

Amicus Brief Storm Highlights WTO's Unease with External Transparency

WTO Members have been deeply divided over non-state actors' participation in trade disputes ever since the Appellate Body ruled in October 1998 that dispute settlement panels could consider spontaneous submissions from non-governmental groups. The ruling raised a storm of opposition, in particular – but not exclusively – from developing country Members. The controversy deepened with the Appellate Body's assertion in the British steel case, adjudicated earlier this year, that the AB itself had the discretion to accept *amicus curiae* or friend-of-the-court briefs. It reached a paroxysm after the Appellate Body issued a procedure on 8 November 2000 for submitting such briefs in Canada's appeal of a panel ruling that France's import ban on chrysotile asbestos was justified on public health grounds. The issuance of the procedure prompted Egypt and other developing countries to call for a special session of the General Council to discuss what they saw as the AB's usurpation of Members' rights (see page 4).

The decision to publish the criteria was made 'in the interest of fairness and orderly procedure in the conduct of this appeal', the Appellate Body wrote in a communication that accompanied the decision (WT/DS135/9). According to diplomatic sources, the AB decided to establish the 'additional procedure' for the submission of friend-of-the-court briefs because it had already received 13 spontaneous submissions – and expected to receive more – in a case closely watched by public interest groups. The AB may also have attempted to respond to previous criticism about not providing guidance on what 'pertinent' *amicus* briefs should contain. Civil society organisations welcomed the procedure, which they called a 'rare moment of clarity' and a recognition of the 'value of their contribution to the WTO's decision-making process'. Although critical of the procedure's tight timeframe, nearly 20 non-governmental groups used it to request the right to submit arguments in the appeal, most focusing on the asbestos panel's ruling that toxicity was not a relevant criterion for discrimination between 'like products' under GATT Article III.4 (see Bridges Year 4 No.7, page 9).

Stringent Procedural Requirements

The contested procedure set out rigorous criteria for the application of a 'leave to file' a friend-of-the-court-brief with the Appellate Body for the purposes of the asbestos appeal only. It stated that 'any person, whether natural or legal, other than a party or a third party to this dispute' had until 16 November to file a three-page request to submit an *amicus* brief. This application had to, *inter alia*, specify the 'nature of the interest' the applicant had in the appeal, identify the specific issues of law covered in the panel report that the applicant intended to address in its written brief, as well as indicate 'in what way the applicant will make a contribution to

the resolution of this dispute that is not likely to be repetitive of what has already been submitted by a party or third party.'

Those granted leave to file were to submit their briefs by 27 November. The criteria included a maximum length of 20 pages and a substantive requirement to 'set out a precise statement, strictly limited to legal arguments, supporting the applicant's legal position on the issues of law or legal interpretations in the panel report'. The AB specified that the right to file a written brief did not imply that it would address the submission's legal arguments in its report.

All Requests to File Denied

The 13 submissions received prior to the adoption of the application process were returned to senders with a letter informing them of the new procedure. And that is the Appellate Body's last word on the matter. Shaken by the outrage expressed by many Members (for whom treatment of *amicus* briefs is among the most controversial issues of external transparency), Appellate Body members and the WTO Secretariat refuse to answer further questions. According to the International Ban Asbestos Secretariat (IBAS), however, 17 organisations ultimately used the procedure to request leave to file written briefs. While ten of the groups/persons remain unidentified, IBAS affirms that all were turned down.¹

Among the rejected applications was a joint request to submit an *amicus* brief by six non-governmental groups. Its sponsors included the International Ban Asbestos Secretariat, which co-ordinates a network of asbestos victims, workers and trade unionists, environmental organisations, government agencies and medical research bodies. Other coalition members were the Ban Asbestos Network, Greenpeace International, World Wide Fund for Nature International, the Foundation for International Environmental Law and Development, and the Center for International Environmental Law.

The AB's tersely-worded response to this request, as well as to most other requests, only states that 'your application [...] has been denied for failure to comply sufficiently with all the requirements set forth in paragraph 3 of the additional procedure.' The NGO coalition issued a statement condemning the AB's 'lack of procedural fairness' in not clarifying which of the application procedure's seven requirements its request failed to satisfy. 'Obviously they have not learnt the lesson from Seattle,' said Greenpeace's Rémi Parmentier. 'Once again, the WTO has arbitrarily dismissed the input of civil society, fuelling concerns about the secretive way in which it makes decisions that impact on human lives and the environment.'

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Goods Council Makes Uncertain Progress on TRIMs Extensions

A multilateral(ish) solution to developing countries' requests for longer transition periods for compliance with the Agreement on Trade-related Investment Measures (TRIMs) may finally be in sight. Meeting on 15 November, Members discussed a proposal elaborated by the Quad (the European Union, Canada, Japan and the United States), which would give at least some countries that have requested extensions two extra years (until end-2001) to bring their trade-related investment regimes into compliance with WTO rules. Two additional years – but no more – could be granted to countries that demonstrate good faith efforts to comply and draw up a binding phase-out plan for the remaining TRIMs-inconsistent measures.

Trade sources said that the Chair of the Council on Trade in Goods held open the possibility that the 'two-plus-two' formula could be applied to all nine Members that have requested extensions¹, but the United States emphasised that the Quad group had not agreed which countries it would apply to. The EU was less explicit but nonetheless appeared reluctant to agree on a blanket approach. Japan and Canada were in favor of granting the package to all requesters.

Several major hurdles remain. For one, three of the applicants (Argentina, Colombia and Pakistan) have asked for seven years to phase out their TRIMs and consider the Quad offer of four years maximum insufficient. Furthermore, the fact that the second request would be non-renewable would curtail their rights under TRIMs Article 5.3 which places no time limits on the Goods Council's right to extend a developing country's transition period if that country 'demonstrates particular difficulties in implementing this Agreement'. The only obligation in Article 5.3 is that in considering such requests, the Council 'shall take into account the individual development, financial and trade needs of the Member in question.'

In addition, the US in particular is insisting that developing countries agree to accelerated dispute settlement proceedings before the second extension is granted. Article 25 of the Dispute Settlement Understanding provides for 'expeditious arbitration' where the issues under dispute are clearly defined, with the exact procedures to be mutually agreed between parties. This way WTO Members still not in compliance at the end of 2003, could be quickly pursued. The requesters, and a great many other Members – both developed and developing – oppose the Article 25 conditionality. The US is alone in seeking agreement on accelerated dispute settlement as a prerequisite to granting even the first extension request of certain, so far unnamed, applicants.

Bilateralism Still Alive and Well

Even if the serious wrinkles could be ironed out, the Quad proposal would not amount to a truly multilateral procedure for dealing with all extension requests. At best, it will respond to (some of) the nine specific requests currently on the table and, even then, it is far from sure that it will apply equally to all applicants.

In addition, trade officials say that the US is still applying considerable pressure in its bilateral negotiations with extension requesters, which continue parallel to the broader consultations, to get the 'multilateral' deal it wants. A case in point would be the Philippines, against whose TRIMs the US has already obtained a dispute settlement panel (see separate article on page 5).

Another item on the Good's Council agenda was dismissed in quick order: consideration of the EU-ACP waiver request for the Lomé Convention's transitional successor arrangement – which retains the Convention's unilateral trade preferences – was blocked by the same Latin American banana producers who have conditioned examination of the new agreement on the EU's complementing it with new banana import rules since the proposal was first tabled last May (Bridges Year 4, No.4, page 4).

¹ Argentina, Chile, Colombia, Malaysia, Mexico, Pakistan, the Philippines, Romania and Thailand. Most of the requests concern local content and balance of payment restrictions in the automotive sector. Colombia and Thailand seek extensions for restrictions in the food processing sector.



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Implementation Review Promises Few Substantive Gains for Developing Countries

The 14-15 December special session on implementation will put the WTO's confidence-building strategy to a serious test. At press time, Members were poles apart on a draft decision meant to wrap up the review of developing countries' problems with existing Agreements, which they have sought to have meaningfully addressed since the Seattle Ministerial preparatory process. The concerns range from ineffective implementation of 'good will' provisions favourable to developing countries to rewriting rules that they consider inequitable and unbalanced.

While the introduction to the draft decision says that the December meeting agenda will include 'consideration of further work on implementation related issues and concerns', at least the United States is reportedly strongly opposed to continuing the implementation review at the General Council level. In contrast, developing countries strongly resist shifting consideration of their concerns to the more technical Committees, which lack the political decision-making power of the General Council.

The draft decision would send practically all open questions to the Committees or to leave them to 'best effort' actions by the Members themselves.

The decision under consideration at press time would send all open questions to the Committees or to leave them to 'best effort' actions by the Members themselves. Informal meetings and consultations seem to have yielded only minor progress since General Council Chair Kåre Bryn summed up the situation in October (Bridges Year 4 No.4, page 3). Sections on textiles and antidumping, two crucial areas left out of the October summary, have been added, but no major concessions were apparent in either.

Anti-dumping

Developing countries had demanded, *inter alia*, a prohibition of repeated anti-dumping investigations on the same product within a year; making it mandatory rather than 'desirable' to impose a smaller than margin anti-dumping duty when this would suffice to remove injury to domestic industry; and a clarification on the calculation of dumping margins when no market exists for the product in the exporting country. The draft decision was exhortatory rather than binding: Members were urged to 'consider', 'explore' and 'examine with utmost care' the various demands, but not mandated to change the challenged anti-dumping practices. For instance, on repeated anti-dumping investigations, the draft provides that

Investigating authorities shall examine with the utmost care any application for the initiation of an anti-dumping investigation where an investigation of the same product from the same Member resulted in the conclusion of the investigation without the imposition of final measures within the 365 days prior to the filing of the application.

