

DECEMBER 2005

## The World Trade Organization and sustainable development: A guide to the debate

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As traditional tariff barriers have fallen everywhere, and as trade negotiators have turned their attention to other government policies which may affect international trade in products and services, the international trading system governed by the WTO has come to affect more and more areas of government policy. Governments deciding environmental, health and labour standards, rules for service provision or intellectual property rights protection now cannot ignore the WTO.

The outcome of this process is to bring to the fore the disputed relationship between sustainable development and the liberalization of international trade. It has been argued that trade liberalization is *essential* to economic and social development and environmental protection; and, conversely, that it is *harmful* to one or all of these three pillars of sustainable development – or at least, that it gives a much greater focus to economic growth at the expense of the social and environmental dimensions.

The purpose of this briefing paper is to provide a concise background to the main issues at stake in the interaction between the WTO system and sustainable development. It considers a series of 'frequently asked questions', including whether big business unduly influences the WTO, how much developing countries benefit from world trading rules, the WTO's impact on environmental policy, including policies designed to regulate trade in GM products and in illegal timber, the interrelationship between the WTO and standards of labour standards and of animal welfare, and whether or not agricultural liberalization will benefit sustainable development.

## The World Trade Organization: the basics

The rapid expansion of international trade has been one of the defining characteristics of the world economy since 1945, and a key factor in the complex of processes known as 'globalization'. In 1970 one-eighth of world product was traded internationally; now the proportion is one-fifth. International trade is crucial to every nation.

One of the principal reasons for this expansion has been the steady removal of government-imposed barriers to international trade, in terms of both tariffs and non-tariff barriers such as quotas or administrative requirements. Industrialized countries' tariffs on manufactured goods have fallen from about 50% in 1948 to an average of about 3.7% today. This removal of trade barriers has been coordinated and promoted under the framework of the General Agreement on Tariffs and Trade (GATT). Originally agreed in 1947, this international agreement was augmented through successive rounds of negotiations, of which the Uruguay Round, completed in 1994, was the eighth. More ambitious and long-drawn-out than its predecessors, it led to the creation of a permanent rules-based body, the World Trade Organization (WTO), which came into being on 1 January 1995. The WTO oversees the implementation of the GATT and the range of additional agreements that came into place alongside it, together with a quasi-judicial system of dispute resolution which requires consensus among WTO members to overturn any decision – taken together, a much more powerful and far-reaching system of trade rules than had previously existed.

## Interaction with other areas of public policy

Because of the achievements of successive trade rounds in reducing tariffs, particularly on manufactured products, the attention of trade negotiators increasingly turned to other factors affecting trade in goods – for example, product standards imposed for reasons of health and safety, or environmental quality. This led to the creation of an array of additional trade agreements, covering, among others, agriculture, textiles, services, intellectual property, technical barriers to trade and sanitary and phytosanitary (health and plant health) standards.

In turn this started to generate concern among some sections of the public in many countries. In the environmental field this was triggered in particular by a number of dispute cases in the early 1990s which seemed to imply that the GATT/WTO would quite extensively limit national governments' ability to restrict imports of products that caused transboundary or global (as opposed to purely national) environmental stresses – such as those from unsustainable commercial fishing.

At the same time, campaigning non-governmental organizations (NGOs) and development agencies had

long been calling for a better deal for developing countries from the world trading system, and in particular for better market access for their exports, especially of agricultural goods and textiles. The international trading system was steadily growing in importance for international development: while only 11 of the original 23 signatories of the GATT had been developing countries, by the end of 2004 the proportion had grown to over three-quarters of the 148 members of the WTO. Yet despite this, even today developed countries maintain higher tariffs against many developing-country exports than they do against those from developed countries.

