

MORE POWER TO THE WORLD TRADE ORGANIZATION?

The international trade controversy

In the entire history of international trade there has never been an institution as powerful and influential as the World Trade Organization (WTO). The rules it passes and the sanctions it can authorise are binding on its members. Of its 134 member nations, two thirds are developing countries, with another 32 queuing up to join. The attraction of the WTO has grown as more and more countries have liberalised their economies in the hope of sharing in the benefits of expanding world trade.

The WTO was born in 1995 out of the Uruguay Round of GATT (the General Agreement on Tariffs and Trade). Its mandate is to oversee the new world trade order negotiated in the Uruguay Round, and to handle trade disputes which threaten free trade. The stakes are high: the trade liberalisation negotiated in the Uruguay Round is expected to increase the value of world trade by at least US\$200 billion by 2005.

However, 70 per cent of this new wealth is set to go to the industrialised countries of the rich North. And while a handful of powerful exporters in Asia and Latin America will share in the gains, the world's least developed countries stand to be worse off than before. Sub-Saharan Africa is expected to lose around US\$1.2 billion a year from freer trade.

Many developing countries point out that 'free' trade has in fact not been so free for them. Markets in the North remain restricted for many of the most important developing country exports, while Northern governments continue to provide their farmers with huge subsidies which contradict the basic principles of the WTO. By contrast, developing countries are under increasing pressure to open up more of their economies to competition from overseas – even though their own industries may suffer as a result.

To many observers, it is the large transnational corporations of the rich North which have done best out of free trade. Through the huge influence they wield over governments at the WTO, these corporations have won the freedom to move around the globe without restriction, making use of cheap labour, playing suppliers off against each other and locating wherever they can best tap into the largest and most lucrative markets.

All eyes are now fixed on the WTO's Third Ministerial Conference in Seattle, USA, from 30 November to 3 December 1999, which will discuss a proposed new round of trade talks. A tug of war over the remit of this possible 'Millennium Round' is already taking place. At one end are the European Union, which wants negotiations to begin on new issues such as investment and government procurement, and the US which wants existing agreements to be expanded. At the other end is a large group of developing countries that want to consolidate what was agreed in the Uruguay Round. Many developing countries, especially the least developed, fear they will be outgunned and outnegotiated, in a process over which they have little control.

NEWS PEGS

30 November-3 December 1999: Third Ministerial Conference of the WTO, Seattle, USA

12-19 February 2000: Tenth quadrennial session of UNCTAD, Bangkok, Thailand

April 2000: Eighth session of Commission on Sustainable Development (special focus on trade), New York, USA

ACRONYMS

EU: European Union

GATS: General Agreement on Trade in Services

GATT: General Agreement on Tariffs and Trade

IMF: International Monetary Fund

MAI: Multilateral Agreement on Investment

NGO: non-governmental organisation

OECD: Organisation for Economic Cooperation and Development

TNC: transnational corporation

TRIMs: Trade-Related Investment Measures

TRIPs: Trade-Related Aspects of Intellectual Property Rights

UNCTAD: United Nations Conference on Trade and Development

WTO: World Trade Organization

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KEY FACTS

- ✂ 134 countries are members of the World Trade Organization (WTO). They account for over 90 per cent of world trade. 32 others are queuing up to join.
- ✂ Global trade has grown 12-fold since the setting up of the first trade body in 1948, but the richer industrialised countries have benefited the most.
- ✂ The least developed countries, with 10 per cent of the world's people, have only 0.3 per cent of world trade – half the share they had two decades ago.
- ✂ Excepting the developing countries of Asia, which increased their share of world trade from 11.7 per cent in 1985 to 17.6 per cent in 1996, the share of world exports has actually declined in all other developing country regions over the last decade.
- ✂ Despite successive trade rounds, products in those sectors where developing countries have an advantage (such as clothing, leather and rubber goods) still face high barriers in industrialised countries.
- ✂ The Uruguay Round was expected to increase world trade by between US\$200 billion and US\$500 billion in the first decade, but around 70 per cent of the benefits will go to industrialised countries.
- ✂ A total of 45 regional trade agreements were notified to the WTO in its first two years.
- ✂ Transnational corporations control 70 per cent of world trade and 80 per cent of all foreign investment.
- ✂ One third of developing country members of GATT earn most of their foreign exchange from agriculture, and a fifth or more from textiles and clothing. If they could sell fabrics and clothing without limits, these would earn them an estimated US\$4 billion to US\$15 billion a year.
- ✂ A fifth of world trade is made up of services such as transport, banking and telecommunications.
- ✂ Between 1990 and 1995 the number of anti-dumping measures notified to the WTO increased by over 1,000 per cent.
- ✂ The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) is for the benefit of large companies in industrialised countries, which hold 96 per cent of all patents.
- ✂ The EU wants a new round of trade negotiations – popularly known as the Millennium Round – to include a large number of issues. The USA favours a sector-by-sector approach. Developing countries are divided.
- ✂ Many non-governmental organisations and a good number of developing countries do not want a Millennium Round until there has been a comprehensive review of existing agreements.

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1. INTRODUCTION

The day-to-day lives of most people the world over are increasingly affected by international trade. Many do not know it, but what they eat, how much shirts or drugs cost, whether they have a job or not, the freedom of peasants to replant seeds, the subsidies offered by governments are all being touched by trade rules.

Already 134 countries are members of the World Trade Organization (WTO), the powerful body that regulates trade matters. These countries account for over 90 per cent of world trade. In addition, 32 others are queuing up to join. The attraction of the WTO has grown as more developing and Eastern European countries have opened up their economies in the expectation that trade will be an engine of growth.

Economic liberalisation has coincided with a dramatic extension of the areas covered by trade rules. Until 1994, when the Uruguay Round (the latest 'round' of trade negotiations) was signed, trade policy had mostly to do with lowering import tariffs on manufactured goods. Now it also covers agriculture, some services, intellectual property and standards for food safety, and may soon extend its reach to foreign investment, the environment and competition policy.

The WTO is also a powerful Court of Law that settles trade disputes and authorises sanctions on offenders.

Global trade has grown 12-fold since the setting up of the first trade body in 1948. Trade as a share of total output has increased in most regions of the world, with Western Europe, North America and Asia topping the list. [i]

Yet it is the richer industrialised countries, with more goods to offer in the international market, that have benefited the most. According to a joint report on market access prepared by the WTO and the United Nations Conference on Trade and Development (UNCTAD), in 1997 Canada, the European Union (EU), Japan and the USA accounted for almost two thirds of world exports. In contrast, four Southern countries considered successful exporters – South Korea, China, Malaysia and Brazil – accounted for just 7.8 per cent of the total. [ii]

The least developed countries, with 10 per cent of the world's people, have only 0.3 per cent of world trade – half the share they had two decades ago. [iii]

One of the reasons why trade liberalisation has not benefited developing countries as much as it should is that industrialised countries have protected themselves against the most dynamic exports of developing countries, such as textiles and clothing, agriculture, footwear, steel, consumer electronics and processed raw materials. Protectionism in these sectors was only partly addressed in the Uruguay Round.

Eyes are now set on a possible new round of trade talks, dubbed the 'Millennium Round'. The new round may be launched at the Ministerial Conference of the WTO in Seattle, USA, from 30 November to 3 December 1999. A tug of war over the remit of a possible new round is already taking place. The EU wants negotiations to begin on a raft of new issues, while the USA wants to expand existing agreements into new areas. A large group of developing countries want first to consolidate what was agreed in the Uruguay Round.

The merits of integrating into the world economy and enlarging the freedom of the market are hardly in question, at least among WTO member governments. What is at issue for them is the pace at which developing economies should integrate. Some, like India, favour a more active role for the state. Others,

including some Latin American countries like Chile, are in a hurry to open their economies further. But all developing countries without exception are calling for trade policies that cater better for their economic conditions and interests.

Many non-governmental organisations (NGOs), in the North as well as the South, are campaigning against the new round. They complain that the WTO pushes trade liberalisation with no concern for its social and environmental impacts, and tends to serve the interests of corporations rather than the needs of the world's people. The World Bank, in its latest *World Development Report*, acknowledges this popular feeling against the WTO: "The lack of attention given to the social consequences of reform has threatened a backlash against trade, which has the potential to stall momentum toward reform." [iv]

Some civil society organisations (such as some US workers' unions and the international alliance Peoples' Global Action Against 'Free' Trade and the WTO) are unhappy with the whole policy of trade liberalisation and its impacts. Many other campaigners accept the move towards liberalisation in general but fear that its most enthusiastic supporters are pushing the process too far and too fast, ignoring the dangers and disadvantages. Civil society organisations in the South feel that their governments have let themselves be pushed by the more powerful industrialised countries into accepting trade agreements that severely disadvantage their people.

