

Environmental Integrity vs Political Expediency At What Price a 'Ratifiable' Kyoto Protocol?

Should governments be required to meet at least half of their greenhouse gas reduction targets through domestic measures? This was one of the key questions that climate change negotiators from 170 countries left unanswered when they met in Lyon in the second week of September amid continent-wide demonstrations against high fuel prices in Europe. The Lyon meeting was the last (missed) opportunity for the signatories of the Kyoto Protocol to work out crucial differences before they meet in the Hague next November for the Climate Change Convention's sixth annual Conference of the Parties.

Under the Protocol, industrialised (Annex I) countries must bring their collective greenhouse gas emissions five percent below 1990 levels in the first 'commitment period', which runs from 2008 to 2012. The handful of Parties that now look likely to meet their targets will do so through measures imposed for economic rather than for environmental reasons: the UK is among the very few thanks to the shift from a coal- to a gas-based economy in the 1990s and Germany might meet its commitment due to the massive shutdown of polluting industries in the former German Democratic Republic. Russia and the Ukraine are already below their 1990 levels because of similar reasons, which makes them the major potential providers of tradeable 'emission reduction units', also called 'hot air' as this surplus of reduction units does not involve any actual emission reductions resulting from new measures. Greenhouse gas emissions have grown, sometimes significantly, in all other Annex I countries (current projections show an overall increase of 15 percent over 1990 levels by 2010). Developing countries have no binding greenhouse gas reduction targets.

Many scientists believe that the severe recent storms and floods, as well as reports of melting polar ice caps and other weather disruptions, are climate change-related, which adds to the pressure for the Kyoto Protocol's entry into force. Parties hope this will happen in 2002, but so far only 29 developing countries have ratified the treaty. No Annex I Party will do so until the Protocol clearly spells out what will be permitted under its flexibility mechanisms and what the consequences for non-compliance will be.¹

These complex questions were not closer to a solution after the Lyon meeting. At the Hague, the challenge will be to fill in the fuzzy areas of the Kyoto Protocol in a way that will make it 'ratifiable' without compromising the treaty's environmental integrity. Leading environmental organisations have already warned that they will actively campaign against ratification if Parties dilute the Protocol's efficiency too far.

The Battle over Domestic Action

The economic and political price of domestic action to curb greenhouse gas emissions will be much higher than the costs involved in various cross-border collaboration projects under the Protocol's so far undefined flexibility mechanisms. For the former, governments would need to raise taxes on fossil fuels or resort to other economic incentives, such as subsidies and technical standards, to steer their citizens toward less carbon-intensive production and consumption patterns. According to the Protocol, Parties must progressively reduce or phase out 'market imperfections, fiscal incentives, tax and duty exemptions and subsidies in all greenhouse gas emitting sectors that run counter to the objective of the Convention.' French Prime Minister Lionel Jospin's promise to demonstrating truck drivers to cut fuel taxes – while in Lyon the European Union (which France currently presides) was pushing for an obligation to meet at least half of the Kyoto Protocol commitments through emissions reductions at home – neatly illustrated the difficulties governments are likely face over unpopular domestic measures.

The Kyoto Protocol offers three ways to avoid such hard choices:

- Joint implementation between Annex I Parties;
- International emissions trading between Annex I Parties; and
- The Clean Development Mechanism.

The EU and its allies want countries to achieve at least 50 percent of their emissions reductions through domestic action and the rest through the mechanisms listed above. The so-called Umbrella Group, which includes the US, Australia, Canada, Norway, New Zealand and Russia, is adamantly against quantitative limits in the use of any of the flexibility mechanisms. Developing countries are divided between these positions. This is likely to be the last issue to be agreed in the Hague, if indeed it gets decided at all. And if it

does not, the major players will not ratify the Protocol.

IN THIS ISSUE

Essential Drugs in Southern Africa Need TRIPs	3
Public Health Safeguards Protection	
Dispute Settlement	5
Impact of Sanitary and Phytosanitary	6
Measures on Developing Countries	
WTO News	7
Asbestos Ruling Raises More Questions than	9
Answers	
Regional Integration News	11
Plant Genetic Resources Pact on Home Stretch	13
The EU's 'Trade Agenda for Development'	14
Meeting Calendar/Publications	16

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The CDM, Sinks and Nuclear Power

The Clean Development Mechanism (CDM) was originally conceived as a way to encourage the transfer of clean energy technologies to developing countries. However, even before negotiators had agreed on how to award credit under technology transfer projects, the focus of the CDM debate moved to the shifty terrain of 'sinks'.

Under the Protocol, Parties may offset their carbon emissions through carbon sequestration, which is only defined

Continued on page 2

Climate Change, continued from page 1

in the loosest terms as ‘any process, activity or mechanism, which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere.’ The Umbrella Group argues that sink projects, which could include a wide range of land-use change and afforestation activities in developing countries, should qualify for emission reduction credits under the CDM.

The Protocol’s Article 12.5 requires certified emission reductions resulting from each CDM ‘project activity’ to bring ‘real, measurable, and long-term benefits related to the mitigation of climate change’ as well as ‘reductions in emissions that are additional to any that would occur in the absence of the certified project activity.’ The carbon absorption capacity of sinks is extremely difficult to quantify and monitor, and those opposed to their inclusion in CDM activities – mainly the EU and Brazil – question how ‘real, measurable and long-term’ sink projects’ benefits would be. Environmental organisations say the Umbrella Group is turning the carbon sink debate to ‘the biggest loophole in the Protocol’.

The Umbrella Group and the EU disagree not only on whether sinks should be allowed in the CDM, but also on whether energy projects under the mechanism could include nuclear power. The Umbrella Group advocates granting credits for any energy project that would result in relatively low greenhouse gas emissions, including those that involve ‘clean coal’ and natural gas, as well as nuclear power.

Emissions Trading and Liability

Article 17 of the Kyoto Protocol provides that ‘the Conference of the Parties shall define the relevant principles, modalities, rules and guidelines, in particular for verification, reporting and accountability for emissions trading.’ The requirement for ‘accountability’ has tied the establishment of an emissions trading system to another bone of contention: who should be held liable if a country fails to achieve its greenhouse gas reduction target? The buyer of the credits or the buyer and the seller jointly? There is also considerable disagreement over how – or whether – non-compliance should be punished. Australia, Canada and Japan oppose binding consequences, the EU supports them and wants a compliance fund to be established to collect fines, and the US advocates reducing future emission rights rather than applying financial penalties.

Another paradox slows progress on the difficult issues above: at a time of sky-rocketing oil prices, OPEC members continue to insist that ‘their issues’ receive equal attention. They want recognition of and, possibly, compensation for the fact that their economies are likely to suffer from industrialised country measures to reduce fossil fuel use. Article 4.8 of the Framework Convention on Climate Change directs Parties to give full consideration to what actions, including funding, are necessary under the Convention ‘to meet the specific needs and concerns of developing country Parties arising from [...] the impact of the implementation of response measures, especially on countries whose economies are highly dependent on income generated from the production, processing and export, and/or on consumption of fossil fuels and associated energy-intensive products.’

There is also a pressing need to set up a credible technology transfer and capacity-building scheme to assist developing countries in coping with adverse effects of climate change. Such initiatives would help build confidence and could eventually convince large developing country emitters to take on binding commitments of their own. Some climate change negotiators speculate that the third report of the scientific Intergovernmental Panel on Climate Change (IPCC), to be released early next year, may spark off new reduction target negotiations, which could lead to some form of developing country participation in the second commitment period starting in 2013. In 1997, the US Senate passed a resolution prohibiting the Protocol’s ratification without ‘meaningful’ developing country participation.

¹ Fifty-five countries must ratify the Kyoto Protocol before it enters into force. This group must include enough industrialised countries to account for 55 percent of Annex I Parties’ emissions (the US alone accounts for 33 percent, the EU for 27 percent and Russia for 17 percent).



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Essential Drugs in Southern Africa Need Protection from Public Health Safeguards under TRIPs

By René Loewenson

'The question that arises is what intervention can the developing countries make to ensure that a process which, by its nature, will favour the rich, addresses also what are clearly the more urgent needs of our people, millions of whom lack the most basic things that a human being needs.'

South African President Thabo Mbeki, speaking on globalisation (opening address of the Non Aligned Movement Summit, Durban, August 31, 1998)

This article investigates the consequences of the WTO TRIPs Agreement on drug access for Southern African Development Community (SADC) countries.¹ It outlines the key content of the essential drug policies needed to manage the public health problems in the region, and explores the impact of the TRIPs Agreement on these policies. It highlights the options that SADC governments have to address these impacts and the current policy measures which SADC governments and other institutions are pursuing to sustain essential drug access and meet public health obligations.

The Health Challenges

The health context for these policy measures is important. Human poverty affects more than a quarter of the population in all SADC countries, and most poor people depend on public sector provision for health care. The burden of disease is equally high. Nearly a third of children are underweight, one in ten infants dies in their first year of life and one in 200 women dies due to pregnancy or childbirth complications. Southern Africa is the worst affected region in the world for HIV/AIDS, drastically reducing life expectancy to amongst the lowest in the world. The region also has a high prevalence of tuberculosis, pneumonia, malaria, other communicable diseases and malnutrition.

What Role for Essential Drugs?

