



ICTSD

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## The Millennium Round Setting the Stage for Developing Countries

'Get involved in the early stages of setting the agenda for the year 2000 round of WTO negotiations,' Gamani Corea, former Secretary-General of UNCTAD, urged developing countries at a meeting held in Geneva in late November. Convened by the CUTS Centre for International Trade, Economics and Environment (CITEE) of Jaipur and ICTSD, the Roundtable on Trade Issues for Developing Countries gathered a distinguished group of experts and more than 100 other participants to discuss questions of strategic importance in the run-up to the WTO Ministerial Conference in May 1998 and the negotiations thereafter.

Highlighting the lack of an overall 'developing country philosophy' during the seven years of negotiations that established the WTO, Mr Corea said that most developing countries were caught unprepared when the Uruguay Round started in 1986. With many new issues on the table – intellectual property rights, trade in services, investment, etc. – they had to deal with an agenda that did not reflect their priorities, making the round 'essentially an exercise in damage control'. Ambassador Nestor Osorio Londoño, Chair of the WTO Committee on Agriculture, remarked that in the post-Uruguay Round era, developing countries had clearly been givers, not receivers: talks were frozen on two of their priority items – maritime services and movement of natural persons – while the basic telecommunications pact was speedily adopted and the financial services negotiations (both principally backed by the US and the EU) were about to conclude successfully. For the new negotiations, Mr Corea called on developing countries to clearly establish what they wanted out of the multilateral trading system and to ensure that their domestic priorities were reflected in international trade rules.

### Single Undertaking versus Separate Negotiations

Uruguay's Ambassador Julio Lacarte Muró, Chair of the WTO's Appellate Body, stressed the importance of pre-negotiations on the scope of the upcoming round. As countries had widely divergent interests regarding new negotiations, they needed 'to agree on the package' before 'bargaining a final solution,' he said. Ambassador Lacarte Muró felt strongly that developing countries would benefit from a 'single undertaking' approach with several reviews conducted simultaneously, allowing concessions in one area to be offset by gains in another. He reminded the audience that the growing

importance of developing countries as markets for developed country products gave them more bargaining power than they had during the Uruguay Round – according to the OECD, China, Russia, Brazil and Indonesia count for one-third of world GDP. Some participants, however, voiced their concern that developing countries might lose more than they gained by agreeing to a 'single undertaking' rather than separate negotiations.

### Preparatory Work and 'Common Purpose'

Successful trade negotiations depend largely on good preparation. Ambassador Lacarte Muró drew attention to the sophisticated preliminary work needed on different countries' tariff systems in order to ensure that tariff removal actually contributed to increasing market access.

He also urged developing countries to form alliances with others around specific concerns – the stronger the group and its common position, the better the chances of its negotiators to successfully defend the group's interests, he said. He cited the Cairns Group of agricultural producers as an example where a consistent line over a decade had produced significant results (the group, which systematically pursues the removal of agricultural export subsidies, consists of ten developing and four developed countries). Emphasising the WTO's 'multi-polar'

nature and the absence of automatic alliances along ideological lines, Ambassador Celso Lafer, Chair of the WTO General Council, also said it was in developing countries' interest to align themselves with other members depending on the issue at hand.

### Priority Issues

Agriculture, services and certain aspects of the Trade-Related Intellectual Property Rights Agreement have already been agreed as subjects of new WTO negotiations starting 2000. Professor Jagdish Bhagwati, one of the roundtable chairs, pointed out that the 20-year patent protection mandated by TRIPs 'had no basis in economics', and called for a revision of the patent provisions of the agreement. Developing countries could also insist on a review of the 'differential and more favourable treatment for developing countries, including special attention to the particular situation of least developed countries' called for in the Marrakesh Declaration establishing the WTO.

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# The Enigma of APEC

By Jeff Atkinson

At the APEC Ministerial meetings and Leaders' summit held in Vancouver in November, governments wanting to see APEC become a leading instrument for trade liberalisation were again frustrated. And those wanting to see APEC's potential for regional co-operation used to address crucial regional issues such as the environment and workers rights were also frustrated.

In their Declaration this year, the Leaders referred to APEC's three mutually supportive pillars – trade and investment liberalisation, business facilitation and economic and technical co-operation. As was to be expected, restoring financial stability in Southeast Asia was high on the agenda. There was agreement to 'early voluntary sectoral liberalisation' of trade in 15 sectors, with work beginning on nine of these sectors in 1998, including forest products and fish. And there was a decision to hold a Ministerial Meeting on Women in Manila in 1998 and a Ministerial Conference on Education in Singapore in 1999.

Three new economies were admitted to the fold – Peru, Russia and Vietnam – raising membership of the APEC 'club' to 21.

## Getting a grip on APEC

APEC (Asia Pacific Economic Co-operation) is not an easy institution to understand. Exactly what it is, or is aiming to be, is not always clear as there has never been agreement on this among its member governments. While some see it as a regional consultative group which can facilitate technical co-operation on economic matters, others want it to be a grouping that is pushing ahead with regional trade liberalisation or consolidating into a free trade area.

At the moment, it is much closer to the former than the latter. APEC is basically a forum at which officials, ministers and heads of government of 18 (now 21) member countries come together periodically to negotiate, plan and implement a modest program of trade liberalisation and economic co-operation.

The diversity within the group is marked. The types of economies represented range from the US's 'laissez faire' system to China's market socialism, and East and Southeast Asia's 'network' capitalism. Its members include two of the world's largest industrial economies, Japan and the United States; two of the most populous and rapidly developing nations, China and Indonesia, as well as some of the most successful newly industrialised economies, including Singapore, Chile, Hong Kong and Malaysia. Together the APEC economies account for nearly half the world's merchandise trade and over half its Gross National Product.

The annual meetings of trade and finance ministers aim to develop APEC's broader goals. It is at these meetings that assessments of APEC's progress are made and the following year's agenda is set. Associated with these are the meetings of APEC heads of government or 'Leaders'. The joint statement from these meetings, the 'Leaders' Declaration', sets the overall direction and priorities for APEC.

APEC is different in several significant ways from the World Trade Organisation (WTO). For a start, it is – as its name implies – about economic co-operation as well as trade. Unlike the WTO it is not an institution in which binding agreements are hammered out, but a loose consultative mechanism for policy co-ordination within the region.

It is also a consensus-based organisation. All decisions and agreements reached within APEC are subject to the unanimous approval of its

members. While this has at times made the process somewhat frustrating and time-consuming, it has worked and has ensured that the balance of decision-making power has remained with APEC's Asian members, who comprise the bulk of the membership.

## Liberalisation versus economic co-operation

There is a fundamental disagreement within APEC between those countries who would like to see it eventually becoming a Free Trade Area and those who want it to remain a consultative, non-binding body like the Organisation of Economic Co-operation and Development (OECD), facilitating technical co-operation on economic matters. Leading the former is the United States, struggling to maintain an economic foot-hold in the lucrative Asian region and keen to see Asian markets opened. At the other end is Malaysia, deeply distrustful of the free trade agenda being pushed by the US, Australia and others, and wanting to see the establishment of an East Asian Economic Caucus within APEC, a bloc of Asian economies which would exclude the 'Anglo Saxon' economies of Australia, New Zealand, Canada and the US.

APEC was initially conceived as an OECD-type institution, and it was Australia which first pushed to have it become a free trade agreement – one which would include it and the other 'Anglo Saxon' economies in the same fold as the dynamic and potentially lucrative Asian economies. In 1993 this idea was taken up by the United States, at that stage faced with GATT and NAFTA talks which were going nowhere, increasing European competition for Asian markets and a growing trade deficit with Asian countries. At the 1993 Leaders' meetings in Seattle, the US took up the mantle and replaced Australia as the leader of the free trade lobby in APEC.

At the Leaders' summit the following year, the so-called Bogor Declaration was agreed to, which the US and Australia interpreted as committing member governments to establishing borderless trade by the year 2020. But the Malaysian, Thai and Chinese governments were quick to declare that they regarded the Declaration as aspirational only and non-binding.

At Osaka the following year, 1995, the Japanese hosts in their subtle and indirect way largely derailed the liberalisation agenda and brought economic and technical co-operation to the fore. The resultant 'Osaka Action Agenda' while broadly reaffirming the goal of liberalisation, stressed that it would be carried out in a voluntary, flexible and non-binding fashion. It also said that economic co-operation was an equally important 'pillar' of APEC.

The 18 member countries agreed at Osaka to submit individual action plans (IAPs) for the progressive liberalisation of their respective economies, which would be collectively reviewed at the 1996 meeting. In the event, however, the plans submitted at the Manila meeting in 1996 were in most cases vague, simplistic and nondescript, to the extent that the whole IAP framework was rendered largely inoperative. This year at the Vancouver meeting, the Leaders' Declaration called for members to 'improve the commitments in their IAPs'.