The environmental organisation WWF International (Worldwide Fund for Nature) encapsulates the thinking of many NGOs: "While trade is a necessary part of many people's livelihoods, it can also drive environmental destruction, deplete natural resources and result in the inequitable distribution of wealth and power. The challenge in the next WTO round will be to define rules that ensure that trade and trade liberalisation broadly benefit people and the planet, and support sustainable development." [v]

Another important issue for the Millennium Round is how far countries are prepared to compromise their national sovereignty over sectors such as health, the environment and culture.

Speaking on France's TV5, President Jacques Chirac has already served notice that at the Seattle meeting his country will oppose the forced acceptance of genetically modified and hormone-treated foods in Europe. Chirac was speaking during a French summer of discontent that saw fruit and vegetable farmers complaining over low prices, as well as violent protests against US companies like McDonalds and Coca-Cola. The USA has become a target after it imposed tariffs on some French goods following US success in a WTO dispute over hormone-treated beef. [vi]

A glimpse of the many cracks in the WTO membership was provided by the extraordinary infighting over the appointment of a new director in early 1999. Member states could not decide between the New Zealander Mike Moore and the Thai Supachai Panitchpakdi. When it became clear that the supporters for each candidate would not change sides, they settled for the Solomonic but impractical solution of dividing the six-year term up between the two men. An ambassador with 10 years' experience in Geneva described one of the meetings of WTO members discussing the appointment as "the most unexpected and horrible quarrel I've ever witnessed at the WTO. Something broke and will take many years to repair." [vii]

Against this background, some are predicting that if a new round of trade talks is launched in the millennium it will be one of the most acrimonious and difficult negotiations in the history of international trade. A stronger WTO whose rules increasingly affect domestic regulations in areas as diverse as banking, food safety and patents is bound to attract much public attention, including that of anti-WTO demonstrators at Seattle.

Even if there is no agreement at Seattle on a new round – which is unlikely, given that the EU, the USA and Japan are behind the idea – negotiations on agriculture and services must go ahead, because this was agreed in the last round. So trade policy matters will continue to loom large on the international scene.

The question for the coming years was expressed by the Egyptian contribution to a WTO Symposium in March 1999: how can trade be turned into “a tool that promotes convergence of levels of development and standards of living among various countries and people around the world and not a tool to widen the existing and ever growing inequities”? [viii]

2. THE WORLD TRADING SYSTEM

In the entire history of international trade there has never been an institution as powerful and influential as the World Trade Organization (WTO). The rules it passes and the sanctions it can authorise are binding on its 134 member nations, two thirds of which are developing countries.

Set up on 1 January 1995, the WTO is the successor to the General Agreement on Tariffs and Trade (GATT). When the Allied leaders met at the Bretton Woods Conference in 1944, they planned to establish three institutions: the International Monetary Fund (IMF), to stabilise exchange rates and balance of payments, the International Bank for Reconstruction and Development (better known as the World Bank), and a trade organisation to create a stable system for countries to trade with each other on the basis of shared rules and regulations – to avoid the uncontrolled trade competition and protectionism which was thought to have contributed to the global recession of the 1930s and the Second World War. In the event, only the first two of these institutions were set up, because in the area of trade the leaders were not ready to cede sovereignty to a fully fledged organisation. Instead, GATT was established as an *ad hoc* and provisional organisation, and the full WTO, approved by the parliaments of all its member countries, only came 50 years later.

The main functions of the WTO are:

- ✍ administering WTO trade agreements
- ✍ acting as a forum for trade negotiations
- ✍ handling trade disputes
- ✍ reviewing national trade policies.

While GATT focused mainly on regulating tariffs (custom duties) on trade in manufactured goods, the WTO covers tariffs and two other areas: services (such as transport, travel, banking and insurance) and trade in ideas (or ‘intellectual property’). GATT agreements negotiated in eight trade rounds have been amended and incorporated into the WTO. GATT as an organisation has given way to the WTO.

The original principle of GATT was non-discrimination between members – the principle of ‘most favoured nation’ treatment, which means that any trade concessions made to one ‘most favoured’ country should be extended to all. This principle was extended to include rules and standards for non-discrimination between domestic and foreign goods – the principle of ‘national treatment’.

Decisions in the WTO are made by the entire membership, when possible by consensus. Where there is no consensus a majority vote is taken in the General Council, made up of ambassadors and heads of delegations in Geneva, and at the Ministerial Conference, which meets at least every two years. Under the Ministerial Conference and the General Council are three councils – on Goods, Services and Intellectual Property – and numerous specialised committees, working groups and working parties, all made up of government representatives.

These councils and committees are assisted in their work by the Geneva-based WTO Secretariat, which has around 500 staff. “Since decisions are taken by members themselves, the Secretariat does not have the decision-making role that other international bureaucracies are given.” [ix]

The WTO has more teeth than its predecessor: its Dispute Settlement procedure is much stronger.

Whereas in GATT consensus was required at every stage of a dispute process – which in practice meant stalemate, because one of the parties to the complaint would always object – in the WTO the dispute

process goes ahead unless there is a consensus not to do so. The same applies to appeals against the verdict of a dispute panel.

The time allowed for resolving disputes has also been speeded up: it now takes a maximum of 18 months from the time the aggrieved country files a complaint at the WTO, even if the loser appeals. If the loser does not change the offending practice, then the winning country may apply sanctions, with the approval of the WTO. For example, the USA was allowed to penalise EU trade by US\$200m in the dispute over better access to the European market for non-Caribbean bananas.

Becoming a WTO member can be a lengthy process. Applicants Algeria and China set up their Working Parties to oversee accession negotiations with existing WTO members as far back as 1987. The entry process includes bilateral market access negotiations in goods and services, and establishment of the required legal and administrative infrastructure such as a customs system, industrial subsidies and intellectual property protection.

The 32 current applicants for membership include China and Russia. Most of the others are former socialist states such as Albania, Azerbaijan and Belarus, or least developed countries such as Cambodia, along with some small countries such as Andorra.

Three views of freer trade

For: "The rise in global trade facilitated by trade liberalization within the rules-based system has created more and better paid jobs in many countries".

Singapore Ministerial Declaration of the WTO, adopted on 13 December 1996

Qualified: "In the past few years the international economic environment has seen a surge of activity and new initiatives, especially in trade, capital flows and financial liberalization. Many changes are positive – but they are driven overwhelmingly by the economic interests of the rich and powerful countries. Much less attention is being given to the needs of the poorer and weaker countries. Their interests have become marginalized. Global inequalities have grown more extreme. Nothing short of major reconsideration of mechanisms to offset these tendencies to global inequality is needed."

Human Development Report 1998, United Nations Development Programme

Against: "The Uruguay Round Agreements and the establishment of the WTO were proclaimed as a means of enhancing the creation of global wealth and prosperity and promoting the well-being of all people in member states. In reality, however, in the past five years the WTO has contributed to the concentration of wealth in the hands of the rich few; increasing poverty for the majority of the world's population; and unsustainable patterns of production and consumption."

Statement from Members of International Civil Society Opposing a Millennium Round or a New Round of Comprehensive Trade Negotiations, first circulated 24 March 1999 and signed by 1,200 organisations from 87 countries by October 1999

Developing countries in the international trading system

Until the early 1960s, most of today's developing countries were not members of GATT in their own right since they were still European colonies. Many joined after independence, but they lacked the power and the technical capacity to push for their interests in the world trading system. Nonetheless, most developing countries chose to liberalise their economies and open up to international trade. The liberalisation process gained momentum in the 1980s and preceded the completion of the Uruguay Round; in the case of several countries, mainly in Eastern Europe, it also preceded their application to join the WTO.

The spur to this unilateral liberalisation was a new consensus in development thinking. There was a shift away from the traditional emphasis on the development of national industries in order to replace imports, with a central role for the state. The new emphasis is on export-led growth and the private sector.

Trade is essential for the development of developing countries. It earns foreign exchange with which they can import what they do not produce and the technology they need for a more diversified and productive economy. An orientation towards exports should also attract foreign investment and create jobs. On the negative side, it can also cost jobs in existing sectors because workers are exposed to competition from imports.

The World Bank adds a few more advantages of foreign trade: "Imports bring additional competition and variety to domestic markets, benefiting consumers, and exports enlarge foreign markets, benefiting businesses. But perhaps even more important, trade exposes domestic firms to the best practices of foreign firms and to the demands of discerning customers, encouraging greater efficiency." [x]

When they joined GATT/WTO, developing countries as weaker trading partners obtained special and differential treatment. They could restrict trade to protect their infant industries and their balance of payments. They also enjoyed special trade preferences in the industrialised countries (the Generalised System of Preferences, or GSP: this was negotiated in UNCTAD, but recognised by GATT).

The specified period for some concessions for better-off developing countries is coming to an end, and in addition these countries are likely to see their preferential position eroded as general tariffs will be reduced, cutting the value of their preferences. But the least developed countries will be given additional preferential market access and are being offered training and capacity building in the area of trade. There is a Plan of Action for the least developed countries and a technical assistance scheme involving six intergovernmental organisations including the WTO, the World Bank and the IMF to help them integrate into the global economy.