The most concrete result of the draft decision's anti-dumping provisions – if they are adopted – is likely to be the establishment of a work programme under the Committee on Anti-dumping to 'examine the practical difficulties and impediments' to imposing a duty less than the full margin. The Committee would also examine problems in the calculation of anti-dumping duties where no domestic market exists for the exported product.

Textiles

A similar trend prevails in the textiles section of the draft decision. Although the language includes the mandatory 'shall', it only obliges members to 'consider' accelerating their textiles import

liberalisation and to 'exercise all possible restraint' with regard to the use of trade remedies against developing countries' textile exports. Only the notification of changes in textiles rules of origin before their application would become mandatory. The following is fairly typical example of the draft decision's proposals

Members shall endeavour to apply the most favourable methodology when implementing the provisions of Article 2.18 of the ATC (Agreement on textiles and Clothing, ed.), and such treatment shall be extended to least-developed countries.

Article 2.18 concerns improving market access for countries whose textile products represented less than 1.2 percent of the total import restrictions in place in the importing country on 31 December 1991. Such access must be improved by advancing the importing country's liberalisation schedule (set to be complete by 2005) by one stage or 'through at least equivalent changes as may be mutually agreed with respect to a different mix of base levels, growth and flexibility provisions'.

Subsidies

Beyond the added textiles and antidumping sections, the draft decision reflects the Chair's the October summary. It would move all open issues to the Committee on Subsidies and Countervailing Measures, which should examine them 'expeditiously'. Among those questions is 'reviewing' the US\$1000 per capita annual income level under which the Agreement on Subsidies and Countervailing Measures currently authorises the poorest countries to provide export support to their industrial products. On industrialised countries export credits – the basis for which was unsuccessfully challenged by Brazil in the aircraft subsidy dispute it lost to Canada (see page 6) – the draft decision instructs the Committee to

examine expeditiously the question of a specific interest rate benchmark and any other related issues for determining when export credits provided by developing-country Members do not constitute export subsidies, and identify and examine any technical issues relating to that question.

A rare firm commitment would extend the transition period for phasing out export subsidies from eight to twelve years for countries that no longer qualify for them.

Differences May Prove Irreconcilable

The draft makes it clear that importing industrialised countries have not changed their minds from pre-Seattle days, when the same developing country demands were on the table. The US publicly vowed then that it would not accept opening up the textiles and anti-dumping Agreements under any circumstances – and that export credit benchmark negotiations belonged to the OECD. Other industrialised countries, including Canada and Japan, were also reluctant to renegotiate existing Agreements. The EU conditioned substantive changes to existing trade rules on the launch of a comprehensive new round of negotiations.

While developing countries have blasted the draft text as weak and dismissive of their concerns, the US reportedly objects to its subsidies and anti-dumping sections (Canada was having trouble with latter, as well). At the time of this writing, other developed countries were more or less prepared to go along with it, with the EU and Japan – the most ardent proponents of a new round – calling it the best that could be achieved under current circumstances.

Amicus Briefs, continued from page 1

Members' Concerns

Many Members, both developed and developing, think that the Appellate Body's various rulings on the admissibility of non-governmental briefs amount to illegal rule-making rather than legitimate interpretation of the Dispute Settlement Understanding (DSU). At the General Council session on 22 November, called to consider the legitimacy of the new filing procedure, they reiterated their view that the AB had overreached its competence, as only Members can change dispute settlement rules – and by consensus, at that. They pointed out that, according to DSU Article 17.9, the AB's working procedures, such as the contested filing guidelines, must be 'drawn up by the Appellate Body in consultation with the Chairman of the DSB and the Director-General and communicated to Members for their information.'

In fact, the Appellate Body's communication made it clear that it had *not* adopted the guidelines as a permanent new working procedure under DSU Article 17.9, but as a case-specific 'additional procedure' pursuant to Rule 16(1) of the Working Procedures for Appellate Review, which provides as follows: 'In the interests of fairness and orderly procedure in the conduct of an appeal, *where a procedural question arises that is not covered by these Rules, a division may adopt an appropriate procedure for the purposes of that appeal only*, provided that it is not inconsistent with the DSU, the other covered agreements and these Rules (editor's italics).'

The AB's requirement that any potential brief be 'strictly limited to legal arguments, supporting the applicant's legal position on the issues of law or legal interpretations in the panel report', failed to convince critics that acceptance of *amicus* briefs was not a violation of DSU Article 17.6, which requires appeals to be limited to 'issues of law or legal interpretations developed by the panel'.

Beyond procedural rights and wrongs, Members re-aired their long-standing systemic concerns with regard to *amicus* briefs. The most serious of those have to do with Members' rights and the government-to-government nature of the WTO. Only parties and third parties can make submissions to dispute settlement panels. To become a third party, a country must, at the outset of dispute settlement proceedings, demonstrate that it has a substantive trade interest in the dispute, and no Member can join a dispute at the appeal stage as a third party. Thus, the right of 'any natural or legal person' to file a brief with the Appellate Body confers 'outsiders' more access to WTO justice than to Member governments that are not directly involved in the dispute.

Even Canada, usually open to greater external transparency of the WTO, said Members, not the dispute settlement system, should decide on how *amicus* briefs would be considered in the future. 'Members must ensure that the government-to-government nature of the dispute settlement process is not weakened or compromised by the procedural initiatives of panels or the Appellate Body,' Canada's Ambassador Sergio Marchi said. Ambassador Pérez del Castillo of Uruguay called the AB initiative 'a change in the balance of functions' of each body involved in the WTO.

Among the more than forty WTO Members who took the floor at the General Council meeting, India blasted the decision to issue the procedure as a dismissal of the 'overwhelming sentiment of Members against acceptance of unsolicited *amicus curiae* briefs'. It further criticised the Appellate Body for posting the procedure on the WTO website as a virtual invitation to 'hundreds of NGOs' to file briefs.

Only the US whole-heartedly backed the Appellate Body's decision. Ambassador Rita Hayes said that the AB 'did the only thing it could do' given the number of persons that either had already filed or had expressed their intent to file friend-of-the-court briefs. According to Ms Hayes, the AB did not create a new issue related to potential *amicus* submissions; it 'merely managed a situation that already existed in the specific context of the asbestos dispute'. New Zealand and Switzerland were the only other Members to express cautious support for the AB's initiative.

In practice, only one independently submitted non-governmental brief (from the Concerned Fishermen and Processors of South Australia in the Australian salmon case) has been taken into consideration by a dispute settlement panel (Bridges Year 4 No.2, page 7). Another friend-of-the-court brief was accepted, but not taken into account, in an anti-dumping dispute over bed linen won by India against the EU. *Amicus* briefs filed as part of government submissions were considered by panels in the EU-US dispute over US copyright law and the asbestos case. Independently submitted briefs in the British steel appeal (filed by industry associations) and the asbestos dispute we turned down. In none of the cases did the panels go into any detail on why they accepted or rejected unsolicited submissions.

Golden Opportunity for Rule-making Missed

In an ironic turn of events, some of the Members who most vehemently blame the Appellate Body for making decisions that should only be made by Members were also among those most determined to terminate the 1999 review of the WTO's dispute settlement rules with no changes.

The Dispute Settlement Understanding (DSU) review was a perfect opportunity for Members to clarify procedural rules, including the treatment of *amicus* briefs. At that time, controversy had already risen over the 1998 ruling that panels could decide whether or not to accept unsolicited information from non-governmental sources.² The issue was widely debated with the United States and, to a lesser extent, the EU arguing for an explicit provision on the right to submit *amicus* briefs. In contrast, most developing countries, led by India and Pakistan, were seeking a clarification clearly stating that only government submissions could be considered in dispute settlement proceedings. By letting the review fizzle out with no conclusions, Members left panels and the AB to their own devices in interpreting DSU provisions.

It is now up to General Council Chair Kåre Bryn to try to forge a consensus on what is acceptable with regard to *amicus* briefs, including whether they should be accepted at all. He has also forwarded a stern note to the Appellate Body, urging it to exercise 'extreme caution' on the issue.

ENDNOTES

¹ Applications from at least the following were rejected: the American Public Health Association, the Society of Occupational and Environmental Health, the Occupational and Environmental Diseases Association, the International Confederation of Free Trade Unions/the European Trade Union Confederation, Professor Rob Howse from the University of Michigan Law School at Ann Arbor, the Australian Centre for Environmental Law, and a coalition of advocacy groups including IBAS.

² 'A panel has the discretionary authority to either accept and consider or to reject information and advice submitted to it, whether requested by a panel or not.' *United States – Import Prohibition of Certain Shrimp and Shrimp Products*. AB Report.

Dispute Settlement Corner

EU Requests Swordfish Panel against Chile

The European Union has made good of its threat to challenge Chile's denial of port access for vessels carrying swordfish caught in high seas off the Chilean coast. The restriction is based on Article 165 of Chile's Fisheries Law, which Chilean authorities say aims to preserve swordfish stocks seriously depleted due to overfishing. In its 17 November dispute settlement panel request (WT/DS193/2), the EU alleges that under the Fisheries Law, EU ships cannot 'unload their swordfish in Chilean ports either to land them for warehousing or to tranship them onto other vessels. Consequently, Chile makes transit through its ports impossible for swordfish. This prohibition also renders impossible the importation of the affected catches into Chile.' The port access restriction is inconsistent with GATT Articles V.1-3, which provides for free transit of goods along Members' territories, as well as Article XI.1, which prohibits the establishment of quantitative import restrictions, the EU argues.

