up in the shrimp-turtle case, many civil society groups welcomed the panel's clarification, held up by the Appellate Body, that panels had the right – but not the obligation – to accept unsolicited briefs from non-governmental sources. They saw it as a venue for increased input into a process hitherto exclusively reserved for Member governments. However, several WTO Members raised a number of systemic concerns, including the fact that even governments not party to a dispute could not submit their views, that panels would be deluged in unsolicited material, and that industry advocates, as well as public interest groups, could use the procedure to press their interests (Bridges Vol.2 No.8, page 8).

In the British Steel case, two industry groups did just that. The American Iron and Steel Institute and the Specialty Steel Industry of North America submitted briefs to the Appellate Body, which reaffirmed its right to consider them in principle, although in this particular case it declined to do so. The affirmation that the AB had the 'legal right to accept and consider amicus curiae briefs in an appeal in which we find it pertinent to do so' was roundly criticised by a number of Members. Some maintained that the Appellate Body should confine its work to points of law and consider only submissions from parties and interested third parties in the dispute. Japan, Canada, India and Mexico said that while the Appellate Body may under DSU Article 17.9 draw its own working procedures, this must be done in consultation with the chair of the DSB and the WTO Director-General, and communicated to the Members for their information.

Others, including the European Union, regretted that the Appellate Body's affirmation did not provide any guidance on when amicus briefs would be deemed 'pertinent' (at an earlier stage, the EU had strongly argued that the AB had no right to accept amicus briefs at all). Only the United States called the AB affirmation a 'positive step in the direction of making the WTO a more open organisation and enhancing public confidence in the WTO dispute settlement process'.

The treatment of amicus briefs was one of the controversial points of the aborted review of the Dispute Settlement Understanding (Bridges Year 3 No.8, page 8). Several Members wanted it clarified that only Members themselves, either at the level of the General Council or at the WTO's Ministerial Conference, could decide on how panels should deal with spontaneous non-governmental submissions. They sought a decision expressly stating that panels or the Appellate Body could only accept or consider materials submitted by the parties to the dispute or solicited as expert advice.

With the DSU review in a limbo, WTO Members have no venue to try and forge a consensus on this issue, or any other that would require a clarification of rules, including the sequencing of steps in compliance challenges or the legitimacy of rotating products under trade sanctions (see page 6).

Dispute Settlement Briefs

EU Banana Import Reform, ACP Tariffs Remain Linked

While the European Union keeps laconically reporting to the DSB that 'divergent views' between the main parties continue to prevent agreement on a WTO-consistent banana import regime, behind the scenes EU Trade Commissioner Pascal Lamy is trying to convince the EU General Affairs Council to put its weight behind an import regime based exclusively on tariffs. Arguing that there is no 'sufficient majority' for a tariff-quota system, Mr Lamy advocates dropping the option entirely in favour of a tariff regime that would offer bananas from ACP countries a level of protection similar to the current EU banana trade regime.¹

A tariff-only regime would be WTO compatible in form, but the Commission and the litigants in the banana dispute disagree on the amount of the potential tariff preference for ACP bananas, which currently have guaranteed import quotas, as well as duty-free access to EU countries. If the quotas protecting ACP imports are dismantled, the EU has suggested that a €275/tonne tariff difference between Latin American and ACP bananas would be necessary to ensure that the cheaper 'dollar bananas' do not overwhelm the European market. This figure has been flatly refused by the US and Latin American banana producers. At the most, the US proposed in its tariff-only model that the EU could hike the current non-ACP import duty of €75/tonne to €115/tonne in exchange for dropping the controversial quota and import licensing arrangements (Bridges Year 3 No.8, page 9).

In any case, at the WTO tariff preferences for ACP products need a waiver from Members, freeing the EU from its non-discrimination obligation under GATT Article I.1. Such a waiver covered preferential market access for ACP goods until the expiration of the fourth Lomé Convention last February. The EU and the ACP countries are currently seeking a similar waiver for that treaty's successor, the Partnership Agreement signed in Cotonou, Benin, on 23 June. The Partnership Agreement – which contains no banana protocol – foresees a 'preparatory period' during which Lomé benefits would continue to apply (until the end of 2007). After that, the EU and ACP countries will gradually transition into regional or bilateral trade regimes that will be WTO-compatible and thus no longer need a waiver of the EU's GATT obligations.

Until recently, obtaining a waiver for the Partnership Agreement until 2007 was regarded as a simple question of following the procedures set out for such requests. However, at an informal meeting of the WTO Council for Trade in Goods held on 18 May, Costa Rica, Panama, Ecuador, Guatemala and Honduras refused to start consideration of the waiver request before the EU complements the Partnership Agreement with a WTO-compatible banana protocol (see also Bridges Year 4 No.4, page 5). This puts pressure on the EU to complete its banana import regime reform, but also strengthens the hand of those who question the preferential tariffs or other arrangements between the EU and its ACP partners. The WTO Council for Trade in Goods is scheduled to formally consider the Partnership Agreement waiver request on 7 July.

¹ The 71-nation ACP group consists of African, Caribbean and Pacific developing countries, which have for decades had a preferential trade relationship with the EU under a series of Lomé Conventions.

US Initiates Five TRIMs and TRIPs Disputes

In spite of strong criticism from developing countries, the United States is going ahead with five disputes involving WTO Members whose transition periods under the TRIPs and TRIMs Agreements expired on 1 January 2000. In December 1999, WTO Members agreed to exercise restraint in launching dispute settlement procedures while issues relating to lapsed transition periods were under consultation. On 8 May, the General Council reached a compromise on how to handle requests for transition period extensions under the Agreement on Trade-related Investment Measures (Bridges Year 4 No.4, page 1). Eight countries have made such requests, but the Council for Trade in Goods has not yet formally met to consider the submissions in the light of the 8 May understanding.

On 19 June, India blocked the first US panel request regarding investment restrictions in the automotive sector. The second request will be automatically granted. In addition, the US has requested consultations with the Philippines and Romania (the first step in the dispute settlement process) for similar restrictions although, unlike India, both countries have submitted transition period extension requests for their TRIMs-inconsistent investment measures in the automotive sector. The Philippines has urged the US to give 'full due course' to the procedural and substantive framework mandated under the 8 May decision. For more information on the complaints, see Bridges Year 4 No.4, page 5.

In early June, the US also initiated consultations with Argentina and Brazil with regard to alleged violations in patent and test data protection under TRIPs (Bridges Year 4 No.4, page 5). The EU requested to join the consultations in both cases, and Switzerland has joined the Argentine dispute.