Despite the theoretical advantages of participating in a rules-based free trade system, and despite the special treatment they have received in some areas, most developing countries have not benefited from GATT membership as they expected to. According to UNCTAD, "The predicted gains to developing countries from the Uruguay Round have proved to be exaggerated... Income and welfare gaps between and within countries have widened further. As the twentieth century comes to an end, the world economy is deeply divided and unstable... Asymmetries and biases in the global system against the poor and underprivileged persist unchecked." [xi]

Some critics of the world trade system feel that the power of developing countries to promote their interests has been further weakened by a reduction in the power and status of UNCTAD, and a change in its focus. UNCTAD was established in the 1960s to work for the trade interests of developing countries, but in the early 1990s its autonomy and its position within the UN system were downgraded as part of a streamlining exercise – leaving developing countries more vulnerable, according to these critics, to the economic dominance of the richer countries. [xii]

Being unequal partners in GATT took its toll. Despite successive trade rounds, products in those sectors where developing countries have a comparative advantage still face high barriers in industrialised countries. These include textiles and clothing, vegetables and fish, processed foods, leather and rubber goods, cars and electronics. [xiii] According to UNDP:

- ✍ Average tariffs on industrial country imports from developing countries are 10 per cent higher and for the least developed countries 30 per cent higher than the global average.
- ✍ Developing countries lose about US\$60 billion a year from agricultural subsidies in the industrial nations and from the barriers they face on exports of textiles and clothing. [xiv]
- ✍ Even after the Uruguay Round's agreement on textiles and clothing is implemented, the average tariff will go down to 12 per cent – three times the average levied on industrial country imports. [xv]

Regional trade agreements and the WTO

Regional trade agreements (RTAs) among WTO members have proliferated since the organisation was set up in 1995. A total of 45 RTAs were notified to the WTO in its first two years alone. A 1998 paper by the WTO Secretariat stated that 80 out of the WTO's then 131 member countries were party to an RTA such as the European Union (EU) or the Mercosur agreement among Brazil, Argentina, Paraguay and Uruguay.

Countries may join RTAs because in an RTA they can open up their markets in relevant sectors faster than through the WTO and can make their economies work more in tune with each other. The EU, for example, harmonises technical, food and other standards.

Supporters of RTAs say that, "Regional integration could have positive effects on the rest of the world provided the emerging regional blocs are 'open' to trade from outside." However, it is also true that the essence of an RTA is discrimination against those outside it. [xvi]

Concerned to avoid diverting trade to members of RTAs, Article XXIV of GATT established some disciplines for RTAs. For example, it restricts the raising of barriers against third countries. So the WTO now reviews each new RTA, and any conflicts go to a dispute settlement panel. [xvii] Developing region RTAs may be reviewed less stringently, according to their special treatment provisions.

The Lomé Convention between the EU and African, Caribbean and Pacific (ACP) countries is not an RTA and breaks several of the WTO rules (for example, that RTAs must be based on the principle of reciprocity). The EU obtained a waiver to allow the present arrangement to continue until it expires on 29 February 2000. The next Lomé Convention, currently under negotiation, will have to be changed to conform with Article XXIV of GATT. The EU's proposal – to enter into Regional Economic Partnerships with groups of ACPs – is not to the liking of ACP countries because it would spell the end of their non-reciprocal market access to the EU. [xviii]

Trade liberalisation has helped a few countries, such as South Korea, that had the industrial capacity to take advantage of trade liberalisation and preferences. But most developing countries still earn a substantial part of their export earnings from primary commodities (which mostly face no tariffs). In 1995 primary commodities accounted for 64 per cent of Africa's export revenue, 49 per cent of Latin America's and 15 per cent of Asia's. The world average was around 24 per cent.

Excepting the developing countries of Asia, which increased their share of world trade from 11.7 per cent in 1985 to 17.6 per cent in 1996, the share of world exports has actually declined in all other developing country regions over the last decade. According to WTO statistics, from 1985 to 1996 Africa's share in the value of world exports went down from 4.2 per cent to 2.3 per cent. [xix] Africa, Latin America and the Middle East have slid back partly due to the fact that commodity prices (including oil) in the 1990s were 45 per cent lower than in the 1980s, and because they lost markets in the industrialised countries due to the recession of the early 1980s.

Large corporations flex their muscles

Transnational corporations (TNCs) control 70 per cent of world trade and 80 per cent of all foreign investment. [xx] According to UNCTAD figures, more than two thirds of world trade involves at least one TNC, and half of this occurs between subsidiaries of the same TNC.

As the Transnational Institute, an Amsterdam-based research institute, explains, "Trade rules play a crucial role in the capacity of a company or corporation to gain or lose in the market, and to serve its aim of achieving higher profits. For TNCs, trade and investment rules determine their freedom to move freely

around the globe making use of the cheapest labour and production, playing suppliers off against each other, achieving economies of scale, and locating in the largest and most lucrative markets.”

Or, as the World Bank puts it, “Production networks (mostly involving TNCs) thrive on – indeed they expect – stable, predictable trade and investment policies. For this reason alone, multinational corporations will support effective enforcement provisions in regional and multinational trade agreements.”
[xxi]

Corporations defend their interests in the WTO through well organised and well resourced lobbying groups. The over 100 corporate leaders involved in the ongoing Transatlantic Business Dialogue among big businesses in the USA and the EU develop common strategies which are then communicated to high government officials. US and EU corporations were behind important new agreements in the Uruguay Round of trade talks, and actively influence their countries’ stances at the WTO. [xxii]

- ✍ The US Coalition of Service Industries lobbied for and got a global regime for services. The Coalition included household names such as Federal Express, the then Citibank/Citycorp and American Express.
- ✍ The US Intellectual Property Committee, made up of 13 major US corporations including DuPont, Monsanto and General Motors, propelled the inclusion of intellectual property rights in the Uruguay Round.
- ✍ The Financial Leaders Group of the international financial industry, headed by some of the world’s largest banks and insurance companies such as Chase Manhattan, ING Group, The Bank of Tokyo-Mitsubishi, Goldman Sachs, Barclays plc and the Royal Bank of Canada, supplied information to their government negotiators on other countries’ barriers to trade. Former EU Commissioner Leon Brittan remarked of the Uruguay Round that, “The close links established between EC and US industry... were an essential factor in obtaining a final deal.”
- ✍ European companies regularly inform the European Commission of market access problems in other countries. The Commission then uses the information to bring complaints at the WTO, press for new rules or set conditions during accession negotiations with future WTO members.
- ✍ The European Commission has been consulting the Investment Network representing Fiat, ICI, Daimler-Benz, Carlsberg, BP/Amoco, Rhône-Poulenc and 50 other corporations on the priorities for a new investment agreement at the WTO.

These large corporate groups also have close connections with the WTO bureaucrats and make good use of them. For example, the European Roundtable of Industrialists has former GATT Director-General Peter Sutherland as chair of its group on foreign economic relations. Sutherland is chairman of BP/Amoco and an associate of Goldman Sachs International. The influential International Chamber of Commerce has recruited another former Director-General of GATT, Arthur Dunkel, to head its working group on international trade and investment policy. Dunkel is also in the registry of WTO dispute panel members, and is a board member of Nestlé.

Business will again play a leading role in the proposed Millennium Round. They started lobbying early: a number of business groups have organised campaigns in support of the Millennium Round. Issues such as investment, competition policy and government procurement feature among their priorities.

Civil society and the WTO

While business, especially US business, has been a driving force during successive trade rounds, civil society groups such as NGOs have had little information and little say. Information about and access to GATT processes and the WTO have been limited, and most governments do not consult NGOs.

The WTO is said by its critics to be a highly secretive organisation where even the agendas of forthcoming meetings are kept under wraps. This hampered the involvement of civil society during the Uruguay Round. In the last few years the USA has campaigned for more openness and transparency in the WTO, as have civil society groups. NGOs are not asking for a voice at WTO meetings but simply for the right to make an input into the issues under discussion.

Informally, the pressure has yielded some results: NGOs can attend Ministerial Conferences, though they are still excluded from the meetings where the real business takes place. The WTO also holds informal symposia with NGOs – the symposia on trade and the environment have become an annual event – and some of the most active NGOs on trade matters have developed good working relations with WTO staff. At the country level, some (mainly Northern) NGOs have succeeded in getting some sectors of government to consult them, but in most countries NGOs do not have access, resources or the preparation needed to engage in what are highly technical issues.

On the information front, the WTO Secretariat has set up an efficient electronic document distribution system. But it is still up to the discretion of the individual governments whether to release a document for public consumption. A few countries, such as Mexico, have fought hard to keep most documents restricted. Many fear the politicisation of the WTO if local NGOs come to Geneva to speak against their government.