Most people would accept that the liberalization of trade plays a major role in promoting economic growth. The removal of the distortions in the market created by trade barriers results in lower prices and access to a wider range of markets, extending choice for firms and consumers alike. All economies develop by exporting the goods and services they produce best in exchange for other goods and services they need. The various forms of trade protectionism – subsidies, tariffs, dumping, etc. – distort markets, impede the optimal use of resources and generally benefit elites and vested interests while restricting choice and opportunity. Alongside these economic benefits, there are political arguments for trade liberalization; trade can promote interdependence and a sense of international community, building links between peoples, communities and nations and rendering armed conflict less likely.

Yet, equally, the expansion of trade can have major drawbacks. The benefits from economic growth may be inequitably distributed, both between and within countries. The environmental costs of production and consumption are hardly ever reflected in the prices of goods in international trade, amplifying unsustainable patterns of economic behaviour. The deregulation that generally accompanies trade liberalization may weaken countries' abilities to regulate transnational corporations (TNCs) and maintain high environmental or labour standards. The globalization of lifestyles and consumption patterns has led to fears of cultural homogenization and a loss of independence and identity. Many of these are side-effects of much wider processes of globalization than trade liberalization, yet in many eyes the WTO has come to embody them. There are also arguments about the pace of trade liberalization. As will be seen below, many poor countries may well suffer from rapid exposure to world markets before they have had time to develop competitive industry or agriculture; this is a particular problem for small farmers.

More broadly, there is a growing concern over a lack of *balance* in the international system. Any functioning economy needs to balance the benefits of free trade with wider public needs – a healthy natural environment, the protection of local culture, safe workplaces, public health, social infrastructure for those suffering from ill-health or disability, and a strategy to reduce poverty, all subject to democratic accountability and redress. At the national level this can be achieved with varying degrees of success.

At the *global* level, however, the international institution that governs trade – the WTO and its range of trade agreements – is far more powerful and effective, as a whole, than those that handle environmental protection, health, human rights or social development. International trade liberalization has been pursued and developed to a much greater extent than any other global policy objective. This has resulted, many argue, in an *unbalanced* world economy, where the interests of exporters and big companies usually seem to be given a higher priority than environmental protection, for example, or the concerns of local communities.

The second section of this paper examines to what extent many of these specific criticisms are justified in relation to the WTO. Before that, however, we take a brief look at how the WTO system works in practice.

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## How the WTO system works

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The WTO agreements, now centred around the GATT, the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Intellectual Property Rights (TRIPS) essentially lay down general rules for governments to follow in liberalizing international trade; they cannot possibly deal with every specific traded product or service, so they set out broad principles which must be interpreted and applied in particular dispute cases where one WTO member believes that another is failing to comply with them. The core principles are to be found in the following articles of the GATT:

- GATT Articles I ('most favoured nation' treatment) and III ('national treatment') outlaw discrimination in trade: WTO members are not permitted to discriminate between traded 'like products' produced by other WTO members, or between domestic and international like products.
- GATT Article XI ('elimination of quantitative restrictions') forbids any restrictions other than duties, taxes or other charges on imports from and exports to other WTO members.

WTO members, in other words, are not permitted to discriminate between other WTO members' traded products, or between domestic and international production. Essentially the same principles are built into all the other WTO agreements that have developed alongside the GATT.

The WTO agreements do, however, permit unilateral trade restrictions under particular circumstances. These include measures, for example, 'necessary to protect human, animal or plant life or health' (GATT Article XX(b)) and those 'relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption' (GATT Article XX(g)), both of which have been cited in a series of dispute cases concerned with trade measures

taken in pursuit of environmental protection. The key question at issue is whether the disruption to trade in each case can be justified under these wordings – e.g., in the case of Article XX(b), is the measure really *necessary* to the objective, or are there any alternative measures available that could achieve the same ends with less disruption to trade?