## Co-operation for development

In comparison, APEC's other 'pillar', economic and technical co-operation (eco-tech), has plodded along in a quiet, modest but not altogether ineffective way, promoting economic development,

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# Trade Provisions Still Possible on Post-Kyoto Agenda

By Aniket Ghai

Discussion on potential conflicts between the United Nations Framework Convention on Climate Change (UNFCCC) and international trade rules was limited during the Convention negotiations and remained so until recently. The Framework Convention contains neither binding greenhouse gas reduction targets nor, unlike many recent multilateral environmental agreements, any trade-related provisions to encourage participation or discourage non-compliance. Concern about the trade impacts of climate change mitigation increased, however, during the negotiations that led to the conclusion of a greenhouse gas reduction protocol with quantified targets for industrialised countries in Kyoto on 10 December. The compromise at Kyoto was only made possible by the inclusion of three key mechanisms which provide flexibility for countries to attain their targets, although the exact details of those mechanisms remain to be defined. This article examines briefly some general issues related to the possible impacts of the provisions of the Protocol, as well as policies and measures to implement it, on market access and the international trade of goods and services.

The Kyoto Protocol establishes legally-binding commitments for industrialised countries (Annex I Parties) to reduce their overall emissions of six greenhouse gases by 5.2 percent below 1990 levels during the years 2008-12, but with different targets for individual countries, ranging from a ten percent increase to an eight percent decrease. The international trade impacts of measures to mitigate greenhouse gases will depend both on the choice and the stringency of the policies and measures adopted to attain the required reduction targets. For example, governments who choose to introduce, or raise existing, carbon and/or energy taxes, and to remove exemptions accorded to the industrial sector, may face pressure to introduce border tax adjustments to preserve domestic competitive positions. As countries adopt more stringent mandatory energy efficiency standards, for instance for household appliances, developing country industries may find it increasingly challenging to produce goods meeting these standards. The usual difficulties associated with voluntary eco-labelling schemes might also apply to labelling related to energy efficiency.

While some of these difficulties can be overcome by adopting a harmonised approach, negotiations on a common mandatory set of policies and measures did not result in agreement in Kyoto (consensus was only reached on an indicative list of areas in which policies and measures could be applied). Article 2, however, provides that Annex I Parties shall co-operate to enhance the individual and combined effects of their policies and measures. It also requires Parties to strive to implement policies and measures in a way that minimises their adverse effects on international trade, as well as social, environmental and economic impacts on other Parties, especially developing country Parties. This Article, in addition, provides a mandate for the Conference of the Parties serving as the meeting of the Parties to the Protocol (MOP) to conduct work on minimising adverse effects on international trade, as well as ways and means to elaborate the co-ordination of policies and measures. It thereby establishes a forum within the Kyoto Protocol for addressing possible trade conflicts before these reach the level of a WTO dispute settlement panel.

## Key Open Questions

A degree of uncertainty exists on what will be the required 'level of effort' for countries to comply with their Kyoto targets, which will in turn affect the stringency of policies and measures they implement. A key determinant will be the extent to which targets are met through domestic emissions reductions and the extent to which credits are earned from action abroad, through the three flexibility mechanisms:

- joint implementation between Annex I Parties (Article 6);
- joint implementation between Annex I and developing country Parties through the 'clean development mechanism' (Article 12); and
- a system of emissions trading between Annex I Parties (Article 16 bis).

While the operational details of these mechanisms have yet to be defined, they will have significant implications for the action required by Parties to comply. These mechanisms also have the effect of linking the level of effort required in different countries, despite the fact that

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they have agreed to different numerical targets. For example, owing both to economic recession and to the weak level of their agreed targets, some Parties with economies in transition may not have to implement any additional policies and measures to attain or to emit less than required by their Kyoto targets. The latter scenario would result in a source of cheap emission permits which could be bought by other Annex I Parties who expect to exceed their agreed emission limit, thereby reducing the level of effort required for these Parties to adhere.

The inclusion of an emissions trading regime in the Protocol does not impact directly on WTO rules, as these concern the international trade of goods and services, whereas the proposed system would involve transactions regarding the right to emit. As noted above, there would, however, be an indirect effect of lowering the level of effort required to comply (by providing a mechanism to buy cheaper reduction options abroad). Although the details of the system have yet to be elaborated, a number of effects not linked to WTO rules can be identified: any trade in permits between Annex I Parties will necessarily result in financial transfers, different national emissions profiles and possibly technology transfer. Similar outcomes could be expected from joint implementation between Annex I Parties and from the clean development mechanism involving developing countries.

The inclusion of removals by sinks in the Protocol commitments has also led to some ambiguity regarding the level of required action, as important scientific and methodological gaps still need to be filled. 'Modalities, rules and guidelines as to how and which additional human-induced activities' can count as removals by sinks need to be negotiated. There is also some ambiguity as to the exact meaning of the agreed text, some interpretations of which could render currently agreed commitments much weaker.

Countries themselves will also need to assess further the implications of the Protocol, particularly the ramifications of having included in the accord the three additional greenhouse gases – hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride – as not all Parties have estimated projected levels of these gases.

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*Millennium Round, continued from page 1*

Although the dispute settlement system was acknowledged to be working more speedily than other venues of international justice, some roundtable participants expressed reservations about the quantity of cases taken to the WTO, saying the dispute settlement mechanism was in danger of 'collapsing under the weight of litigation'. Noting that 'rules do not enforce themselves', Professor Ernst-Ulrich Petersmann urged developing countries both to participate actively in the forthcoming review of the dispute settlement mechanism, and to make more use of the possibilities it offers to right some of the shortcomings of the WTO agreements. For instance, Professor Petersmann said, it would be easier to win cases involving market access restrictions due to protectionist use of licensing and patent rules through the dispute settlement understanding than to renegotiate the TRIPs Agreement. Many speakers referred to the expense of defending or bringing cases in the WTO for countries mostly dependent on foreign legal experts. Calls were made for WTO and UNCTAD to step up efforts to train developing country lawyers in dispute settlement procedures. In addition to the dispute settlement understanding, WTO governance – particularly the transparency of its decision-making processes – should be part of the year 2000 negotiations, Ambassador Anthony Hill of Jamaica emphasised.

### **Growing Regionalism**

Several speakers, including Professor Bhagwati and Gamani Corea, expressed concern over the proliferation of regional trade agreements. With many countries belonging to more than one regional arrangement, there was a danger of conflicting interests. The multilateral trading system could be seriously fragmented and bargaining power concentrated in fewer hands if a significant number of developing countries associated themselves with different 'megablocks' such as the EU, NAFTA or APEC, where they might well find themselves in a client-patron relationship under 'one rich uncle or another'. Such evolution would have severe discriminatory impacts on neighbouring countries. Professor Christian Friis Bach offered a spirited defence of regional arrangements, highlighting their larger potential to integrate environmental and social concerns. While he conceded that regional trade agreements could result in trade diversion in some sectors, he also pointed out that they often increased trade overall. In addition, he maintained that regional agreements could support infant industry while WTO rules often facilitated the needs of larger industries and multinationals.

### **Labour and the Fast-Track Effect**

Might developing countries have played it wrong in resisting strong commitment to the enforcement of core labour standards? Argentine Ambassador Sánchez Arnau, former Chair of the WTO Trade and Environment Committee, feared that by not confirming their adherence to the so-called human rights labour standards at the ILO, developing countries ran the risk of the United States forcing labour issues to the international trade arena, either through a new fast-track authority or 301 legislation that could include the use of trade sanctions for non-compliance with US requirements. Ambassador Lacarte Muró also emphasised the importance of developing negotiation positions with full awareness of the implications of the US trade negotiation authority.

See also separate reports on pages 9, 10 and 11 on the three broad clusters on the roundtable agenda: trade rules, market access and new issues, each comprising three to four specific topics introduced by specialists from the trade community and academia.

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institutional capacity-building, and environmental co-operation. It is likely to receive a boost next year when the APEC summit is hosted by development-minded Malaysia, which has been one of the strongest supporters of the eco-tech agenda.

APEC's eco-tech activities are primarily in the form of discreet, short-lived projects carried out by Working Groups in their respective areas. The 1996 Report of the Economic Committee defined the overall goals of the economic and technical co-operation agenda as:

- achieving sustainable growth and equitable development in the region;
- reducing economic disparities among APEC economies;
- improving the economic and social well-being of the people; and
- building an Asia-Pacific community under the spirit of openness.

While these are all highly desirable aims from the point of view of economic and social development and equity, the question is, does APEC have the capacity to achieve them? Judging by the performance so far, probably not.

At a practical level, APEC's eco-tech goals are hampered by the organisation's non-binding, consensus type structure and by differences in priorities among its members. They are also hampered by plans and projects which are often unrealistic, grandiose and under-funded, and by a lack of political will or leadership to implement them.

At the more fundamental level there are problems with APEC's basic approach, in that it relies almost entirely on private sector trade and investment to achieve these goals. While that may achieve 'sustainable growth' it is by no means clear that it will achieve 'equitable development' nor 'improve the economic and social well-being of the people'.

Economic growth is necessary for the promotion of sustainable human development, but it is not enough by itself. As the United Nations Development Programme has repeatedly said, "there is no automatic link between growth and human progress."

### **Non-governmental and business involvement**

Business has driven the APEC process from the outset and continues to have good access and a strong influence, but APEC remains wary of any involvement or scrutiny by the representatives of civil society and most of its proceedings take place behind closed doors. Indeed, up to now civil society has exerted virtually no influence on APEC.