Dispute Settlement Briefs

- The European Union has requested consultations with the US regarding new legislation that will require the Trade Representative to change the list of products affected by trade sanctions every six months. Ecuador has requested to join the consultations. The US currently imposes sanctions worth nearly US\$310 million on EU exports in retaliation to the latter's non-compliance with the banana and beef hormone rulings. The EU argues that rotating the products would exceed the amount of WTO-authorized sanctions because companies would not be able to recapture markets lost under previous sanctions while new products would be affected (in the stalled the Dispute Settlement Understanding review, the EU sought a clarification explicitly forbidding unilateral changes to products affected by trade sanctions).
- The EU and the US report little progress in bilateral consultations on US efforts to revise legislation that gives US export companies tax breaks worth billions of dollars every year. The Appellate Body ruled in February 2000 that the foreign sales corporation (FSC) tax benefits were WTO-inconsistent export subsidies and gave the US nine months to remove them. New legislation is being drafted, but the EU has already implied that it will request a WTO compliance ruling as soon as the reasonable time expires on 1 September.

CTE: Relationship between Trade and Environment Regimes

The Committee on Trade and Environment was scheduled to meet from 5-6 July to take stock of recent developments in multilateral environmental agreements (MEAs). Several MEA Secretariats have submitted updates, and are expected to make presentations and answer questions. UNEP and UNCTAD have tabled a communication on their joint capacity-building task force on trade, environment and development (WT/CTE/W/138).

Members will consider CTE Agenda items 1 and 5, which deal with the relationship between WTO provisions and trade measures for environmental purposes included in MEAs. Switzerland has submitted a paper (WT/CTE/W/139), suggesting the adoption of an 'interpretative decision' that would 'make clear that the WTO and MEAs should focus on their primary competence and pay deference towards the competence of the other. [...] whilst assessing whether a specific measure is arbitrarily discriminatory or protectionist falls fully within the competence of the WTO, determining the legitimacy of an environmental goal and the necessity and proportionality of a measure to achieve this goal must remain the competence of MEAs'. Switzerland also suggests drawing 'objective criteria' for determining towards which MEAs such deference should be paid.

Bangladesh has submitted a paper on trade in domestically prohibited goods (WT/CTE/W/141) requesting the WTO Secretariat, in collaboration with relevant international organisations, to 'prepare a study on the export of domestically prohibited consumer products and their possible effects on human health and the environment'.

The EU has submitted its views on the use of the precautionary principle (WT/CTE/W/147), originally released in February (see Bridges Year 4 No.1, page 12). The EU, which considers the principle a 'key tenet' in setting its health and the environmental standards, wants the WTO to endorse it as legitimate grounds for trade-restrictive measures in cases that involve scientific uncertainty. The EU paper's acknowledgement that risk management is an essentially political responsibility has alarmed many WTO Members, who maintain that sanitary and phytosanitary measures should be based on scientific risk assessments, and that the SPS Agreement's Article 5.7 provides sufficient scope for exercising precaution.

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SPS: US Again Highlights Biotechnology Regulations

The United States has again drawn attention to Members notifications of laws and regulations concerning agricultural and food products derived from modern biotechnology. According to its submission (G/SPS/GEN/186) to the Committee on Sanitary and Phytosanitary Measures (SPS), 15 WTO Members have notified 24 measures under Agreement on Technical Barriers to Trade and another 24 under the SPS Agreement. Like a paper submitted to TBT Committee a year ago (G/TBT/W/115), the US submission notes the wide variety of regulatory requirements, ranging from seeking input on draft risk assessments and the establishment of labelling and documentation requirements to outright product and process bans (in the year between the two submissions, measures notified under the TBT Agreement had jumped from 11 to 24).

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WTO in Brief

When this issue of Bridges went to press, a number of important WTO meetings were underway (see below). These will be reported on in the July-August issue. Please also refer to ICTSD's Bridges Weekly News Digest (subscription details on page 15).

Development: The Committee on Trade and Development held a seminar for representatives of governments and intergovernmental organisations on implementation issues from 26-27 June, followed by a regular session of the Committee on 28 June. On the agenda were discussions on special and differential treatment, including a chairperson's report on a seminar on the topic held on 7 March. The Committee was also to consider a request for observer status by the United Nations Environment Programme, as well as review the WTO's technical co-operation activities. Another item on the agenda was document derestriction proposals by the Secretariat.

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TRIPs: Among the agenda items of the Council for Trade-related Intellectual Property Rights (TRIPs) meeting of 26-30 June were:

- the review of the IPR legislation of 13 developing countries required to have WTO-consistent regimes as of 1 January 2000;
- the review of Article 27.3(b) on patentable subject matter and plant variety protection;
- the implementation Articles 70.8 and 70.9 on the patent protection of pharmaceutical and agricultural chemical products (the so-called 'mailbox' obligation for filing patents and exclusive marketing rights) in countries under transition periods;
- technical co-operation;
- non-violation complaints; and
- the TRIPs Agreement review under Article 71.1.

Contact: Peter Ungphakorn, WTO Information and Media Division, tel: (41-22) 739-5412, fax: 739-5458.

TRIMs: The Council for Trade in Goods will meet on 7 July for the first time since the adoption of the Decision on TRIMs Transition Period Issues on 8 May. According to the decision, Council Members should give 'positive consideration' to individual requests from developing countries, taking into account their difficulties in implementing the Agreement on Trade-related Investment Measures (TRIMs), as well as their 'development, financial and trade needs' (Bridges Year 4 No.4, page 1).

Eight developing countries have filed extension requests for their TRIMs-incompatible investment restrictions, but none have been granted yet. The US has angered developing countries by initiating TRIMs-related dispute settlement procedures against India, the Philippines and Romania, although the latter two have requested extensions (see page 6).

ACP Waiver: The Council for Trade in Goods will also discuss the waiver request for the new ACP-EU Partnership Agreement, whose fate has become tangled with the EU's banana import regime (see page 6 for more information on the banana dispute).

Implementation: The General Council will continue its consideration on implementation issues under paragraph 21 of the draft Ministerial Declaration on 3 July (see cover story).

Contact: Nuch Nazeer, WTO Information and Media Division, tel: (41-22) 739-5393, fax: 739-5458.

Slow Progress in Writing Climate Rule Book in Bonn

Meeting in Bonn from 12-16 June, negotiators made modest progress in determining how countries could reach the greenhouse gas emissions reduction targets they took on when signing the Kyoto Protocol in December 1997. The Protocol commits industrialised countries to reduce, by 1212, their collective emissions of six greenhouse gases by 5.2 percent from 1990 levels. The targets can be reached through domestic 'policies and measures' and three vaguely-sketched 'flexible mechanisms' that involve cross-border collaboration (see boxes below and on p.10).