The EU also claims that Chile has not produced conclusive data on the status of swordfish species in the Southeast Pacific Ocean, and has introduced the port access prohibition to protect its own fishing industry from European and Japanese competition.

While the EU claims that Chile is unlawfully attempting to regulate fishing practices in high seas, Chile has taken the dispute to an arbitral tribunal under the Law of the Sea Convention. The potential for conflict between the trade and environment regimes is exacerbated by the fact that at least two international environmental treaties do provide for extraterritorial conservation action. Article 32(3) of the UN Agreement on the Conservation and Management of Straddling and Highly Migratory Fish Stocks provides Parties with the right to prohibit landings if the catch is found to be taken in manner that undermines the effectiveness of multilateral conservation and management measures in high seas. The problem is that the treaty is not yet in force and Chile has not ratified it. In addition, the Galapagos Agreement signed by Chile, Colombia, Ecuador and Peru in April 2000 provides for the enactment of conservation measures in high seas.

In a press release defending its WTO proceedings, the European Commission wrote that the most effective way to tackle global environmental issues was through multilateral a negotiated agreement, which should 'from the beginning be open to all countries concerned so that any trade measures it may contain can be negotiated and agreed by consensus: this is the best way to guarantee against discriminatory action and the use of trade measures for protectionist purposes.'

The EU has proposed to revive co-operative technical and scientific research on South Pacific swordfish stocks with a view to the establishment of a multilateral swordfish management organisation in the region. The Union complains that Chile broke off such meetings in 1998 and instead concluded the Galapagos Agreement with no EU say in the negotiations. European officials estimate that it would take from 18 months to two years to set up the multilateral management organisation. Chile's response to the proposal was not known at press time, nor was it clear whether the EU would renew its panel request at the DSB's last meeting of the year on 12 December. For more information on the dispute, see Bridges Year 4 No.6 page 11.

The Philippines May Yet Head off TRIMs Panel

The United States obtained the establishment of a dispute settlement panel against the Philippines' investment restrictions on 17 November, but agreed to hold off the appointment of the three panelists while bilateral consultations continue between the parties.

At issue are local content and import-export balance requirements in the automotive sector that the US claims are inconsistent with the Agreement on Trade-related Investment Measures (TRIMs), which entered into force for developing countries on 1 January 2000.

In October 1999, the Philippines applied for a five-year extension of the transition period for measures under its Motor Vehicle Development Programme, arguing that manufacturers needed the extra time to recover from the Asian financial crisis. It referred to TRIMs Article 5.3, which provides that the Council for Trade in Goods 'may', on request, extend the transition period for the elimination a developing country's TRIMs-inconsistent measures if that country 'demonstrates particular difficulties in implementing this Agreement'. Eight other WTO Members have also applied for extensions ranging from a few months to seven years. Case-by-case consultations on these requests have been under way between Members since the beginning of the year, but none have yet concluded (see related article on page 2).

On 8 May 2000, the General Council adopted a decision that urged Members to 'give positive consideration to individual requests' and to take into account the 'development, financial and trade needs of the country in question', as well as directed the Chair of Council on Trade in Goods to 'pursue informal consultations with interested delegations in order to facilitate the process and to reinforce the multilateral character of the exercise and its rapid conclusion'.

Rather than pressure for a multilateral solution, the US cited significant progress in bilateral negotiations as the reason for postponing the appointment of panel members (the Philippines has offered to shorten the extension request to three years and to draw up a phase-out plan). Developing countries have been extremely critical of TRIMs-related dispute settlement proceedings while Members are still seeking a multilateral solution with regard to transition period extensions. The Philippines, in particular, has argued that a panel on its investment restrictions could only be established if the General Council formally revoked the 8 May decision. In a communication to the DSB opposing the establishment of the panel, the Philippines argued that bilateral consultations, instead of considering the merits of the extension request, had been 'confined to the conditions the United States seeks to impose in exchange of its consent to the Philippine request.'

The 17 November DSB meeting also agreed to the European Union's second request for a panel against similar restrictions in the vehicle sector maintained by India. India never notified the measures to the WTO and has not applied for a transition period extension. In practice, the EU's case will be adjudicated by the panel established on 27 July on the request of the US on the same complaint.

Dispute Settlement Corner

Brazil Questions Fairness of EU GSP Scheme

Brazil has requested consultations with the EU with regard to market access for soluble coffee under the latter's Generalised System of Preferences (GSP). Preferential treatment for Brazil's soluble coffee exports was eliminated on 1 January 1999 under a 'graduation' mechanism, which Brazil says 'progressively and selectively reduces or eliminates preferences to specific products and/or beneficiary countries under the GSP scheme'. At the same time, Andean and Central American Common Market countries which conduct campaigns to combat illegal drugs continue to benefit from duty-free access to EU markets under the GSP scheme. Brazil alleges that these two measures adversely affect its soluble coffee exports to the EU and are inconsistent with the provisions of the Enabling Clause and the most-favoured-nation obligation under GATT Article I.

Developing countries have long pushed for binding market access conditions under developed countries' General Systems of Preferences, which often come with conditionalities, and can be withdrawn as unilaterally as they are granted. The Brazilian challenge also shines a light on the competitiveness concerns and other difficulties inherent in preferential market access schemes, such as the Economic Partnership Agreement between the EU and its former colonies in Africa, the Caribbean and the Pacific (ACP countries), whose GATT Article I waiver request is currently stalled at the WTO Goods Council pending a clarification market access conditions of bananas from ACP countries (see page 2). The European Commission's recent proposal to grant duty-free access to 'everything but arms' from all least-developed countries could entail consequences similar to those raised by Brazil in the soluble coffee case.

In its consultation request, Brazil refers to the 28 November 1979 GATT decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries – also known as the Enabling Clause – which contains some rules on the application of non-reciprocal and more favourable treatment of developing countries. Among these are that such treatment be 'designed to facilitate and promote the trade of developing countries and not to raise barriers to or create undue difficulties for the trade of any other contracting parties.'

The Enabling Clause also refers to a 1971 decision by Contracting Parties to waive the most-favoured-nation obligation for 'generalised, non-discriminatory and non-reciprocal preferential tariff treatment in the markets of developed countries for products originating in developing countries'. The consultation request does not specify which provisions of the Enabling Clause Brazil considers the EU's tariff preferences to violate, but it is likely that the challenge will revolve around the requirement that preferences do not 'raise barriers or create undue difficulties for the trade of any other contracting parties', as well as the 'generalised and non-discriminatory' nature of GSP tariff preferences mentioned in the June 1971 decision.

Observers consider the case relatively weak, however, as GSP preferences are entirely voluntary and attempts to establish binding disciplines for their implementation have failed despite many years of efforts under the auspices of UNCTAD.

FCS Replacement Regime Challenged

The European Union on 28 November requested WTO authorisation to impose trade sanctions worth more than US\$4 billion on a broad range of US exports, and the United States asked for arbitration of the amount. The EU sought the authorisation in connection with what it claims is continued US non-compliance with the trade body's ruling that the US foreign sales corporation (FSC) tax regime amounted to an illegal export subsidy.

The timing of the sanctions/arbitration requests was procedural rather than substantive as the EU has agreed to postpone the start of the trade retaliation until a compliance panel has ruled on whether the just-adopted FSC replacement regime complies with the Agreement on Subsidies and Countervailing Measures. However, the EU's trade counselor at the European Commission office in Washington, Bertus van Barlingen, said on 1 December that the Union would start imposing sanctions even before the compliance ruling if the US went ahead with its threat to publish 'carousel' sanctions lists in the beef and banana disputes.

According to the EU, the new regime 'continues to provide a significant illegal export subsidy to more than half of total US exports to the detriment of European companies. Furthermore, the legislation maintains in place the FSC regime at least until the year 2002, despite the WTO ruling and implementation deadlines.' Originally, the US had until 1 October 2000 to implement the Appellate Body ruling. The parties to the dispute later agreed to extend this deadline by a month, and the FSC replacement scheme was finally signed into law on 17 November. The compliance panel is expected to rule around late February 2001 and both sides can appeal the ruling, which could add another 60 days to the procedure.

If the final verdict is unfavourable to the US, WTO arbitrators will determine the level of the EU sanctions. So far, Members' estimates of damage have always been significantly lowered by arbitration panels. However, even if the amount sought by the EU was halved or more, the resulting sanctions would still dwarf all existing retaliation rights, none of which exceed US\$250 million.

Canada to Request Authority to Retaliate against Brazil

Canada was to ask the Dispute Settlement Body to authorise trade sanctions against Brazil on 12 December, after the latest attempt to settle the aircraft subsidy dispute failed in late November (Bridges Year 4 No. 7, page 5). Canada claims that Brazil's readjusted PROEX financing programme still amounts to an illegal export subsidy to aircraft maker Embraer. Brazil says that its proposal to apply market interest rates – equivalent to about seven percent – to Embraer loans, and its offer of trade compensation for losses suffered by rival Canadian aircraft manufacturer Bombardier under the previous PROEX program, meet the WTO ruling. 'If Canada applies for permission to sanction Brazil we are going to show that we are meeting our obligations with the WTO,' Brazil's chief trade negotiator Graca Lima said. WTO arbitrators have set the amount of damage suffered by Canada at US\$231.4 million a year for five years, but so far Canada has not formally requested the authority to start retaliation, nor has it decided when trade sanctions would go into effect.