The Essential Drug Concept, developed by WHO in 1977, aims to prioritise a limited list of vital and essential drugs that are effective, safe, good quality and affordable for treating the priority health problems of the majority of the population.² The concept has been embraced by all SADC member states. WHO regularly updates its Model Essential Drug List, but countries have to make their own Essential Drug Lists for the various levels (primary care, hospital care) based on their own morbidity patterns, treatment guidelines and available human and financial resources.³

Affordability is one of the criteria for becoming an Essential Drug. Some new, life-saving but expensive (mostly patented) drugs are therefore excluded from the current Essential Drug Lists. Consequently, these drugs do not benefit from tax exemption and fast-track registration procedures, and are not seen as priorities in many countries. A new category of 'life-saving, not-yet-affordable' essential drugs needs to be considered, on which efforts to reduce prices can be concentrated.

The WHO estimates that 33 percent of the world's population does not yet have regular access to essential drugs. Barriers to access include poor health care infrastructure, inadequate financing, irrational drug use and non-affordability of new drugs. Poor drug availability increases the ill health burden and reduces confidence in and use of public health services, the major source of care for the poor.

In relation to essential drugs, SADC Health Ministers have:

- made a commitment to ensure that all SADC citizens have access to them;
- initiated a review of bulk purchasing of TB drugs and harmonisation of drug registration;
- begun negotiating with the pharmaceutical industry to drastically lower their prices for essential drugs that are currently not affordable, e.g., drugs for HIV/AIDS, resistant TB, malaria and sexually transmitted diseases;
- begun investigating the use of public health safeguards under TRIPs, such as compulsory licensing, parallel importing and an 'early working' for generics or 'Bolar' clause.

How Will TRIPs Affect Peoples' Access to Essential Drugs?

The TRIPs Agreement has relevance to drug policies in those articles that protect public health and patentable subject matter.⁴ These articles protect intellectual property rights through patent arrangements that exclude third party use, offering for sale, selling or importing of such products for a minimum of 20 years from the date the patent application is filed. Civil claims around breach of patents put the burden of proof on the defendant.

Pre-TRIPs, many developing countries did not recognise patents for pharmaceuticals, or only for processes (and not for products). This allowed copies of new drugs to be made through reverse engineering and patenting another pathway. TRIPs obliges all WTO member states to implement product patent protection for all drugs patented after 1995. This will make it impossible to produce generic copies for at least 20 years, and will thus raise prices.

Currently, most essential drugs are not patented. In South Africa, less than five percent of the 693 essential drugs are patent-protected. TRIPs is thus less of an issue for the vast share of *existing* essential drugs than it is for *new and future* essential drugs, patented after 1995. The increased costs of patented drugs will put a significant burden on public health budgets. These include new drugs for HIV/AIDS, resistant tuberculosis, malaria and reserve antibiotics. SADC will thus face a challenge in accessing these new essential drugs at affordable prices. The price differences can be substantial, as exemplified in the table below:

Best price found for drugs from reliable manufacturers⁵

Medicine (price in USD)	South Africa (patented)	India (generic)	Brazil (generic)
Zidovudine 100mg	0.4	0.2	0.2
Lamivudine 150mg	1.1	0.5	0.8
Didanosine 100mg	0.7		0.5
Stavudine 40mg	2.5	0.6	0.3
Nevirapine 200mg	3.0	2.1	2.5
Fluconazole 200mg	4.1	0.6	0.2
Ceftriaxone 1g	10.9	1.8	

Continued on page 4

TRIPs and Essential Drugs, continued from page 3

Least-developed countries must make their patent laws TRIPs compliant by 2006. They can continue to import or produce generic copies of drugs patented before 1995 if they had no patent protection, but from 2006 they will have to honour drug patents filed in their country after 1995.⁶ SADC countries that do not qualify for LDC status (e.g., Botswana, South Africa, Zimbabwe, Mauritius) had to be TRIPs compliant on 1st January 2000.

South Africa voluntarily became TRIPs compliant in 1997. Its experience is instructive for other SADC countries. The 1996 South African National Drug Policy led to legislation in 1997 to enable parallel import and compulsory licenses. Although these remedies are permitted in TRIPs under certain circumstances, the Act was legally challenged by the South African Pharmaceutical Manufacturers Association on grounds of conflict with TRIPs and alleged failure to protect registration information from unfair commercial use. The US Government threatened trade sanctions over the same Act, and put South Africa on its 301 'watch list'. Pressure also came from the European Union (see page 14, *ed.*).⁷

The case signalled the response that SADC countries would need to deal with, should they attempt to invoke provisions that, in principle, exist within TRIPs. At the same time these disputes strain relations between governments and their pharmaceutical industries, and make drug policies more difficult to implement. With the public health burden and resource limits of most SADC countries, a more sustainable solution is required to ensure drug access, including new drugs needed for priority public health actions.

Options for SADC Countries

Signatories to TRIPs have flexibility in how they implement the Agreement, as TRIPs only defines the *minimum* requirements. SADC countries are now studying how to formulate or adapt their legislation to widen their options to access essential drugs. This means using the provisions in TRIPs Article 30 to provide for limited exceptions to the exclusive rights conferred by a patent, provided that they are limited, justified, and do not unreasonably affect the patent owner. The exceptions enable countries to parallel import the drugs or to compulsorily license them, provided their national laws provide for this.

The strongest grounds for such exceptions are in the interests of public health, given that TRIPs enables members to give the highest possible priority to protecting the public interest.⁸ SADC countries are thus challenged to define an acceptable and evidence-based definition of public health interests that can justify the exceptions they seek to impose on patent owners.

In SADC countries that currently do not have patent laws, or in cases where drug companies have not sought patent protection, generic copies of drugs can be imported.

TRIPs allows certain public health 'safeguards' for patented drugs:

- When a patented product is marketed at a lower cost in another

country, countries may revert to 'parallel import' of that drug from the country where the same manufacturer sells it at a lower price, but only if they have enabled the principle of 'exhaustion' in their national patent act.⁹

- Countries may insert 'compulsory license' clauses in their national legislation. Such licences would allow a government, under certain circumstances, to import or produce a more affordable generic copy of the patented product, and pay a royalty to the patent holder. These exceptions are, however, time-limited, and conditional.
- In order to benefit from lower priced generic drugs immediately after patent expiry, governments could insert 'Bolar' or 'early working' clauses in the patent act. These would allow generic companies to develop and test (but not stockpile for sale) generic drugs in the last years of a patented drug.

SADC countries need to fulfil all of the above conditions. This means they must have the expertise and institutions necessary for the appropriate laws, patent registration and health registration data provisions, as well as the capacity to defend themselves in legal battles in case of disputes within WTO around their actions.

Countries can also seek remedies not regulated under TRIPs, such as:

- voluntary price reductions / donations from industry
- price controls
- voluntary license from patent holders for local production / transfer of technology, emergency use.

Some of these remedies have been more widely raised in recent months. Five multinational drug companies offered on 12 May 2000 to make AIDS-related drugs cheaper by 60-85 percent for developing countries, in collaboration with UNAIDS. Boehringer Ingelheim offered its nevirapine free for five years to mother-to-child transmission prevention programmes in developing countries.

Pfizer offered fluconazole free until end 2002 to South African public sector patients with cryptococcus meningitis.

In August 2000, SADC health ministers developed a joint strategy on how to deal with these offers. They insisted that donations be equitable (i.e. available to all citizens in all SADC countries), as well as affordable, accessible, appropriate, acceptable and sustainable (at least five years).¹⁰

It would appear that legal remedies that use the leeway

offered within TRIPs on public health grounds offer a more sustainable approach within the control of SADC health authorities than current price measures. This is exemplified for example in the table above, which compares price reductions or donations with compulsory licensing.

These considerations are probably one reason why SADC ministers of health have rejected offers through media for price reductions in the search for more sustainable longer-term measures. It is also doubtful whether even an 85-90 percent price reduction is enough for the huge cost burden implied in making these drugs equitably accessible in HIV/AIDS therapy, given the scale of the epidemic.

Continued on page 8

Price reductions/donations and compulsory licensing

Compulsory Licenses	Reduced Price Offers
Patents Act decides	Voluntary offers
National controls	Patent holders in control
Non-exclusive	Exclusive
Allow generics	Brandname only
Clear procedure	Terms not (yet) clear
Prices probably cheaper	Prices lower, but not as low as with compulsory licenses
Conditions listed in TRIPs, royalties	Conditions unclear

Dispute Settlement Corner

'Mother of All Trade Wars' Links US Export Subsidies and Carousel Sanctions to Key DSU Issues

As this issue of Bridges went to press, the 1 October deadline was fast approaching for US compliance with WTO rulings, which condemned tax breaks enjoyed by US companies through off-shore foreign sales corporations (FSCs). The Appellate Body confirmed last February that these were illegal export subsidies under the Agreement on Subsidies and Countervailing Measures. The financial stakes of the case far surpass all WTO disputes to date as the FSC scheme is estimated to save US exporters billions of dollars in income tax (Bridges Year 4 No.2, page 8).

Legislation to replace the FSC scheme with another system that would shield some corporate income generated abroad from US taxes was close to Congressional approval at press time. If passed, the EU will challenge the WTO-compatibility of the new regime as soon as the US compliance deadline expires. The EU claims that the new scheme 'continues to be export-contingent, in clear violation of WTO rules.' 'The only way for a US-based manufacturer to benefit from the new regime is by exporting. In addition, the new proposal maintains the obligation to use more than 50 percent of US inputs to benefit from the tax break,' the European Commission said in a statement. A ruling in the EU's favour could have significant consequences to all WTO Members, as it would enhance their competitiveness vis-à-vis many US key exports.