Both domestic and international efforts will have significant economic and trade repercussions, but these stayed at the background of the talks in Bonn. Instead, negotiators focused on writing a 'rule-book' for the flexibility mechanisms. No major decisions were taken, however. Still open questions include:

- Setting a limit for emissions trading. The EU is advocating that countries must meet at least 50 percent of their reduction targets through purely domestic measures. Most developing countries back this stance, but several other industrialised countries, including the US and Australia, argue against any 'capping'.
- How to share emissions reductions credits between developing (recipient) and industrialised (donor) countries under the Clean Development Mechanism (CDM)? Should carbon sinks, such as forests, be included in the CDM, or should the mechanism only apply to technology transfer? How could such sinks be quantified? What about nuclear power?

In addition, major oil producers keep threatening to block progress unless negotiators make similar efforts to address the so-called 'adverse effects' clauses in the Climate Change Convention (Article 4.8 foresees financial and technological assistance to countries whose fossil fuel-dependent economies are adversely affected by Convention Parties' climate change response strategies).

The next meeting will take place from 11-15 September in Lyon, France, and Parties hope to make significant progress in completing the rule-book. The plan is to adopt it at the next Conference of the Parties in the Hague in November 2000, in the hope that a clearer understanding of how the flexible mechanism will operate will speed up the ratification process of the Kyoto Protocol.

Contact: FCCC Secretariat, tel: (49-228) 815-1000, fax: 815-1999, e-mail: secretariat@unfccc.de, web: <http://www.unfccc.de>

The Kyoto Protocol's Flexible Mechanisms

- Tradeable greenhouse gas emissions permits between countries that have taken on reduction commitments. Under this scheme, countries can buy unused 'pollution rights' from another party that has more than met its target. The main source of such rights will be Russia where emissions have already dropped under 1990 levels due the closure on countless severely-polluting industrial plants. Environmental groups call this scheme trading in 'hot air', as it will not contribute to a reduction of actual emissions.
- A Clean Development Mechanism (CDM) meant to encourage the transfer of environmentally sound energy technologies to developing countries.
- Joint implementation projects between industrialised countries.

Biodiversity Benefit-sharing Regime Is 'Years Away'

As was to be expected in the light of the controversial subject matter and the weak recommendations that the discussions were based on (Bridges Year 4 No.3, page 9), the Fifth Meeting of the Conference of the Parties to the Convention on Biological Diversity (CBD-COP5) could do no more than establish working groups to develop recommendations for the protection of traditional knowledge and access to genetic resources and benefit-sharing. The meeting took place from 15-23 May in Nairobi.

Access, benefit-sharing and traditional knowledge

Decision V/26 on Access to Benefit Sharing urges governments to develop legislation for access to their genetic resources in line with the objectives of the Convention, i.e. conservation, sustainable use and 'the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources'. It also establishes an open-ended working group, composed of government-nominated representatives, with the mandate to (a) develop guidelines and other approaches for submission to the COP, and to (b) assist Parties and stakeholders in addressing the following elements as relevant to access to genetic resources and benefit-sharing:

- terms for prior informed consent and mutually agreed terms;
- roles, responsibilities and participation of stakeholders;
- relevant aspects relating to *in situ* and *ex situ* conservation and sustainable use;
- mechanisms for benefit-sharing, for example through technology transfer and joint research and development; and
- means to ensure the respect, preservation and maintenance of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, taking into account, inter alia, work by the World Intellectual Property Organisation on intellectual property rights issues.

Decision V/26 notes that the Panel of Experts on Access and Benefit-sharing was 'not able to come to any conclusions about the role of intellectual property rights in the implementation of access and benefit-sharing arrangements (see Bridges Year 4 No.3, page 9). It invites Parties and relevant organisations to submit further information on these issues by 31 December 2000. Governments were urged to finalise the negotiations on the International Undertaking on Plant Genetic Resources for Food and Agriculture as soon as possible.

Reaffirming the importance of *sui generis* protection of traditional knowledge and indigenous and local communities, the Decision invites the WTO to 'acknowledge relevant provisions of the Convention and to take into account the fact that the provisions of the Agreement on Trade-related Aspects of Intellectual Property Rights and the Convention on Biological Diversity are interrelated and to further explore this interrelationship'. It also requests the CBD Executive Secretary to apply for observer status at the TRIPs Council.

Sixty-four countries and the European Community signed the the Cartagena Protocol on Biosafety in Nairobi, and adopted a programme of work for the Intergovernmental Committee for the Biosafety Protocol, including the development of compliance and liability/redress regimes. The first meeting of the Intergovernmental Committee will be held in Montpellier from 11 to 15 December 2000.

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

FfD Wants Trade and Investment for Development

At its first substantive session, held from 31 May to 2 June 2000 in New York, the Preparatory Committee for the High-level International Intergovernmental Event on Financing for Development adopted a provisional agenda for the 2001 event.

The over-arching goal of the high-level meeting is to address 'national, international and systemic issues relating to financing for development in a holistic manner in the context of globalisation and interdependence', including the mobilisation of financial resources for the full implementation of the outcome of major UN conferences and summits during the 1990s and the UN Agenda for Development, in particular with regard to poverty eradication.

The provisional agenda consists of six main headings:

- mobilising domestic financial resources for development;
- mobilising international resources for development through foreign direct investment and other private flows;
- trade;
- increasing international financial cooperation for development through, *inter alia*, official development assistance (ODA);
- debt; and
- addressing systemic issues: enhancing the coherence and consistency of the international monetary, financial and trading systems in support of development.

Under the 'trade' heading, the 2001 event will look into:

- issues related to the decline of public revenues from trade liberalisation; strengthening regional cooperation/integration for expansion of global trade; capacity-building and technical assistance, including assistance for trade negotiations and dispute settlement; and
- special needs of Africa, the least developed countries, small island developing States, landlocked and transit developing countries and other developing countries, as well as countries with economies in transition with special difficulties in attracting financing for development.

With regard to 'enhancing the coherence and consistency of the international monetary, financial and trading systems in support of development' the Preparatory Committee said the financing for development process should contribute to 'strengthening the role of the United Nations in assisting and complementing the work undertaken in the appropriate international monetary, financial and trade institutions'. It welcomed consultations carried out with WTO member states, 'which should lead to an appropriate modality for the participation of the World Trade Organisation at the intergovernmental level in the Financing for Development process', and mandated the Bureau to continue consultations with the International Monetary Fund for the same purpose. The World Bank is already involved in the process.