It is this approach, and the exclusion from the APEC process of issues such as the impact of trade liberalisation on workers' rights, the environment and the poor, which has led NGOs to hold a separate and parallel 'Peoples Summit' on APEC' each year in the country in which the official summit is being held. This year's Peoples' Summit in Vancouver was attended by over 700 participants from 25 countries, representing development NGOs, peasant and worker organisations, human rights, environment and women's groups and indigenous peoples. These Peoples' Summits are seen as 'a place for civil society to build alternative and opposing visions' to APEC. In contrast, at the other end of the city, the official meetings of APEC economic ministers and Leaders were something of a non-event.

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### **Financial Services Agreement Reached**

The Committee on Financial Services exceeded its negotiation deadline of 12 December by two hours but emerged with a new multilateral protocol that, according to the WTO, covers more than 95 percent of trade in banking, insurance, securities and financial information. The US and the EU, the major backers of the negotiations both hailed the result as a major victory and predicted that the move would stimulate more capital flows to troubled South East Asia.

Asian governments, however, did not see the advantages of liberalising their financial sectors in the same light: many openly worried about the 'colonisation' of their financial services sectors if powerful foreign providers were allowed to compete with domestic providers. The negotiations were prolonged due to three main stumbling blocks: the US sought to ensure that Malaysia would not force fully American-owned companies to comply to the 51 percent foreign ownership limit the country is imposing on all future financial services providers. The countries compromised with a clause that would allow the US to retaliate with similar restrictions if Malaysia required US companies to divest to the 51 percent limit.

Japan agreed after lengthy negotiations to offer other trading partners the conditions of a 1996 bilateral insurance treaty with the US, but South Korea held fast to its refusal to allow foreign investors a controlling interest in South Korean banking operations.

Seventy countries, ranging from Mauritius to the United States, agreed on financial sector liberalisation commitments under the Fifth Financial Services Protocol. In each country, the agreement with its national commitments must be ratified by the parliament. The agreement will enter into force on 1 March 1999 at the latest, and will remain open for governments to accept until 29 January 1999.

Contact: Masamichi Kono, WTO Trade in Services Division, tel: (41-22) 739-5390, fax: 739-5771.

### **Committee on Rules of Origin**

The WTO Committee on Rules of Origin is expected to conclude its work on the harmonisation of rules of origin on 20 July 1998. These rules affect the administration of quota systems and tariff preferences, and anti-dumping and countervailing measures. Presently, Members' rules of origin provisions differ widely and often present considerable barriers for exporters, particularly those from developing countries.

The Committee is currently examining the so-called 'substantial transformation' test which would determine item-by-item where a product originates. This approach would allow products to carry certificates of origin according to where the 'substantial transformation' from raw materials to finished or semi-finished goods took place. Preliminary agreement has already been found on granting country of origin status to some product categories according to this criteria. Examples include furs assembled from pieces or cuttings, lubricants (through processing molybdenum ore), concentrates from metal ores, solid fuels from coal and the manufacture of pitch coke from pitches of coal tar and other mineral tars. Should the Committee take the same approach to textiles, garments assembled in Bangladesh from raw materials from other countries would be considered as originating in Bangladesh and scarves cut and stitched in Italy from Chinese silk would have to be labelled 'made in Italy'.

The next meeting of the Committee is scheduled for 25 February.

Contact: Eki Kim, WTO Market Access Division, tel: (41-22) 739-5584, fax: 739-5770.

### **China Accession**

With the financial services talks successfully concluded, WTO Director General Renato Ruggiero said the next big priority for the world trading body was China's accession. While WTO Members recognised that China had made significant progress in some respects at the latest round of talks in early December, they still maintained that Chinese offers were insufficient, particularly regarding the services sector. WTO Members are concerned that China still has not agreed to liberalising its basic telecommunications services and the financial sector. In bilateral talks with the United States during the APEC summit, China offered to eliminate import duties beer, furniture and toys and to lower tariffs on some pharmaceutical products. Negotiations will continue early next year on these issues as well as on China's quarantine and sanitary measures which other countries consider to pose significant non-tariff barriers to trade.

Contact: Jeffrey Gertler, WTO Legal Affairs Division, tel: (41-22) 739-5352, fax: 739-5762.

### **Committee on Trade and Environment**

The CTE wrapped up its work for 1997 on 26 November. It adopted a one-page report listing the items discussed in each of its three meetings, and agreed to meet again from 19-20 March. The meeting is likely to be preceded by an NGO symposium.

The items discussed in November were the work programme envisaged under the Decision on Trade in Services and the Environment (this issue will be discussed for the first time in any detail at the Committee's next meeting), and relations with other intergovernmental bodies and NGOs. No particular decisions were reached. The Secretariat distributed a sector-by-sector study, requested by the CTE, on the Environmental Benefits of Removing Trade Restrictions and Distortions (document WT/CTE/W/67). In March, the CTE is expected to address textiles and energy, although agricultural subsidies are likely to be the main focus.

In the wake of the Kyoto climate summit, the Committee expects future work on emissions trading, subsidies and border tax adjustments. The panel report on the shrimp-turtle case, to be issued in April (see page 6), may also affect the CTE's work schedule.

Contact: Sabrina Shaw, WTO Trade and Environment Division, tel: (41-22) 739-5482, fax: 739-5620.

### **Sub-Committee on Least-Developed Countries**

In 1998, the Sub-Committee on Least-Developed Countries will largely focus on follow-up to the High-Level Meeting on Integrated Initiatives on Least-Developed Countries' Trade Development held from 27-28 October in Geneva. The Sub-Committee expects to hold two more sets of round tables on least-developed countries' trade-related technical assistance needs, with the aim to completing a 'consolidated response' from the WTO and the other six organisations collaborating on the integrated technical assistance packages for the 1998 WTO Ministerial Conference.

The Sub-Committee is also currently looking into possibilities to provide technical assistance to least-developed countries that have not paid their membership dues. This issue is under examination in the light of the WTO's commitment to provide 'differential and more favourable treatment' for developing and least-developed countries.

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**Dispute Settlement Corner**

**Panel Finds Against Argentina's Textile Taxes**

A WTO dispute settlement panel report, circulated on 25 November, found that Argentina's import taxes on footwear, textiles and other apparel in excess of its bound rate of 35 percent were not justified under GATT law. The United States had alleged violations of several GATT articles as well as other WTO agreements. The panel retained the claims that the minimum specific duties imposed by Argentina on textiles and apparel were inconsistent with GATT Article II (Schedules on Concessions), and that the 'statistical tax' of three percent ad valorem levied on imports violated Argentina's obligations under GATT Article VIII (Fees and Formalities Connected with Importation and Exportation).

**India Renews Request for QR Settlement**

India has renewed its call for a negotiated settlement to its dispute with the United States over quantitative import restrictions. The US claims, however, that the compromise India negotiated with the EU, Australia and New Zealand is not sufficient for the US to withdraw its complaint. The deal involves the liberalisation of more than 2,700 industrial and agricultural products over five years. While the US is willing to negotiate, it has indicated that the panel process will not be revoked until India agrees to move more priority items, particularly agricultural goods, to the early phases of the liberalisation agreement.

**Japan Wins Photo Film Case over US**

The US lost its WTO challenge to Japan's import barriers concerning photographic film and paper. Widely known as the 'Kodak case', the US complaint alleged that Japan used a variety of measures to protect its domestic photo film producers, the largest of which is Fuji Photo Film Ltd. Calling the panel decision – circulated on 5 December – unacceptable, an Eastman Kodak spokesperson said that the US complaint documented 21 specific measures by the Japanese government which had limited imports to three percent of the Japanese market. The panel, however, found that Japan 'never took any measures to close its market'. As this review went to press the US was still evaluating its options. Trade sanctions remained a possibility as did an appeal at the WTO.

**EU Contests Pakistan's Export Restrictions on Leather**

Claiming that Pakistan's decision to prohibit the export of hides and skins, as well as wet blue leather made of cow and calf hides limits the access to EU industries to competitive sourcing of raw and semi-finished products, the European Union has asked for consultations with Pakistan at the WTO. The EU bases its allegation on GATT Article XI on general elimination of quantitative restrictions. The article, which covers import and export quotas, licenses and other measures, is rarely invoked for export restriction measures.

**Chile's Alcohol Tax Challenged**

At the request of the EU, a panel was established on 18 November to examine Chile's internal taxes on alcoholic beverages, which favour the local 'pisco' over imported distilled spirits. The US requested consultations with Chile on the same topic on 11 December. The case is similar to those lost by Japan in 1996 and currently defended by South Korea. All these cases are based on the GATT obligation to treat domestic and imported 'like products' in a similar fashion.

**Beef Hormone Appellate Report Postponed**

The Appellate Body announced on 10 December that, due to the 'exceptional nature' of the beef hormone case, it would not be able to deliver its verdict by the already extended deadline of 23 December. The European Union is appealing a July panel decision which found that the EU's import ban on beef treated with growth hormones violated global trade rules because it was not sufficiently based on science. The case was brought by the United States and Canada. In its appeal, the EU maintained that the panel decision inappropriately curtailed states' rights to set whatever health protection standards they deemed necessary, and that the panel had ignored evidence by scientists in support of the embargo. The EU argued further that the Codex Alimentarius standards which support the panel findings were controversial and that WTO Members were not obliged to always follow Codex standards. The Appellate Report is now expected on 16 February 1998.