While some NGOs are lobbying for more or less formal access to the WTO, others are trying to make their views heard through protests and demonstrations in the streets. Geneva-based journalist Chakravarthi Raghavan has written: “At the time of the Geneva Ministerial [May 1998]... the meeting, and most of the governments, were taken aback by the anti-WTO demonstrations that took place and the intensity of anger voiced against the WTO trading system... According to many indications, the Seattle meeting too will witness a similar outpouring against the system.” [xxiii] As Consumers International put it, it is no longer acceptable for negotiators “to do deals behind closed doors and submit them for rubber-stamping by parliaments. Instead, they must gain wider popular legitimacy for their actions by explaining and defending them in public.” [xxiv]

Handicaps for Southern negotiators

International trade negotiations are very complicated affairs. In comprehensive negotiations such as the Uruguay Round or the proposed Millennium Round, more than 100 countries may be trading concessions on many areas simultaneously. The aim is, at the very minimum, to balance the number of issues on which a country wins and loses. So, for example, a country that wants better access for its agricultural products may agree to strengthen its patent laws in return.

The exchange of trade commitments favours bigger traders. They have more to offer and their negotiating power is much greater.

They also have many more resources to put into the negotiations. This contrasts with the position of many developing countries: 30 WTO members, including 19 in Africa, do not have permanent trade missions in Geneva. Those that do have such missions often find it impossible to attend the large number of meetings (said to be around eight every day), let alone influence the many issues under discussion at any one time.

Also, since many developing countries are dependent on the USA, the EU or Japan for technical cooperation, markets, aid and other matters, they generally shy away from confronting them directly at the WTO.

The problems faced by developing countries are no easier when it comes to the technical and complex matter of devising trade rules and regulations. Vinod Rege, an ex-GATT official, looked at the problems faced by developing countries in two GATT agreements, on Customs Valuation and Pre-Shipment Inspection. [xxv] He found a number of reasons why developing countries are generally at a disadvantage when it comes to trade negotiations, including:

- ✍ The USA and the EU, the two major trade players, largely determine the agenda for the negotiations as well as the principles on which the new rules should be based.
- ✍ Industrialised countries bring issues to the WTO after much preparatory work, including ministerial contacts, consultations with concerned national interest groups and discussions in other

organisations such as the Organisation for Economic Cooperation and Development (OECD), which acts as a think tank for the industrialised countries.

- ✍ Developing countries lack the technical expertise and resources needed to study the issues and come up with good negotiating approaches. Whereas industrialised countries have various interest groups which through lobbying assist and influence governments in determining policy, for developing countries these either do not exist or are not very effective.
- ✍ Negotiators from developing countries do not know the precise implications for their economies and their trade of the proposals that are under discussion. "Such uncertainty often makes them adopt negotiating strategies to contain the damage (by asking for a grace period, for example)... rather than negotiate for the maximization of the benefits of their trade."
- ✍ Negotiations are often carried out informally in small groups, restricted to a limited number of delegations. The countries invited to join are those with the largest stakes and the greatest technical knowledge.

Rege predicts that developing country negotiators will have an even tougher time in the future. Not only is public interest in trade matters growing, but developing countries may benefit less from special treatment.

On the other hand, UNCTAD Secretary-General Rubens Ricupero feels encouraged that developing countries are at last organising themselves to make "a collective effort" to negotiate more effectively. "The preparatory process for the upcoming meeting in Seattle has already demonstrated their willingness to assume a much more active attitude than in the past." [xxvi] The current Director-General of the WTO, Mike Moore, has also stated his commitment to helping developing countries gain the benefits of liberalisation. The WTO, he says, must be an organisation "where the little guy not only has a say but where he can protect and defend his trading rights." [xxvii]

3. THE URUGUAY ROUND

The Uruguay Round launched in 1986 was the most ambitious trade pact ever. The issues under negotiation were so wide-ranging, the differences between countries so great and the disagreements so acute that it dragged on for seven years. A deal was finally cut when the USA and EU buried their hatchets over the opening up of agricultural markets. By then it was December 1993. The agreement was signed in Marrakesh, Morocco, on 15 April 1994.

Negotiations in the Uruguay Round were not, like previous rounds of GATT talks, mainly confined to reducing tariffs paid by exporters of manufactured goods to enter a foreign market – most of these had come down so much by then that they no longer took all the limelight. The Uruguay Round negotiations also dealt with issues as varied as agriculture, food and product standards, services, patents and more relaxed rules for investors.

Some developed countries (though not the EU or Japan) were particularly interested in reducing protectionism in agriculture. Some wanted to open up trade and investment in services such as telecommunications, and to firm up property rights on inventions.

For developing countries the main aim was to start chipping away at the heavy subsidies given to farmers in industrial countries and the import quotas they set on developing country exports of textiles and clothing under the Multifibre Arrangement (MFA). One third of developing country members of the WTO gain most of their foreign exchange from agriculture, including tropical products, and a fifth or more from textiles and clothing. If they could sell textiles and clothing without limits, it is estimated that their earnings would increase by between US\$4 billion and US\$15 billion a year. [xxviii]

The Uruguay Round agreements dealing with tariffs and services followed the same pattern. First, the broad principles and the special requirements of each area are laid out. These are followed by long lists of commitments ('schedules', in GATT parlance) made by individual countries on access to their markets for specific products or service providers.

General Agreement on Trade in Services (GATS)

The debate on whether to liberalise services was one of the hottest. Since GATT was set up, the focus had been on liberalising trade in manufactured goods. But by the early 1990s a whole fifth of world trade was made up of services such as transport, banking or telecommunications. Services are mostly exported by the industrialised countries, which explains why it was mainly the USA and the EU that wanted to have services ruled by GATT disciplines of national treatment (no discrimination in favour of national providers) and most favoured nation treatment (equal treatment to all members of the agreement). Most developing countries were reluctant to open up their weaker transport, banking, insurance or telecommunications industries to foreign competition, so they resisted the inclusion of trade in services in the Uruguay Round. India, however, is now interested in sectors like computers, transport, audio-visual services, construction and engineering, and services related to health and tourism.

GATS covers cross-border trade and various means of supplying a service, including establishment in a foreign country of a bank or construction company, for example. To accommodate developing country worries, the agreement only applies to those sectors that a country includes. Help for developing countries to develop their own service industries is vaguely mentioned and has so far been ignored by the industrial countries.

Service agreements are negotiated sector by sector. So far three agreements of special interest to industrialised countries have seen the light of day: on telecommunications (access to public telecoms networks without discrimination), financial services (maintaining and expanding access to national financial markets such as banking and insurance), and information technology. Discussions on professional services, such as guidelines to recognise professional qualifications in accountancy, are ongoing. South-East Asian countries want to resume negotiations which were aborted in 1996 on maritime transport, including access to and use of port facilities.

The so-called 'movement of natural persons' is of primary importance for developing countries. This refers to the right for a person that provides a service – say an Indian construction engineer overseeing the building of a hospital in Dubai – to stay in the country while he or she is needed. Developing countries argue that GATS is fundamentally unbalanced: while money can be taken into a country in order to provide a service, most country schedules lack explicit provision for bringing workers in, especially non-professional workers. [xxix]

Tariffs

Individual country commitments to cut or not to raise customs duties on imported goods took up a total of 22,500 pages of the Uruguay Round results. The scorecard for developing countries was mixed. On the one hand, the percentage of duty-free exports to industrial countries doubled, bringing the average tariff down from 6.3 per cent before the round to 3.8 per cent after it. Developing countries doubled the value of the industrial products that they allow in duty-free. On the other hand, generally lower tariffs eroded the advantage developing countries had of paying lower tariffs on certain products exported to industrialised nations.

The damaging practice of charging higher duties for more processed goods – copper wire versus raw copper, for example – remained in place. Known as tariff escalation, it deters developing countries from processing their raw materials.

In March 1997 an agreement was signed to eliminate import duties and other charges on information technology products. So far 40 countries, amounting to 92 per cent of the market in information technology products, are signatories. They have agreed to eliminate duty restrictions on the imports of these products by 2000 (by 2005 in a few cases).

Uruguay Round disappoints developing countries

The Uruguay Round is expected to increase world trade by between US\$200 and US\$500 billion in the first decade (1995-2004). [xxx] To put this in perspective, world income will be at least one per cent up on what it would have been without the Uruguay Round.