The first PrepCom session was suspended, and will be reconvened 'at an appropriate time' to consider – and hopefully endorse – the results of ongoing consultations between UN member states on 'the form, venue, timing, duration and format of the final event'.

The second substantive session of the PrepCom will take place from 12-23 February 2001, and the third from 30 April to 11 May 2001. The high-level event itself is currently scheduled for 2001.

Contact: FfD Secretariat: tel: (1-212) 963-2587, fax: 963-0443, e-mail: ffd@un.org, web: <http://www.un.org/esa/analysis/ffd/>

Social Summit Follow-up Shows Few Improvements

As this issue of Bridges went to press, delegates were gathering in Geneva to review progress and obstacles encountered in implementing the outcomes of the World Summit for Social Development held in Copenhagen in 1995. The year 2000 was the target date for achieving many the Summit's goals, including:

- universal access to basic education and completion of primary school for at least 80 per cent of school-age children;
- primary health care for all, with drastic reductions in infant and maternity mortality rates;
- halving the 1990 malnutrition levels among children under five;
- reducing illiteracy by at least half of 1990 levels and eliminating the gender gap in literacy; and
- safe drinking water and sanitation for all.

Other goals included significant reductions in unemployment and the eradication of absolute poverty by a target date set by each nation. Recipient and donor countries were to increase spending on social development, the latter through official development assistance (ODA) and debt relief, as well as better trade terms.

None of these lofty goals has been achieved, not least because the ambitious agenda lacked adequate funding from the start. A drive to adopt a '20:20 compact', which would have committed donor countries to earmark 20 percent of their ODA to social development and recipient countries to do the same with regard of their national budgets, came to naught. The idea of a tax on international financial transactions, first proposed by Nobel Prize-winning economist James Tobin, remained just an idea. And in practice, donor countries have moved further from the 0.7 percent of GDP official development assistance target rather than closer.

Now, under the overall theme of 'achieving social development for all in a globalising world', the Special Session will review progress – or the lack thereof – since 1995 and attempt to reinforce commitment to the Social Summit goals. Hundreds of civil society side events will address the conference themes, ranging from poverty and employment to health, education and world trade, with a special focus on the negative consequences of globalisation.

Civil society groups were among the most scathing critics of the pro-free trade recommendations of a new report launched by UN Secretary General Kofi Annan on the opening day of the meeting. Co-produced by the UN, the World Bank, the International Monetary Fund and the Organisation for Economic Co-operation and Development, the report focuses on the implementation of seven development goals set at world conferences in the 1990s. Although *A Better World for All* acknowledges that the economic growth experienced since the mid-1990s has had little or no impact on people living on less than one dollar a day in Africa – and that every one of the seven targets remains a distant dream for all poorest countries – it nevertheless states that 'globalisation offers enormous opportunities for developing countries', and urges them to lower trade and non-trade barriers in order to 'be credible to investors, both domestic and foreign'.

The July-August issue of Bridges will report on the outcome of the Copenhagen + 5 meeting, as well as other highlights of the Geneva social development week.

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Despite Declaration, Core Labour Right Violations Persist on Large Scale, ILO Finds

At the 2000 International Labour Conference, held in Geneva from 30 May to 15 June, delegates took stock of the implementation of the ILO Declaration on Fundamental Rights at Work (Bridges Vol. 2 No. 5, page 11). Adopted in 1998, the Declaration aims to reinforce respect for core labour rights without linking them to the WTO (any such attempts are fiercely resisted by developing countries). The Declaration commits ILO Members to uphold core labour rights even if they have not ratified the relevant ILO conventions, and promises technical assistance to help countries reach a stage where they can enforce such fundamental rights as freedom of association and collective bargaining, elimination of compulsory and child labour, and elimination of discrimination in employment. Compliance with the Declaration is monitored by the International Labour Conference through reports compiled by the ILO Secretariat.



The 2000 ILO conference considered the first of these monitoring reports, which recognises that 'we are still a long way from universal acceptance of these fundamental principles and rights in practice', and urges governments to 'do more than pay lip service' to them. It details violations in a large number of countries, mostly in the developing world, although some industrialised countries are also cited for failing to allow workers to organise in specific sectors, such as domestic labour, agriculture or fire fighting. Other violations include physical assault, forced exile, harassment, black-listing and massive dismissals of labour organisers.

The report also notes that the 'criteria of survival in a fiercely competitive global market' may exert a downward pressure on freedom of association and collective bargaining rights. The growth of the informal economy – 80 percent of all new jobs in Latin America and 93 percent in Africa – has increased the proportion of workers without any formal representation.

Myanmar (formerly Burma), barred from the ILO last year due to its wide-spread use of forced labour, was the subject of a special resolution which promises 'measures' against the government unless it takes concrete action to end the practice before 30 November. ILO members could 'review their relations' with the rogue state, and the ILO could appeal to the IMF and the World Bank to make sure that their loans do not contribute to the perpetuation of forced labour. The ILO has no right to impose economic sanctions, and trade sanctions are not option, as the WTO – Myanmar is a Member – has no provisions related to labour or human rights violations.

Maternity, Child Labour and HIV/AIDs Addressed

Delegates to the conference adopted an international Convention on Maternity Protection by a vote of 304 for, 22 against and 116 abstentions. The new Convention – which sets a 14-week paid maternity leave and improved conditions for breast-feeding mothers, among other provisions – will enter into force after ratification by two ILO members. Among those voting against were a number of Latin American countries, which said their national legislation already offered wider protection for working mothers, and the UK, which is in the process of revising its parental leave legislation.

The ILO reported with satisfaction that the Convention Concerning the Prohibition and Elimination of the Worst Forms of Child Labour had gathered 27 ratifications in its first year, more

than any other ILO treaty in a comparable period. Many years in the making, the Convention was adopted by ILO Members last year (Bridges Year 3 No. 5, page 14), and is set to enter into force on 19 November 2000. It forbids the employment of children in slave-like conditions or forced labour, in pornography and prostitution, and illicit activities such as drug trafficking, as well as work that would jeopardise their health, safety or morals. The ILO said that in preparation for ratification several developing countries had enacted legislation and established support programmes to help reach the Convention's objectives.