In related news, the EU expressed its 'amazement' at the United States' announcing an import ban on cattle, sheep and related products from Europe on 12 December. US Assistant Agriculture Secretary Michael Dunn justified the ban as a measure 'to protect human and animal health, to protect the security of our export markets and to protect the safety and integrity of our food supply' in the light of the uncertainties surrounding the 'mad cow disease' or bovine spongiform encephalopathy (BSE) occurring in many European nations. According to the US Department of Agriculture, the ban will be lifted for countries able to demonstrate they have a BSE surveillance programme that conforms to international standards and contains adequate export and import controls.

Also in connection with BSE, the EU has postponed by three months its import embargo on cosmetics and pharmaceuticals containing beef tallow or gelatine. The prohibition was to be effective as of 1 January 1998. The EU proposed the restriction because of evidence that beef tallow and gelatine may carry BSE, but scientists were unable to reach consensus on the issue by their early December deadline and are now expected to deliver their findings at the end of January. The US and six EU countries claim that they are free of BSE and therefore should not be affected by the embargo.

**Shrimp-Turtle Update**

The issuance of the panel report on the shrimp-turtle dispute, initially expected on 22 December, has been postponed until March or April. The panel has submitted written questions to five conservation scientists and may ask for an oral hearing before drafting its report.

India, Malaysia, Pakistan and Thailand brought the case to the WTO over the United States' import embargo on marine shrimp (and products thereof) caught with mechanical nets without turtle excluder devices. These devices allow most sea turtles caught in shrimp trawl nets to escape.

The complainants see the ban, in force since 31 May 1996, as a discriminatory unilateral trade measure designed to extend US environmental legislation beyond national borders. They allege violations of GATT Articles XI (elimination of quantitative restrictions), XIII (non-discriminatory treatment of like products) and I (most favoured nation treatment). The US argues that the measure is necessary to protect endangered sea turtles as 'shared global commons'. Twenty-five countries (counting the EU as 15) have reserved their third party rights in the case.

## Renato Ruggiero on Trade and Sustainable Development

On 9 December 1997, Renato Ruggiero, Director-General of the World Trade Organization, delivered a major speech in Bonn on the subject of sustainable development. As this was the first time a high official of the multilateral trading system publicly addressed some of the key concerns of civil society, we have excerpted highlights from his speech below.

‘The end of the Cold War in 1989 swept away more than the Berlin Wall. It erased many of the barriers of ideology, politics, and economics which had divided our world for almost fifty years. One of the most unique features of this new global age is the opportunity we now have to tackle shared challenges with a new sense of shared outlook, shared values, and shared purpose. The idea of ‘sustainable development’ exemplified this emerging picture – and it about this larger picture that I want to talk to you today.

This debate starts with recognizing – and reinforcing – the inherent link between economic growth and the advancement of environmental, social, and ethical goals; a link which is central to the idea of ‘sustainable development’. The reality is that trade is a powerful engine of economic growth, and that economic growth is vital to creating conditions which favour advancing environmental protection, improving social conditions, or sustaining ethical values. By opening markets, particularly to exports from developing countries, and by keeping markets open through clear and enforceable rules, the global trading system is a natural ally of sustainable development....

An open trading system is also important in more fundamental ways. One of the keys to sustainable development lies in pricing environmental resources to reflect their real scarcity and true social value. Faced with the prospect of global warming, a thinning atmosphere, contaminated water or disappearing forest, the idea that we cannot afford the cost of protecting the environment is rapidly giving way to the idea that we cannot afford not to protect it....

Then there is the political value of the international trading system. Open trade on the basis of universally accepted rules helps to build shared international interests and provides a powerful motive for maintaining global stability and cooperative relations. And cooperative relations in turn provide the best possible foundation on which to exert moral influence and build mutual respect. On the other hand, weakening the international trading system in any significant way would most certainly mean destabilizing the global order and closing off opportunities for partnership and dialogue....

Does this mean that trade liberalization on its own can solve all of the complex environmental and social issues we face in today’s interdependent world? Of course not. Freer investment will not repair the damage to our atmosphere. Lower tariffs will not halt the destruction of our forests. What an open, rules-based trading system provides is a necessary precondition – in partnership with the appropriate environmental, development, or social policies – for building a more globally coherent policy response to the challenges of globalization.

The broader solution to environmental, social, and other challenges lies in reaching a global consensus in each of these areas. Reaching enforceable global agreements and standards. And building the kind of global institutions needed to manage them. It lies, in other words,

with developing global rules to address global needs – as we have done over fifty years with the trading system.

Examples of the kinds of multilateral agreements that are possible include the Convention on International Trade in Endangered Species (CITES), the Basel Convention, or the Montreal Protocol. And as early as tomorrow, in Kyoto, some 150 governments from around the world are set to agree on legally binding targets and timetables to stabilize and reduce greenhouse gas emissions... The point is that each of these agreements targets the environmental problem they aim to solve with an environmental answer – not with a trade answer. And they exemplify the scope for transgovernmental solutions to specific transborder issues.

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**The issue of production and process methods underlies the pressing need to reach targeted multilateral solutions to specific issues. The broader solution to environmental, social, and other challenges lies in developing global rules to address global needs.**

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Nothing in the WTO stands in the way of the international community pursuing these goals in international agreements. On the contrary, the WTO has every interest in building an effective bridge between the multilateral trade agenda and the multilateral agenda in areas like the environment, not least because without a coherent strategy for addressing these challenges, it is trade liberalization – and the multilateral system as a whole – which will suffer.

Subject to the basic requirement of non-discrimination, WTO rules place no constraint on

the policy choices available to a country to protect its own environment or health standards against damage either from domestic production or from the consumption of domestically produced or imported products. Governments can use any type of trade restriction, including import and export quotas and prohibitions, or the imposition of taxes or other charges at the border, for the purpose of environmental protection or resource conservation within their jurisdiction – as long as basic requirements relating to non-discrimination and least-trade-restrictiveness are met.

What a country cannot do under WTO rules, however, is apply trade restrictions to attempt to change the process and production methods – or other policies – of its trading partners. Why? Basically because the issue of production and process methods – like any other domestic policy – lies within the sovereign jurisdiction of countries themselves.

But this larger issue of production and process methods once more underlies the pressing need to reach targeted multilateral solutions to these specific issues. And here again, WTO rules need not stand in the way. Such agreements might, for example, involve compensatory payments or inducements to burden-sharing, and include provisions for monitoring compliance and other follow-up action. They may also entail trade sanctions for enforcement purposes. As long as the agreement in question is genuinely multilateral in the sense of being consensus-based among a large group of countries, the WTO – under Article XX – has little to say about the use of such measures.

It is true that up to now more could – and must – be done by trade and environmental negotiators to coordinate their policy proposals and to forge a common approach towards trade-related, global environmental problems – with the result that a number of the most important Multilateral Environmental Agreements contain trade measures whose consistency with WTO rules might be open to question. But the reality is that – so far – the issue of legal compatibility is a theoretical, not a practical problem for the trading system. Over 200 international

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*Sustainable Development and Trade Sanctions, continued from page 7*

environmental agreements already co-exist with the WTO without a single challenge in dispute settlement – suggesting that multilateral cooperation on the environment – as on many other transborder issues – is a practical option.

But what about when a multilateral consensus for global action does not exist? How to exert pressure on countries considered by some to have inadequate, wayward or even distasteful policies? And isn't this an argument for allowing countries to take unilateral measures – including trade sanctions – by adapting the WTO rules to accommodate these goals?

I would argue that the opposite is true. Asking the WTO to solve issues which are not central to its work – especially when these are issues which governments have failed to address satisfactorily in other contexts – is not just a recipe for failure. It could do untold harm to the trading system itself – with all the collateral effects this would have for a sustainable global economy – without making any progress towards the environmental or social goals it was meant to address. Let me outline three broad reasons why:

First there are serious doubts about whether trade agreements offer a useful policy tool to address many of these challenges. Take the example of a steel mill which produces unacceptably high levels of sulphur emissions leading to acid rain. Will imposing trade restrictions on exports from this steel mill really eliminate the problem? It may reduce production for export markets, but not domestically. In fact, it could have the opposite effect of forcing the mill to increase its domestic production at lower costs to compensate for the loss of foreign markets. And this would almost certainly reduce profits which would in turn reduce the company's ability to invest in cleaner, more environmentally-friendly technologies. If the problem is pollution then our goal should be to develop policies which address pollution – not trade....

The second point is political. There is a basic flaw in the assumption that an international consensus on environmental objectives, for instance, which eludes countries in environmental fora can somehow be reached less painlessly by the same countries in the WTO. The WTO is a consensus-based organization – and all major decisions are reached on the basis of mutual agreement. A country which has not been persuaded to join a consensus to resolve an environmental problem through a Multilateral Environmental Agreement can hardly be expected to join a consensus in the WTO to change the trade rules in ways that would allow it to be punished. The reality is probably just the opposite....