But the Uruguay Round benefits will be distributed very unevenly. Around 70 per cent will go to industrialised countries, while the least developed countries will actually be worse off by US\$600 million. Sub-Saharan Africa is expected to be US\$1.2 billion a year worse off. [xxxi] As the United Nations Development Programme (UNDP) points out, "Developing countries, with three quarters of the world's people, will get only a quarter to a third of the gains – hardly an equitable distribution – and most of that will go to a few powerful exporters in Asia and Latin America." [xxxii]

Five years after the agreement was signed it is also clear that many countries continue to protect their economies. For example, the EU continues to spend US\$600 billion (seven per cent of its gross domestic product) on various trade protections, a figure comparable to the position a decade ago, prior to the Uruguay Round. [xxxiii]

Many industrialised – and developing – countries are also resorting to other means of protection as more traditional trade barriers are reduced or eliminated. Between 1990 and 1995 the number of active anti-dumping measures notified to the WTO increased by over 1,000 per cent. Many anti-dumping investigations have been initiated by industrialised countries against developing country exports – everything from steel to toys to colour televisions. Brazil has termed them "an abusive and disproportionate use of anti-dumping measures". Many of the investigations are in the same sector. Brazil, for example, has been particularly affected by 173 investigations in the steel sector in the last 10 years. [xxxiv]

Agreement on Sanitary and Phytosanitary Measures (SPS)

One of the controversial areas of the Uruguay Round was the agreement regulating food standards and plant and animal health and safety. Consumers care about food standards, which protect them from food-borne diseases. Standards are also of interest to industry because they set a yardstick for how much pesticide residue is permitted, for example, or what constitutes a tomato purée. Developed countries generally have higher standards than developing ones, and they naturally want to protect and raise these if necessary. Those very standards may become an insurmountable barrier to developing countries, blocking their entry into a foreign market.

Food standards and measures to protect a country from pests or disease carried by plants or animals can potentially be used improperly as a deliberate barrier to trade. The aim of the SPS Agreement is to reduce this possibility. It does this by establishing the principle that risks to people, plants and animals and the effectiveness of measures to deal with these risks must be scientifically proven. In one of the most heated trade disputes, the USA has accused the EU of banning the use of hormones to boost growth in cattle without having proven its case scientifically.

Agreement on Technical Barriers to Trade

This agreement deals, among other things, with technical standards for products such as those set by national standards bureaus. It also attempts to reduce the room for covert protectionism.

Agreement on Anti-Dumping

One of the ways in which countries protect their domestic producers is by penalising imports that they consider to have been 'dumped'. Dumping is the term used when an imported product costs less than it does in its home market, or when it has been exported at below the cost of production. GATT already regulated the practice, and the Uruguay Round established common rules. An exporter is guilty of dumping if the price it charges in a foreign market is more than two per cent lower than the current price in its home market, and if the company in question has a market share in the importing country of more than three per cent.

Where it cannot be proved that the domestic price is higher than the export price, the importer can construct a theoretical 'proper' export price on the basis of estimated costs and profit margins. This makes it easy for importers to bring unjustified anti-dumping complaints to the WTO, and several developed countries have resorted to such complaints as a means of protecting their own industries against cheaper imports.

Subsidies

Government subsidies such as tax exemptions or payments to producers are a popular way of supporting local industries and exports. GATT tightened regulations on subsidies to manufacturers, and allowed for the first time – though this will not come into effect until 2003 – action against subsidies on agriculture. Some types of subsidy which had existed under previous rounds continued to be allowed under GATT. These include aid to poorer regions within countries and aid not directly targeted at exports, such as subsidies for research and development.

Developed countries were given three years to phase out the now outlawed subsidies; countries in transition seven years; developing countries eight (10 on appeal) and the least developed countries were exempted. [xxxv] Some developing countries complain that the rules are too tight, and that continued subsidies are essential to their economic development. In addition, some critics claim that the new regulations discriminate against developing countries by outlawing many of the types of subsidy they most commonly use, while giving a green light to those types most commonly used by developed countries.

Agreement on Trade-Related Investment Measures (TRIMs)

These are measures related to foreign investment such as tax incentives, subsidies or local content requirements that affect trade. The TRIMs agreement confirmed that some practices which were commonly used by developing countries, such as requiring a foreign investor to use a percentage of local materials or to export at least as much as they imported, were contrary to existing GATT rules. The USA and EU pushed for this agreement; developing countries resisted; Japan sat in the middle.

Agreement on Agriculture

The introduction of agriculture into GATT was controversial. For many people in many countries, developed and developing, the concept of 'food security' meant and still means that countries should aspire to produce enough food from their own resources and stock up for lean times. In addition, agriculture provides livelihoods for over half the population in many developing countries. Opening agriculture to competition from major industrialised country producers will, it is feared, spell the end for many small producers and less developed or less competitive agricultural sectors.

Farming is the most protected area of the world economy, which explains the attention agriculture received during the Uruguay Round. The champions of its inclusion were the Cairns Group (of 15 major agricultural exporters) [xxxvi] and the USA. Both wanted to sell more agricultural products to the EU and Japan; the Cairns Group also had the US market in mind.

By far the main food exporters are the EU and the USA. Both have used their wealth to give substantial support to farming, increasing their production well beyond the efficient level. [xxxvii] Developing countries that do not have resources to match have seen their markets captured by cheaper food from industrialised countries. For example, thanks to its Common Agricultural Policy (CAP) the European Union went from being a sugar cane importer to a major sugar beet exporter, gravely damaging developing country exporters of sugar. The same is true of exports of EU beef to West Africa.

Countries support the agricultural sector in three main ways:

- ✍ by restricting imports
- ✍ by giving subsidies to producers
- ✍ by subsidising exports

The Uruguay Round agreement on agriculture touched on all three areas.

It made a start on the opening of markets by making protection more transparent. This it did by obliging countries to convert all the different ways in which they were protecting their farmers – for example, import quotas – into tariffs. Having done that, industrialised countries committed themselves to reduce the resulting tariff by 36 per cent over six years, developing countries by 25 per cent over 10 years. Developing countries could maintain other types of barriers on staple foods but had to start reducing them in 10 years.

The subsidies that governments give directly to farmers were also slightly reduced (by 20 per cent for industrialised countries, 13.3 per cent for developing countries). However, many subsidies, such as technical support to farming, were excluded from the cut on the grounds that they did not distort trade.

Most welcomed by developing countries was the agreement to reduce the money spent on subsidising exports by 36 per cent over six years in industrialised countries and by 24 per cent over 10 years in developing countries. However, the hoped-for reductions in domestic and export subsidies have not materialised. A declaration by European and African farmer organisations and development NGOs issued in Germany in 1996 concluded: “The 1994 GATT agreement did not make agricultural trade more fair. It failed to reduce dumping, and it ignored many Southern concerns.” [xxxviii]

Ambassador Narayanan of India expressed the views of developing countries when he complained that, “Developing countries are being forced to open their own markets, but markets for developing country producers with export potential remain completely closed or are open only partially.” [xxxix]

There are several reasons why the Agreement on Agriculture has done little to prise open the markets of industrialised countries:

- ✍ Many industrialised country tariffs went sky-high when other means of protection such as import quotas were converted into tariffs. Some resulting tariffs are as high as 1,000 per cent.
- ✍ When they had to reduce the new converted tariffs by 36 per cent, they concentrated on tariffs that were already low and reduced only slightly the tariffs on products of importance to them, such as sugar, meat and milk.
- ✍ Agriculture in the industrialised countries continues to be heavily subsidised, whereas developing countries are unable to subsidise their farmers to any significant degree – partly because still-permitted subsidies require more administrative resources than most developing countries have.
- ✍ Many of the domestic subsidies, such as for pest control and basic research and development, were excluded from cuts. Yet these do assist farmers and help them to raise their production. Developing countries do not have the resources to provide the same level of support.
- ✍ The Agreement on Agriculture required industrialised countries to reduce export subsidies by 21 per cent, which still leaves another 79 per cent to go. Furthermore, there is evidence that the USA and the EU are just shifting the subsidy to other permitted areas, such as credit guarantees to exporters.

Industrialised countries can get away with abuses because a provision in the Agreement on Agriculture stops any country that is misusing domestic and export subsidies from being taken to a dispute panel and suffering sanctions until 2003. [xI]

The ‘Net Food-Importing Countries’ include many which have been dependent on cheap imports of subsidised food from the USA and EU. The reduction of subsidies would make these food imports more expensive for them. They were able to obtain a Special Ministerial Decision when the Uruguay Round was signed off in Marrakesh in 1994, promising assistance to offset any rises in world food prices resulting from the reduction of agricultural subsidies. But though world cereal prices more than doubled in 1995/96, the World Bank and the IMF argued that the price increase was not due to the Agreement on Agriculture, and besides there was never any agreement on who would be responsible for providing the assistance.

The Uruguay Round provided that talks for reviewing the Agreement on Agriculture should start at the end of 1999. In preparation, WTO members are engaged in an ‘Analysis and Information Exchange’. It has

transpired from this and other exchanges in the WTO Committee on Agriculture that the EU, Japan and South Korea want to go slow on liberalising the agricultural sector. They also want to bring other issues into consideration such as biodiversity, food security, cultural heritage, rural development and 'differences in natural conditions'. Critics see these as mere excuses for postponing the reduction of protectionism.