So dispute cases revolve around the *interpretation* of WTO rules. The bodies that carry out these interpretations are the dispute panels (generally composed of trade experts) which issue an initial set of findings, and the WTO Appellate Body (mostly international lawyers), to which dissatisfied parties can appeal. Since their decisions can only be overturned by a negative consensus among all WTO members – which has never happened – this quasi-judicial system is a powerful means of resolving conflicts and ensuring that trade rules are interpreted and applied consistently around the world.

If the loser in any given case does not modify its policy accordingly, the winner is entitled to take trade-restrictive measures (e.g. apply tariffs) against the losers to the estimated value of the trade lost because of the loser's action. So, for example, when the EU was found against in a dispute with the US over trade in bananas, in 1999, the US applied penal tariffs against a wide range of European exports, including items such as cashmere clothing. But because the effectiveness of the sanctions in each case rests on the economic power of the winner, the system is highly unbalanced – if the US loses a dispute with Ecuador, for example, it is not going to be deeply affected by Ecuadorian trade sanctions, whereas US trade measures against Ecuador would have a devastating impact.

It should be noted that interpretations can change, even if the wording that is being interpreted does not. Decisions in particular by the Appellate Body in recent years have clearly helped to shift the way in which the WTO system is applied, especially in environment-related disputes. It is this key role for *interpretation* that often leads to uncertainty and disagreement over what the WTO rules might mean in practice in potential dispute cases that have not yet been ruled upon – as we will see in the FAQs section.

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## The Doha Round

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Only two years after the completion of the Uruguay Round in 1994, pressure began to build for a further round of trade talks. Four new issues – investment, competition, government procurement and trade facilitation – were proposed for negotiations, mainly by developed countries, at the first WTO ministerial conference at Singapore in 1996. From one perspective this reflected a logical process of establishing multilateral rules to govern policies which affected cross-border economic activity. For developing countries, however, more important was the implementation of Uruguay Round commitments, mainly on market access. It was these developing-country concerns, much more than the well-publicized NGO and trade union demonstrations, that torpedoed

the third WTO ministerial, at Seattle in 1999, and prevented the launching of a 'Millennium Round' of negotiations.

The new round finally got off the ground at Doha in 2001. The four 'Singapore issues' were included in the agenda, along with further liberalization of agriculture and services (envisaged in the Uruguay Round agreement), implementation issues from the Uruguay Round, and a new trade and environment agenda. Dubbed the 'Doha Development Round' (with the Doha Development Agenda, DDA) the negotiations were supposed to focus in particular on the needs of developing countries.

However, it became clear at the fifth WTO ministerial, at Cancun in 2003, that developing countries were still not convinced, and this conference too ended in failure. Cancun was notable for the emergence of more organized developing-country negotiating blocs, in particular the G20, a group of middle-income developing countries with significant agricultural exports. Other groups which came into being at Cancun or subsequently include the G33, led by Indonesia and focusing on proposals for special and differential treatment and special products, and the G90, the least-developed countries together with other developing countries from Africa, the Caribbean and the Pacific. The creation of these groups helped to highlight how diverse the 'developing world' is in terms of trade interests.

In the wake of the failure at Cancun, many of the more ambitious components of the DDA, including investment, competition and government procurement, were dropped or sidelined. The overriding issue going into the Hong Kong ministerial, in December 2005, is agriculture, the 'last major frontier for trade liberalization', as one observer put it. In contrast to manufactured products, trade distortions in agriculture, including export subsidies, domestic support and limitations on market access, remain extensive. Although agricultural and related activities are not of great economic significance to most developed countries (their priorities lie in further liberalization of services and non-agricultural goods), farmers' organizations and pressure groups still retain considerable political power. The EU, one of the two major negotiators alongside the US, is itself internally split over reform of the Common Agricultural Policy. If significant progress is not made at Hong Kong, then WTO members will be under severe pressure to reach final agreement in 2006, before the expiry in summer 2007 of the US administration's fast-track authority, which enables it to put the agreement through Congress as a single item. The final shape of the deal, which is bound to focus on agriculture and non-agricultural market access (the main priority for developed countries) but may include a disparate range of other issues, is still far from clear.