The third – and perhaps most important – point is a legal one. The WTO is not – and has no intention of becoming – a supranational body with the power to determine values and standards for the international community – especially in the absence of internationally agreed standards and rules. It is not a world policeman that can force compliance upon unwilling governments. The genius of the multilateral system lies in the way the free pursuit of national self-interest within a consensus-based system has produced such extraordinary collective benefits in terms of open trade, shared interests, and cooperative international action. Equally revolutionary

is the core principle of non-discrimination which has done so much to remove power politics from international trade relations, by guaranteeing all countries equal rights within the system – irrespective of their size and power.

The irony is that some would now undermine these basic principles of international cooperation in the name of larger global objectives. Indeed, one paradoxical result of the current search for global solutions to environmental, social and other issues is growing pressure in some quarters for unilateral trade measures. But whose environmental standards, cultural traditions, political systems represent a universal norm? Which one of these values and standards should be imposed on other countries? And do we really want the WTO to play the judge, jury and police of our environmental, social and ethical values? Not only are we asking the trading system to perform a role for which

it was never intended. Worse, this is the surest way of poisoning the spirit of international consensus and cooperation that we so desperately need to begin addressing the broader challenges of the next century.

I don't pretend that reaching multilateral agreements on many environmental, labour, or ethical issues will be easy. But nor should we pretend that there is a short cut through the WTO – or a magic bullet called trade sanctions. Unilateralism will not convince any country of the validity of the values which another asserts. Nor will trade sanctions serve as a wake up call for public opinion around the world. This approach is a sign of weakness not strength. It reflect a basic lack of confidence

that one's rights or values can be freely shared by others.

Divisive approaches can only lead to divided outcomes. By definition, the global challenges we all face call for shared and cooperative solutions. And this can only be achieved through consensus. The only road ahead, in other words, is the multilateral road – which will require determination, skill, and patience.

I began by observing that we have a unique opportunity in this post-Cold War world for developing shared approaches to shared challenges. The danger we face in the time ahead is not from the debate about globalization. Its impact on jobs, the environment, labour standards, human rights, or other ethical issues is something which can only be clarified and explained if these issues are brought out into the open in an honest and informative way.

The real danger is that we will fail to open up the globalization debate – and allow it instead to be dominated by a dialogue of the deaf. Growth versus the environment. Free trade versus labour standards. Globalization versus Human Rights. This is back to the future – a return to the ideological conflicts of the last century, not a shared vision for the next....

Greater global coherence in policy-making – for Germany, for Europe, and for the world – is not only a logical but a necessary next step in this age of interdependence. As we begin to address the growing gap between the rules of international trade and the rules needed to manage the many other facets of global integration, perhaps the greatest contribution which the WTO can make is through its example. What the multilateral trading system offers is an important symbol of what can be accomplished internationally through cooperation and consensus – it is a symbol which we cannot afford to tarnish or devalue.?

# Developing Country Trade Issues: Standards, IPRs and Dispute Settlement

By Raghav Narsalay

The CUTS-ICTSD Roundtable on Trade Issues for Developing Countries was held from 27-28 November in Geneva (see cover story for an overview). The first session focused on multilateral trade rules of particular importance to developing countries.

## Standards

While a few developing countries have managed to diversify their exports during the evolution of the GATT, most still primarily export basic commodities, particularly agricultural products. These exports, rarely challenged until recently, are now increasingly in danger of being rejected by developed countries on the grounds of sanitary and phytosanitary (SPS) standards and other technical barriers to trade (TBTs).

SPS measures relate to the protection of animal, plant and human life within the territory of WTO members regarding the entry, establishment or spread of pests, diseases, additives, contaminants, toxins, disease-causing organisms, etc. Technical regulations pertaining to product characteristics or their related production processes (including or exclusively dealing with terminology, symbols, packaging, marking or labeling requirements) fall under the Technical Barriers to Trade Agreement (TBT). All products - industrial and agricultural - are subject to TBT regulations.

Both TBT and SPS use standards set by other bodies.

The SPS Agreement permits governments to justify their barriers only on the basis of scientific findings, but this provision does not apply to technical barriers to trade. Developing countries should be aware that rapidly proliferating standards will make it technically more difficult for them to abide by importers' regulations. Under the circumstances, Ms Gretchen Stanton, Secretary of the WTO Committee on SPS Measures, offered the following suggestions for developing countries' consideration:

- increased involvement in the activities of international standard-setting bodies such as the Codex Alimentarius, to address their interests;
- transparent national standards regulations to avoid future conflicts during discussions on standards; and
- increased spending on upgrading standards of processed goods if found below currently accepted international norms rather than incurring expenditure on just increasing the output, especially in the area of agricultural products.

Participants identified several critical issues for the future, as well as steps developing countries could take to lessen the impacts of standards and technical regulations on their exports:

- focus on developing processes that work well for them and prove their equivalence with respect to internationally accepted norms;
- participate in discussions at the WTO Committee on Trade and Environment to reduce the risk of environmental standards becoming a major obstacle to trade;
- exercise caution while using genetically modified seeds as the produce of such seeds might face non-tariff barriers in the future; and
- participate in discussions taking place on labour standards in the ILO as some measures (for instance, setting an age limit on labour or banning child labour) could result in additional TBTs on their exports.

## Intellectual Property Rights

As developing countries try to move up the ladder in terms of producing value-added goods or making structural shifts in their production - venturing into areas such as bio-technology - they will now need to be careful of the Trade-Related Intellectual Property Rights (TRIPs) Agreement.

The TRIPs Agreement rests on three fundamental principles:

- general GATT principles, including national treatment, most favoured nation treatment and non-discrimination;
- signatories are bound by the provisions of already existing intellectual property rights (IPR) treaties; and
- signatories must provide minimum level of protection for IPRs.

The right for inventors to hold patents on their inventions is an important one. However, the benefits of including IPRs in the GATT/WTO are still being vociferously debated (most developing countries resisted including intellectual property rights protection in the WTO agreements during the Uruguay Round negotiations, preferring to leave such matters under the World Intellectual Property Organisation, WIPO). Several participants noted that the issue of TRIPs was conveniently relegated to the background during the Singapore Ministerial Meeting at the cost of new issues such as investment and competition policy.

**Economic logic does not justify the level of protection granted to intellectual property rights under TRIPs. The provisions should be challenged during the Millennium Round.**

Professor Jagdish Bhagwati, Chair to the session, argued that economic logic did not support the inclusion of IPRs under GATT and saw their inclusion in the multilateral trading system as a 'political settlement'. He seemed exasperated about the minimum level of protection laid down, e.g. 20 years for patents, 10 years for industrial designs and 50 years for copyrights. He fired questions to the audience: was there any economic justification for the time frames identified for these protection periods? If not, could the TRIPs provisions be taken up as an issue for the millennium round of 1999? If developing countries supported the idea, could WIPO help them put up a case?

Mr Carlos Fernandez-Ballesteros of WIPO said that while developing countries may have lost by agreeing to TRIPs, once TRIPs was on the Uruguay Round 'single undertaking' agenda, they either had to sign on or stay out of the WTO altogether. Renegotiating the patent provisions would be very difficult but developing countries should position themselves to take advantage of the upcoming revision of other TRIPs clauses. Mr Fernandez-Ballesteros drew attention to a new unit WIPO was establishing to deal with global issues affecting developing countries, including biodiversity, folklore and cultural heritage. He also pointed out the benefits of having intellectual property rights under the 'tooth and claw' of a binding and enforceable agreement, through which other treaties could be enforced.

## Dispute Settlement

An effective dispute settlement system goes a long way in protecting the rights of under-privileged countries.

The multilateral trading system provides for a common system of rules and procedures applicable to disputes arising under any of its legal instruments. The main responsibility for administering these rules and procedures lies with the General Council which acts as the

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## Developing Country Trade Issues: Market Access

By Christophe Bellmann

'When we talk about market access we can bring out all kinds of economic arguments regarding access to developed country textile markets and so on but as long as issues relating to power are not addressed there is no way we can bring about changes in the relationship between the North and the South,' Professor Yash Tandon of the International South Group Network commented on opening the session on market access during the joint ICTSD-CUTS roundtable on developing country trade issues. The cluster Professor Tandon was chairing focused on tariff escalation, agriculture and textiles.

### Tariff escalation

To initiate debate, Dr Basudeb Guha-Khasnobis of the Indira Gandhi Institute of Development Research pointed out that while tariff rates had generally declined as a result of the Uruguay Round, there had been little change in tariff escalation. For instance, in a market where the tariff for raw leather is 1.8 percent, that for finished products is 4.1 percent. No tariffs are levied on jute fiber, but jute fabric has a tariff of 3.2 percent. Compared to pre-Uruguay rates, current tariff rates reflect a 38 percent reduction in escalation between semi-manufactured goods and raw materials but only a 23 percent reduction in escalation between finished goods and semi-manufactures.

Dr Guha-Khasnobis saw the recent 'phenomenal' increase in many Asian countries' raw materials exports at the expense of finished goods exports as indirect evidence of tariff escalation. He highlighted the dangers of excessive reliance on raw materials exports for long-term development; for instance, he said, economic dependence on agro-based products puts countries at the mercy on climatic conditions, while an export strategy focused on natural resources may push them to over-exploit their exhaustible resource base.

Dr Guha-Khasnobis demonstrated the negative impact of tariff escalation on developing countries' balance of payments as it prevents them from exploiting their natural comparative advantage in exporting labour-intensive products. He also called for more analysis on non-tariff barrier escalation.