On the other side, free traders represented by the Cairns Group of 15 developed and developing agricultural exporters aim to increase market access and reduce production and export subsidies.

For their part, the less developed countries also want to go slow on further liberalisation. They want to push food security on all fronts, including allowing developing countries to subsidise their farmers beyond the agreed minimum of 10 per cent. In a paper submitted to the WTO Committee on Agriculture in November 1998, India proposed a 'market-plus' approach whereby non-trade concerns such as the livelihoods of peasants and the production of enough food to meet domestic needs are taken into consideration. India said that supports to alleviate poverty must be allowed and differentiated from those given to 'carve out a niche in international trade'. [xli]

Bhagirath Lal Das, former Indian Ambassador to GATT and later Director of International Trade Programmes in UNCTAD, points out that the free trade approach to agriculture assumes that it is desirable for a country to import food if it is cheap compared to its own. This principle, he says, "may be valid for most of the developed countries which have enough foreign exchange all the time to import whatever they want. But most of the developing countries are short of foreign exchange most of the time... Such countries may consider it wise to grow their own food as far as possible, even if it is more costly than the food available in other countries." [xlii]

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)

Another controversial Uruguay Round agreement is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), which extends exclusive rights over products and processes to individuals or companies, through systems such as patents or copyrights. Previously, intellectual property rights (IPRs) were dealt with only by the World Intellectual Property Organisation (WIPO), which does not have the WTO's mechanism for imposing sanctions on offenders.

The TRIPs Agreement is in the interests of large companies engaged in research and development – 96 per cent of all patents are held in industrialised countries. It is problematic for developing countries, which do little original research and depend on importing technology. Most of them do not provide such a high level of intellectual protection as industrialised countries. This explains why the USA was the great champion of TRIPs in the Uruguay Round, and why developing countries did not want it.

The TRIPs Agreement gives a company the right to hold a patent for a minimum of 20 years; for copyright, the minimum level of protection is 50 years. [xliii] Supporters argue that protection of intellectual property is needed to encourage innovation. On the other side, critics claim that 20 years of protection is longer than it takes a company to recoup its investment in research and development, and much of the benefit is pure profit. Patents increase the price of goods, disadvantaging consumers.

Some developing countries have taken issue with the impact of TRIPs in two important areas: agriculture and pharmaceutical products.

TRIPs and agriculture

The TRIPs Agreement obliges all WTO member countries to extend intellectual property rights to cover plant varieties. Developing countries were given five years to introduce IPR systems – that is, until the year 2000; the least developed countries were given 10 years.

For plant variety protection, countries can fulfil their obligations under TRIPs by passing their own laws or by signing up to the International Convention for the Protection of New Varieties of Plants (UPOV), the mechanism used by industrialised countries since 1961 to give plant breeders rights – very similar to patent rights – over new varieties of plants. The USA, in collaboration with WIPO, has been pressing

developing countries to sign a 1991 version of UPOV. One feature of the system which has caused particular concern among developing country farmers is the ban on saving seed from a protected variety to replant the following year. This is likely to affect increasing numbers of farmers if more of them move to using patented commercial varieties of seed – as the agricultural corporations are urging them to do. The 525 US farmers who had already been prosecuted by the US company Monsanto by early 1999 for saving or reusing genetically engineered seeds know all about this. [xliv]

UPOV provides for ownership of varieties by private individuals or, more usually, companies. One area of concern is that in signing up to UPOV, countries are rejecting the possibility of creating a system of their own which could grant intellectual property rights to communities or small farmers – whose contribution to the development of many useful varieties of crop plants generally goes unrecognised and unrewarded. As well as being inequitable, this may in the future contribute to the erosion of valuable crop plant biodiversity. In the run-up to the year 2000 deadline for implementation of TRIPs, several developing countries in Asia, Africa and Latin America have introduced or started the process of introducing innovative legislation which will comply with TRIPs but at the same time protect the rights of farmers and communities. Such countries include Costa Rica, the countries of the Southern Africa Development Community (SADC), India, Thailand and others. [xlv]

A third problem area is biotechnology patents. The TRIPs Agreement obliges countries to extend intellectual property protection to “non-biological” and “micro-biological” processes for the production of plants and animals. This includes genetic engineering, the genetically modified organisms (GMOs) which are the product of it, and genes. In what is popularly known as ‘biopiracy’, Northern companies are claiming patents on genetic materials and knowledge which originate in developing countries. The TRIPs Agreement will oblige the developing countries to recognise – and pay the cost of – such patents, while it does nothing to encourage a more equitable system in which the countries or communities might obtain a share of the profits. This is one of the areas in which the WTO appears to conflict with an international environmental agreement, the Convention on Biodiversity, and there is heated controversy over which should have priority.

So controversial was the part of TRIPs Agreement relating to biotechnology and plant varieties – Article 27.3(b) – that it is up for review by the end of 1999. Some developing countries want applicants for a plant variety patent to declare the origin of the material used and to pay compensation to the country or the communities from which it was obtained. [xlvi] The African group of WTO members wants Article 27.3(b) to state that plant variety protection can be used for protecting innovations of indigenous and local farm communities. The Africans also want the implementation deadline for developing countries to be extended to five years from the date of completion of the review of Article 27.3(b). [xlvii]

TRIPs and pharmaceuticals

Developing countries that have a national pharmaceutical industry have had the ground cut from under their feet by the TRIPs Agreement. Many of them only grant patents for the process by which a product is made, rather than for the product. This has allowed them to circumvent patents by producing the drug in a slightly different way from that used by the transnational company which holds the patent. This has been the foundation of the pharmaceutical industry in countries such as India, Brazil and Argentina. But the TRIPs Agreement now forces them to patent both the processes and the products, and to pay a patent fee even if the product is manufactured by a different route.

Developing countries were given 10 years to introduce patents for technologies they did not protect previously, but agro-chemical companies can apply for a patent immediately. A group of developing countries want the TRIPs Agreement reviewed so that domestic producers are compulsorily licensed to manufacture and market patented drugs, particularly those in the World Health Organisation’s list of essential drugs, “when these are being sold at unreasonably high prices”. [xlviii]

4. THE ENVIRONMENT AND TRADE CONUNDRUM

Reconciling environmental protection with open trade is a problem which haunts the WTO. A political hot potato, the trade and environment debate pits industrialised countries and some environmentalists on the one hand against free traders and developing country governments on the other. The environmentalists blame trade for causing environmental harm, for instance by forcing producers to focus on low prices to the exclusion of other considerations such as clean production, and they see a conflict between environmental and trade rules. On the other side, free traders and developing country governments worry that the environment may become a new source of protectionism.

A few agreements combining environment criteria and trade rules exist – for example, CITES (the Convention on International Trade in Endangered Species) and the Montreal Protocol on Substances that Deplete the Ozone Layer. Both of these are accepted by the WTO as legitimate constraints on trade. There are also a number of ‘green’ provisions scattered around existing trade agreements. They include the exemption of environmental programmes from cuts in subsidies, as well as permission to refuse issuing a patent that risks serious damage to the environment.

The problem is to find a general way of deciding when environment or trade rules should take precedence, and on this no solution seems to be close. The WTO Committee on Trade and the Environment (CTE) has been debating the relationship between trade and the environment. After numerous meetings the positions are as far apart as ever. There is agreement, however, that the WTO is only competent to deal with the impact that environmental policies have on trade. Industrialised countries want the environment to have a stronger role in trade talks – for example, the G7 group of leading industrialised nations agreed in Cologne, Germany, in June 1999, “that environmental considerations should be taken fully into account in the upcoming round of WTO negotiations.” [xlix] Developing countries are less enthusiastic. Ministers from the so-called G15 group of developing countries meeting in Bangalore, India, in August 1999 said: “The environment is *ab initio* [from the outset] a non-trade issue, and all legitimate concerns can be accommodated with the existing WTO provisions.” [I] In other words, there is no need for negotiations on trade and the environment.

Some environmentalists want ‘greening’ of international trade rules and procedures so that they do not interfere with environmental treaties nor undermine domestic environmental standards. Free traders counter that if the markets are working properly and adequate environmental regulations are in place, there is no reason why trade should damage the environment.

Developing countries fear that environmental regulations will impair their access to rich country markets. They also resent the fact that those industrialised countries that paid scant attention to the environment when developing themselves should now be telling poorer countries how to manage their natural resources. Developing countries also worry that the cost of environmental protection will slow down their economic growth.

“A central reason for North-South trade and environment disputes is the reliance by certain countries, particularly the United States, on trade ‘sticks’ (trade measures) to advance their environmental policy goals rather than ‘carrots’ (financial or technical assistance) to coax developing countries into joining international environmental efforts.” [ii] The US import bans on tuna captured alongside dolphins, and on shrimps caught together with sea turtles, are good examples of such ‘sticks’.