Agriculture Negotiators Debate Non-trade Concerns but Main Differences Remain

WTO Members devoted nearly six hours of debate to non-trade concerns at the November special session on agricultural negotiations. The discussion was based on a lengthy paper submitted by the European Union, its European allies and a number of African, Caribbean and Pacific nations, which participated in a Conference on Non-trade Concerns in Agriculture held in early July 2000 in Ullensvang, Norway. The paper (G/AG/NG/W/36/Rev.1) includes essays on different aspects of non-trade concerns, presented by the meeting's sponsors, i.e. the European Commission, Japan, Mauritius, Norway, the Republic of Korea and Switzerland.¹

The more 50 delegations that took the floor on this issue agreed that all WTO Members had legitimate non-trade concerns (NTCs), which should be taken into account during the agricultural negotiations. These concerns vary from food security, rural development and poverty alleviation to environmental protection and other socio-economic objectives. That is where the consensus stops, however.

Where the multifunctionality advocates (the EU, Korea, Japan, Norway, Switzerland and economies in transition) see the need to broaden the scope of the green box² to exempt a wider range of all WTO Members' support measures from reduction obligations, major agricultural exporters continue to stress that, at least in industrialised countries, environmental and social objectives can and must be met through other means than subsidies. At the November special session, Australia made a ringing statement, rolled out on well-oiled Cairns Group wheels: 'To promote the non-trade concerns of *one* Member through trade-distorting measures is to ensure that other Members are denied the opportunity to promote *their* non-trade and trade concerns. Given that most of the leading countries promoting the importance of non-trade concerns are rich, exporting such a burden to poorer countries violates a basic concept of fairness and is alien to the goals of the multilateral trading system. It is a classic case of "beggar thy neighbour".' The Australian delegate invited Members to 'start discussing the specific policy instruments that they propose to use'.

Many developing countries would like to tighten rather than extend the criteria for industrialised countries' green box subsidies, and eliminate the blue box category of reduction exempt support altogether (see ASEAN below, for instance). At the same time, they seek greater latitude to subsidise their own non-trade concerns, including improving food security and production capacity, enhancing employment for the rural poor, and regulating against subsidised cheap imports (Bridges Year 4 No.5, page 1).

At the November meeting, the Caribbean Community welcomed the discussion paper's contribution to an 'understanding of the diverse non-trade concerns maintained by all Members and particularly so for developing and least-developed countries.' It said that issues raised in Mauritius' submission on developing countries' NTCs accurately reflected 'the importance of NTCs such as food security, the particular concerns of countries and regions transitioning from preferential trading arrangements, rural development in all its dimensions and ecological and environmental diversity.'

In response to Korea's and Japan's paper on food security, several developing countries argued that rich net food-importing countries did not need subsidies to 'keep a certain level of domestic production' as they had trade surpluses and foreign exchange reserves to pay for imported food.

A briefer discussion ensued on a paper by Mercosur countries, Bolivia, Chile and Costa Rica on the effects of export subsidies on net food importing developing countries (G/AG/NG/W/38). The paper argues that export subsidies increase dependency, cause balance-of-payments and debt problems, and hinder the development of domestic agriculture. Most Cairns Group members, Colombia, the US, Namibia, India and Mexico agreed with this view while Indonesia had reservations. The EU and Switzerland said the paper's conclusions were too simplistic.

Special and Differential Treatment

Despite consensus on the validity of non-trade concerns in agriculture, Members are no closer to agreeing on how those concerns should be addressed.

The Association of South East Asian Nations (ASEAN) submitted a negotiating proposal on Special and Differential Treatment for Developing Countries in Agricultural Trade (G/AG/NG/W/55), which asserted that longer implementation timeframes for liberalisation were not sufficient to provide effective special and differential treatment (S&D). 'The nature, depth and substance of the commitments must also be different,' ASEAN members said. For example,

developed countries should 'immediately eliminate all forms of export subsidies' while developing countries 'must be able to continue using existing flexibility with respect to export subsidies'. The proposal met with enthusiastic support from India and a number of other developing countries, but Switzerland warned against raising expectations, which could not be fulfilled. Some developing countries responded that Switzerland appeared to reject the principle of S&D.

To redress the imbalance in exempt domestic support between developed and developing countries, ASEAN suggested that developed countries commit to a 'substantial down payment of aggregate and specific support' with subsequent support reduction until total elimination, including measures currently exempted in the 'blue box'. ASEAN also called for the redefinition of criteria for 'green box' measures to ensure that such support is at the most minimally trade-distorting, as well as more responsive to the food security needs of developing countries. Special and differential treatment would also require exempting from reduction commitments developing countries' investment and input subsidies and measures intended to promote agricultural diversification. And finally, the Agreement resulting from the present negotiations should make an 'appropriate differentiation' between industrialised countries' measures which result in over-production and measures 'designed to face the challenges of food security of developing countries'. Several developed countries expressed concerns that the proposal contained no time limits and other disciplines on the exemptions.

ASEAN also called for asymmetrical tariff reductions for developed and developing countries, as well as particular attention to liberalising trade in tropical products. In addition, noting the 'recent tendency' of industrialised countries to 'impose conditionalities' in their Generalised Systems of Preferences (GSP), ASEAN proposed that 'GSP principles already encapsulated in the Enabling Clause should be elaborated and maintained in the framework of the [Agriculture] Agreement, with an explicit commitment by developed countries to conform to the principles of non-discrimination and non-reciprocity' (see related article on page 6).

Continued on page 8

Agriculture, continued from page 7

Market Access

The Cairns Group market access proposal (G/AG/NG/W/54; not sponsored by Canada or Fiji) called for a ‘down payment’ consisting of steep reductions in tariffs and substantial expansion of tariff quota volumes in the first year of implementation of the new Agreement. To address developing countries’ market access concerns, Cairns members proposed special and differential treatment provisions, such as faster and steeper tariff cuts for all agricultural goods produced in developing countries, more favourable administration of tariff rate quotas and the maintenance of the special safeguard clause for developing countries to ‘assist with domestic and international agricultural reform efforts and in countering subsidised competition’. Turkey, Ecuador, the US and Pakistan broadly supported the proposal. India supported the main arguments but wanted the S&D proposals to distinguish more clearly between small-scale subsistence agriculture and large commercial farming. Morocco, Mauritius, Hungary, Japan, Switzerland, Norway and the EU found the proposal too aggressive. Fiji and Caribbean countries said they needed tariff preferences in order to survive and therefore had problems with deep cuts.

Countries with economies in transition put forward proposals on domestic support (G/AG/NG/W/56) and market access (G/AG/NG/W/57). Both papers plead for more flexibility in allowable support and tariff levels due to the difficulties these countries are facing. The proposals were generally sympathetically received, although some expressed concern about perpetuating protectionism.

The US tabled a technical proposal on tariff quota reform, which contained a provision for automatic triggers to cut in-quota tariffs if quotas were not filled (G/AG/NG/W/58). Many members opposed the idea of automatic triggers, but agreed on the need for clearer rules on tariff quota administration.

EU Adopts Common Negotiating Stand

In related news, EU agriculture ministers approved on 21 November a ‘no surprises’ negotiating position for the WTO agriculture talks. The 26-point comprehensive proposal reiterates the main elements of earlier EU submissions, including willingness to negotiate domestic support reductions provided that the green and blue boxes are maintained, together with the rules that apply to them; conditioning export subsidy reductions on negotiations on other forms of export support (including export credits, state trading enterprises and food aid); and approaching market access negotiations through the Uruguay Round formula of tariff reductions.

In addition, the EU will fight for the maintenance of the special safeguard clause and the peace clause (the latter is set to expire at the end of 2003, and some countries have called for the termination of the special safeguard clause for developed countries).

Animal Welfare and Other Controversial Issues

A lengthy section on ‘non-trade concerns’ defends the EU’s concept of the ‘multifunctional’ character of agriculture, which includes ‘its contribution to sustainable development, the protection of the environment, the sustained vitality of rural areas and poverty alleviation.’ Both developed and developing countries should be allowed to maintain support to these ends in the green box, which is exempt of reduction requirements.

The ministers confirmed their support for animal welfare, the only non-trade concern the EU has so far addressed in detail (G/AG/NG/W/19). At the September special session, only the EU’s closest multifunctionality allies expressed support, while Cairns Group members and developing countries were particularly critical of the EU’s claim that WTO Members should be allowed to address ‘this legitimate concern’ through the exemption of ‘compensation of additional costs to meet animal welfare standards from reduction commitments where it can clearly be shown that these costs stem directly from the adoption of higher standards and thus are not, or at most minimally, trade distorting’ (Bridges Year 4 No.8, page 2).

Another controversial – although more widely shared – position concerns ‘fair competition opportunities for those products whose quality and reputation are linked to their geographical origin and traditional know-how’. This proposal was made independently in

European countries and the Cairns Group are heading for a clash on industrialised countries’ right to use the special safeguard clause.

an earlier paper on food quality (G/AG/NG/W/18), and includes various provisions to strengthen actions to ‘guarantee effective protection against usurpation of names of agricultural products and food-stuffs’. (Parallel to its effort to bring the geographical origins to the agriculture negotiations, the EU is leading the push in the TRIPs Council to extend geographical indication protection to other products than wine and spirits, see page 9. Such protection would, for instance, mean that Edam cheese could only be made in the Netherlands under

that name.) The General Council was expected to examine the geographical indications issue at its meeting on 7-8 December.

The EU will also continue to argue for acceptance of the precautionary principle to ensure food safety. Acknowledging other WTO Members’ concerns about the principle’s potentially protectionist implementation, the EU proposes that Members clarify its application.