### Agriculture

Colombia's Ambassador Nestor Osorio Londoño, Chair of the WTO Committee on Agriculture, introduced the debate on agriculture. Referring to Professor Tandon's opening comments, he reminded the audience that the most powerful agricultural countries were also the most protectionist. He conceded, however, that in spite of the numerous trade barriers that still remain, the Agreement on Agriculture constituted a starting point towards agricultural liberalisation. He highlighted many problems of particular importance to developing countries, including food security and the fact that most developing countries exporting agricultural goods had not managed to cross the gap from primary goods to value-added products. Since this was largely due to developed countries' imposing restrictions on processed goods (for instance through escalating tariffs) in order to generate the value-added income themselves, he said many developing countries could be considered as 'contained' developed countries.

Regarding new agricultural negotiations in the WTO, Ambassador Osorio Londoño predicted strong pressure from the Cairns group for the elimination of subsidies in the European Union and the United

States. With the entry of Eastern European countries to the Union, the subvention budget is expected to grow from 8.6 billion Ecus to 13 billion Ecus. As the US, the EU needs to reform its agricultural policies and diminish subsidies to achieve a balanced budget.

Developing countries could also exert pressure for reducing these subsidies. But to ensure that the liberalisation process works in their favour, they must be well-prepared for the negotiations, clearly identify their interests and create alliances. The best approach would be global negotiations (the 'single undertaking' advocated by Ambassador Lacarte Muró, see cover story) rather than sectoral negotiations. There is also a need for analysis of the WTO Agriculture Agreement's impacts on developing countries that non-governmental organisations could contribute to. He stressed that in many Southern countries, agricultural imports had risen sharply at the expense of exports and local agriculture, giving rise to serious social and political problems. The relationship between multilateral rules for agriculture and commodity prices merited more careful attention, Ambassador Osorio Londoño emphasised.

### Textiles

Mr Munir Ahmad, Director of the International Textiles and Clothing Bureau, commented on key issues in the sensitive textiles sector.

World textile exports are worth US\$310 billion a year and represent between 20 and 68 percent of developing country exports. The WTO Agreement on Textiles and Clothing stipulates that all quotas on textiles must be removed by 2005, thus bringing this sector back to the mainstream of traded goods after decades of special restrictive treatment under one treaty or another. However, for the moment tariffs on textiles and clothing remain much higher than those levied on other industrial goods and are subject to a high escalation rate. As for quotas, only an insignificant number have been lifted during the first implementation period (from 1995-1998). Market access would also be significantly enhanced by improvements in the WTO provisions on rules of origin and customs procedures. In conclusion, Mr Ahmad called for a better understanding of the role of textiles in the development process.

### Discussion

During the ensuing debate, many participants denounced developed country protectionism: real negotiations on liberalising trade in agriculture will not start before the year 2000 and the implementation of the WTO Agreements on Textiles and Clothing is progressing far too slowly. Non-tariff barriers such as quality, health and safety standards, as well as social and environmental labels or anti-dumping measures are also considerable obstacles. A question arose as to what extent it was realistic to expect further liberalisation in OECD countries who were facing rising unemployment and budget constraints. The panelists saw the elimination of protectionism in the North mainly as an adjustment process whereas for the South access to Northern markets was a question of development and survival. Opinions differed widely over whether 'triggering' development was needed before 'sustainable' development could be envisaged. Some speakers thought better market access was vital for getting the development process off to a start, thus allowing countries to generate funds necessary for environmental protection and social programmes.

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## Developing Country Trade Issues: New Issues

By Marie-Claire Segger-Cordonier

It was clear, at the conclusion of the joint ICTSD - CUTS Roundtable, held in November in Geneva, that 'new issues' for developing countries in the international trade system will need much further debate and consideration. Provocative remarks from the Chair, Professor Jagdish Bhagwati of Columbia University, set the tone for the afternoon. Professor Bhagwati raised the specter of standard WTO arguments against consideration of 'new issues' in trade talks, questioning the imposition of environmental and labor concerns, the investment furor in connection with the OECD MAI negotiations, the legitimacy of competition policy analysis, and trade diversion as related to regionalism.

### Regionalism

A convincing presentation from Professor Christian Friis Bach of the University of Copenhagen challenged conventional thinking with regard to regional trade integration processes. Set in a context of increasing inequality between rich and poor, public opposition in some countries to trade liberalization and the need for 'global affirmative action for development', his questions included whether regional trade agreements were stumbling or building blocks in trade liberalization for sustainable development; and whether regionalism diverted or created more trade. Among his initial points were the suggestions that social and environmental policies were easier to jointly set and achieve in a regional context, and that while regional trade agreements could result in trade diversion in certain sectors, they often increased trade overall. In addition, he maintained that regional agreements could support infant industry while WTO rules often facilitated the needs of larger industries. He pointed out that since some national economic sectors did lose from trade liberalization, a regional free trade agreement might mean less abrupt changes, and less likelihood of public opposition. He also stressed the importance of ensuring that regional trade agreements were conducted in a transparent, time-limited fashion resulting in binding trade rules.

### Investment

Ambassador Anthony Hill of Jamaica, to launch the discussion on investment issues, gave an insightful commentary on the dynamics of international trade negotiations. He offered the WTO intellectual property and services agreements as examples of developed country issues which, in spite of 'stretching imaginations', had been successfully introduced as priorities for international trade rules. Driven by the same forces, investment agreements – within or outside the context of the WTO – might also become priority agenda items. He emphasized that any negotiations should be grounded in sound economic theory, particularly because of the danger of a 'financial economy' driving the 'real economy', which provided employment and a chance to better human conditions. The Ambassador pointed out that unsound rules, once written, still bound their signatories, and challenged developing countries to follow the debate and defend their interests in the WTO in spite of the serious investment of resources this required.

In response to the presentation, comments from the floor pointed out that current multilateral investment treaty negotiations were unbalanced in their aim to serve business interests, and expressed clear opposition to the investor-state dispute resolution provisions being discussed in the Organization for Economic Cooperation and Development as part of the new Multilateral Agreement on Investment (MAI). Another question arose concerning the forum chosen for MAI

discussions, and the unequal access for developing countries to the negotiation of an agreement which would then be open for all to sign. The fact that business, as exporters, had more voice in many trade and investment debates was acknowledged, and it was pointed out that the current MAI drafts were unbalanced in terms of investors being given rights while nations would carry all the obligations. However, some speakers mentioned that though non-OECD members had no access to the MAI negotiations and, indeed, UNCTAD or even WTO expertise with investment issues might contribute to the discussions, fundamentally the OECD had the right to negotiate any accord desired by its members. Developing countries were advised to follow the debates if their interests were at stake. A developing country trade delegate expressed concern about this closed forum in negotiating an agreement which would eventually affect all countries.

### Competition Policy

Mr. Pradeep Mehta of the Consumer Unity and Trust Society launched competition policy discussions by calling for strengthened domestic and international competition policies. He reviewed the development of competition law and policy in various countries, concluding that national level competition law should be directed at enhancing consumer welfare, enforced by a single body with a consumer policy branch represented at the executive level, responsible for anti-dumping laws and regulating all trade agreements restricting imports. This body should be taken into consideration in all industrial policy decisions. Mr. Mehta advocated the creation of an international agreement to deal with problems of international competition enforcement, and recommended that the WTO begin informal negotiations, with UNCTAD and OECD specialist support, to identify main problems in this area with the goal of enhancing consumer welfare. He further recommended strengthening, reforming and harmonizing national laws under a single, legally-independent agency and ensuring that agency's role in consumer and business-related policies; as well as the development of basic principles of competition rules on the basis of which national parliaments could legislate mutually recognizable and harmonized domestic laws. He also suggested the development of principles for 'rules on rules' on cross-border competition mechanisms under the WTO system but with an arms-length relationship.

### Environment

The former Chairman of the WTO Committee on Trade and the Environment, Ambassador Juan Carlos Sánchez Arnau of Argentina, initiated discussions on environment by pointing out that this issue was not exactly new. He reminded the audience of the honest and sober consensus of the 1997 United Nations General Assembly Special Session that insufficient progress had been made in solving environmental problems. Ambassador Sánchez Arnau highlighted several reasons for this: low government priority; institutional weaknesses in environmental legislation, regulations, enforcement and administration; developing country incapacity to implement multilateral environmental agreements (MEAs) or take on new commitments; and the spreading of unsustainable consumption and production patterns into developing countries in the context of globalization. His recommendations included addressing environment on government agendas, improving environmental management institutions and capacity, and distinguishing between state projects

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Dispute Settlement Body (DSB). Because of the inclusion of time-limits in the Dispute Settlement Understanding (12 months maximum on appeal, nine months normally), the wronged member can expect to receive compensation within a year to 18 months. One of the important principles of the dispute settlement process is that a dispute can only be brought to the DSB once efforts to settle it through bilateral consultations have failed. Professor Ernst-Ulrich Petersmann, Legal Advisor to the WTO, expressed his satisfaction regarding the rising number of cases settled through consultations.

Either of the parties involved in the dispute can appeal against the decision of the DSB. The Appellate Body consists of seven people of recognised authority who are unaffiliated with any government. Of the seven, only three persons are called to serve in any one case. Professor Petersmann stressed that the Appellate Body had to confine itself to legal issues contained in the panel report. Its mandate was to interpret these legal issues and submit its report to the DSB within a period of 60-90 days.