The WTO Committee on Trade and Environment has a 10-point agenda. This includes, among other things:

- 2 **The WTO and Multilateral Environmental Agreements (MEAs):** The issue is whether MEAs such as the Montreal Protocol on the ozone layer take precedence over the WTO. Some MEAs impose trade sanctions on members who fail to honour the agreement. Environmentalists fear that the sanctions might fall foul of the WTO (although this has not happened to date).

- ? **The legality of unilateral trade measures:** These refer to trade penalties imposed by one country on others in order to protect the environment beyond its borders. Examples here are the tuna-dolphin or the shrimp-turtle sanctions imposed unilaterally by the USA, which most countries believe are prohibited by Article XX of GATT.
- ? **The WTO and technical environmental standards and regulations:** The focus has been on eco-labelling schemes, mainly over eco-labels which take into account the environmental impact caused during the making of a product, and whether products awarded an eco-label might have a competitive advantage over foreign products that do not have one.
- ? **Trade restrictions and the environment:** The CTE has discussed how removing trade restrictions such as subsidies for fishing or farming can be good for the environment.
- ? **Environmental measures and trade:** The concern is that environmental measures and standards such as recycling regulations, car emissions or pesticide safety standards can make products more expensive and therefore uncompetitive.
- ? **The relationship between the TRIPs Agreement and the environment:** Issues here have included access to and transfer of technology to developing countries so that they can meet their multilateral environmental commitments, and how TRIPs can promote the conservation of biological diversity.

For environmental organisations, the CTE agenda is inadequate. It fails to assess the environmental impact of trade-liberalising measures and it does not “ensure that trade liberalisation is accompanied by improved environmental rules and other policies needed to create a sustainable market.” [Iii] Whether this is a role for the WTO is open to question, but the fact remains that trade frictions over environmental measures would be greatly reduced if the prices of goods and services reflected their environmental cost. The problem that countries might value environmental costs differently would remain, however, in the absence of an international agreement.

Trade battles over biodiversity

The clashes at a recent meeting of the Convention on Biological Diversity over how to deal with genetically engineered seeds, crops and foods is a clear case where world trade rules seem to interfere with Multilateral Environmental Agreements.

A seminal meeting of the Convention called to approve its Biosafety Protocol in Colombia in February 1999 ended in disarray over international trade in genetically modified (GM) products. Most developing countries, led by Ethiopia, wanted the right to agree in advance whether GM products were imported into their countries. They argued that environmental and socio-economic factors should be taken into account when deciding whether or not to allow imports, transfer, handling or use of GM products within their territories.

But free traders led by the USA worried that the Biosafety Protocol could become a protectionist device. They insisted on including an article saying that imports of GM foods should “be consistent with their international obligations”.

The EU tried to mediate by expressing interest in the application of a precautionary principle that would give nations the right to refuse imports of GMOs if they felt they posed a threat to biodiversity or human health. But even the discussions on the precautionary principle raised concerns that it would be seen as a ‘green light’ to restrict imports without full scientific certainty, thus “arbitrarily legitimating the creation of trade barriers”. [Iiii]

The precautionary principle, included in the Preamble of the Rio Declaration signed at the Earth Summit in Brazil in 1992, states that: “Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures of environmental protection.” The problem is how to make it operational without its being used as a trade barrier. This is a problem that will increasingly exercise trade negotiators and other international bodies.

5. RESOLVING CONFLICTS AT THE WTO

When a country legally challenges a trading partner, the world is bound to take notice. And when the loser has to compensate the winner, companies and workers in the affected industries are bound to take notice. So it is that trade disputes have been the most talked-about actions of the WTO since it came into being.

The purpose of many countries in endorsing the World Trade Organization was to restrain the USA, and most notorious disputes have had the USA either as the accuser or the accused. The USA has won some, but it has also lost some. The EU has also been involved in some of the most spectacular disputes, but it has mostly been on the losing side. [liv]

Among the 38 panels that were set up between the date of the WTO's establishment and 31 December 1998, six of the most publicised disputes have had to do with human and animal health or the environment, and a few have involved developing countries.

US standards for gasoline

It was with great glee that Latin America welcomed the triumph of Venezuela and Brazil over the USA in May 1996 in a dispute over US cleanliness standards for 'reformulated gasoline'. This was one of the first decisions of the WTO's strengthened Dispute Settlement Body.

The USA argued that its cleanliness standard was permitted within Article XX of GATT. This article provides "general exceptions" to GATT obligations in order to protect public morals, preserve national heritage and limit commerce in goods made with prison labour. Although it does not mention the environment specifically, it says the contracting parties should be allowed to take actions that are necessary for the protection of human, animal, or plant life or health; or that relate to the conservation of exhaustible natural resources – provided the measures apply to domestic production or consumption as well.

In the Gasoline Rule case, the appeal panel found that the purpose of the measure – that is, to combat air pollution – was appropriate, but that the USA was guilty of discrimination against foreign suppliers.

The tuna-dolphin case

This case was started under the old GATT dispute settlement procedure. It concerned US restrictions of tuna imports when dolphins had been caught in the nets, introduced in June 1994 under its Marine Mammal Protection Act. The dispute was brought initially by Mexico, and then also by the European Communities and the Netherlands, which charged that any country can protect its own environment but it cannot penalise other countries' actions.

The US ban was directed initially at yellowfin tuna harvested in the Eastern Tropical Pacific Ocean, where dolphins swim above schools of tuna. Only a small annual quota of tuna caught where dolphins had been killed or seriously injured was allowed into the USA. The problem as far as GATT was concerned was not that the USA was not allowed to protect dolphins in its own territorial waters, but that it was applying such protection beyond its borders. As a result of the case GATT coined a word for this practice: 'extrajurisdictionality'.

The dispute panel ruled that the USA was at fault. However, the decision was never adopted because the USA objected and thus escaped being penalised - a case of weak trading partners not daring to impose trade sanctions against the stronger ones even if they have won a trade dispute.

US shrimp imports ban

The US Endangered Species Act of 1973 lists five species of endangered marine turtles and prohibits their fishing within the USA and on the high seas. A subsequent law says that shrimp harvested with technology that may adversely affect certain sea turtles may not be imported into the USA unless the producing nation has a regulatory programme and an incidental take similar to that of the USA.

India, Malaysia, Pakistan and Thailand complained that the measures were contrary to several GATT articles, and constituted, like the tuna-dolphin case, an attempt by the US to enforce rules on other countries. The dispute panel ruled that the US measure was inconsistent with GATT Article XI (General elimination of quantitative restrictions) and could not be justified under Article XX (General exceptions) because it constituted "unjustifiable discrimination between countries where the same conditions prevailed". After a US appeal, the WTO acknowledged in November 1998 that there was potential for exclusion measures to protect turtles, but it still judged the US actions illegal. The USA has until December 1999 to comply with the ruling.

WWF comments: "If Article XX cannot protect these endangered and internationally protected species, what can it protect? Under what circumstances will the WTO give priority to the protection of the environment over market deregulation?" [IV]

EU banana quotas

This case tested the right of countries to give preferential treatment to some exporters over others. The EU had, under the Lomé Convention of trade and aid to African, Caribbean and Pacific (ACP) countries, given special access to these countries' bananas, and rights to EU companies over banana imports from non-ACP countries. The USA, which does not produce bananas itself but has large multinationals involved in the banana trade in Latin America, complained to the WTO that the Latin American banana growers were being treated unfairly by the EU.

The EU lost the case in 1997. In April 1999 the WTO authorised the US to impose US\$200m of trade sanctions against European exporters because the EU's amendments to its banana regime were deemed insufficient. Many NGOs opposed the US position, seeing the dispute as one between multinationals and the populations of the ACP banana-producing countries. They pointed out that one of the key beneficiaries of the dispute, the US firm Chiquita Fruits, had given half a million dollars in donations to US political parties. [V] Some other observers saw it as a dispute between US and EU multinationals.

EU ban on beef hormones

The most notorious of the trade disputes dealing with health is the USA's complaint to the WTO about an EU ban on the use of hormones in meat production. At issue is the WTO Agreement on Sanitary and Phytosanitary Measures (the SPS Agreement).

In 1988 the EU banned the use of hormones such as progesterone and testosterone that cause cattle to grow faster, arguing that consumers did not want hormone-treated beef. Beef hormones are widely used in the USA, so it was no surprise when in 1996 the USA took the case to the WTO. The EU lost the case when the WTO panel ruled in February 1998 that it had not proven scientifically that the hormones were a health hazard. In July 1999 the WTO authorised US sanctions against the EU to the sum of US\$117 million, as the EU has refused to lift the ban.