Some US officials, including Ways and Means Committee Chair Bill Archer, have warned that the US might retaliate by challenging EU countries' tax schemes. 'The mother of all trade wars needs to be avoided,' Archer said, adding that 'those in glass houses shouldn't throw stones.'

At press time, the two parties were engaged in talks over retaliation proceedings. At issue was when the EU would announce the level of retaliation it would seek – and the US exports that would be targeted – in case the compliance panel found the reformed tax regime still inconsistent with WTO export subsidy rules. Within the EU, the UK in particular is advocating a delay of the retaliation arbitration until the compliance proceedings are complete (see below). According to Article 21.5 of the Dispute Settlement Understanding (DSU), compliance investigations must not exceed 90 days, although panels have in some cases taken longer.

The European Commission reportedly favours initiating the retaliation procedure promptly, as DSU Article 22.6 requires the DSB to authorise sanctions within 30 days of the expiry of the compliance deadline. The proceedings could then be suspended until the compliance panel delivers its verdict.

The Carousel Quid pro Quo

Resisting pressure from farm groups, the Clinton Administration has not yet released a revised list of European goods to be affected by trade sanctions, although it was required by law to announce such changes by 19 June 2000. While USTR and the European Commission have issued statements that the FSC and carousel cases are not linked in any way, the delay was widely reported to have resulted from a deal between UK Prime Minister Tony Blair and President Clinton: in exchange for the US excluding Scottish cashmere from the new list, the UK is putting pressure on the European Union to adopt a 'moderate' banana import regime and a conciliatory attitude in the FSC case.

EU goods worth nearly US\$310 million are currently targeted by US retaliation in the beef and banana disputes through 100 percent tariff increases. Proposed changes to those goods include several luxury items, some of which could face import duties of 200 percent. The EU will request the establishment of a dispute settlement panel on the WTO-compatibility of the carousel legislation as soon as the US announces the changes.

Will Panels or Members Decide?

Sequencing compliance and retaliation procedures, and the carousel approach were among key issues of the Dispute Settlement Understanding (DSU) review that ended in confusion before the Seattle Ministerial Conference (Bridges Year 3 No.8, page 8). Both have come back to haunt the system. In addition to the challenges cited above, the EU on 12 September filed an appeal of a 17 July ruling that a retaliation arbitration panel could also decide whether a Member had implemented dispute settlement rulings properly. The reason is that, unlike the findings of a compliance panel under Article 21.5, arbitration under DSU Article 22.6 cannot be appealed (Bridges Year 4 No.6, page 7).

Only Members can approve changes to the DSU – and by consensus, at that – and many among them consider that the Appellate Body and dispute settlement panels have already over-reached their competence in delivering rulings on how DSU provisions should be interpreted. According to diplomatic sources, several delegations are still consulting informally on a possible Article 21 bis, that would clarify that a compliance finding must precede the imposition of trade sanctions.

Brazil Faces Sanctions in Aircraft Dispute

Brazil has lost its fight with Canada over export support to rival aircraft makers Embraer based in São José dos Campos and Bombardier in Montreal. On 21 July, the Appellate Body upheld an earlier compliance panel ruling that Brazil's PROEX interest rate equalisation payments to Embraer's clients still amounted to export subsidies prohibited by the Agreement on Subsidies and Countervailing Measures (SCM, Bridges Year 4 No.4, page 5).

The AB brushed aside Brazil's claim that the Agreement unfairly allowed Members to use only export credit rates that comply with the so-called OECD Arrangement. Brazil argued that developing countries had not negotiated the Arrangement nor its commercial interest reference rates (export credits which conform with the OECD interest rate benchmark are exempted from subsidy disciplines under paragraph k of the SCM Agreement's Annex I). Brazil said that the OECD rules were 'not suited to the needs and specificities of developing countries or of any non-participant.'

On 28 August, WTO arbitrators released their determination of the amount of trade sanctions that Canada may apply: US\$231.4 million a year for the next five years. On 27-28 September, Brazil was to make a fifth attempt to convince Canada to accept compensation rather than apply sanctions to Brazilian exports. So far, however, Brazil has refused to go back on its commitment to PROEX financing for 900 undelivered Embraer aircraft. Canada, on the other hand, has conditioned compensation acceptance on Brazil's withdrawing the condemned financing from the 900 jets.

Impact of Sanitary and Phytosanitary Measures on Developing Countries

By Spencer Henson

As tariffs and quantitative trade restrictions decline, there is a growing recognition of the limits that sanitary and phytosanitary (SPS) measures pose on developing countries' access to industrialised country markets. A recent study by the Centre for Food Economics Research at the University of Reading sought to assess the impact of SPS measures and the WTO Agreement on the Application of Sanitary and Phytosanitary Measures on agricultural and food exports from developing countries.¹

While in many cases the impact of SPS measures could not be quantified and the results should be interpreted with care, the study does highlight a number of key issues, which reflect the concerns expressed by developing countries themselves about the impact of developed country SPS requirements and the weaknesses of the SPS Agreement.

General Findings

It is evident that developed countries' SPS requirements do constrain developing countries' ability to export agricultural and food products. Indeed, a number of developing countries consider SPS requirements to be one of the greatest impediments to trade in these products, particularly in the case of the European Union. This reflects the fact that developed countries typically apply stricter SPS measures than developing countries and that SPS controls in many developing countries are weak and overly fragmented. Furthermore, in certain circumstances SPS requirements are incompatible with prevailing systems of production and marketing in developing countries. As a consequence, wholesale structural and organisational change may be required in order to comply, and the associated costs can restrict trade as effectively as tariffs.

The problems developing countries have in complying with SPS requirements reflect their wider resource and infrastructure constraints that limit not only their ability to comply, but also their ability to demonstrate compliance. A particularly acute problem is access to appropriate scientific and technical expertise. Indeed, in many developing countries knowledge of SPS issues is poor, both within government and the food supply chain, and the skills required to assess SPS measures applied by developed countries are lacking.

Concerns Relating to the SPS Agreement

Most developing countries are aware of the SPS Agreement, support its overall objectives and acknowledge that there are longer-term benefits provided the Agreement is implemented in an appropriate manner. However, many have concerns about the manner in which the SPS Agreement has been implemented to date, including that developed countries take insufficient account of the needs of developing countries when setting SPS requirements, allow insufficient time between notification and implementation of SPS requirements and give insufficient technical assistance to developing countries to meet them.

To date, many developing countries have not actively participated in the SPS Agreement. Indeed, many are not represented at SPS Committee meetings or meetings of the international standards organisations and, as a result, may fail to utilise the provisions and mechanisms laid down by the Agreement to their advantage. Key problems include insufficient ability to assess the implications

of developed country SPS requirements following notifications, insufficient ability to participate effectively in dispute settlement procedures and insufficient ability to demonstrate that domestic SPS measures are equivalent to developed country requirements.

Potential Solutions

These problems could be addressed in a variety of ways, which fall into three main categories:

First, efforts are required to enhance the capability of developing countries to comply with the SPS requirements of developed countries. These might include initiatives to improve access to scientific and technical expertise and the development of domestic SPS control systems that are effective and appropriate to local circumstances. Effectively targeted and appropriate technical assistance and greater regional co-operation between developing countries are likely to be important elements of these initiatives.

Second, international institutions responsible for SPS issues should be reformed and/or developed so as to better address the needs of developing countries. Ways need to be found to facilitate the better inclusion of low- and middle-income WTO Members in the SPS Agreement's operation. To increase their sense of 'ownership' of the Agreement, revisions to its transparency arrangements may be necessary along with greater harmonisation of international SPS standards, changes to the decision-making procedures of the international standard-setting organisations and the development of mechanisms for legal and/or technical assistance relating to SPS matters within the context of the WTO.

Third, developed countries should take the needs of developing countries into account when promulgating and applying SPS requirements. On the one hand, this requires greater recognition of the problems faced by developing countries. Changes may be necessary in institutional structures to incorporate developing country interests into the SPS standards-setting process and – whenever possible – developing countries should be granted longer periods to comply with SPS requirements.

Although industrialised countries need to be more aware of the needs and special circumstances of developing countries and to take these into account when promulgating SPS measures, they should not be expected to adopt lower requirements in terms of the level of protection to human, plant and animal health. Rather, the study suggests, SPS measures should minimise, wherever possible, incompatibilities with the systems of production and marketing applied in developing countries.

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ENDNOTE

¹ Henson, S.J., Loader, R.J., Swinbank, A., Bredahl, M. and Lux, N. 2000. Impact of Sanitary and Phytosanitary Measures on Developing Countries. Centre for Food Economics Research, University of Reading. The study includes ten case studies and a survey of SPS contact/enquiry points in all low- and middle-income countries that are members of the WTO and/or Codex Alimentarius. For further details contact s.j.henson@rdg.ac.uk.

Debate Finally Starts on Implementation Concerns, but Positions Remain Far Apart

The good news of the informal General Council special session on implementation concerns, held on 18-19 September, was that WTO Members finally started a debate on specific demands. The outcome of the exercise remains doubtful, however, as the discussions revealed virtually unchanged pre-Seattle positions on issues that developing countries consider central to their efforts to rectify the imbalances created by the Uruguay Round Agreements.