Noting that 105 cases had been brought to the dispute settlement mechanism in a span of just of two-and-a-half years, Professor Petersmann said the frequent use of the procedures reflected the WTO membership's confidence in the system's efficiency and fairness. One-third of the complaints had been filed by developing countries, many more than under any other international treaty, resulting in some precedents in interpretation that could prove helpful in the future. Active participation in the dispute settlement process could assist developing countries in identifying their strategic interests – a useful exercise in view of the full review of the dispute settlement procedures slated to take place in 1998. Better use of the dispute settlement system could also reduce the costs borne by developing country industries and consumers during unending political negotiations, Professor Petersmann said.

Given the potential benefits of the dispute settlement mechanism, the question is how equipped are developing countries to reap these benefits. Many of them lack the legal and financial resources to hire the services of foreign experts and have few or no lawyers of their own specialising in WTO law. Professor Bhagwati and Professor Petersmann both made strong requests to the WTO and UNCTAD to strengthen developing country expertise in dispute settlement. This could be included as an agenda item to the 1998 review.

*Raghav Narsalay is an economist at Tata Services Ltd. in Bombay, India.*

#### **SOLIDARITY FOR THE FUTURE**

The Swiss Coalition of Development Organizations will convene a North/South Conference for Sustainable Development under the theme Solidarity for the Future from 25-29 May 1998 in Berne, Switzerland.

Distinguished speakers, including Flavio Cotti, President of the Swiss Confederation, Julius Nyerere, former President of Tanzania and Nafis Sadik, Director of the UN Population Fund, will address aspects of political, economic and social change that will determine North/South relations in the 21st century. Workshops and panel discussions will develop recommendations and attempt to draw conclusions relevant to Swiss society.

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and enterprises for wiser resource allocation. National-level actions, he recommended, should deepen interest in the environment, transform production and consumption patterns, and fight poverty as the source of environmental problems. At the international level, Ambassador Sánchez Arnau called for better analysis, ensuring that industrialized countries fulfil their commitments, and a recognition that, from an environmental perspective, Northern and Southern concerns were similar while strategies might differ. A review of the WTO Committee on Trade and Environment's work touched upon two principal themes: the need to build effective bridges between multilateral environmental agreements and the WTO, and the openings presented by market access and tariff debates which might begin to address agricultural subsidies and real costs of production.

Pointing out the institutional weakness of the UN Environment Programme (UNEP) and the difficulty of dealing with dispersed MEA secretariats, Ambassador Sánchez Arnau welcomed a suggestion from the floor to set up a World Environment Organization, with the competence to deal with trade-related environmental measures.

Other questions raised in the debate that followed the 'new issues' cluster, focused on possible amendments to the WTO's dispute settlement procedures and the importance of good domestic economic policies to ensure social and environmental independence from the IMF and other international financial institutions. As time constraints prevented in-depth discussion on many points, several participants expressed their interest in continuing in other fora the debate regarding the 'non-trade' issues that so inexorably seem to make their way into the rules of the multilateral trading system.

*Marie-Claire Segger-Cordonier is Coordinator of the Canadian Environmental Network in St. Victoria, Canada.*

*Developing Country Trade Issues: Market Access, continued from page 10*

Regarding agriculture, participants noted that the tariffication of trade barriers had sometimes led to more protectionism, not less. Tariff peaks were common for too many products of export interest to developing countries. For net food-importing countries, many raised food security issues and the persistent question of external debt. Looking at the agricultural negotiations ahead, the debate focused on the options available to developing countries regarding political forces and possible alliances (APEC, Cairns, regional alliances, etc.).

Participants also questioned the benefits of trade liberalisation to developing countries and countries with economies in transition: with the end of commodity agreements – brought about by the Uruguay Round – many countries lacking the means to profit from better market access face increased competition and often high social costs.

Finally, participants highlighted the need for more analysis from the WTO, UNCTAD and NGOs to assist developing countries in defining their interests, preparing for negotiations or evaluating the impacts of WTO rules and liberalisation on their development.

At the end of the session, the Chair summarised the issues, grouping them according to four levels of complexity: first, technical questions such as market access, rules and their impacts; second, the leeway for negotiation regarding agriculture and textiles, including the powers that must be reckoned with and negotiation options; third, the importance of changing paradigms and approaching the issues from a perspective of long-term development; and, finally, existing alliances and those to be formed, particularly among developing countries.

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### **Biodiversity Convention: Protecting Indigenous Knowledge**

The Secretariat of the Convention on Biological Diversity organised a Workshop on Traditional Knowledge and Biological Diversity from 24-28 November 1997 in Madrid. The workshop sought to identify ways of implementing the Convention's Article 8(j), which requires the Parties to 'respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation of biological diversity' and to 'encourage the equitable sharing of benefits of such knowledge, innovations and practices'. The more than 60 governments and almost 150 indigenous and local community groups who attended the meeting produced two sets of recommendations for future action, reflecting a wide variety of views.

The first set concerns a workplan, and lists more than 50 (sometimes mutually exclusive) options divided under three main headings: general recommendations; specific recommendations for future elaboration concerning eight broad areas of action; and development of recommendations for actions at the national and international levels.

Among the proposed options, some are relevant to the international trade regime. Under 'equitable benefit sharing', one proposal suggests the establishment of a process 'involving relevant international and multilateral bodies, including the WTO and WIPO, in developing a multilateral mechanism for certifying and/or confirming prior informed consent for the use of traditional knowledge'. The section on 'monitoring elements' includes calls for a moratorium on bio-prospecting in the territories of indigenous people and local communities until acceptable *sui generis* systems for the protection of traditional knowledge are established, as well as for the recognition of the rights of indigenous peoples and local communities to access and repatriate genetic materials held in all *ex situ* collections. Under the 'legal elements' section, one proposal requests analysis and evaluation of existing intellectual property rights regimes and the development of alternatives, including 'special regimes that recognise collective ownership, as well as *sui generis* systems to protect traditional knowledge'. Another option proposes the examination of the implications of the TRIPs Agreement on the implementation of Article 8(j) and related provisions.

The other outcome of the meeting was a set of options, again sometimes contradictory, on the need to establish an intersessional working group or other subsidiary body to offer guidance/advice on Article 8(j) implementation. The document lists options on the need to establish such a body, its possible mandate, reporting requirements, as well as its duration (ranging from three years to permanent), and the frequency of its meetings. The report also provides options for the body's composition (most of these involve equal participation of indigenous peoples and local communities) and financing.

The recommendations for the workplan (UNEP/CBD/TKBD/1/CW/L.1) and the subsidiary body/intersessional working group (UNEP/CBD/TKBD/1/CW/L.2) will be considered at the next meeting of the Conference of the Parties to the Convention on Biological Diversity, scheduled for 4-15 May 1998, in Bratislava, Slovakia.

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### **FAO Discusses Benefit-Sharing for Plant Genetic Resources**

Access to and compensation for products derived from biodiversity are also under discussion at the FAO Commission on Genetic Resources for Food and Agriculture, which met for the fourth time from 1-5 December to continue negotiations on the revision of the International Undertaking (IU) on Plant Genetic Resources for Food and Agriculture in harmony with the Convention on Biological Diversity. Established in 1983, the IU aims to ensure that plant genetic resources, particularly those with major economic potential, are collected, conserved and made available for plant breeding and other scientific purposes.

Much of the world's existing *ex situ* germplasm, mostly collected free of charge, is held by international agricultural research centres supported by the Consultative Group on International Agricultural Research (CGIAR), a consortium of 57 public and private sector donors. The CGIAR collections were placed under the auspices of the FAO in 1995, with provisions specifying that they should be managed in a manner consistent with the Convention on Biological Diversity. Other plant genetic resources are conserved in national collections or private germ banks around the world. By far the greatest part of potentially useful genetic material for food production, however, is still to be found in its natural *in situ* surroundings, often carefully fostered by generations of indigenous or farming communities.

Governments differ sharply over the so-called Farmers' Rights. The concept of Farmers' Rights is similar to that of indigenous peoples' and local communities' rights in the Biodiversity Convention, and involves such issues as participation in decision-making about the use of genetic materials and the development of a *sui generis* system to protect farmers' innovations and knowledge and compensate for their use. This last issue again highlights the need to clarify the relationship between the WTO TRIPs Agreement and environmental conventions dealing with compensation to, or benefit-sharing with, local communities involved in biodiversity conservation.

Issues under the Farmers' Rights cluster also involve requesting farmers' prior informed consent before plant resource collection, as well as modification of intellectual property rights and land tenure legislations. Another clause directing countries to promote/assist farming communities in participating in germplasm activities raised concerns about such promotion resulting in trade distortions and discrimination, pointing to possible conflicts with the subsidy provisions of the WTO Agreement on Agriculture.