Special and Differential Treatment

In the section on S&D, the EU suggests that industrialised countries and the wealthiest developing countries provide ‘significant trade preferences to developing and least-developed countries’, but adds in a footnote that the EU Council of Ministers is still debating the provision that the Union is ‘pledged to provide duty-free access to essentially all products from least-developed countries, including agricultural products’.

Other S&D measures include green box protection for developing countries’ domestic support measures that promote the ‘sustainable vitality of rural areas’ and address food security concerns ‘as a means of poverty alleviation’. The *de minimis* clause for domestic support should be ‘revisited’ and industrialised countries’ food aid should be delivered fully in grant form.

¹ The contributions included: Specific characteristics of agriculture and the need to treat agriculture separately within the WTO (Switzerland); Agriculture’s contribution to rural development (EC); Food security and the role of domestic agricultural production (Japan and Korea); Agriculture’s contribution to environmentally and culturally related non-trade concerns (EC); Developing countries and non-trade concerns (Mauritius); and The need for flexibility in national policy design to address non-trade concerns (Norway).

² Green and blue box subsidies are exempt from support reduction commitments. The ‘green box’ covers support that is non-trade distorting or only minimally distorting. Measures under the ‘blue box’ are acknowledged to distort trade, but are allowed because they are aimed at limiting rather than enhancing production.

TRIPs Council

Brazil continued its push to harmonise the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) with those of the Convention on Biological Diversity at the TRIPs Council meeting held from 27 November to 1 December. Its paper (IP/C/W/228) proposed specific amendments to Article 27.3(b) which would allow Members to set conditions on patentability, including encouraging Members to

- disclose the source of genetic material;
- disclose relevant traditional knowledge used to obtain the material;
- show evidence of fair and equitable benefit sharing; and
- show evidence that the patent applicant received consent from the government/local communities where the material was obtained.

Brazil's paper also addressed technical questions relating to patent protection under 27.3 (b); *sui generis* protection of plant varieties; ethical issues relating to patentability of life forms; conservation and sustainable use of genetic material; and concepts of traditional knowledge and farmers' rights (see related article on page 11).

Similar efforts were made at the last Council meeting by India and the African Group, and Members' reactions to them remain largely unchanged (Bridges Year 4, No.7, page 10). For instance, Singapore said that TRIPs should not be used to force common rules on Members. While it recognised the need for benefit sharing and proof of a genuine inventive step in the patent system, Singapore stressed that was only fair to reward research and development with patent protection. Other Members, including the US and Japan, have repeatedly said that there is no conflict between the CBD and TRIPs, and no amendments are necessary. While views differ over the CBD-TRIPs relationship, the discussion will continue under the 27.3 (b) review.

There is no consensus, however, on the long-standing request of the CBD Secretariat for *ad hoc* observer status with the TRIPs Council, still firmly resisted by the US. The General Council was to address the issue of observer status for inter-governmental organisations at its regular session on 7-8 December.

The European Union for the first time at the TRIPs Council clearly came out in favour of extending the protection level for geographical indications, thereby supporting Switzerland, Central European countries, India, Sri Lanka, Turkey and others (the EU has also submitted a paper on the issue to the agricultural negotiations and Bulgaria has threatened to curb the scope of those talks unless Members agree to start negotiations on wider geographical indications coverage). The US and New Zealand, which together with Australia strongly oppose bringing more goods under TRIPs geographical indications protection, suggested that Article 23 should be scrapped rather than its coverage extended.

On the review of the implementation of the TRIPs Agreement under Article 71.1, both India and Australia submitted papers. India proposed that the review focus on the question of whether the objectives of TRIPs had been met, while Australia wanted the focus to be on implementation issues. Australia repeatedly took the line that most problems encountered under TRIPs had to do with implementation, i.e. countries' compliance with TRIPs rules. The Council called on Members to submit further proposals on how the review should be handled until the end of February 2001.

The next Council meeting is tentatively fixed for the week of 2 April.

The General Council's Crowded Agenda for Last Regular Meeting

At its regular session, on 7-8 December, the General Council was to address several delicate institutional issues. For one, it was to review progress on 'internal transparency' (i.e. the WTO's decision-making processes), as well as possibly take up 'external transparency' issues or the WTO's response to growing demand for more avenues for civil society input to its work. The session was also to hear from GC Chair Kåre Bryn the results of his consultations regarding the efforts of some countries to bring geographical indications, which is an intellectual property protection issue, to the ongoing negotiations on agriculture. The EU and a number of countries had submitted a proposal to have the TRIPs Council regularly report to the General Council on geographical indications negotiations (WT/GC/W/425).

On internal transparency, the Director-General stressed in a document posted on the WTO website that at the October special session on implementation concerns, 'a large number of delegations

representing Members from all regions and all levels development expressed satisfaction with the way in which the consultative processes were being carried out'. In the corridors, however, many developing countries continue to complain of systematic railroading of their concerns.

Among other systemic issues, Members were to review procedures for the appointment of the Director-General. A prolonged stalemate a year ago led to the decision to split the statutory four-year term between the current Director-General Mike Moore and Thailand's Deputy Prime Minister Supachai Panitchpakdi, who will take over in 2002.

'Civil society's direct participation in the WTO would 'risk politicising the operations of the organisation due to sectoral and electoral interests.'

Hong Kong's submission on external transparency

External transparency was not on the official agenda, but might well surface under 'other business' in the aftermath of the *amicus* brief debate and the Secretariat's role in distributing the controversial Appellate Body procedure (see page 1). In addition, at least Norway and Hong Kong had tabled papers on external transparency (WT/GC/W/419 and WT/GC/W/418, respectively). Hong Kong is largely satisfied with current practices and considers that, before debating individual proposals, Members should agree on questions of principle. Norway focuses on its national-level consultative processes, and proposes more regular WTO seminars involving civil society, as well as the derestriction of WTO bodies' minutes after three months instead of the current six. Neither country's proposals touch on the question of *amicus* briefs (see also Bridges Year 4 No.8, page 7).

Canada, Colombia, Costa Rica, Ecuador, Japan, Korea, New Zealand, Norway, Peru, Switzerland and Venezuela had again put on the agenda their proposal for an amendment of the Dispute Settlement Understanding that would require Members to wait until compliance and arbitration procedures are complete before imposing trade sanctions (WT/GC/W/410). The United States and the EU refused to endorse the document at the General Council's October session (Bridges Year 4 No.8, page 6).

Members were also to consider and, perhaps, decide where and when to hold the WTO's next Ministerial Conference. The WTO's highest level decision-making body should usually meet every two years, which would put the fourth Ministerial at the end of 2001. Chile and Qatar have conditionally offered to host the event, while efforts to convince South Africa to organise it appear to have come to naught.

African Ministers Call for a WTO Focus on Development

African trade ministers met on 13-15 November in Libreville, Gabon, to consider ways to improve Africa's participation in the World Trade Organisation. The meeting was organised by the Gabonese government in collaboration with the WTO Secretariat.

Hailed by WTO Director-General Mike Moore as a major confirmation of African countries' commitment to the multilateral trading system, and denigrated by critics as a PR exercise aimed at securing Africa's consent to a new round of comprehensive trade negotiations, the meeting consisted of 24 'educational' workshops and much political diplomacy to come up with a final communiqué reflecting the diverse continent's views of future developments at the WTO.

A draft declaration submitted to the Ministers proposed, *inter alia*, that they: 'underline [their] firm determination to strive jointly to accelerate the trade liberalisation process in Africa and, with that objective in mind, to support the launching of a new round of trade negotiations with the adhesion of all countries, which will also help clarify and improve the existing Agreements.'

In spite of the promise of improving existing Agreements and some high-level persuasion, ministers did not adopt this call for a new round. Instead, they referred to the African position developed at earlier trade meetings, which identifies development issues as the key challenge to be addressed by the multilateral trading system and noted that any 'future multilateral negotiations must, therefore, be suitably prepared and take into account the development dimension' (see box).

Although African trade ministers called for a co-ordinated approach to WTO negotiations, it will not be easy for Africa to enter multilateral trade negotiations as a block, because key countries have divergent priorities: Egypt, for instance, staunchly opposes the launch of a broad-based new round while South Africa is interested in adding industrial tariff negotiations to the current mix of agriculture and services.

Ministers welcomed the Cotonou Agreement between the European Union and almost 80 African, Caribbean and Pacific (ACP) countries, which formally replaced the Lomé Convention last July, as well as the US African Growth and Opportunity Act signed into law in May. The Cotonou Agreement provides duty-free access to practically all ACP products until 2008 when it is set to be replaced by a series of 'economic partnership agreements' based on the principle of reciprocal, rather than unilateral trade concessions.¹ The US Act offers trade preferences to Sub-Saharan African countries, but African civil society groups are urging their governments not to seek 'eligible status' because of the conditionalities it contains (Bridges Year 4 No.8, page 11). Ministers urged that 'all opportunities be explored to ensure that all African countries and all products benefit from the Act.'

The final communiqué calls for 'immediate implementation of G-7 measures to cancel part of the debt of all African countries', as well as more trade-related technical and financial assistance.

¹ The Cotonou Agreement needs a waiver from the GATT most-favoured-nation obligation. So far, Latin American banana producers have blocked consideration of the waiver at the WTO's Goods Council, thus making the Agreement's trade preferences technically GATT-illegal (see page 2).

NAFTA Dispute Influenced by WTO Amicus Brief Debate

Not only are *amicus* briefs a hot topic at the WTO, they are also dividing the member governments of the North American Free Trade Agreement (NAFTA). In fact, sources say that Canada's support for public interest groups' participation in NAFTA investment (Chapter 11) disputes was directly linked to the WTO debate on *amicus* briefs.