Two main lines of industrialised country response emerged at the September session: that specific concerns should be dealt with in the WTO Committee that oversees the implementation of the Agreement in question, and a resistance to address the most controversial problems outside of a new round of negotiations. Developing countries, on the other hand, continue to maintain that implementation issues must be meaningfully addressed before launching broader liberalisation negotiations. They also want to keep the discussions within the General Council, which can make political decisions. Speaking at a seminar organised by the Third World Network in mid-September, Ambassador Supperamaniam of Malaysia said that the implementation review issues were 'very substantive in nature and the WTO membership should give its undivided attention to them, rather than be distracted by calls for a future comprehensive round, which does not merit a lot of support at this time.'

Anti-dumping and Textiles

Developing countries brought forward three proposals to amend anti-dumping practices. They called for a prohibition to initiate anti-dumping investigations within one year of the end of a previous investigation on the same product, and for making it mandatory – instead of 'desirable' – that an anti-dumping duty 'be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry' (Article 9.1 of the Anti-dumping Agreement). A third proposal concerned Article 2.2, which developing countries said should be 'clarified in order to make appropriate comparison with respect to the margin of dumping'. The Article deals with cases where there is no market for a product in the exporting country.

Both the US and the EU said the demands should be discussed at the Anti-dumping Committee, while India countered that technical-level talks in the Committee would not offer enough political flexibility for solutions to emerge. The EU, which frequently has recourse to repeated anti-dumping investigations, said that any limitations to investigations, or clarifications in calculating dumping margins, should be addressed in the context of broader negotiations.

Developing countries also wanted a commitment that no anti-dumping actions would be taken against textile products currently under quantitative restrictions, or for two years after all quotas are lifted in 2005. In addition, they called on restraining countries to lift quotas on 50 percent of 1990 imports by March 2001, as well as increased growth rates for quotas affecting small exporters and least-developed countries.

The US, which in the pre-Seattle negotiations consistently opposed reopening of the Anti-dumping and Textiles Agreements, recommended that the proposals be reviewed by the Council on Trade in Goods, but indicated that its opposition to accelerating textiles liberalisation had not changed. The EU also said that it had problems with the demands.

Subsidies

Developing countries opposed a US suggestion to move subsidy discussions to the Committee on Subsidies and Countervailing Measures (SCM). Instead, they want the General Council to expand the scope and coverage of non-actionable subsidies available to developing countries. They proposed, *inter alia*, that Members raise the yearly income threshold under which countries may provide industrial export subsidies (currently US\$1000 per capita). Other demands included extending non-actionable development subsidies under SCM Article 8, which lapsed on 1 January 2000. The Article exempts subsidies for production diversification, assistance to disadvantaged regions and adaptation of existing facilities to new environmental requirements from SCM obligations.

Chile was the only developing country to argue that subsidies distorted trade and should be rolled back rather than increased. Fellow Cairns Group members Canada and New Zealand agreed, while

the EU predictably said that raising the income limit exemption and changes to rules on export subsidies should be rolled into future negotiations. Chile, Argentina and New Zealand tried to shift some of the subsidy questions into the ongoing negotiations on agriculture, but India objected citing the uncertain outcome of those talks (see page 10).

Intellectual Property Rights

Surprisingly, both the EU and the US agreed that Article 66.2 of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs), which calls for developed countries to provide incentives for technology transfer to least-developed countries, should be 'made operational' and subject to notification to the WTO.

Switzerland, Cuba and Haiti were in favour of expanding geographical indications protection to other products than wines and spirits, but the US and New Zealand said such changes would require new multilateral negotiations. New Zealand and Switzerland supported developing countries' call for extending the technically-lapsed moratorium on TRIPs nullification and impairment cases. The last two subjects were also raised at the TRIPs Council meeting on 21-22 September (see page 10).

Japan objected to extending developing countries' transition periods for TRIPs compliance beyond 1 January 2000, as well as to a proposal from Honduras to expand the list of essential drugs, which developing countries may produce under compulsory licenses (see related articles on pages 3 and 14).

Questioned on the implementation review's likely ultimate result, most sources concurred that it might advance 'small things', but not resolve the more fundamental issue of redressing the imbalances in existing Agreements. Among the small things, they listed potential increases in technical assistance related to the Agreements on Technical Barriers to Trade and on Sanitary and Phytosanitary Measures, as well as possible progress on more transparent administration of agricultural tariff-rate quotas.

The next special session on implementation is scheduled for 18-19 October.

Redressing the imbalances in existing Agreements looks unlikely without a broad-based new round of negotiations.

TRIPs and Essential Medicines, continued from page 4

The South African experience cited above signals further the investments and areas of potential dispute that will need to be addressed if SADC countries are to ensure access to new essential drugs, even within the TRIPs framework.

- SADC member states will need to implement legal and institutional measures to take up the 'public health safeguards' permitted under the TRIPs Agreement. SADC offers an important framework for organising and channelling such support to member states. The World Health Organisation (WHO) also has a mandate to provide such support.¹¹
- The pharmaceutical industry will need to balance considerations of property rights and cost returns against public health interests, and the potentially wide market for new drug products if prices are put at more affordable levels. At a deeper level, the deep disconnect between current drug price structures and the needs of the majority of people within regions such as SADC should be a stimulus to the industry to review its policies and to participate in a wider public review of drug access policies. The current proposals for price subsidies and tiered pricing arrangements themselves signal that the present situation is not tenable.
- Clients, particularly low income communities, and the civic organisations that represent them, face pressure to become more informed and involved in the negotiations around health service and drug access. Organisations such as Doctors without Borders (MSF) and Health Action International have taken a proactive role in raising awareness on complex WTO issues at community level, and in taking up issues of drug access and cost at global level. So too have local civic networks such as the Treatment Action Campaign in South Africa and the Community Working Group on Health in Zimbabwe. Such civil input is important for strengthening state actions in public health interest. It is also important that clients know their options in terms of generic drugs, and become more informed consumers of health products. This implies greater and more proactive public information dissemination on drugs and drug use.

The challenge of ensuring equitable and affordable access to new essential drugs under TRIPs in SADC countries once again highlights the agility that states must develop in the uneven WTO playing field, particularly if they are to make trade integrate public health and equity considerations. This is not simply an issue for SADC – it goes back to how the WTO takes account of such issues in framing trade agreements. This pressure for a more proactive integration of such issues within WTO was found for example in the 1999 World Health Assembly, when countries raised a wider global concern that trade agreements be more sensitive to public health considerations.

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ENDNOTES

¹ The Southern African Development Community (SADC) comprises Angola, Botswana, DRC, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. It is an economic, political and social community of nations, covering 193 million people. SADC's Health Sector Desk is co-ordinated by South Africa, as well as the SADC Trade and Investment Sector Desk.

² WHO's strategy to achieve access to Essential Drugs is based on four pillars: rational selection; affordable prices; sustainable financing, and reliable health and supply systems. See <http://www.who.int/medicines>

³ For example, Zimbabwe just published its 4th Essential Drugs List and Standard Treatment Guidelines. Info: ndtpac@healthnet.zw South Africa's Treatment Guidelines for PHC and Hospitals (December 1998) are available at <http://www.sadap.org.za/edl>

⁴ TRIPs Articles 1, 27.1, 27.2, 27.3, 28, 28.1(b), 33, 34, 65 and 70

⁵ MSF. 2000. HIV/AIDS medicines pricing report. Available at: <http://msf.org/advocacy/accessmed/reports/2000/07/aidspricing/>

⁶ Patent protection for drugs before 1995 was available in South Africa and Zimbabwe.

⁷ Patrick Bond. *Globalization, Pharmaceutical Pricing and South African Health Policy: Managing Confrontation with US Firms and Politicians*. International Journal of Health Services Vol. 29, No.4, 1999.

⁸ TRIPs Articles 7 and 8.

⁹ Although TRIPs seems to prevent parallel import in Article 28.1, this is subject to the exhaustion Article 6, where it is stated that countries cannot be taken to dispute settlement if their patent legislation allows exhaustion.

¹⁰ SADC Principles to guide negotiations with pharmaceutical companies on provision of drugs for the treatment of HIV/AIDS related conditions in SADC countries. August 2000.

¹¹ WHO Assembly resolution WHA52/19. May 1999.

References

Equinet. 2000. *WTO Agreements: Implications for Equity and Health in Southern Africa*. Equinet Policy Series No. 4. Harare. Soon available at: <http://www.equinet.org.zw>

Equinet Steering Committee. 2000. *Equity in Health in Southern Africa: Turning values into practice*. Paper presented at the Equinet conference on Equity in Health in Southern Africa, September 2000.

WHO/EDM. 1999. *Globalization, Patents and Drugs – an annotated bibliography*. Health Economics and Drugs EDM Series No. 9. Geneva: World Health Organization; (WHO/EDM/PAR/99.6). Available on-line, see URL below.

WHO/EDM. 1999. *Globalization and Access to Drugs – Perspectives on the WTO TRIPs Agreement*. Health Economics and Drugs EDM Series No.7. Geneva: World Health Organization; (WHO/EDM/98.9 Revised). Available from: <http://www.who.int/medicines/docs/pagespublications/economicspub.htm>

Velasquez/Boulet. *Essential Drugs in the New International Economic Environment*. Bulletin of the WHO, Vol. 77, No.3, 1999.