Another contentious issue involves access to germplasm. The IU revision aims to set up a multilateral system of access that could also ensure benefit-sharing. Delegates more or less agree that the CGIAR collections will form the backbone of the multilateral system and offer free access to the germplasm held by the international agricultural research centres. For plant genetic resources held in national institutions, a list will be drawn up, indicating which resources in the collection would be available to the multilateral system. Bilateral benefit-sharing schemes between countries regarding other plant genetic materials could also be envisaged. However, some delegates stressed the increasing privatisation of germ banks around the world and worried that large amounts of potentially valuable material for

*Continued on page 14*

*Plant Genetic Resources, continued from page 13*

food and agricultural production might remain outside the system. In addition, *in situ* farm materials pose considerable problems, whether managed collectively by traditional farmers (see Farmers' Rights above) or owned privately.

Finally, what are the obligations of recipients of genetic resources if these are not used for research or breeding, that is direct agricultural and food production needs, but for commercial purposes? Discussion on this issue raised many more questions than it answered. For example, should the revised IU stipulate compensation or a share in the profits from the sale of products developed on the basis of genetic resources made available through the multilateral system? Should countries place their plant genetic resources under intellectual property protection? How could royalties be collected for qualities such as drought resistance?

The next meetings of the Commission are tentatively scheduled for June and autumn 1998.

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### **Towards Biodiversity Cartels? New Protocol Proposed**

A meeting organised by the UNEP Regional Office for Latin America and the Caribbean on 'Biodiversity, Globalisation and Sustainability' from 19-21 November also looked into the question of returning benefits to biodiversity-rich communities and countries. The meeting, attended by researchers, governmental and intergovernmental representatives and citizens' groups, recommended the adoption of a special protocol to the Biodiversity Convention, which would oblige countries to amend their intellectual property rights legislation to require certificates of origin on products using biological diversity.

The proposed protocol would create 'biodiversity cartels' consisting of countries and communities on whose land a particular resource is found. The cartel members – who could be physically as far apart as Brazil and Indonesia depending on the species – would have collective bargaining power vis-à-vis bioprospecting companies instead of being tempted to outbid each other in a 'race to the bottom'.

The special protocol would create a fund which would receive and distribute among the cartel members 13 percent of net sales of biotechnology products using their biodiversity, plus about 2 percent for the country that provided the physical samples. The cartel would divide royalties resulting from ethno-bioprospecting equally between communities able to demonstrate possession of useful knowledge about the collected resource, as well as states that could supply the chemical that is the physical basis for that knowledge.

Finally, the meeting recommended that indigenous peoples and other holders of traditional knowledge be instructed that the publication of their ancestral knowledge automatically places that wisdom in the public domain in the US and other countries that have not ratified the Biodiversity Convention. Given the high cost of patenting, intellectual property protection for traditional knowledge could be more efficiently provided through other mechanisms. Treating indigenous knowledge as trade secrets, for instance, would imply not publishing any traditional knowledge not yet in the public domain.

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*Kyoto, continued from page 1*

The agreement reached at Kyoto was based on countries' best-available estimates of their projected future greenhouse gas emissions. These estimates are critically sensitive to the assumed effectiveness of policies and measures already implemented, as well as assumed future values of key variables such as the price of oil and national economic growth. Should countries' estimates prove to be wrong, the implications for the stringency of the necessary policies and actions, or 'level of effort', could be enormous.

Policies and measures taken by Annex I Parties to mitigate climate change could also have negative impacts on developing countries who are, for example, significant fossil fuel exporters. As noted above, Article 2.3 of the Protocol requires that measures be implemented in a way that minimises these effects. This condition is reiterated in Article 3.14, where it is further established that the MOP at its first session will examine how to minimise these, and other, adverse effects, particularly through funding, insurance and the transfer of technology.

Article 17 postpones the fleshing out of provisions related to determining and addressing non-compliance to the first meeting of the Parties to the Protocol. While trade-related measures remain possible instruments to enforce compliance, the Article suggests an initial approach of developing an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance.

International trade impacts will depend on the policies and measures chosen to reach targets, as well as their level. As many key features of the Protocol remain to be elaborated, the level of effort required by countries is neither clear nor has been agreed on, making specific trade impacts difficult to predict. Much will depend on the extent to which Parties meet obligations by domestic action and the extent to which credits are earned abroad. No doubt consideration of international trade impacts will continue to play an important role in shaping critical future decisions related to the Protocol.

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### **EDITOR'S NOTE**

Due to severe space constraints in the previous issue of Bridges (Vol. 1 No. 5), the article entitled Trade-Related Issues and the Climate Convention did not show credits which were duly given in its original version.

Credits are due to a paper presented by Gary Sampson (from the WTO Secretariat) at his personal capacity in the Global Emissions and Australian Business conference held in Melbourne in July 1997. Footnotes in the original article referring to several other papers compiled by Patrick Low in a 1992 World Bank publication were also left out.

The author of the article and the editor of Bridges apologise for any misunderstandings or inconvenience.

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The International Centre for Trade and Sustainable Development (ICTSD) was founded in September 1996 as a link between the trade, environment and development communities. It seeks to facilitate access to the multilateral trading system, promote understanding and disseminate information on issues and events concerning sustainable development and international trade. Please contact us for more information or to subscribe to ICTSD publications.

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## Harmonising the Biodiversity Convention and the WTO

The World Conservation Union (IUCN) has launched a four-year project aimed at achieving coherence between the Convention on Biological Diversity (CBD) and the WTO. The initiative seeks to avoid conflicts and reinforce synergies between the two regimes. It will focus on the effective implementation of the trade-related aspects of the CBD through support to national implementation of the relevant CBD provisions in three developing countries, and present recommendations based on the country studies in international fora such as the CBD and the WTO.

The most notable link between biodiversity conservation and the multilateral trading system is trade in genetic resources and associated resources, such as biochemicals or traditional knowledge. With such resources new products are developed for use in biotechnology, agriculture and other applications. Trade also impacts on biological resources through the production of goods, notably timber or agricultural products, as well as through industrial pollution.

One of the three main objectives of the CBD is the 'fair and equitable sharing of the benefits arising from the use of genetic resources', including by appropriate access to genetic resources (Article 15), transfer of relevant technologies (Article 16) and access to research and benefits arising from biotechnology (Article 19). Article 15 requires Contracting Parties to take measures aimed at 'sharing in a fair and equitable way the results of research and the development and the benefits arising from the commercial and other use of genetic resources'. The CBD (Article 8[j]) also directs Contracting Parties to respect knowledge of 'indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity', and to 'encourage the equitable sharing of benefits' arising from such knowledge. The question of benefit sharing, particularly concerning compensation for traditional knowledge raises complicated intellectual property rights issues.

Although other WTO agreements and rules may also have considerable impacts on the conservation of biodiversity (for instance, regulation of the environmental impacts of genetically modified organisms involves CBD/WTO linkages through the biosafety protocol negotiations), the TRIPs Agreement is of the most importance to the Convention. It's Article 27, which deals with patentable subject matter, allows Members to exclude from patentability plants and animals other than micro-organisms. However, it requires Members to 'provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof' (Article 27.3[b]). This sub-paragraph is due to be reviewed in 1999. The IUCN project will seek, inter alia, to ensure that TRIPs supports rather than limits countries' discretion to create *sui generis* systems for protecting traditional knowledge and genetic resources (see related articles on pages 13 and 14).

The TRIPs Agreement's patent provisions are also linked to CBD Article 16, which requires Contracting Parties to provide or facilitate access to 'technologies that are relevant to the conservation and sustainable use of biological diversity or make use of genetic resources and do not cause significant harm to the environment'.

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All WTO meetings take place in Geneva. Dates are subject to change, please contact the WTO for confirmation.  
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January 28	WTO Council for Trade in Services Contact: A.-Hamid Mamdouh, tel: 5435, fax: 5771
January 28-29	WTO Trade Policy Review Body (Japan) Contact: Peter Tulloch, tel: 5089, fax: 5765
January 29	WTO Council for Trade in Goods Contact: Suja Rishikesh, tel: 5484, fax: 5770
January N/A Brussels	INC-5 for a Legal Instrument on the Prior Informed Consent Procedure for Hazardous Chemicals in International Trade Contact: UNEP IRTPC, tel: (41-22) 979-9111, fax: 797-3460, e-mail: <a href="mailto:IRTPC@unep.ch">IRTPC@unep.ch</a>
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February 24-26	WTO Council on TRIPs Contact: Matthijs Geuze, tel: 5418, fax: 5790

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## INTERNET AND OTHER RESOURCES

Economiquity - A newsletter presenting a Southern perspective on trade, development and consumer concerns, produced by the CUTS Centre for International Trade, Economics & Environment, 3-B Camac St., Calcutta 700 016, India; tel: (91-33) 297-391; fax: 297-665, e-mail: [cuts@lwbs.com](mailto:cuts@lwbs.com).

NAFTA Commission for Environmental Cooperation - [www.cec.org/](http://www.cec.org/)  
The internet site for official documents and information concerning the environmental dimensions of the North American Free Trade Agreement.

Trade & Development Centre - [www.itd.org/](http://www.itd.org/) This internet site, designed primarily for use by individuals in developing countries, was recently opened by the WTO and the World Bank to provide information on trade as it relates to social and economic development. The site provides information on developing countries and economies in transition, training and technical co-operation activities, as well as discussion forums, links and case studies.

Traffic Bulletin - A periodical journal containing information and original papers on trade in wild animals and plants. Available free of charge from Traffic International, 219c Huntington Road, Cambridge CB3 0DL, UK.