Two non-governmental organisations have filed requests to submit friend-of-court briefs to the UN Centre for International Trade Law (UNCITRAL), which is hearing a case involving US environmental regulations, brought by the Canadian-based Methanex Corporation (see Bridges Year 4 No.7, page 11 for further details).

In response to the *amicus* brief requests, UNCITRAL invited NAFTA governments and Methanex to present written arguments on whether non-governmental groups could intervene in investor-state disputes. Their responses are now known: Canada backed the right of Winnipeg-based International Institute for Sustainable Development (IISD) to be heard, while the US supported the applications of both IISD and EarthJustice, the other NGO (headquartered in the US) petitioning for a right to file.

Sources close to the case say that the Canada decided to support the IISD request because its position in the WTO's asbestos *amicus* brief debate (see page 4) left it vulnerable to criticism after the US came out in favour of the two friend-of-court filings in the NAFTA dispute. The Mexican government and Methanex opposed both requests. As the arbiter of the dispute, the UN court is in a position to make a historic precedent for public participation in cases where investors' rights clash with authorities' right to set health or environmental standards. Should it refuse, no NGO is ever likely to participate in Chapter 11 disputes, predicts Howard Mann, a lawyer associated with the IISD petition. UNCITRAL's final ruling is expected within the next few weeks.

We, the African Trade Ministers

Reaffirm the African position, as already defined at the Algiers and Cairo meetings, which identifies development issues as the key challenge to be addressed by the multilateral trading system. Future multilateral negotiations must, therefore, be suitably prepared and take into account the development dimension, on an urgent basis, and include the following:

- structural adjustments requiring developed economies to reduce a range of protection and support measures to inefficient industries;
- a balanced and broad agenda accommodating the concerns and interests of all African countries;
- addressing the implementation issues, in particular the commitments in favour of developing countries;
- addressing imbalances arising from the Uruguay Round Agreements; and
- taking into account the trade and finance needs of developing countries.

The Andean Community's New Industrial Property Regime: Creating Synergies between the CBD and Intellectual Property Rights

By Manuel Ruiz

What are the impacts of intellectual property rights and, particularly, of patents on inventions and plant breeders' rights, on efforts to conserve and sustainably use biological diversity?

This question has been the subject of intense debate and speculation in many national and international fora ever since the Convention on Biological Diversity (CBD) incorporated in its text explicit references to intellectual property rights (Article 16) and recognised that these could affect its effective implementation. If we add to this the rules on patenting life forms of the WTO's Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs Article 27.3(b)) the controversy deepens on issues such as access to genetic resources, equitable sharing of benefits arising from the use of these resources, technology transfer, and the protection of indigenous communities' knowledge, innovations and practices.

There are, however, practically no precedents of intellectual property regimes that draw an explicit and direct link between these rights and biological diversity, integrating the concepts of 'genetic resources' 'traditional indigenous knowledge' and 'biological heritage'.

The Context of Decision 486

It is legitimate to question intellectual property systems per se, as well as their impacts on developing countries' potential scientific and technical development and, in particular, a range of ethical concerns arising from patenting life forms. The concept of 'bio-piracy' well reflects the underlying tensions in international negotiations on these issues.

Decision 486 of the Andean Community¹ on a Common Industrial Property Regime², adopted on 14 September 2000, contains a number of extremely interesting elements that allow us to envisage a future where 'megadiverse' countries that traditionally provide biological material – consequently used in inventions and protected by patents – could share the benefits arising from access to and the use of this material. It also offers a possibility for these countries to exercise greater control on the use of this material by pharmaceutical, biotechnology and agro-industrial companies.

With Decision 486, which entered into force on 1 December 2000, the Andean Community again finds itself at the forefront of progress and legislative innovation, which it already demonstrated with the adoption of Decision 391 on the Common System of Access to Genetic Resources in 1996. The new Andean Community regime on industrial property contains a series of provisions directly related to biological diversity and the protection of indigenous communities' traditional knowledge, thus establishing links between the CBD and a regional industrial property regime, which only a short time ago were considered extremely complicated and close to unviable by international negotiators and political circles.

While Decision 486 and its rules on patented inventions explicitly recognise in several instances that its implementation may generate impacts on biological diversity, it also creates certain synergies

between rules on biological diversity and traditional knowledge on the one hand, and the intellectual property rights system on the other.

Linking IPRs and Biodiversity

In a unique provision in a sub-regional industrial property legislation, Article 3 of Decision 486 (on Biological, Genetic and Traditional Knowledge Heritage) states that

The Member Countries shall ensure that the protection granted to intellectual property elements shall be accorded while safeguarding and respecting their biological and genetic heritage, together with the traditional knowledge of their indigenous, African American, or local communities. As a result,

the granting of patents on inventions that have been developed on the basis of material obtained from that heritage or that knowledge shall be subordinated to the acquisition of that material in accordance with international, Andean Community, and national law.³

In other words, the acquisition of rights or protection through, for instance, patents or even plant breeders' rights cannot (or must not) hurt Member Countries' or their communities' interests with regard to biological heritage or traditional knowledge.

Article 3 also provides that

Member Countries recognise the right and authority of indigenous, African American and local communities to decide on their collective knowledge.

This explicitly implies the governments' recognition of the indigenous intellectual contribution for whose protection mechanisms eventually need to be developed.

And finally, Article 3 states that

The provisions of this Decision shall be applied and interpreted in such a way that they do not contravene the stipulations of Decision 391 and its effective amendments.

This makes a direct link between the patent system and the regime of access to genetic resources, as many of these patents – particularly in the field of biotechnology – arise directly or indirectly from genetic material originating in Member Countries.

Patentable Material

While Article 14 of Decision 486 requires that patents be granted for inventions, Article 15 lists materials that will not be considered as inventions. These include in Article 15(b)

any living thing, either complete or partial, as found in nature, natural biological processes, and biological material that exists in nature or is capable of being isolated, including the genome or germplasm of any natural living thing.

Art. 15(b)'s reference to a 'natural living thing' is interesting as it indicates that in its implementation genomes or germplasm of 'non-natural' living things would be patentable, that is to say materials that may have resulted from human biotechnological interventions.

Continued on page 12

Andean Community's Industrial Property Regime, continued from page 11

Getting back to the link between the system of access to genetic resources and the patent regime, the Decision's Article 26 establishes that the application for a patent for an invention must contain

(h) a copy of the contract for access, if the products or processes for which a patent application is being filed were obtained or developed from genetic resources or byproducts originating in one of the Member Countries.

Paragraph 26(i) further specifies that the application must include *a copy of the document that certifies the license or authorisation to use the traditional knowledge of indigenous, African American, or local communities in the Member Countries where the products or processes whose protection is being requested were obtained or developed on the basis of the knowledge originating in any one of the Member Countries, pursuant to the provisions of Decision 391 and its effective amendments and regulations.*

This means that the applicant must secure the community's consent and present a document that proves it when attempting to patent an invention arising either directly or indirectly from traditional knowledge.

Another interesting point is that, consistent with Article 75, the competent national authority in industrial property rights could decree outright, or on request by any person at any moment, the absolute nullity of a patent in cases where

(g) the applicant failed to submit a copy of the contract for access to that genetic material when the products or processes in respect of which the patent is being filed were obtained and developed on the basis of genetic resources or their byproducts originating in one of the Member Countries; or

(h) the products or processes whose protection is being requested were obtained or developed on the basis of traditional knowledge belonging to indigenous, African American, or local communities in the Member Countries, if the applicant failed to submit a copy of the document certifying the existence of a license or authorisation for use of that knowledge originating in any one of the Member Countries.

A possibility thus exists for third parties to question the grant of a patent based on the suppositions above, and if these are confirmed, the patent can be annulled.

In conclusion, the mechanisms proposed in Decision 486 could be used to ensure that the CBD's general principles of access to genetic resources, benefit-sharing and respect for indigenous communities' knowledge, innovations and practices are effectively taken into account in the implementation of intellectual property systems. They are an important contribution to the quest for mechanisms to make intellectual property rights compatible with the Convention on Biological Diversity.

Plant Variety Protection

TRIPs Article 27.3(b) requires WTO Members to provide protection to plant varieties, either through patents or through a *sui generis* system. With the adoption of the new industrial property regime both now seem possible in Andean countries.

In October 1993, the Andean Community adopted Decision 345 on a Common Regime of Protection of Plant Variety Breeders' Rights. The legislation establishes the rules for the acquisition of

Breeders' Certificates, which protect the rights of those who develop new plant varieties that are stable, homogeneous and distinguishable.

In conformity with Article 24 of this Decision, the holder of this exclusive right can prevent third parties from undertaking without his consent a number of actions with regard to reproduction, propagation or multiplication of the protected variety, including *inter alia* its production, offer on sale, sale, exportation and importation. Decision 345 maintains an exemption for researchers (to allow continued improvement of the protected variety – Article 25). It also contains a farmer's exemption, which allows the reuse of this material in consequent harvests, although this is left to the discretion of each of the Member Countries (Article 26). Finally, the Sub-regional Committee for the Protection of Plant Varieties decided to extend protection to essentially derivative varieties. All Member Countries have already established regulations for the implementation of Decision 345.

This is an important reference that calls for a definition of double protection through Breeders' Certificates and through patented inventions, as Article 54 of Decision 486 gives the impression that patents could also apply to plant varieties. Indeed, while Decision 345 serves as an *ad hoc* (or *sui generis*) mechanism to protect new varieties, it does not exclude the possibility that they could be protected through other means. What is absolutely clear and evident is that components of varieties protected through Breeders' Certificates can be patented. This implies a complementarity and a high degree of total protection as it concerns both the variety and its specific components. It also has important consequences for the potential use of the protected variety.