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## The WTO: frequently asked questions

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This section provides a brief guide to some of the most frequently asked questions about the WTO and the system it oversees, concentrating particularly on issues relevant to sustainable development. As noted above, in the absence of dispute cases dealing with some of these questions, it is often impossible to say for sure how the WTO would deal with a particular issue; we aim here primarily to explain the background.

One other point should be noted. Partly because of the success of trade liberalization, and the priority afforded to it by most governments, the psychological power of the WTO system is huge. Even when it is not at all clear that WTO rules would in reality prohibit any given policy which might interfere with trade, there is often now an automatic assumption among policy-makers throughout the world that it probably would, and a resulting 'chilling effect' on regulation.

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## *Is the WTO dominated by big business?*

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The WTO is an intergovernmental agreement; negotiations take place between government officials (and, ultimately, ministers) and only governments may bring dispute cases, and only against other governments. The investor-state provisions of the North American Free Trade Agreement (NAFTA), under which corporations may directly challenge governments, have no parallel in the WTO.

The key question, then, is how much business lobbies affect national government positions – and the answer, certainly in most developed countries, is 'quite substantially'. Unsurprisingly, companies which export and import, and their trade associations, are keen to see trade restrictions lowered. They also have the resources to maintain sophisticated lobbying operations, both in national capitals and in Geneva. Corporate influence on government positions is probably greatest in the US, where corporate donations to politicians are far greater in importance than in most other countries. In virtually all countries, however, trade ministries possess greater political clout than, say, environment or development departments.

Nevertheless it would be an exaggeration to say that corporate interests will win out in all circumstances. For example, in the light of public concern over the prohibitively high cost of patented pharmaceuticals to the poorest countries, WTO members agreed at Doha in 2001 that the TRIPS Agreement 'can and should be interpreted and implemented in a manner supportive of WTO members' rights to protect public health and in particular to ensure access to medicines for all'. Agreement on the right of countries to import cheaper generic drugs if they were unable to manufacture the medicines themselves was finally reached in 2003.

The broader agenda of the Doha Round has brought many other interests into the arena, including many NGOs, trade unions and consumer groups, and



also seen a greater degree of press and public attention than in previous trade rounds. In fact, many major corporate lobbies seem, if anything, to have been relatively less active than in previous rounds, and in many countries it is the agricultural and farmers' interest groups that have made the running. In the final analysis, it is not the WTO system itself that tends to give priority to corporate interests, but the balance of competing interests within the governments of the WTO's members.

### ***Are developing countries' needs ignored in the WTO?***

Developing countries need the access to international markets that allows their economies to develop and diversify; no country has ever been lifted out of poverty through development aid alone. Yet the process of trade liberalization has been deeply uneven, benefiting rich economies more than the poorest, and the gains from trade have not been distributed evenly throughout the global economy. Industrialized countries still maintain higher trade barriers against many developing-country exports than they do against one another's – though this is offset to some extent by the various preferential schemes available to developing countries. 'Tariff escalation', in which industrialized states place higher tariffs on processed goods than on raw materials in order to protect their own industrial sectors from competition, is less extensive than in the past but still helps to lock poor countries into reliance on a small number of primary commodity exports liable to wide price fluctuations.

Although some developing countries, particularly in South and Southeast Asia, and most notably China and India, have in recent years seen their economies' ability to participate in trade develop enormously, many of the poorest nations lack the capacity fully to benefit from trade liberalization, which needs effective governance structures such as a lack of corruption, trade-friendly customs agencies, access to foreign currency, an independent judiciary, a tax system that does not need to rely on import and export duties, and so on. Even where developing countries have enjoyed good market access – for example through the EU preferential schemes available to former European colonies – they may lack the competitive ability to benefit. Furthermore the deregulation and privatization that often accompany trade and investment liberalization open developing-country economies to new stresses as well as new requirements for government regulation and enforcement for which they often lack adequate capacity. Finally, while the international movement of goods and financial capital has been liberalized, movement of labour – a major export of poor countries – has not (with the exception of skilled professionals).