South Centre (2000; in press). *Integrating Public Health Concerns into Patent Legislation in Developing Countries*. Info: south@southcentre.org

Health Action International. 1997. *Power, Patents and Pills – an examination of GATT/WTO policies and essential drug policies*. Seminar Report. Amsterdam. Info: hai@hai.antenna.nl

HAI/MSF. 2000. *Improving Access to Essential Medicines in East Africa – patents and prices in a global economy*. Report of 15-16 June 2000 meeting in Nairobi, Kenya. Available from: <http://www.accessmed.msf.org>

MSF. 2000. Access to Essential Medicines Report. Available from: <http://msf.org/advocacy/accessmed/reports/2000/07/aidspricing/>

Asbestos Ruling Raises More Questions than Answers

By Kevin Gray

The WTO ruling that the French government's ban on asbestos is justified on public health grounds has touched off a great deal of praise. It marked the first time that a panel or the Appellate Body upheld a trade-inconsistent measure for non-trade reasons. While happy with the end result, environmental organizations have, however, criticized the panel's reasoning, which seems to make it more difficult for trade-related environmental measures to withstand WTO scrutiny.

The case involved a French decree that banned the manufacture, processing, sale, importing or placing on the domestic market of all varieties of asbestos fibres, regardless of whether these substances were incorporated into materials, products or devices.¹ The decree's purpose was to protect workers and consumers. The Canadian government asserted that this ban was inconsistent with WTO rules because chrysotile, or 'white' asbestos, could be used safely in certain products and therefore should not be the victim of an outright ban.

Technical Barriers to Trade – Right Time, Wrong Case?

The dispute might have been an ideal opportunity to rule on the application of the Agreement on Technical Barriers to Trade (TBT). The TBT Agreement appears to be advantageous in that it could support a trade-related environmental measure. There are specific references to the protection of animal/plant/human health, as well as the environment, as being legitimate objectives for governmental policy. The European Community, which defends EU members' WTO disputes, argued that the French measure was not a 'technical regulation' bringing it under the scrutiny of the TBT Agreement. Canada's position was that since the decree regulated importation based on the characteristics of the product (absence of asbestos fibres) and the process and method of production, the TBT Agreement applied.

In resolving this question, the panel noted that the technical characteristics must be stipulated in the regulation and must specifically refer to an identifiable product in order to be considered a technical regulation. The decree was not concerned with the characteristic of the product, but essentially banned all types of asbestos. The panel stressed that its findings did not reflect the scope of what a technical regulation is under the TBT Agreement, but only whether, in this particular case, the French decree constituted a technical regulation. Therefore, there still is no authoritative ruling on whether a technical standard that regulates unsafe production methods could be consistent with international trade obligations. On a positive note, the effect of this ruling is that countries can circumvent a product and production method (PPM) analysis, at least as it relates to goods containing a banned product, by simply outlawing the hazardous substance as a whole.

Like Products Regardless of Toxicity

The most contentious issue from the perspective of the environmental community was the panel's expansive interpretation of 'like product'. The panel held that imported Canadian asbestos and domestically-produced substitutes (PVA, cellulose and glass) were in fact 'like products' for the purpose of determining whether

the French decree violated the national treatment requirements under GATT Article III:4. This was so because they were similar in properties, nature and quality and had similar end-uses.

The World Health Organisation classifies asbestos fibres as category 1 proven carcinogens, while the substitute products do not have the same classification. By holding that asbestos products and their less harmful substitutes are 'like products' for the purpose of Article III, the ruling suggests that the toxicity of a product is not a basis to distinguish between products under WTO law. The panel held that the 'like product' analysis under Article III:4 was not so much a scientific classification exercise as a question concerning market access for products. This would indicate that the 'like product' analysis has a fundamentally commercial orientation, while non-trade related concerns, such as human health or the environment, which potentially determine consumers' choice in the marketplace, are secondary at best. Such a narrow interpretation of Article III:4 belittles non-trade concerns despite their presence in the preamble to the WTO Agreement.

The panel noted that the dispute marked the first time that the relevance of the human health risk of a product was considered when addressing Article III:4. Despite discretion to consider a variety of factors in making this determination, the panel ruled out using risk as a criterion because it would 'largely nullify the effect of Article XX(b)'. It found that products could be considered 'like' despite their differing impacts on health, which should be exclusively arbitrated under Article XX(b) where a 'necessity test' is applied. By excluding health risks as relevant criteria for a 'like product' determination, the ruling defeats the spirit of the WTO Agreements and acts contrary to proper treaty interpretation by failing to consider the WTO Agreements as a whole.

Article XX - Residual Arena to Assess Health Issues

By virtue of the expansive interpretation of 'like products', the panel resorted to examining the purpose and objectives of the French decree under Article XX. Interestingly, it was the first time that a panel engaged in an assessment of risk under Article XX. There is mention of risk and risk assessment in the TBT and SPS Agreements, but its basis for consideration under Article XX is not supported by the text. The panel identified its primary role as determining whether the decree fell within the range of policies designed to protect human life or health. From this responsibility, the panel further extracted that it was required to assess whether a risk in fact existed. In deference to the French authorities, the panel imported a standard of 'reasonableness', not based on any scientific certainty, to conclude that it was reasonable for a public health policy official to conclude that a risk occurred.

The panel noted that there was an emerging international consensus on asbestos use, which justified the assumption that a risk existed. In this regard, it allowed for the recognition of international standards as a basis for justifying a trade-restrictive measure under Article XX. This also seems to borrow from the TBT and SPS Agreements, where a measure that conforms with

Continued on page 10

TRIPs Council : Two Members Tie Agricultural Negotiations to Progress on Geographical Indications

In spite of the fact that there is no mandate for interlinked broad-based negotiations at the WTO, Bulgaria and Switzerland have tied progress in the ongoing agricultural negotiations to an expanded negotiating mandate on geographical indications at the Council for Trade-related Aspects of Intellectual Property Rights (TRIPs). At the Council's last meeting on 21-22 September, Bulgaria told WTO Members that unless they agreed to start negotiations on expanding geographical indications protection to other products than wines and spirits, Bulgaria would insist that proposals tabled in the agricultural negotiations conform narrowly to Article 20 of the Agreement on Agriculture.

Article 20 calls for 'substantial progressive reduction in support and protection', but the Cairns Group in particular is seeking much more radical reform, leading to the complete elimination of export subsidies and the integration of agricultural products into the GATT (see also related article on page 15). Developing countries have sought the creation of a 'development box' that would shield from WTO disciplines their policies aimed at increasing food security and production capacity, rural employment and regulating subsidised or dumped imports (Bridges Year 4 No.5, page 1).

Currently, geographical indicators protection under TRIPs is granted only to wines and spirits, but Article 24 mandates Members to 'enter into negotiations aimed at increasing the protection of individual indications under Article 23.' Switzerland, Bulgaria, the Czech Republic, Iceland, India, Liechtenstein, Slovenia, Sri Lanka, Switzerland and Turkey maintain that the mandate to start negotiations on 'increasing the protection of individual indications under Article 23', which only covers wines and spirits, offers the possibility to extend a higher level of protection to other goods. They have proposed a 'basket' approach in which all negotiations and reviews on geographical indications would be discussed together. These countries are seeking to protect products varying from yoghurt, rice and tea to beers, chocolates and handicrafts.

New Zealand, Australia, the US and Canada in particular oppose the expansion of geographical indications protection to other goods than wines and spirits (see also page 7).

The Council's discussions on the review of Article 27.3(b), which addresses patentability exclusions for biological organisms, went into considerably greater depth than previously, with new papers from India, the African Group and the US. Supported by many developing country Members including Brazil, India and the African Group are pushing to have the TRIPs Council take into account issues such as biodiversity, traditional knowledge, benefit sharing, farmers rights to resow and share seeds, and the ethics of patenting of life forms. Most developed countries would prefer to keep Article 27.3(b) as is and focus on its implementation rather than substance.

The African Group and India have also proposed that Article 27.3(b) be harmonised with the access and benefit-sharing provisions of the Convention on Biological Diversity (CBD, see related article on page 13). The US, which has not ratified the CBD largely because of these obligations, strongly resists these attempts. The review continues, and the long-standing request for TRIPs Council observer status from the CBD Secretariat is still pending.

India proposed that the review of the implementation of the entire TRIPs Agreement focus on its 'confidence-building' aspects, in particular Articles 7 and 8 which deal with technology transfer for

socio-economic welfare and prevention of intellectual property rights abuse to protect vital health and other social issues. India argued for an assessment of the social, economic and welfare impacts of the Agreement. There was little agreement among Members on how to structure the review, and the process will continue.

The next regular meeting of the TRIPs Council will be held in late November. Meanwhile, TRIPs Chair Ambassador Chak Mun See will consult with Members on the whole range of geographical indications issues.

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Asbestos, continued from page 9

international standards is deemed to be non-discriminatory. Although some aspects of the French measure (exposure ceilings) were stricter than the relevant ILO standard, the panel held that extra caution was justified in light of the high level of health risk. The risk to humans outweighed the possibility that less restrictive measures, such as controlled use, were available.

One concern is that by according a great deal of weight to a measure purporting to avoid risks to human health, and perhaps employing reasoning that mirrors the precautionary principle, it artificially creates a hierarchy between measures aimed for the protection of humans and pure trade-related environmental measures. It is questionable whether a panel would go so far as to allow a country to take action that is stronger than what it provided in a multilateral environmental agreement. Moreover, the deference afforded to the French government's decision stands in contrast to the heavy scrutiny seen in the shrimp-turtle decision, where a measure aimed to protect an endangered species was struck down for various reasons despite the great likelihood that continued shrimp fishing processes would undermine a threatened species.