An ILO study released during the conference painted a bleak picture of the evolution of the workforce in sub-Saharan Africa, where up to a quarter of the population in the worst-hit countries is infected with HIV/AIDS. The report predicted that in Botswana, Namibia and Zimbabwe the workforce would be more than 20 percent smaller in 2020 than it would be without the epidemic. The Conference adopted a resolution on HIV/AIDS that urges governments of member states and, where applicable, employers' and workers' organisations, to expand the capacity of the social partners to address the pandemic, strengthen occupational health and safety systems to protect groups at risk and formulate and implement social and labour policies and programmes to mitigate the effects of AIDS, at the national and enterprise levels.

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Financing Sustainable Development with the Clean Development Mechanism

'Just how much sustainable development can be expected from the CDM is difficult to forecast, in view of continued uncertainties and the lack of precedent. However, from examining potential CDM projects in Brazil, China and India it is clear that many options will create desirable (non-carbon, *ed.*) cobenefits in developing countries, addressing local and regional environmental problems and advancing social goals. Moreover, in some cases, the projects that do most for developing countries are also the ones that do most for carbon. The ranking of projects in India and coal's contribution to chronic air pollution in China point to a good correlation in these countries between the projects deemed best from a carbon perspective and those deemed best from a development perspective. Even in Brazil, the first-choice option based on cost offers positive benefits in all three evaluative categories (environmental, developmental and social, *ed.*), but other projects promise more. For developing countries that might otherwise be preoccupied with immediate economic and environmental needs, the prospect of significant cobenefits should provide a strong inducement to participate in the CDM. Moreover, the extent to which the two objectives naturally overlap should quell fears that the CDM will do much for developed nations and little for developing countries.'

Extracted from the conclusions of a WRI study entitled 'Financing Sustainable Development with the Clean Development Mechanism', published in March 2000. See back page for a full reference.

WTO Reform: Time for an Independent Dispute Settlement Mechanism?

By Konrad von Moltke

Is there a crisis at the World Trade Organisation (WTO) after Seattle, and if so how serious is it? The question is not merely rhetorical since the answer largely determines the priorities that the WTO needs to set for the coming months.

After a few months of shell shock, the WTO appears to be returning to business as usual. It is clear to everybody that nothing can happen before the next US election, so why conjure up problems that do not need attention yet? A Republican President, in particular one from the Texas oil patch, and a Republican Congress would transform the landscape. On the other hand a Democratic House of Representatives with Dick Gephardt as Speaker would mean that no negotiations can occur that do not include both environment and labor standards, which is tantamount to stating that there will be no Round.

It remains as true as ever that a Round without strong US participation is unthinkable. The results of such an exercise will hardly pass muster in the US Congress. Environmental agreements have worked without US ratification, for example the Basel Convention and the Convention on Biological Diversity, perhaps even the Kyoto Protocol. However, no trade agreement can survive without US participation.

This approach to the current situation rests on two fundamental assumptions: that the problems highlighted by Seattle largely originate in the United States, and that a transatlantic agreement will suffice to relaunch the negotiation process in the WTO. Neither of these assumptions can stand up to scrutiny.

Environment: the wild card of future trade negotiations

The failed Seattle Ministerial was a crisis of the WTO that was exacerbated by the location of the meeting, not a US crisis that happened to play out in the WTO. There are many facets to what happened in Seattle but the issue of trade and environment can serve to highlight the problems. This issue has been around for almost a decade. It has been of immediate concern to the GATT/WTO since 1991, when the tuna/dolphin panel reported. It has become the symbol of the WTO's inability to adjust to new circumstances.

Environment and trade is by now a complex set of issues that draw in constituencies from Europe and North America and has acquired a dimension that is of concern to developing countries. Among its most important aspects:

- Most environmental organizations in Canada have opposed most forms of trade liberalization since the Canada United States Free Trade Agreement;
- Many US environmental organizations have entered into a close alliance on trade policy with US trade unions (never mind that this will make it impossible to deal with either environmental or labor issues appropriately in the WTO).
- European environmental organizations were galvanized by the effort to stop the Multilateral Agreement on Investment. Long experience with the environment in the European Union tends

to mute their opposition to globalization, but they are now observing the WTO with deep suspicion.

- Developing countries have entered the trade and environment debate through two of the multilateral environmental agreements. They view the Basel Convention as an essential bulwark to protect them against the hazardous waste trade. The Biodiversity Convention is seen as one of the few available vehicles to put more balance into the bargain they struck in the WTO on intellectual property rights. While continuing to denounce the environment and trade linkage in general, developing countries are in fact committed to the agenda in certain areas. The same cannot be said about trade and labor standards.

It is difficult to see how a new trade Round can be launched that does not take the environmental agenda seriously. Nevertheless, there are few signs that the trade and environment agenda is viewed as central to the future of the WTO.

Agriculture: not enough as a central bargain

Furthermore, the central bargain of a future Round appears increasingly in doubt. The underlying assumption of those advocating a "comprehensive" Round is that a deal can be fashioned out of European concessions on agriculture and corresponding concessions by other countries in other areas. This approach misses two points.

- Given the advanced state of tariff reduction, there is little the Europeans desire sufficiently to contemplate the pain of Common Agricultural Policy (CAP) reform beyond what is dictated by internal politics, and that is not much.
- Moreover, the CAP has evolved, at least when seen from an environmental perspective. The time when environmentalists could be mobilized against the CAP is past. By now, the CAP provides a level of funding for rural conservation that other countries can only dream of. This funding mitigates the worst environmental impacts of the CAP and creates a community of interest between agriculture and conservation interests, an almost unbeatable combination. Environmentalists also realize that the CAP is an important factor in the movement towards organic farming that would be severely curtailed by substantial liberalization, particularly if it occurs without a set of rules that permit the reliable distinction between agricultural commodities according to their process and production methods.

There are also potential problems on the side of producers in countries with agricultural surpluses. They may recognize that higher prices resulting from trade liberalization are typically eroded by the secular decline in commodity prices. In other words, prices will continue to fall even though they may be higher than they might otherwise be, hardly the basis for a major trade deal.