Finally, it is worth thinking about the eventual impacts of this mechanism on agro-biodiversity. While it could promote monoculture and homogenisation, one can also argue that Andean zones – where this type of culture is not really viable due to agro-ecological conditions and farming practices – would not be affected from the incorporation of protected varieties in patent legislation. In fact, Andean farming based on agricultural diversification, has shown itself highly resistant to the loss of genetic variety. This has led to the preservation of an immense diversity, which in any case finds itself affected by other factors, such as the abandon of the rural environment, the influence of trade (not necessarily related to protected plant varieties) and the modernisation process. Clearly, there now is much to evaluate with regard to the direct impacts of these systems on agro-biodiversity.

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ENDNOTES

¹ The Community of Andean Nations consists of Bolivia, Colombia, Ecuador, Peru and Venezuela. It enjoys regulatory authority through Decisions and Resolutions. As a rule, Decisions need no internal approval processes and become national law automatically upon their publication in the Community's Official Journal.

² Intellectual property is divided into two categories: *industrial property*, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and *copyrights*, which protect literary and artistic works, as well as the rights of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.

³ All quotes from Decision 486 are unofficial translations.

Climate Change: No Consensus on Four Key Issues

The growing scientific consensus, and ample empirical evidence, that the atmosphere is warming at a much faster rate than previously predicted did not suffice to convince countries to overcome their divisions at the sixth Conference of the Parties to the UN Climate Convention (COP-6). Rather like the WTO's Seattle Ministerial Conference, COP-6 was suspended with no decisions adopted. The session is tentatively scheduled to resume on 21 May 2001.

The fractious meeting was split in several ways: between (and within) the EU and the Umbrella Group consisting of the US, Canada, Australia and Japan, between oil producers and small island states, and between developing nations and industrialised countries.

An eleventh-hour deal brokered by British Deputy Prime Minister John Prescott and chief US negotiators foundered when other EU ministers found it too weak. While the US delegation said that the EU clearly missed an opportunity to make the Kyoto Protocol 'ratifiable' – particularly as a likely Bush Administration will have even less appetite for it – the EU countered that no agreement is better than a bad agreement.

Four issues proved intractable: supplementarity, sink activities, compliance and funding.

Supplementarity: To reconcile the EU, which wanted a 50 percent maximum cap on the use of the flexibility mechanisms to meet agreed greenhouse gas emission reduction commitments, and the Umbrella Group that wanted none, Conference Chair Jan Pronk proposed that Parties agree to meet commitments 'primarily' through domestic action. Parties failed to agree.

Sinks: The Umbrella Group sought to include existing domestic 'carbon sinks' (forests and grasslands) in activities that countries could use to offset their emissions, as well as the inclusion of such activities in the Protocol's Clean Development Mechanism (CDM). The EU and developing countries were adamant that Annex I countries' domestic actions consist of actual emission reductions. The EU also wanted CDM projects to focus, at least primarily, on developing countries' energy sectors, while some of the latter, notably African countries, thought forestry projects should also qualify.

Compliance: Parties could not agree on how to induce countries to comply with their commitments and how to punish those that fail. The EU and developing countries supported the establishment of a fund, where Parties would pay penalties for non-compliance. Developing countries also proposed that non-compliant countries be barred from greenhouse gas emissions trading in the subsequent commitment period and the reduction of emission allowances in that period. The Umbrella Group wanted the only penalty to be the reduction of future emission rights.

Financing: This issue brought the clearest North-South split. Developing countries wanted two funds: one to finance their adaptation activities, such as avoidance of deforestation, and combating land degradation and desertification, funded by a percentage of proceeds generated through the CDM's certified emission rights, and another, called a convention fund, to pay for technology transfer to developing countries, capacity-building, national climate change mitigation strategies and economic diversification in fossil fuel dependent economies. At the end of the meeting, no agreement existed on the funding mechanisms or the amount of money that might ultimately be made available.

Genetic Resources Pact Embroiled in IPR Fight

Just as it seemed that the major hurdles had been cleared in the seven-year effort to harmonise the International Undertaking on Plant Genetic Resources (IU) with the provisions of the Convention on Biodiversity, four members of the contact group that was to finalise it said they could not support the language on intellectual property protection agreed at the group's last meeting in Teheran (Bridges Year 4 No.7, page 13).

A key element of the IU revision is the establishment of a Multilateral System of Access and Benefit-sharing (MS) to administer the large *ex situ* germplasm collections held in 17 international agricultural research centres operating under FAO auspices. Plant genetic resources held by other international institutions may also be placed in the MS, as may germplasm from national collections. Material under the MS should in principle be accessed free-of-charge for research, breeding and training purposes.

One of the challenges in designing the MS is to encourage the private sector to make available plant genetic resources covered by intellectual property protection through the system. Another is the treatment of any new, patentable, plant genetic resource that would result from material accessed under the MS (MS germplasm itself cannot be patented).

In November, Australia, Canada, New Zealand and the US announced to the 41-nation contact group in Neuchâtel, Switzerland, that they could not accept the tentatively agreed IU Article 14.2(d)(iv), which provided 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.

Patent holders, most likely to be private seed companies, were to pay the royalty to a fund that was to be set up to finance the operation of the Multilateral System.

The four countries that withdrew their consent to this cited potential conflicts with the WTO's TRIPs Agreement among their main reasons. They argued that the proposed language would be incompatible with TRIPs Article 27.1 on the obligation to grant patents for inventions regardless of the field of technology and 27.3(b) on plant variety protection requirements, as well as Article 30, which provides that exceptions to the exclusive rights conferred by a patent must not 'unreasonably conflict with a normal exploitation of the patent.'

Despite a WTO expert's advice on the applicability of these articles, the contact group failed to find a consensus on the matter. Delegates pointed out the irony that while only a WTO dispute settlement panel ruling could provide advice on the IU's compatibility with TRIPs obligations, a dispute involving the IU could not be brought to the WTO until the IU revision was complete and in operation. Such a challenge would most likely come from a non-Party complaining about insufficient intellectual property protection for a plant genetic resource by a Party to the IU.

The IU revision currently seems in an impasse, but Parties hope that the review get will back on track for adoption by the FAO's Council in 2001. Dates for future meetings have not yet been set.

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Trade, Employment and Wages Revisited

By Maryke Dessing

The paradigm of export-led growth generally considers that trade boosts employment in the exporting sector and displaces jobs in importing industries. Moreover, according to neoclassical theory, employment and wages of the relatively abundant factor of production are supposed to benefit from more buoyant trading, based on comparative advantages in the production of goods and services.

Most econometric studies, however, have appraised the record of industrialized countries. Few have analyzed the case of developing countries, and those that did, mainly compared the rate of growth of trade with that of employment, without controlling other factors that boost employment. Not surprisingly, they often found that both were increasing, although they failed to isolate the effect of trade.

A recent UNCTAD econometric study of 18 developing countries, plus the Republic of Korea, partly fills this gap and challenges those tenets.¹ On average, an increase in export or import penetration had no discernible impact on manufacturing employment in either direction: in about half the cases it was slightly positive and in the other half negative, but it never reached statistical significance. Apparently, exports production is often expanded by way of rationalization and a switch to more capital-intensive technologies, rather than by increasing employment, and imports provide indispensable production inputs; hence, they frequently have a favorable impact on employment instead of an adverse one.

Moreover, industry characteristics seem to bear more heavily on the employment creation record than country characteristics. The table below lists, in descending order, the industries that were most successful in creating employment, across the full sample of countries (ISIC rev. 2).

Industry Sectors Most Capable of Generating Employment

Exports	Imports
Plastic products not classified elsewhere	Wood and wood/cork products, except furniture
Wood and wood/cork products except furniture	Industrial chemicals
Wearing apparel, except footwear	Food
Electrical machinery apparatus, appliances and supplies	Professional/scientific & measuring/controlling equipment; photographic and optical goods
Food	Furniture and fixtures, except primarily of metal
	Other non-metallic mineral products

For the Philippines, the Republic of Korea and Turkey, imports had a more favorable impact on employment creation than exports when all trading sectors of the economy were included (except agriculture for Korea); in fact, the former was positive in two cases. Thus, non-manufacturing imports appear to play an important role in absorbing trade-displaced manufacturing workers.

Finally, the following factors jointly explained quite well inter-country differences of the employment impact of exports (employment elasticities of exports):

- the employment impact of imports;
- GNP per capita;
- population size;

- size of the subsistence sector;
- economic openness;
- share of the external debt in GDP;
- share of investments in GDP (domestic and foreign ones); and
- the growth of manufacturing production and employment.

In the case of imports, however, these factors completely failed to explain differences across countries. Factors pertaining to income distribution and inter-sectoral linkages might be more suitable.

Translating favorable trade shocks into higher wages in labor abundant countries appears even more arduous. For example, an ILO study of the machinery, electrical and electronic industries found that the share of labor in value-added goods had globally declined between 1970-1995, especially in low-income countries, in spite of a sizeable relocation of employment to the South, in particular of 'low-tech' sectors of the machinery industries.² Moreover, in those countries labor's share in value-added is generally much lower than in industrialized countries. In a recent WTO study, some authors claim that a country must have reached a certain level of development to reap the full benefits of trade.³

Finally, some late theoretical work concludes that social dumping may lead to negative growth.⁴ 'Social dumping' refers here to a situation where firms exploit labor's subsistence needs to increase work hours, output and profits by reducing wages. That leads to a sizeable transfer of income from labor to employers. In so far as the latter spend a larger share of their income on imports than the former, it follows that an expansion of exports may result in a deterioration of income terms of trade (the total value of exports divided by that of imports), the trade balance and national welfare. Competing with excessively low wages thus hurts developing countries in the long-run, because labor is not paid its actual contribution to the final value of products.