The WTO system itself is difficult for poor countries to participate in fully. Quite apart from their general lack of institutional expertise and access to information, most of the negotiations take place in between ministerial conferences at WTO headquarters in Geneva, where representatives of wealthy countries

are supported by teams of experts, which many poor countries cannot sustain. Indeed, 37 WTO members cannot afford a permanent office in Geneva. Involvement in dispute cases is easier for those countries with the best access to legal expertise and advice (or those backed by TNCs); once again, this tends to discriminate against small and poor countries. This is increasingly not the case, however, for middle-income developing countries, which are increasingly making use of the dispute settlement system. Argentina, Brazil, Korea and Thailand are among the ten most frequent complainants in the WTO and have so far won almost all of the cases they have initiated. As above, this shows the danger of treating the developing world as a single group.

Developing countries do, furthermore, enjoy some special recognition within the WTO. The WTO agreements include various provisions giving developing countries special rights or extra leniency – 'special and differential treatment'. Among these are provisions that allow developed countries to treat developing countries more favourably than other WTO members, mainly implemented through the various Generalized Systems of Preferences (GSPs). Some WTO agreements allow extra time to be given for developing countries to fulfil their commitments, and some require WTO members explicitly to safeguard the interests of developing countries when adopting particular measures. The DDA contains a commitment to review all special and differential treatment provisions 'with a view to strengthening them and making them more precise, effective and operational', and the principle is incorporated into every part of the current negotiations; some extensions have already been agreed.

In general, the least-developed countries benefit from the maximum flexibility in applying WTO agreements – though they do not always have the capacity to utilize them fully – and in addition some WTO members have unilaterally scrapped import duties and import quotas on all exports from least-developed countries. These countries, of course, tend not to be important competitors in trade with the developed countries.

Some assistance is also available through WTO training and capacity-building. The WTO Secretariat has special legal advisers for assisting developing countries in WTO disputes, and the least-developed countries are automatically eligible for advice from the Advisory Centre on WTO law set up in 2001. More importantly, donor countries are increasingly making aid available for capacity-building for trade; Tony Blair announced in November, for example, that UK aid for trade would treble to £100 million a year by 2010, and the World Bank and other international agencies are similarly paying more attention to this issue.

Beneficial though all this is, no one pretends that it is enough to redress the systemic imbalances from which the poorest countries suffer in the world trading system. Addressing these kinds of issues was supposed to be a key priority for the Doha Development Round. After Seattle and Cancun, it is clear that the needs of at least the richer and larger developing countries have

to be taken into account in any final settlement; whether this is true of their smaller and poorer counterparts remains to be seen.

### ***Does the WTO force developing countries to liberalize their markets before they are ready?***

For most countries, and particularly the poorest, there is no real alternative to joining the WTO. Weak though their position may be within the WTO, the option of trying to arrange bilateral or regional deals with neighbouring countries is usually even more difficult, if it is available at all. The option of staying out of international trading arrangements altogether is even less credible, particularly as progress towards membership of the WTO is generally required as a precondition of World Bank and International Monetary Fund (IMF) assistance. And in any case, there are real advantages in WTO membership, including access to a multilateral rules-based structure which includes a dispute resolution system that can force much bigger and richer countries to dismantle – at least some – trade barriers. The dispute case taken in 2004 by Brazil against US cotton subsidies produced a ruling against the US, of potentially major importance to cotton-exporting countries in Africa, which include some of the poorest developing countries. The dispute case taken in 2002 by several countries against EU sugar exports, where the ruling went against the EU, is another example.