Conclusion

The asbestos dispute raises many interesting questions about how the WTO Agreements are to be interpreted in harmony with each other. In addition, the ruling displayed the application of new legal reasoning on such questions as the allocation of burden of proof and treaty interpretation, which will be vulnerable to appeal. Errors in the panel's reasons could obviate the liberal interpretation of Article XX exceptions, leaving the development of non-trade related policy measures at a standstill. Canadian trade officials have indicated that one of the major thrusts of their appeal of the report pertains to the panel's ruling on safety issues and the principle of safe use of chrysotile asbestos. Canada argues that the panel ventured beyond its mandate to simply determine whether the ban was consistent with the WTO Agreements. How the Appellate Body adjudicates on the safe use principle will probably have greater significance since it could shed new light on how far a WTO Member can go, in light of existing alternatives, to proscribe a trade restrictive measure for non-trade purposes.

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¹ Decree No. 96-1133, December 24, 1996, *Official Journal of the French Republic*.

NAFTA Investor-State Disputes Highlight Conflicts between Public Interest and Company Profits

The first environment/public health-related dispute under NAFTA's controversial Chapter 11 on investment has now been adjudicated. In a ruling handed to the parties on 30 August, the International Centre for the Settlement of Investment Disputes ordered the Mexican government to pay US\$16.7 million to the California-based waste treatment company Metalclad Corporation.

Mexico's Acts 'Took' Company Property

Metalclad filed the suit against the Mexican federal government in 1997. The company had bought a landfill and waste treatment site in Guadalcázar in the state of San Luis Potosí and, according to a company statement, the renewed facility was 'nearing completion and ready for commercial exploitation' when it was denied permission to operate. Both state and federal authorities had previously approved the project, but the Governor of San Luis Potosí withdrew his consent when strenuous local opposition led Guadalcázar's municipal authorities to refuse a construction permit for the near-finished facility. Later, the Governor declared the site part of an 'ecological zone'. State authorities said that environmental impact assessments had revealed that the site lay atop of a sensitive groundwater system, which had been seriously polluted by the site's previous owner.



Methanex has challenged regulations protecting groundwater supplies from leaking storage tanks.

People living near the site were less concerned by environmental threats than the potential health effects of a new and much bigger hazardous waste dump in their neighbourhood. They complained about levels of respiratory disease, cancer and birth defects that were much higher than the national average, and suspected the cause to be soil, water and air contaminated by more than 5,000 drums of improperly treated and buried toxic waste. Mexico's chief lawyer in the case, Hugo Perezcano, said the amount of hazardous waste already present in the environment was comparable to that in Love Canal.

Metalclad sought US\$90 million in compensation of expropriated expected profits, which it claimed derived from a zoning law that constituted an 'effective seizure' of the company's property. According to Metalclad, the Chapter 11 arbitrators ruled that the 'government of Mexico committed acts like unto expropriation which in effect took the Company's property'. The ruling has not yet been released to the public, but both sides have confirmed that Metalclad was awarded compensation only for the actual cost of the investment, i.e. US\$16.7 million, instead of the US\$90 million that it had estimated as the investment's total value. Metalclad's president Grant Kessler called the court decision a 'totally hollow victory for us.'

Mexico will seek to have the decision revised or annulled by a Canadian court in Vancouver. Chapter 11 disputes cannot be appealed at the International Centre for the Settlement of Investment Disputes, but NAFTA Article 1135 gives the loser of a dispute three months to seek revision or annulment of the award in a competent court. The claimant cannot collect the award until the revision or annulment proceedings have been completed.

Mexico's revision request is likely to be built on two central arguments: Metalclad initiated construction without obtaining local permits; and the panel decision infringes on the powers of

municipal authorities under the Mexican constitution. Without the recourse, the Mexican government would have to pay the US\$16.7 million within 45 days or face six percent annual interest payments. In a Metalclad press release, the company's NAFTA counsel is quoted as saying that 'Mexico's chance of success with this process is highly unlikely.'

The Controversial Chapter 11

Chapter 11 allows companies that invest in another NAFTA country to seek compensation from the host government for 'measures tantamount to nationalisation or expropriation of an investment'. In several cases, companies have used the wording '*tantamount to expropriation*' to challenge government regulations that have reduced the value of their investment, or deprived investors of expected benefits (see Methanex below).

Chapter 11 disputes involving health/environmental regulations have provoked public outrage, and largely fuelled civil society opposition to the Multilateral

Agreement on Investment (MAI), which was to contain investor-state provisions similar to those in NAFTA (OECD governments abandoned the MAI negotiations in December 1998). Non-governmental organisations and even the Canadian government have sought to modify or clarify the Chapter 11 expropriation provision to ensure that it does not interfere with governments' right to legislate in the public interest. Mexico, in particular, has been cool to the proposal and, despite the adverse ruling, Hugo Perezcano said that his government remained 'quite happy' with the way NAFTA and Chapter 11 were working. It was too early to tell, he said, whether the investment rules were generally used in an abusive way (see also Bridges Year 3 No.3, page 9).

At least two other public health-related investor-state disputes are still under litigation. One was filed in 1999 by Methanex Corporation (see below) and the other in 1998 by S.D. Myers Inc. S.D. Myers – a hazardous waste treatment enterprise – claimed that Canada's export ban on PCBs prohibited the company from conducting business in Canada and 'resulted in damage to the investor arising directly from Canada's NAFTA-inconsistent measures' (Bridges Vol.2 No.6, page 8).

In July 1998, the Canadian government provoked a public outcry when it reached an out-of-court settlement with the US-based Ethyl Corporation. It paid the company US\$13 million and cancelled the disputed inter-provincial trade and import ban of the fuel additive MMT (Bridges Vol.2 No.6, page 8).

Methanex Claims Expropriation Compensation

Another high-profile Chapter 11 dispute was filed in 1999 by the Canadian Methanex Corporation against the US. Methanex alleged that California's ban on the use of the methanol-based fuel additive MTBE, set to enter into force in 2002, amounted to an 'expropriation of its business interests'. MTBE, classified as a potential human carcinogen by the US Environmental Protection Agency, has been seeping into groundwater supplies in several states. Methanex is seeking US\$970 million in compensation for the 'significant damages' it claims to have suffered as a result of California's action.

Continued on page 12

Latin America Seeks Greater Regional Integration

Presidents of 12 Latin American countries agreed on 1 September in Brasilia to launch negotiations on a 'trade union' – rather than a 'free trade area' – between Mercosur and the Andean Pact countries. These comprise all Latin American nations except Guyana and Suriname, which will also be associated with the project. Talks on the regional integration initiative are scheduled to conclude by 2002.

The communiqué issued at the end of the summit contains four other goals in addition to deepening trade ties: strengthening democracy, infrastructure development, fighting illegal drugs, and scientific and technological co-operation.

The initiative aims primarily to strengthen the region's coherence and weight in the negotiations for the Free Trade Area of the Americas (FTAA), which should enter into force in 2005, and the WTO negotiations on agriculture. The presidents expressed support for the WTO, but warned that 'future multilateral trade negotiations should be based on a positive agenda and take into consideration the link between trade and development, as well as the specific needs and concerns of developing countries.' Reducing industrialised countries' agricultural trade barriers is particularly important to the region. 'We are not prepared to open our economies further without negotiations which will give us access to rich countries,' said Brazil's President Fernando Henrique Cardoso at the end of the summit.

Members of the Latin American business community were cautious about the plan's success. They pointed out Mercosur's difficulties in evolving into a true free trade area, as well as the huge differences between Latin American nations which rendered the 2002 goal 'overly optimistic'.

Sustainable Development and Public Participation

The final communiqué has little to say about sustainable development, reflecting most Southern countries' mistrust of the concept in the context of trade negotiations. Strengthening environmental protection 'through the application of the concept of sustainable development' gets a passing mention in the preambular paragraphs, and the section on infrastructure contains a reference to the application of 'sustainability and environmental criteria' to new infrastructure projects. These are expected to include more energy lines, roads and bridges.

The communiqué devotes a couple of paragraphs to the question of public participation: the democracy section mentions promoting the 'participation of civil society organisations and their contribution in the debate of issues of public interest', and the trade section foresees the establishment of 'a consultative South American forum between senior officials and civil society representatives to identify joint actions between the region's nations in the area of trade and investment.' It remains to be seen whether participation will be limited to employers and workers or expanded to other groups, and whether the forum will turn out as problematic and dysfunctional as the FTAA Committee of Government Representatives on the Participation of Civil Society (Bridges Year 3 No.8, page 15).

As follow-up to the summit, Bolivia will convene the first political dialogue between the Andean Community, Mercosur and Chile, and Uruguay offered to host a ministerial meeting on infrastructure integration. Dates for these events are not yet set.

NAFTA Investor-State Disputes, continued from page 11

The California regulation acquired wider significance when the US Senate Environment and Public Works Committee approved a bill on 7 September that would ban MTBE nationwide within four years. If adopted by Congress, the bill would lead to a major shift from methanol to ethanol as a key additive in reformulated gasoline, which is mandated by many states' clean air laws. Methanol is Methanex's only product.

In a Claimant's Reply to the Statement of Defense dated 28 August 2000, Methanex argues that 'the use of the words *tantamount to expropriation* are broad enough to include a measure which removes an entire market otherwise available to Methanex US. Regulation can indeed be exercised in a way that constitutes a measure tantamount to expropriation. An action that prevents, unreasonably interferes with, or unduly delays effective enjoyment of Methanex US' property is an expropriation.'

A Test Case for Amicus Briefs?