However, the WTO Appellate Body reaffirmed the right of countries to establish higher food standards than the international standards approved by the UN's Codex Alimentarius Commission. In a decision applauded by consumer activists, the panel also said that the assessment of risk can include factors which cannot be quantified numerically. [vii]

Genetically modified foods

Another potential dispute that may lead to accusations against the WTO concerns the labelling of genetically modified (GM) foods. If all GM foods had to be labelled, it would force the USA to separate out GM soya and maize which are now mixed in with non-GM grains. The USA has argued that labelling GM foods is a barrier to trade because if GM foods are labelled consumers may choose not to buy them.

Countries that ban GM products because of safety concerns could also be taken before the WTO Dispute Settlement Body for not conforming with the SPS Agreement, which requires convincing scientific proof of the exact nature of the health risk before a country has the right to ban an import.

However, by October 1999 there were signs that the US government might reduce its hostility to labelling, as a result of the build-up of opposition to GM foods around the world.

Developing countries miss out on dispute resolutions

Developing countries were happy with the stronger dispute resolution system of the WTO because even powerful traders such as the USA could be taken to task for violating international trade rules. However, their experience so far leaves much to be desired.

Bhagirath Lal Das has examined the experience of developing countries with the Dispute Settlement Body of the WTO. [lviii] According to him, "The process is ideally suitable for disputes between partners that are almost equally powerful. The system may prove less effective when a weak trading partner is to get redress against the omissions and commissions of strong trading partners." The problems for developing countries identified by Das include:

- ✍ Getting compensated takes too long: countries may have to wait for around two years before getting compensation. For weak trading partners such as developing countries such delayed relief may come too late to avoid irreparable damage to their trade and economy.
- ✍ Weak trading partners may not dare impose trade sanctions against the stronger ones even if they have won a trade dispute.
- ✍ Panels have restricted authority over disputes relating to anti-dumping. They can only check whether the authorities from the importing country have evaluated the facts properly but cannot overturn the conclusion of the authorities in the importing country. This is particularly harmful to developing countries, which are at the receiving end of most anti-dumping cases.
- ✍ Panel discussions are highly technical. This makes it difficult for developing countries to prepare and present their cases properly. The costs are also high.

Support for developing countries so that they can make effective use of the Dispute Settlement Body will come in the future from the newly established Advisory Centre on WTO Law.

6. THE NEW ISSUES

The 1996 Singapore Ministerial Conference of the WTO set up three controversial working groups on trade and investment, trade and competition policy and government procurement. Some WTO members are now pushing hard for these issues to be taken forward in the proposed new round of negotiations.

Liberalising investment

Transnational corporations (TNCs) investing in developing countries were only partially satisfied with the Uruguay Round Agreement on Trade-Related Investment Measures (TRIMs). It confirmed that host governments cannot require them to use a specified amount of local goods and services, to export as much as they import or to face foreign exchange limits.

TNCs did not, however, gain the right to invest wherever they wanted and to be treated as a national company. So a few months after the launch of the Uruguay Round the powerful International Chamber of Commerce, which represents industries worldwide, launched a campaign to extend the rights of foreign investors.

The industrialised countries, under the umbrella of the Organisation for Economic Cooperation and Development (OECD), obliged by opening negotiations on a Multilateral Agreement on Investment (MAI),

which would open all sectors in member countries to unrestricted foreign investment. However, the MAI negotiations at the OECD collapsed in October 1998, due to disagreements among the industrialised countries and strong opposition from civil society.

Pressure – especially from some members of the EU – began to build up for including investment in the proposed Millennium Round of WTO trade talks. The EU's Eastern European member candidates, some other industrial nations such as Japan and Canada, and some developing countries such as Chile, Costa Rica and South Korea also want investment to be included in any new round. However, some developed countries, including the USA and France, are unwilling to give up their right to restrict the sectors open to foreign investment; and many developing countries such as Egypt, India, Pakistan and Uganda feel that the time is not yet ripe for multilateral rules on investment within the WTO, because the existing working group on trade and investment still has many issues to discuss. [Iix]

Fomenting competition

The liberalisation of trade and investment has increased the demands for making national competition policy more responsive to international concerns. National competition policies include measures to prevent companies from monopolising the market or engaging in anti-competitive practices such as price fixing. TRIMs mandates the WTO to tackle the issue.

Competition policy, especially its international dimension, is uncharted territory. This explains why the WTO's Working Group on Competition Policy has been little more than a mutual learning process. While an international competition agreement is still far off, the EU wants the WTO at least to agree on a common framework that all countries could then apply in their domestic competition laws.

Many countries want to focus discussions on issues such as the impact of anti-dumping measures, which they fear some countries are using improperly to keep out competitively priced imports. The USA – a prolific practitioner of anti-dumping measures – will not hear of this, and will not support negotiations on competition policy in the new round.

If some countries, and some international NGOs, want the WTO to take action on competition policy it is because it would help curb the power of TNCs. As Egypt has said, "We cannot address the rights of investors without equally addressing their obligations." [Ix]

Opening up government procurement

The issue of government procurement is becoming more prominent in regional negotiations and at the WTO. The first GATT agreement on government procurement (aimed at opening official business to international competition) dates from 1970, but the Uruguay Round extended the scope of the agreement 10-fold, so it now also covers construction and services. A total of 24 countries have signed the agreement so far (it is one of only two WTO agreements which are 'plurilateral': not binding on all member states), and have identified government entities such as Ministries, local councils and public utilities to which the procedures of the agreement will apply.

A WTO Working Group has been working on the narrow issue of 'transparency' in government procurement. Industrialised countries, with the EU in the lead, are much more ambitious: they want government procurement to give foreign companies 'national treatment', which means that foreign corporations could bid for government contracts on the same terms as local companies. Government procurement is big business in many developing countries, where it can typically account for 20 to 30 per cent of gross domestic product. (In many cases, however, it is donor rules on tied aid rather than national law which are the major constraint on procurement).

Countries such as the USA and Australia want an agreement on government procurement in the proposed Millennium Round, though they emphasise that it would only concern the transparency of government

procurement rules, not access for foreign companies. Those opposed to an agreement, led by India, Pakistan and Egypt, argue that the Working Group on Transparency in Government Procurement needs more time “to understand fully the concerns of developing and least developed countries”. [Ix]

According to critics, “The proposed rules for investment, WTO rules for competition policy and government procurement are presented as necessary for the creation of a ‘level playing field’. In reality, however, equal competition between giant global corporations and small local producers in developing countries will lead to the massive extinction of the latter.” [Ixii]

7. THE MILLENNIUM ROUND

Fresh negotiations will take place in the year 2000 on agriculture, services and intellectual property rights; this so called ‘built-in agenda’ was already agreed in the Uruguay Round. In addition, a new round of trade negotiations might, or might not, be announced at the WTO Ministerial Conference in Seattle, USA, in December 1999, six years after the Uruguay Round was finally settled. Called the ‘Millennium Round’ by its mentor, former EU Trade Commissioner Leon Brittan, if it takes place it might be the most difficult round of trade negotiations so far.

The EU has proposed a new round to include a large number of issues including investment, public procurement and competition policy (‘comprehensive negotiations’). Japan has enthusiastically supported the ‘comprehensive round’ because it would allow it to offer limited concessions in agriculture in exchange for liberalisation in other areas such as industrial tariffs. [Ixiii] The USA, on the other hand, favours a sector-by-sector approach, whereby negotiations would be completed on one issue at a time rather than having to wait for the whole package to be approved.

Developing countries are divided on whether to have a new round of trade talks dealing with new issues. The majority of members of the Asia Pacific Economic Cooperation (APEC) forum favour a new round. On the other hand, a group led by India, Malaysia and Egypt does not want negotiations on new issues until their problems with the Uruguay Round have been properly addressed.

Some Latin American and Eastern European countries want an investment agreement in the WTO. Most developing countries do not.

Where the large majority – if not all – of developing countries speak with one voice is on their firm rejection of using trade sanctions to enforce core labour standards (such as the right to unionise) and environmental standards. Industrialised countries say that WTO rules and disciplines would force member nations to improve working conditions. Many developing and some developed nations believe that bringing labour standards into the WTO could be used for protectionist purposes. Moreover, many NGOs believe that the WTO’s mandate should not be extended to include labour standards. [Ixiv]

The restructuring of anti-dumping rules is also likely to be a priority for developing countries.

Industry, under the coordination of bodies such as the International Chamber of Commerce, has been actively lobbying for a new round. On the NGO front, many NGOs, especially from industrialised countries, started lobbying their governments in early 1999, and hundreds of activists will converge in Seattle for the WTO Ministerial Conference. Many alternative events have been planned, including a People’s Conference and a march against WTO and globalisation. Over 1,200 NGOs and civil society organisations from 87 countries have signed a statement opposing a new round of trade talks, especially on the new areas of investment, competition policy and government procurement. NGOs are calling instead for “a comprehensive and in-depth review and assessment of the existing agreements”. [Ixv] They feel that such a review will convince governments and people of the extent to which developing countries are

disadvantaged by the present trade rules, and may persuade them to take action to create a more equitable system.

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