Nevertheless, for many of the reasons outlined above, most developing countries, particularly the poorest, do less well out of the WTO than do most developed countries. Trade is more liberalized in sectors where developed countries are more competitive. Some developing countries apply much higher tariffs to industrial goods and services than do rich countries – a legacy in part of a development strategy based on import substitution. Such tariffs can be important to shield infant industries from competition, and they can also represent an essential source of state income (much higher proportionately than in developed countries). The eventual reduction and removal of these tariffs would be beneficial in the long run, encouraging greater competitiveness and welfare, but in the short run there may be a strong case for their retention; as argued above, developing countries are generally less well equipped than developed countries to cope with the shocks consequent upon trade liberalization.

The UN Conference on Trade and Development (UNCTAD) has described this as the ‘policy space’ needed to nurture dynamic domestic industries that can compete internationally. There is a strong argument, therefore, for the special treatment afforded to developing countries in the WTO (see above) to be extended to allow them to liberalize at their own pace – through lengthened transitional stages, reduced reciprocity obligations, and so on. This is particularly – though not only – true of the least-developed countries.

### ***Will the GATS force developing countries to privatize public services?***

Services represent the fastest growing sector of the global economy, accounting for two-thirds of global output, one-third of global employment and nearly one-fifth of global trade. The General Agreement on Trade in Services is the arm of the WTO agreements covering internationally traded services. Countries are encouraged to make commitments to liberalize trade in services; GATS’ core principle is that if a country allows foreign competition in a sector, equal opportunities in that sector must be given to service providers from all other WTO members.

National governments retain the right to choose whether or not to open up particular sectors to competition – though once a decision is taken it is effectively irreversible – and derogations from full market access and non-discriminatory treatment are permitted, based on the number of suppliers, operations or employees in the sector, the value of transactions, the legal form of the supplier, or foreign capital. Despite an active NGO campaign against GATS, nothing in the agreement directly compels governments to privatize public services (defined as those that are not supplied commercially and do not compete with other suppliers). Examples of detrimental privatizations in developing countries often cited by critics of GATS generally have nothing to do with the agreement; they are much more likely to be an outcome of IMF or donor conditionality connected to the provision of financial assistance.

Despite the safeguards written into the agreement, however, there is unease about the likelihood in practice of developing-country governments being able to impose conditions – for example, for high environmental standards or local employment requirements – on foreign service providers, and developing countries have indeed come under pressure, not least from the EU, not to implement such derogations. This concern is reinforced by the high costs of reversing sector liberalization (compensation has to be paid), and the difficulty in projecting exactly what is likely to happen. It is also true that the privatization of important service sectors, such as water or energy, requires a level of monitoring and regulation by government that may well be beyond the current capacity of many poorer countries.

Although WTO members are being encouraged to widen the list of services for which they are prepared to offer market access and non-discriminatory treatment to foreign providers, in practice the range of services put forward for liberalization has been much smaller than anticipated. This is probably because developing countries have difficulty in projecting exactly what will happen, see little direct advantage in opening their service sectors, and may also wish to use potential opening as a bargaining chip to achieve greater progress in agricultural liberalization. This situation is not helped by developed-country recalcitrance in offering freer movement of labour from developing countries to provide services on a

temporary basis within their borders (GATS 'Mode 4' negotiations). Despite the initial intentions, it seems unlikely that major expansion of services liberalization will be a feature of the Doha Round.

### ***Do WTO rules force down labour standards?***

The interrelationship between trade liberalization and labour standards is a controversial one. On the one hand, in general trade helps economies to grow and develop, creating new employment opportunities under the right conditions. On the other hand, poor countries, exploiting their competitive advantage of cheap labour, invariably experience lower wages and poorer working conditions than those of the richer countries.