The International Institute for Sustainable Development (IISD), a non-governmental organisation based in Canada, is seeking permission to submit a friend-of-the-court brief to the UN Centre for International Trade Law (UNCITRAL), which is hearing the dispute. IISD filed the request because 'the issues raised in the Methanex case could have a critical impact on environmental protection at the federal, state, provincial and municipal levels across North America.' This first-ever amicus brief request is also a test of the NAFTA governments' position on civil society participation in investment disputes that involve a public interest dimension. Up to now, all NAFTA investment disputes have been adjudicated solely on the basis of submissions by the claimant and the defense. Even the final decisions are not published if one of the parties objects. Following the IISD request, the UN Centre for International Trade Law invited NAFTA governments, Methanex and IISD itself to present written arguments on whether public interest groups can make representations in the proceedings between investors and governments.

Citizen Submissions

In related news, the NAFTA Commission on Environmental Co-operation (CEC) declined on 17 July to pursue further the 'citizen submission' filed by Methanex under the North American Agreement on Environmental Co-operation. The company alleged that Californian regulators had failed to enforce state legislation on underground storage tanks, which caused MTBE to leak into groundwater supplies. The CEC determined in March that Methanex's submission fulfilled the criteria for citizen submissions, but dismissed it in July because the matter was already under UNCITRAL arbitration. According to the CEC, the US government had also pointed out that California had undertaken 'substantial additional efforts to enforce its underground storage tank regulations.' Methanex was the first company to have recourse to the citizen submission procedure, which is usually used by public interest groups or private individuals (Bridges Year 3 No.8, page 15).

NAFTA environment ministers failed to agree last June on the scope of the factual records that the Commission on Environmental Co-operation (CEC) may prepare pursuant to citizens' complaints that a government is not properly enforcing its own environmental laws (Bridges Year 4 No.5, page 12). The CEC's Joint Public Advisory Council is now nearing completion of its review of the citizen submissions process, and is expected to finalise its recommendations to the CEC Council by mid-October.

Plant Genetic Resources Pact Finally Reaches Home Stretch

A little-noticed but important process aimed at developing equitable access and benefit-sharing arrangements for plant genetic resources is likely to conclude in November after six years of difficult negotiations. A major hurdle was cleared in late August when a 41-nation contact group finally addressed the issue of intellectual property rights in the context of harmonising the International Undertaking on Plant Genetic Resources (IU) with the provisions of the Convention on Biological Diversity (CBD).¹

A key element of the IU revision is the establishment of a Multilateral System of Access and Benefit-sharing to 'facilitate access to plant genetic resources for food and agriculture, and to share, in a fair and equitable way, the benefits arising from the utilisation of these resources'. This system will cover the large *ex situ* germplasm collections held in 17 international agricultural research centres, previously overseen by the Consultative Group on International Agricultural Research, and now operating under FAO auspices. Material held in collections of other international institutions may also be placed in the Multilateral System (MS), as may material from national and privately owned collections. Governments will retain the authority to determine access to their own genetic resources, which will remain subject to national legislation.

Issues relating to intellectual property rights in the IU have direct relevance to discussions currently under way in the WTO in the review of the TRIPs Agreement (Bridges Year 4 No.6, page 8).

Access to Genetic Resources under the MS

All genetic resources placed under the MS can be accessed free-of-charge for research, breeding and training purposes. At its August meeting, the contact group retained two alternative formulations with regard to intellectual property rights and access. The first of these would prohibit recipients of MS material from claiming intellectual property protection that would 'limit facilitated access to plant genetic resources received from the MS'. The second states that 'no plant varietal or patent protection will be sought by recipient Parties on the plant genetic resources for food and agriculture received under this MS.'

Access to plant genetic resources covered by intellectual property rights (IPRs), mostly held by private sector companies, is another matter. According to the International Undertaking, developing countries' access to this material should be facilitated, but there is no consensus on how this should be done. Text still under consideration proposes that access to IPR-covered plant genetic resources should be 'consistent with national and international law'. A bracketed addition suggests that such laws should not be implemented in a way that restricts others from using this material.

IPRs and Benefit-Sharing

The draft under consideration lists four mechanisms for sharing the benefits arising from the use of MS resources:

- exchange of information,
- access to and transfer of technology,
- capacity-building, and
- sharing of commercial benefits.

Of these, technology transfer and sharing commercial benefits are directly linked to the WTO TRIPs Agreement. On the former, TRIPs Article 7 states that the protection of IPRs should contribute to the 'transfer and dissemination of technological knowledge [...] in a manner conducive to social and economic welfare, and to a balance of rights and obligations.' Developing countries have pointed out that this 'good will' clause has failed to bring about concrete results.

The IU contact group agreed in August that the benefit-sharing arrangements would include access to and transfer of technology to developing countries 'on favourable terms, including on preferential and concessional terms where mutually agreed.' However, access to and transfer of technology must be consistent with intellectual property rights.

New text proposes that rights-holders pay an equitable royalty whenever material accessed under the Multilateral System results in a plant genetic resource covered by any type of intellectual property or commercial protection that restricts further use.

Sharing the commercial benefits arising from the utilisation of MS resources generated a lengthy debate, particularly with regard to bracketed Article 14.2(d)(iv), which read:

[Whenever the use of plant genetic resources for food and agriculture accessed under the Multilateral System results in a product protected by patents, or any form of commercial protection that restricts further access to the genetic material involved for research and plant breeding, Parties agree that a fixed share of royalties shall be paid into a

mechanism to be decided by the Governing Body as a contribution to the implementation of agreed plans and programmes as established in accordance with Article 16.]

This draft provision derived directly from the Convention on Biological Diversity, which requires Parties to take measures to share 'in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilisation of genetic resources.' Developing countries seek something similar when they call for the harmonisation of the TRIPs Agreement with the CBD.

During the contact group discussions, some developing countries said that as companies would reap the benefits of access to plant genetic material under the MS, they should be obliged to contribute to the IU's funding strategy. Others warned that royalty payment requirements would reduce private sector investment in developing countries. The provisional compromise reached by the negotiators foresees that

the rights-holder shall pay an equitable royalty whenever plant genetic resources for food and agriculture accessed under the Multilateral System result in a plant genetic resource covered by any type of IPR or commercial protection that restricts further use (editor's italics).

Parties will also encourage rights-holders to pay an equitable royalty for non-restrictive IPR or commercial protection. The latter provision will be reviewed five years after the treaty's entry into force. Some developed country negotiators warned that their agreement on the language on the royalty provisions was subject to approval from capitals.

Continued on page 14

European Commission Proposes Duty-free Access to Everything but Arms from Poorest Countries

On 20 September, the European Commission adopted a far-reaching proposal to grant duty-free access to all goods except arms from all least-developed countries. The 'everything but arms' proposal would go into effect as soon as it has been adopted by the Council of Ministers and the European Parliament. It goes beyond the EU's previous commitment to duty-free access for 'essentially all products' from LDCs by the year 2005, by accelerating and broadening the market access offer. The proposal covers more than 900 new tariff lines, including sensitive sectors such as bananas, sugar and rice. Tariffs for these would be progressively phased out over three years.¹

It is by no means certain that EU member countries will endorse such a sweeping proposal, particularly as other major OECD economies are unlikely to follow suit. Last March, the EU, the US, Canada and Japan proposed that industrialised WTO Members grant duty-free access to 'essentially all products' from LDCs, but the offer had so many conditionalities as to render it meaningless (Bridges Year 4 No.3, page 2). Presenting the new proposal, Trade Commissioner Pascal Lamy said that it reflected the Commission's belief that 'all WTO Members can and should benefit from trade liberalisation', and that with regard to LDC market access the time had come to 'move beyond opt-out clauses'.

Sustainable Development: a crucial objective for future WTO talks

The Commission's proposal is in line with the EU's *Trade Agenda for Development*, which Pascal Lamy outlined in an address to the Labour Movements International Forum in Copenhagen on 12 September 2000.¹ Mr Lamy said that 'enhancing the contribution of the WTO to the promotion of sustainable development should be considered as a crucial objective for future trade negotiations. In particular, this means that we will have to consider the following elements as part of a new round of trade negotiations:

- Substantial improvements in market access across the board, including on products of export interest for developing countries. This would imply a willingness by the EU and other trading partners to envisage substantial liberalisation of sensitive sectors.
- New WTO rules on investment, competition and trade facilitation to improve the governance of the world economy. [...] In the case of investment, this implies a gradual bottom up approach to market opening, while fully respecting the right of governments to regulate. As regards competition, the central objective should be to strengthen international co-operation against anti-competitive practices of an international dimension, such as international cartels or transnational abuses of a dominant position.
- Clarifying and – if necessary – improving existing WTO rules from a sustainable development perspective. A key issue will be clarifying the relationship between WTO rules and a number of actions taken for the protection of the environment.'

Mr Lamy said that while a comprehensive round of negotiations would be 'the essential tool to enhance the contribution of WTO to sustainable development, this does not mean that all actions geared to this end should await a political decision to launch negotiations.' He called LDC market access 'an area where the EU should lead by example and not wait for the actions by others.'

Mr Lamy warned that a sanctions-based approach to labour standards was 'doomed to fail', but said that the WTO 'must be involved in a broader dialogue' to promote understanding of the relationships between trade and social development, including the links between trade liberalisation, job creation and the fight against poverty.