Even if all of these issues could be wrestled into some kind of agreement between the United States and the European Union – an agreement most OECD countries would probably follow – it remains highly uncertain that the developing countries that are not members

Continued on page 14

NAFTA Environment Council Struggles with Transparency Issues

Meeting in Dallas from 11-13 June, the Council of the North American Commission on Environmental Co-operation (CEC) failed to agree on the scope of the 'factual records' that the CEC Secretariat is called to prepare in response to citizens' allegations of government failure to enforce environmental laws. Environmental groups argued before the meeting that an 'interpretation' of what the factual records should contain, sought by Canada and Mexico, would result in a weakening of the Commission's role and citizens' access to justice. Unable to come to a consensus, the Council requested the CEC Joint Public Advisory Committee to conduct a 'public review with a view to providing advice to the Council' on issues concerning 'the implementation and further elaboration' of provisions related to citizen submissions on enforcement matters in the NAFTA environmental side agreement (officially called the North American Agreement on Environmental Co-operation or NAAEC).¹

Setting Limits for Facts

NAAEC Articles 14 and 15 provide for a complex interplay between the Council and the Commission Secretariat in response to 'citizen submissions on enforcement matters'. Such submissions may be brought by any non-governmental organisation or person asserting that a Party to the NAAEC is failing to effectively enforce its environmental law. The provisions were included in the NAAEC to avoid lax implementation or downgrading of national environmental standards and regulations in a 'race to the bottom' between NAFTA countries competing for investment. When the Secretariat deems that a citizen submission merits investigation, it can recommend to the Council the development of a 'factual record' and, if the Council approves the request, the Secretariat is responsible for preparing the factual record. Parties to the Agreement can provide comments on the draft record, and the Secretariat must incorporate these in the final report. The Council decides, with a two-thirds majority, whether to make the final factual record publicly available.

While most steps contained in NAAEC Articles 14 and 15 are subject to Council approval, the actual preparation of the 'factual report' is handled by the Secretariat in an independent manner, although it must limit the investigation to findings of fact, and abstain from drawing conclusions or recommendations. Even if the factual record has no legally-binding implications, it can bring to light embarrassing issues for governments. One of the first such records was instrumental in halting the construction of a large pier for cruise ships in Mexico, which threatened the destruction of a nearby reef used by scuba divers.

Environmental Groups Critical

In advance of the CEC Council meeting, environmental groups had denounced what they saw as government efforts to weaken the Commission's role in developing the factual records or to curtail the range of cases that citizens and public interest groups can bring to the CEC to be investigated. They also criticised NAFTA governments for not involving the public in discussions on possible revisions or 'interpretations' of the procedures contained in NAAEC Articles 14 and 15.

On the other hand, critics have contended that the citizen submission procedure is too loosely tied to the environmental

implications of trade under NAFTA. Canadian Environment Minister David Anderson has publicly complained that CEC investigations will become too expensive if any group can go to the CEC 'on whatever catches [its] fancy'. His government, in particular, is keen to 'clarify' the citizens' submission procedure in a way that civil society organisations say would remove the most innovative feature of the CEC before it has even had the chance to reach cruising altitude.

BC Hydro Record Raises Government Hackles

Perhaps to placate environmentalists' vocal concerns about efforts to reduce the transparency and efficiency of the citizens' submission procedure, the CEC Council agreed on 12 June to make public the factual record of a complaint from a group of environmental organisations regarding Canada's enforcement of the federal Fisheries Act. The groups alleged that the government did not pursue violations of the Act by the utility company BC Hydro with due diligence.

In its response to the factual record, Canada noted with disapproval that the record went 'beyond a compilation of facts and contains opinions, conclusions and recommendations of the Secretariat and the Expert Group' and reminded the Secretariat that 'the question of the scope of factual records under the NAAEC is currently being considered by the Parties, and the Parties intend to clarify their collective understanding of this matter as soon as possible'. Mexico reprimanded the Secretariat for exceeding its mandate in seeking more information from the submitters, in reproducing expert opinions on the efficiency of Canadian law enforcement efforts, and in making available on its website other documents than those specified in NAAEC Articles 14 and 15. The US also stressed that the Secretariat must refrain from offering comments that 'appear to provide the Secretariat's own view about whether or not there has been effective enforcement of the law with respect to the assertions within a particular submission'.

Copies of the BC Hydro factual record and the government responses, as well as the final communiqué of the Council meeting are available on the CEC web site (see below). The site also contains information on the first North American Symposium on Understanding the Linkages between Trade and Environment, to be hosted by CEC in Washington, DC, from 11-12 October 2000. The July-August issue of Bridges will provide more information on this meeting.

Contact: CEC Secretariat, tel: (1-514) 350-4300, fax: 350-4314, e-mail: info@ccemtl.org, web: <http://www.cec.org>

ENDNOTE

¹ The Commission on Environmental Co-operation (CEC) administers the North American Agreement on Environmental Co-operation or NAAEC, informally known as the NAFTA environmental side agreement. Its governing body, the CEC Council, is composed of the environment ministers of Canada, Mexico and the United States. The Joint Public Advisory Committee consists of fifteen members, five from each of the three countries, who are appointed by their respective governments. They include environmental experts, lawyers, business representatives and academics.



WTO Study Presumptive on Trade, Income Disparity and Poverty

By Ali Dehlavi and Hugo Cameron

Strategically timed to coincide with the UN's Special Session on Social Development (see page 9), the WTO on 19 June released its Special Studies No. 5 on 'Trade, Income Disparity and Poverty'. Authored by Dan Ben-David of Tel Aviv University and L. Alan Winters of Sussex University, the study affirms that open trade regimes bring significant increases in volumes of trade and economic growth (and consequently the potential for faster poverty alleviation), and that from greater trade comes income convergence between countries. The study is, however, strangely presumptive about income convergence between poor and rich countries and optimal policy interventions in the area of poverty.

What the Study Says

In a nutshell, Ben-David's research shows that: (i) trade reforms of European Economic Community (EEC) countries coincided with a positive impact on the trade volumes of reforming EEC members; (ii) dismantling of quantitative restrictions on trade among trading partners within the EEC and the NAFTA Agreement coincided with declines in their income disparity; and, (iii) using a sample period of 1960-85 from a number of middle and high income countries, those who classify as major trade partners tend to exhibit income convergence while the remaining majority show divergence. Based on this, the study takes for granted that 'increasing income gaps between poor and rich countries can be a factor in bringing about a convergence in incomes between countries'.

Using a generalised 'farm household model', Alan Winters demonstrates the significance of various channels with which to trace the poverty impacts of trade liberalisation, including the loss of effective markets or price changes. He proposes a list of key questions for policymakers that he recommends should be posed about any given trade policy reform.

Analysis

A discussion of the relationships between trade, income disparity and poverty is important and timely, and should be heeded. But we cannot take for granted a sufficiently broad context in addressing these relationships. The presumption in the WTO study relates primarily to the exclusion of developing countries in its analysis of income convergence. The report also avoids entirely the role of trade policy in strengthening participative economic growth and direct public support as strategies for dealing with chronic hunger and deprivation, instead presuming the overarching importance of liberalisation and related poverty interventions.