In the case of developing countries, these findings jointly provide a rather contrasted picture of the presumed favorable impact of trade on the relatively abundant factor of production, based on comparative advantages: it cannot be taken for granted nor can one simply extrapolate from the experience of industrialized countries. If anything, they suggest that trade has a beneficial impact provided general economic conditions and policies are supportive, including institutional arrangements. It is up to policy-makers to devise comprehensive trade policy packages, in conjunction with other measures, to optimize their impact.

Maryke Dessing a Geneva-based socio-economist specialising in economic development, labour and trade issues.

¹ M. Dessing. *The Impact of Trade on Employment in 18 Less Industrialized Countries: An Econometric Analysis*. UNCTAD discussion paper. Geneva (forthcoming).

² ILO. 2000. *Impact of Flexible Labour Market Arrangements in the Machinery, Electrical and Electronic Industries*. Sectoral Activities Programme. ILO. Geneva

³ D. Ben-David, H. Nordstrom and L. A. Winters. 2000. *Trade, Income Disparity and Poverty*. Special Studies 5. WTO. Geneva

⁴ M. Dessing. 2000. *The Competitiveness of Firms when the Labor Supply Curve is S-Shaped: Sweatshops and Labor's Poverty Trap; and Social Dumping, the Trade Balance, and Immiserizing Growth in a Low-Income Context*. Working papers. Geneva.

Fisheries, International Trade and Sustainable Development

On 23 October, ICTSD, in co-operation with IUCN-The World Conservation Union and UNEP, convened a dialogue in Geneva to map out and discuss key issues at the intersection of fisheries, international trade and sustainable development that arise in the context of discussions on fisheries at the WTO. Fifty-five fisheries and trade experts from all over the world participated in the meeting, including representatives of the UN Food and Agricultural Organisation, the WTO, and major fishing nations such as Russia, China, Japan, Indonesia, New Zealand, Nordic countries, and the European Union.

The event was organised to highlight sustainable development concerns in the fisheries and trade debate, now addressed in an increasing number of international fora. Through this dialogue, the organisers also wanted to contribute to ensuring that discussions on fisheries in the WTO take a broad view of fisheries subsidies, and bear in mind other fisheries trade-related issues beyond subsidies.

The discussions on 23 October focussed on fisheries subsidies, as well as on market access issues regarding export of fish and fish products. Participants recognised the importance of fisheries as a natural resource given their vital importance for the livelihoods of hundreds of millions of people around the world, as well as their economic importance for many (particularly developing) countries. While it was generally agreed that poor management, and not subsidies, was the main cause of overfishing, several participants pointed out that subsidies do distort economic incentives. Subsidies also have an effect on the environment and on development as they make it harder for fishers from countries wishing to maintain sustainable fisheries management strategies to compete on the global market. It was also pointed out that subsidies were sometimes essential to enable resource-poor but fisheries-rich countries to bolster local efforts to benefit from their fisheries resources.

The discussions on market access looked at some practical issues that affect market access, as well as some fisheries-related rules. On a practical level, the cases of Senegal and Mauritania presented by the UNCTAD/WTO International Trade Centre highlighted the difficulties that developing countries have, for instance, in meeting the high sanitary requirements of the European Union and of the US. In terms of relevant trade rules, participants discussed the benefits, disadvantages and the WTO-compatibility of eco-labelling schemes and possible developments within the WTO on sanitary standards.

During the day's discussions, participants also debated whether the WTO was the proper forum to address fisheries issues, and whether use of trade measures to enforce compliance with fisheries management regimes was desirable.

The meeting followed several months of scoping work carried out under ICTSD/IUCN's dialogues, research and information-exchange programme on fisheries, international trade and sustainable development. In December 1999, the results of the first phase of the project – reports entitled *Net Gains* (IUCN) and *Fish for Thought* (ICTSD) – were published (available on request, and on the web at www.ictsd.org/html/fish.htm). In addition, ICTSD will shortly publish a reference guide to international legal frameworks relevant to fisheries, entitled *Fish Scales – Fisheries, International Trade and Sustainable Development*.

Through convening and supporting a cycle of policy dialogues, research, publications and information-exchange, the ICTSD/IUCN fisheries programme aims to inject both the resource management and the sustainable development perspectives into the debate on trade and fisheries. The programme endeavors to link relevant processes and actors, ultimately seeking ensure that international trade in fisheries is supportive of sustainable development. The next dialogue in Geneva on 12 February 2001 will expand on the subsidies issue.

A copy of the full dialogue report is available on the ICTSD website at: <http://www.ictsd.org/dialogueweb/Dialogues/23-10-00-desc.htm>

The International Centre for Trade and Sustainable Development (ICTSD) implements its programme of information, dialogues and research through partnerships with institutions around the globe.

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December 11-15 Montpellier	Intergovernmental Committee on the Cartagena Protocol on Biosafety (ICCP-1): Contact: Tony Gross, tel: (1-514) 287-7025; fax: 288-6588; e-mail: tony.gross@biodiv.org ; web: http://www.biodiv.org/conv/meetings
December 12	WTO Dispute Settlement Body Contact: Gabrielle Marceau, tel: 5519, fax: 5788
December 14-15	WTO General Council – Special Session on Implementation Issues Contact: Bernard Kuiten, tel: 739-5676, fax: 5777
January 22-24	WTO Textiles Monitoring Body Contact: J.-P. Lapalme, tel: 5223, fax: 5765
January 24-26	WTO Trade Policy Review Body: Mozambique Contact: Lucie Giraud, tel: 5075, fax: 5458
February 1	WTO Dispute Settlement Body Contact: Gabrielle Marceau, tel: 5519, fax: 5788
February 2	WTO Council for Trade in Goods Contact: Nuch Nazeer, tel: 5393, fax: 5458
February 5-7	WTO Committee on Agriculture Contact: Peter Ungphakorn, tel: 5412, fax: 5458
February 5-9 Nairobi	21 st Session of the UNEP Governing Council Contact: B. Miller, UNEP, tel: (254-2) 623-411, e-mail: millerb@unep.org
February 8-9	WTO General Council Contact: Bernard Kuiten, tel: 739-5676, fax: 5777
February 12-15	WTO Textiles Monitoring Body Contact: J.-P. Lapalme, tel: 5223, fax: 5765
February 12-16 New York	UN Forum on Forests (organisational session) Contact: UFF Secretariat, tel: (1-212) 963-6208, e-mail: vahanen@un.org
February 13-14	WTO Committee on Trade and Environment Contact: Hans-Peter Werner, tel: 5286, fax: 5458
February 14-15	WTO Council for Trade in Services Contact: Nuch Nazeer, tel: 5393 fax: 5458
February 14-18 Geneva	Meeting of the Interim Chemical Review Committee of the Rotterdam Convention Contact: Jim Willis, UNEP Chemicals, tel: (41-22) 917-8111, e-mail: chemicals@unep.ch

PUBLICATIONS

Centro de Investigación y Planificación de Medio Ambiente and World Resources Institute. 2000. Through the Open Door: Realising the Full Potential of Trade Liberalisation. A study of the environmental costs of Chile's three lead exports. CIPMA and WRI. Lima/Washington

Christian Aid et al. 2000. Recommendations for Ways Forward on Institutional Reform of the World Trade Organisation. Christian Aid and seven other public interest groups. London

Singh, Ajit and Zammit, Ann. 2000. The Global Labour Standards Controversy – Critical Issues for Developing Countries. South Centre. Geneva

Stevens, Christopher and Kennan, Jane. 2000. Pots-Lomé WTO-Compatible Trading Arrangements. Commonwealth Secretariat/Institute of Development Studies. London/Brighton

UNCTAD. 2000. Least-developed Countries 2000 Report. United Nations. Geneva

UNCTAD. 2000. Trade Agreements, Petroleum and Energy Policies. United Nations. New York/Geneva

UNCTAD. 2000. World Investment Report 2000. Focus on cross-border mergers and acquisitions and development. UN. Geneva

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

Recent WTO Documents of Special Interest

Available on-line from the WTO Document Distribution Facility
http://www.wto.org/english/docs_e/ddf_e/ddf_e.htm

Decision by the Appellate Body Considering Amicus Curiae Briefs (WT/GC/38). Statement by Uruguay at the General Council on 22 November 2000

European Communities – Measures Affecting Asbestos and Asbestos-containing Products (WT/DS135/9). Communication from the Appellate Body; includes the additional procedure for requesting leave to file *amicus* briefs in the asbestos appeal.

External Transparency (WT/GC/W/419). Norway

Generalised System of Preferences (WT/COMTD/N/15). Notification by Canada.

WTO External Transparency (WT/GC/W/418). Hong Kong

ELECTRONIC RESOURCES

Centre for Science and the Environment. Equity Watch. An online climate change newsletter with a Southern perspective. Comprehensive coverage of COP-6 in the Hague and much more. URL: <http://www/cseindia.org/html/cmp/climate/ew/index.htm>

NGO Committee of the Consultative Group on International Agricultural Research (CGIAR). Enhancing civil society input into the CGIAR. An online forum to be held in January 2001. E-mail: majordomo@rimisp.cl; URL: <http://www.rimisp.cl/ngoc>