The spread of trade and investment makes it much easier for transnational corporations to move their operations to take advantage of these lower labour costs, sometimes with severe impacts on unemployment and local prosperity in their former host countries. The activities of TNCs in poorer countries can be positive: they usually pay higher wages than local firms and can provide valuable training and technology transfer. Further, working conditions in paid employment are usually better than alternatives in the small farming and informal sectors. Nevertheless, some TNC operations do not contribute to sustainable development, and relocation of their activities to countries lacking strong regulatory systems may be pursued simply to enable them to drive down wages, avoid decent health and safety provisions and boost their profits.

Occasionally there are calls for minimum global labour standards, enforced through trade discrimination. The GATT does already contain a clause (in Article XX) allowing WTO members to discriminate against products produced with prison labour, but it is difficult to move further than this and protect workers from exploitation without at the same time impeding the process of development, or providing an excuse for protectionism against developing-country exports. The International Labour Organization, which oversees a wide range of conventions setting various international standards of employment, has not called for trade discrimination in support of its standards.

The growing corporate social responsibility and ethical trade movements seek to tackle these questions with a different approach. Initiatives such as the Ethical Trading Initiative and the Fair Trade Foundation aim to increase the share of products' purchase price which flows back to the producers (generally small companies and individuals in poor countries). Socially responsible investment policies ensure that investors choose companies with good records of corporate responsibility, and a series of UN initiatives, including the UN Global Compact, seek to advance good corporate citizenship by encouraging companies to work with UN agencies, governments, labour organizations and civil society to advance a number of universal principles in the areas of human rights, labour and the environment.

### ***Do WTO rules prevent countries from adopting high national environmental standards, or weaken their implementation?***

Trade liberalization impacts on the environment both positively and negatively. It can help to ensure that resources are used efficiently, it can spread the use of more efficient and less polluting technology and it can generate the wealth to pay for it. On occasion, trade liberalization has been used directly to reduce environmentally harmful activities, such as the reduction in agricultural subsidies stemming from the Uruguay Round. Conversely, however, trade can also amplify problems of pollution, resource depletion and biodiversity loss caused by unsustainable economic activity – and in addition, transporting goods has direct environmental costs, in terms of fuel use and infrastructure (roads, airports, etc.).

With the exception of transport costs, however, environmental problems are at base caused by environmentally unsustainable patterns of production and consumption, not by trade itself, which is essentially a magnifier. A reduction in overall levels of trade will reduce the environmental impact of these levels of economic activity, but will also lose any environmental benefits. The aggregate impact will therefore depend on the sectors, products and countries involved – a conclusion supported by the series of sustainability impact assessments commissioned by the EU.

A key determinant of overall environmental impact is the environmental policies adopted by countries, but the current trade rules administered by the WTO have often been criticized as insensitive to these policies. The WTO Committee on Trade and Environment was established, when the WTO was founded, to review the relationship between environmental protection and trade rules and to identify possible reforms but, ten years on, has reached no conclusion on anything. The trade and environment components of the DDA, though generally welcome, are quite limited, and NGOs have questioned whether the WTO really has the environmental competence within the WTO to address them sufficiently. However, recent dispute settlement cases have led to a number of significant reinterpretations of WTO rules – including the applicability of the commitment to sustainable development in the preamble to the WTO agreements and the relevant paragraphs of Article XX of the GATT – which have helped to resolve some tensions between trade and environment.

WTO rules are relevant where environmental policy affects markets, for example in the area of *product standards*. The WTO encourages the use of international product standards – e.g. for health and safety, or labelling requirements – in order to reduce unnecessary barriers to trade. It has consequently sometimes proved difficult for countries to set higher standards – such as on the presence of hormone residues or GM products in food – without providing compelling scientific justification, which is often difficult or impossible to obtain for new technological



developments. This seems to run counter to the precautionary principle embodied in much environmental regulation, which justifies preventive action without full scientific certainty, particularly where the costs of action are low and risks of inaction high.