It is largely accepted that poverty alleviation is determined by growth, which has as its ultimate sources the accumulation of productive resources (such as labour, physical capital, and human capital) and technological change, which enhances the capacity to efficiently use those resources. Ben-David's analysis complements the neoclassical growth model that assumes diminishing returns to capital investment and common technological levels, which gives rise to the prediction of 'universal convergence' (poor countries grow faster than rich ones, converging to common standards of living).

The study's prediction of convergence fails for poorer countries: some have grown rapidly while others continue to face absolute declines in living standards. By improving economic efficiency, liberalisation can give rise to more rapid growth in the medium run

but not necessarily in the long run, where a critical factor is the rate of technological change. The rich countries sampled by Ben-David exemplify what Jeffrey Sachs has called the increasing-returns-to-scale tendency of innovations; their big markets can easily absorb fixed costs such as R&D and the existing critical mass of ideas and technology can be easily built on (The Economist of 24-30 June 2000). Sachs warns that this is not the case in developing countries, where universities, public facilities and private firms do not work together, and exports are not sufficient to pay dividends on foreign investment or imports of technology. These countries are caught in a poverty trap generated by, *inter alia*, tropical infectious disease, low agricultural productivity and environmental degradation (all requiring technological solutions that are not readily available).

Ben-David's contribution is therefore to revisit international comparative data not for universal, but for 'conditional convergence' (in particular only among rich and middle income countries with similar rates of investment and schooling levels). The study's contribution to the Social Summit is doubtful for other reasons: it jarringly omits discussion on attempts to establish statistical causation between exports and growth (including the controversy on the variety of measures of 'openness') and it neglects WTO's experience with obstacles to achieving a level playing field, including high tariffs and tariff escalation that prevent developing country entry into industrial exports. These omissions not only rob Ben-David's analysis of its normative usefulness, they also accentuate its indifference to development economics. Ben-David and Winters are absolutely on target when they say in the WTO study that (a) open trade alone has not been linked to subsequent economic growth, and (b) that it is far from obvious that the positive impacts of liberalisation on earnings in middle and high income countries could also be found in the poorest.

Participants at a 1999-2000 ICTSD/UNCTAD/UNDP dialogues series in Latin America, Asia and Africa argued that the point of departure for translating export-oriented growth into poverty alleviation requires asking how trade reforms impact the following agendas: managing the benefits and impacts of industrialisation and export-oriented processes (i.e. by focusing on such visible outcomes as the status of women, local economic instability and environmental degradation); the poverty agenda (requiring investment in institutional development and social mobilisation); a human development agenda (requiring investment in labour and human capital); and a social capital agenda (focusing on safeguarding and strengthening the factors of social cohesion).

Winters' essay satisfactorily addresses the above 'management' agenda alone. His checklist on poverty impacts of prospective trade reforms may accordingly formalise indirect interventions towards poverty alleviation. This could ultimately serve to encourage ethical dilemmas for economists: in the absence of well-functioning social security systems in developing countries, if proceeds from trade-induced growth are set aside to help the poor, do we help only those disadvantaged by the loss of markets or price changes (and other channels identified in the checklist)? Or do we help whoever is most in need of help?

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of the OECD will buy into the agenda that this implies. The implementation of the Uruguay Round agreements remains a sore point. Why should developing countries agree to further negotiations before there is incontrovertible evidence that the back-loaded Agreement on Textiles is being fully implemented? Why should they move forward when they are unable to meet the administrative requirements of the last Round? And why should they agree to further liberalization if their growing doubts about the fairness of the TRIPs deal cannot be allayed?

Despite all the declarations about the need for a new Round it is unclear that the makings of such a Round exist. At the same time international markets are evolving with breathtaking speed while the governance structure for international trade remains largely unchanged from what it was 50 years ago.

A missed opportunity for governance of international trade

The creation of the WTO is widely seen as a major innovation and one of the great achievements of the past decade in international governance. In truth, it represents an opportunity missed. Negotiators defined their task in establishing the WTO narrowly as improving dispute settlement and fixing the botched relationship between the agreements that surrounded the GATT. They continued a long history of action-by-subterfuge to avoid scrutiny by the US Senate. Consequently there was virtually no debate about the appropriate structure of an organization designed to implement public policy on trade at the international level in the 21st century. While markets were changing, governments decided they were comfortable with the strange procedures of the GATT, indeed they glorified its club-like character and the fact that it was all negotiation and little implementation.

It is time to recognize that the role of the WTO has been transformed, not by the action of governments but by the action of international markets. The WTO now has three essential tasks. The least of these is the traditional work of negotiating trade liberalization bargains. Although there will surely be some such bargains to work out, the ingredients of a new Round based on the old formula are not there any more. Instead, the most important task facing the trading system is to ensure that burgeoning international markets function with a structure of disciplines to ensure that essential public goods are respected as private interests go about the legitimate business of making profits. This is the core of the trade and environment issue. International public goods require international disciplines in the face of international markets. It is mistaken to expect states to address these public goods on their own. Neither of the two primary tasks of the WTO – bargaining and developing market disciplines – can, however, be fulfilled without a reliable structure of implementation that does not rely primarily on multi- or unilateral action by states accompanied by dispute settlement.

Centuries of experience in open, democratic societies suggest that the different tasks of governance that need to be undertaken in relation to trade are best fulfilled by linked organizations that enjoy a measure of independence. It will consequently be necessary to split the WTO into several organizations, one for rule-making, one for administration and one for adjudication of disputes, with appropriate checks and balances between them. This may carry quite unexpected benefits.

One of the paradoxes of the current situation is that the WTO is widely chided for decisions in disputes such as tuna/dolphin or

shrimp/turtle that were correct in their outcome but were accompanied by superfluous, and in some respects wrong, arguments reflecting wishful thinking rather than responsible dispute settlement practice. The US measures against Mexican tuna fishermen were arbitrary and discriminatory and could not be defended as written. But the central arguments of the panel were without basis in the legal texts. The GATT says nothing direct about distinctions between goods in international trade based on their process and production methods, and what it says tends to support the notion that these are acceptable if they meet certain general criteria. It is a mistake to lump all extrajurisdictional measures together, whether they concern another state or the commons. These mistakes have poisoned the debate for years. US application of its turtle protection legislation was unequal, showing significant effort in the Western hemisphere and a lack of adequate effort in parts of the Pacific. Yet the panel that made this finding attempted to read any Article XX exceptions out of the text and had to be revised wholesale by the Appellate Body. In this manner the entire regime is exposed to criticism based on inadequate dispute settlement practices.