Accelerated Action Targeted at Tropical Communicable Diseases

In another Communication, the Commission outlined a policy framework for enhancing the EU's support to developing countries' struggle to cope with major communicable diseases, in particular HIV/AIDS, tuberculosis and malaria.² Among recommended actions were strengthening developing countries' health systems, more research into diseases that disproportionately affect developing countries, and 'increasing affordability of key pharmaceuticals through a comprehensive and synergistic global approach.' On the latter, the paper listed the following options: exploration of the use of differential pricing, voluntary licensing agreements, parallel trading, technology transfer and increase in local production capacity, use of both generic and patented products and review of tariff and taxation options at country level. The Commission will host a round table involving member states, the European Parliament, civil society, researchers and the pharmaceutical industry to formulate a detailed action plan.

¹ For the full text, see <http://europa.eu.int/comm/trade/>

² For the full text, see <http://europa.eu.int/comm/development/>

Plant Genetic Resources, continued from page 13

Among the major issues still to be solved in the IU revision is what genetic resources will be covered by the Multilateral System. This promises to be a difficult task as proposals on the table vary from nine to 287 crops. So far, delegates have only agreed that the MS will cover crops that are important to food security, and that in the case of multi-purpose crops, the food security component will determine inclusion in Annex I, which will list the plant genetic resources available under the MS.

The IU's relationship with other international agreements also needs clarifying. With the TRIPs Agreement clearly in mind, Article 4 states that IU provisions 'shall not affect the rights and obligations' of Parties under existing agreements, but a bracketed addition would add an exception in cases where exercising such rights would cause serious damage or threat to plant genetic resources. Bracketed text also proposes that IU Parties that have not ratified the CBD 'shall be assumed to accept those provisions of the Convention which relate to the matters covered by this Undertaking,' i.e. access and benefit-sharing.

If these hurdles can be cleared in a further negotiation session – whose funding is still questionable – chances are that a revised International Undertaking on Plant Genetic Resources, in harmony with the provisions of the Convention on Biological Diversity, will be adopted by the FAO's Council when it meets from 20-25 November 2000.

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ENDNOTE

¹ The IU was established in 1983 to ensure that plant genetic resources, particularly those with major economic potential, are collected, conserved and made available for plant breeding and scientific purposes. To date, 113 countries have adhered to the IU. Brazil, Canada, China, Japan, Malaysia and the US are among notable exceptions. For further information, see Bridges Vol.1 No.6, page 13; Vol.2 No.4, page 11; and Year 3 No.3, page 13.

IISD Statement on Trade and Sustainable Development

In a statement released on 11 September, the Canadian-based International Institute for Sustainable Development (IISD) called for WTO reform on seven essential points. The policy statement, characterised as 'constructive' by several trade officials, calls on the WTO to:

- accept to be accountable for the goal that the multilateral trading system must support sustainable development worldwide;
- openly address, and give priority to, the range of impacts which result from trade liberalisation, whether on small producers, rural poor, economic growth or the environment;
- look at ways in which the trade regime and the international environmental regimes can be made fully compatible and mutually supportive;
- find ways for developing countries to participate more equitably in the WTO's work;
- greatly increase the capacity of both governments and civil society – particularly in developing countries – to promote trade policies and reforms in the WTO that support and advance sustainable development;
- openly address give priority to the implementation issues arising from the Uruguay Round Agreements, including the possibility that some of them may require amendment; and
- expand opportunities for civil society participation in the development of trade policy at the national level, while promoting increased external transparency at the WTO.

IISD views the statement as a work-in-progress that can serve as a rallying point for like-minded organisations and a foundation for constructive efforts to reform the WTO. It is available at the IISD website: <http://iisd.ca/trade/statement.htm>, as well as the WTO website at: <http://www.wto.org/>

EU Rekindles Agricultural Export Subsidy Debate

In advance of the next WTO negotiation session on agriculture, scheduled for 28-29 September, the European Union has tabled a proposal calling on WTO Members to develop stronger rules and disciplines 'to deal with all instruments affecting export competition on an equitable basis' (G/AG/NG/W/34).

Export support is the most controversial area of agricultural trade liberalisation. As the heaviest user of subsidies, the EU wants the export competition talks to include all other forms of support as well, whereas the Cairns Group and the US focus mainly on the elimination of exports subsidies. In the run-up to Seattle, developing countries called for the immediate elimination of 'all kinds of export subsidies by the developed countries.'

The EU paper argues that while the Union's export subsidies are 'transparent, fully notified to the WTO and in compliance with its WTO obligations,' export credits for agricultural and food products – used in particular by the US – 'have not been governed by any specific discipline within the Agreement on Agriculture, including transparency requirements.' The paper adds that export credits 'may have a similar effect as aggressively used export subsidies, if the total costs for financing the purchase of the exported goods are lower than would otherwise occur.' At the September meeting on implementation concerns, most Members agreed that a debate on greater disciplines on agricultural export credits should await the outcome of an OECD review currently underway (see page 7).

The EU also calls for stricter disciplines on food aid and state trading enterprises. The former, the EU argues, should be given fully in grant form and 'not be used as a market promotion tool to displace normal commercial transactions and local production.' With regard to state trading enterprises, the EU identifies cross-subsidisation, price-discrimination and price pooling as 'highly trade-distorting practices' that act as 'hidden' export subsidies. The next issue of Bridges will report on the outcome of the September negotiating session.

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October 5-6	WTO Council for Trade in Services – Special Session (negotiations) Contact: Nuch Nazeer, tel: 5393 fax: 5458
October 9-10 Rio de Janeiro	Second Global Forum on Human Development Contact: Sarah Burd-Sharps, UNDP; tel: (1-212) 906-3664, email: sarah.burd-sharps@undp.org
October 9-11	WTO Textiles Monitoring Body Contact: J.-P. Lapalme, tel: 5223, fax: 5765
October 9-20 Geneva	47 th Session of the Trade and Development Board Contact: UNCTAD Office of the Secretary of the Board, tel: (41-22) 907-5007, fax: 907-0056
October 10	WTO General Council Contact: Bernard Kuiten, tel: 739-5676, fax: 5777
October 11-12 Montreal, Canada	NAFTA/CEC Symposium on Understanding the Linkages Between Trade and the Environment. Contact: Andrew Horsman, tel: (1-514) 350-4300, fax: 350-4314, e-mail: ahorsman@ccemtl.org
October 11-12	WTO Working Group on the Relationship between Trade and Investment Contact: Nuch Nazeer, tel: 5393, fax: 5458
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October 16	WTO Council for Trade in Goods Contact: Nuch Nazeer, tel: 5393, fax: 5458
October 18-19	WTO General Council – Special Session on Implementation Issues Contact: Bernard Kuiten, tel: 739-5676, fax: 5777
October 23	WTO Dispute Settlement Body Contact: Gabrielle Marceau, tel: 5519, fax: 5788
October 24-25	WTO Committee on Trade and Environment Contact: Sabrina Shaw, tel: 5482, fax: 5620
October 27	WTO Committee on Trade and Development Contact: Chiedu Osakwe, tel: 5250, fax: 5774
November 13-24 The Hague	Sixth Conference of the Parties to the Framework Convention on Climate Change Contact: UNFCCC Secretariat, tel: (49-228) 815-1000, e-mail: secretariat@unfccc.de

PUBLICATIONS

The Governments of Colombia and the Netherlands. 2000. Establishing the Advisory Centre on WTO Law. Ministry of Economic Affairs of the Netherlands. The Hague

Rosenberg, Robin (ed.). 2000. Environmentally Sound Trade Expansion in the Americas: A Hemispheric Dialogue. North-South Center. Miami

South Centre. 2000. The United Nations Millennium Assembly: Contributions to the Debate. Prepared by the South Centre as an input to the proceedings of the Group of 77. Geneva

UNCTAD. 2000. The Clean Development Mechanism: Building International Public-Private Partnerships under the Kyoto Protocol – Technical, Financial and Institutional Issues. United Nations. Geneva

UNCTAD. 2000. Trade and Development Report 2000. United Nations. Geneva

Von Moltke, Konrad. 2000. An International Investment Regime? Issues of Sustainability. IISD. Winnipeg. Also available on-line at <http://iisd.ca/pdf/investment.pdf>

World Bank. 2000. World Development Report 2000/2001: Attacking Poverty. Oxford University Press. New York

WTO. 2000. Canada – Term of Patent Protection. Appellate Body Report. (WT/DS170/AB/R). WTO. Geneva

WTO. 2000. European Communities – Measures Affecting Asbestos and Products Containing Asbestos. Report of the Panel. (WT/D135/R and WT/D135/R/Add.1). WTO. Geneva

WTO. 2000. WTO Matrix of Trade Measures Pursuant to Selected MEAs. Note prepared by the Trade and Environment Division of the WTO Secretariat. (WT/CTE/W/160). WTO. Geneva

ON-LINE AND ELECTRONIC RESOURCES

Consumer Project on Technology. Comprehensive website with a focus on access to essential medicines and intellectual property issues. URL: <http://www.cptech.org/>

EQUINET. The Network on Equity in Health in Southern Africa. This website contains a wealth of information and research on public health issues in Southern Africa. See also references list on page 8 of this issue. URL: <http://www.equinet.org.zw/>

UNCTAD. Greenhouse Gas Emissions Trading. New UNCTAD web site on the development of an international emissions trading regime URL: <http://www.unctad.org/en/subsites/etrade/index.htm>

WTO/Monterrey Institute of Technology and Higher Studies. August through November 2000. Spanish-language Video Conference Cycle on Trade Topics. WTO staff presentations followed by question and answer sessions, broadcast throughout Latin America through the Monterrey Institute's Virtual University network. URL: <http://www.ruv.itesm.mx/programas/uve>