Time to wrest the Jewel from the Crown

A first step would be to hive off the entire dispute settlement procedure and to provide it with its own resources and its own governance mechanism. Clearly dispute settlement does not need “one country one vote” governance. It should be possible to fashion appropriate rules for transparency, accountability and participation, once dispute settlement is properly separated from the negotiation processes. The latter also require the institutions of transparency, accountability and participation – but these will differ from the needs of dispute settlement.

The Appellate Body represents an important and salutary innovation, but it has also served to point up the shortcomings of the panel procedure. The panels are composed of three members who are “well-qualified governmental and/or non-governmental individuals...” and typically have a full time position while they sit on the panel. The panels are guided by the WTO Secretariat, which serves other goals at the same time. There has been little discussion of the role of the Secretariat in panel proceedings, and the selection of panel members remains shrouded in obscurity. This contributes to the sense that panels are not as impartial as they purport to be. Something needs to be done to improve their legitimacy.

Splitting off the dispute settlement procedure will permit it to take urgently needed further steps to consider more than just trade rules in its decisions. Trade disputes will increasingly involve the balancing of trade goals against other public goods, an activity for which the GATT itself gives limited guidance and one that requires a dispute settlement procedure that is above rebuke. Ultimately, this can open the way to investor/state processes, which will presumably become necessary. It will also help shield the bargaining and the administrative functions from the opprobrium that inevitably follows decisions in controversial disputes.

It may seem remote from any reality to advocate that the WTO shed its “crown jewel,” its unique dispute settlement system. Yet that may be the shortest route to reinvigorating a trade regime that has proven incapable of change in a time of rapid market innovation and appears as fearful of the institutional consequences of globalization as its most ardent opponents.

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G-8 to Address Biotechnology, Debt Relief and AIDS

Biotechnology is shaping up to be the most divisive issue at the annual G-8 Summit to be held in Okinawa on 21-23 July. The US and Canada are keen to keep approval procedures for genetically-engineered crop varieties and trade in GMO products as free of red tape as possible, while EU Members Germany, France, the UK and Italy follow the Union's strict standards for both. Japan also requires labelling of GMO foods, and has stringent procedures for growing GMO crops. Russia's stand of the issue is less defined. In addition, France and Japan are advocating the establishment of a new international organisation to regulate genetically modified foods. The US and Canada consider the Codex Alimentarius Commission sufficient for the purpose (Bridges Year 3 No.5, page 3).

The G-8 heads of government will discuss a report they commissioned last year from the OECD Task Force for the Safety of Novel Food and Feeds. According to the report, countries that have conducted safety assessments 'are confident that those GM foods they have approved are as safe as other foods'. However, it recommends more standardised procedures to establish 'substantial equivalence', as well as improved methods to assess the allergenicity of proteins new to the diet. In addition, the task force warns that more complex 'next generation' products will raise additional food safety issues. Complicated modifications (with several genes) will make the application of established principles such as substantial equivalence more difficult, and evaluating these products' safety is likely to require the development of more sophisticated testing strategies and methods.

The G-8 will also hear a strong plea from South Africa's President Thabo Mbeki for the cancellation of more than US\$100 billion in outstanding African debt to free up funds for fighting AIDS, as well as other infectious diseases such as malaria. In June, Southern African countries turned down an offer from leading pharmaceutical companies to drastically cut AIDS drugs prices (Bridges Year 4 No.4, page 9), saying that even with price cuts, the drugs remained expensive and acquiring them would mean less money for fighting other diseases. SADC countries want to negotiate a broader deal on affordable medicines, including WTO provisions on compulsory licensing, parallel importation and the freedom to outsource for public sector drugs.

OECD Adopts Code of Conduct for Multinationals

The OECD Ministerial Council 27 June adopted revised Guidelines for Multinational Enterprises, developed in consultation with labour unions and other civil society groups. Companies that adhere to the voluntary code of conduct will, *inter alia*, 'refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues'. John Evans of the OECD's trades union advisory council, called the guidelines an important advance towards 'socially acceptable' economic regulation. NGOs involved in the revision said that while the code was a first step in the right direction, they would continue to press for binding international rules on corporate accountability.

In their final communiqué, OECD trade and finance ministers called for an 'ambitious and broad-based' new round of trade liberalisation but left the contents of it open, as did the APEC trade ministers in earlier in June. The OECD code of conduct and the ministerial communiqué, as well as the biotechnology report, are available on the OECD Internet site: <http://www.oecd.org>

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July 5-6	WTO Council for Trade in Services Contact: Nuch Nazeer, tel: 5393 fax: 5458
July 6-7	WTO Committee on Regional Trade Agreements Contact: Jorge Viganó, tel: 5078, fax: 5774
July 7	WTO Council for Trade in Goods Contact: Nuch Nazeer, tel: 5393, fax: 5458
July 11-13	WTO Committee on Government Procurement Contact: Luis Ople, tel: 5374, fax: 5458
July 12-14	WTO Trade Policy Review Body (EU) Contact: Lucie Giraud, tel: 5075, fax: 5458
July 17	WTO General Council Contact: Bernard Kuiten, tel: 739-5676, fax: 5777
July 17-19	WTO Textiles Monitoring Body Contact: J.-P. Lapalme, tel: 5223, fax: 5765
July 18	WTO Committee on Government Procurement Contact: Luis Ople, tel: 5374, fax: 5458
July 21	WTO Sub-Comm. on Least-developed Countries Contact: Ingela Nilsson, tel: 5230, fax: 5774
July 27	WTO Dispute Settlement Body Contact: Gabrielle Marceau, tel: 5519, fax: 5788
July 24-26 Geneva	Expert Meeting on the Impact of the Reform Process in Agriculture on LDCs and Net Food- importing Countries and Ways to Address Their Concerns in Multilateral Trade Negotiations Contact: UNCTAD, tel: (41-22) 907-5556.
July 24-28 New York	Intergovernmental Preparatory Committee for the Third United Nations Conference on the Least Developed Countries (UNCTAD) Contact: Secretary of the Intergovernmental Preparatory Committee, tel: (41-22) 907-4054.
September 13-15	WTO Textiles Monitoring Body Contact: J.-P. Lapalme, tel: 5223, fax: 5765
September 21-22	WTO Council for Trade-related Aspects of Intellectual Property Rights Contact: Peter Ungphakorn, tel: 5412, fax: 5458
September 26	WTO Dispute Settlement Body Contact: Gabrielle Marceau, tel: 5519, fax: 5788

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ON-LINE RESOURCES

ACP-EU Trade Relations: What will change? Comprehensive site on the new trade relationships that will gradually replace the fourth Lomé Convention. Includes a helpful timetable for implementation. URL: <http://www.odi.org.uk/iedg/postlome.htm>