The current dispute over trade in genetically modified (GM) products is likely to affect future developments. The complainants – the US, Canada and Argentina – have argued that the EU's failure to approve any new GM products between 1998 and 2004, together with its marketing and import bans, were not scientifically justified and thus contrary to WTO rules. Many see the dispute as a test case for how the WTO will deal with precautionary decision-making. The panel was originally expected to present its report in September 2004; having missed several subsequent deadlines, it is now scheduled to do so in January 2006. It should also be recognized that the adoption of higher standards in developed countries may create barriers to developing-country exporters unless significant assistance is made available to enable them to improve their product standards and to submit them to the necessary testing and certification procedures. The Sustainable Trade and Innovation Centre (STIC) was established in 2002 to help developing-country producers to benefit from growing market pressures by integrating environmental and social factors into their export strategies, although its impact to date has been limited.

One of the most contentious trade–environment debates has centred round *process and production methods* (PPMs). Many current PPMs are environmentally unsustainable, because, for example, they generate transboundary pollution or deplete natural resources such as timber or fish. A series of GATT dispute cases in the 1990s, including the infamous tuna-dolphin dispute (over the US embargo on imports of tuna caught with methods that killed dolphins), seemed to imply that trade discrimination could not be applied on this basis, but more recent WTO dispute settlements, with new interpretations of the GATT text, suggest that in the right circumstances such discrimination could be allowed.

Most importantly, the final outcome of the shrimp-turtle dispute saw the US permitted to maintain its embargo on imports of shrimp caught in ways which killed endangered species of sea turtles (a PPM). This long-running dispute embodied a number of decisions with important implications for future PPM-based trade discrimination. The original form of the US embargo prohibited *all* shrimp imports from countries which did not require the fitting of turtle-excluder devices to their fishing fleet's trawl nets. This was modified, after an initial dispute finding, to apply on a shipment-by-shipment basis – so individual consignments of shrimp caught in turtle-friendly ways were allowed entry. A crucial point was the fact that the US did not treat imports differently from its domestic production, where turtle-excluder devices were compulsory; thus the core WTO principle of non-discrimination was maintained.

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### ***Will WTO agreements override environmental agreements, for example over trade in GM products?***

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Another major area of disagreement in the trade–environment arena concerns the WTO treatment of multilateral environmental agreements (MEAs) or treaties. Several important agreements, such as the Montreal Protocol on ozone-depleting substances, the Convention on International Trade in Endangered Species (CITES), or the Cartagena Protocol on Biosafety, which regulates trade in GM products, contain trade measures, such as a requirement for licences before trade can be permitted, or complete bans on trade in controlled products with non-parties or non-complying parties to the agreement. Such trade measures have proved essential to the success of treaties where trade is a major cause of environmental damage or where there is no alternative compliance mechanism, yet they could, at least in theory, still be challenged at the WTO. Resolution of this issue was an explicit component of the DDA, although – along with most other trade–environment items – no progress has yet been made on the issue.

It is worth noting, however, that no complaint has yet arisen within the GATT or WTO with respect to trade measures taken in pursuit of an MEA, and this may continue to be the case; in instances such as the Montreal Protocol, where the trade provisions were designed to encourage countries to accede, this approach has been so successful that there are in any case virtually no non-parties left against whom trade measures could be taken. On the other hand, the threat of a conflict with WTO rules has been raised in many recent MEA negotiations, generally by those opposed to the principle of the MEA and/or its effective enforcement, and there have been various attempts to write 'savings clauses' into them, ensuring that they remain subordinate to WTO disciplines. The lack of clarity on the issue, and the uncertainty about the outcome of any WTO dispute, have thus led many to call for some kind of resolution.

The GM dispute referred to above may also affect future developments in this area. Although the EU restrictions were not put in place pursuant to the relevant MEA (the Cartagena Protocol), as it was not yet in force, the provisions of the Protocol were cited by the EU in defence of its measures. At base, however, there is nothing in international law to state that the WTO agreements override MEA trade measures – or vice versa. It would therefore seem sensible not to let the possibility of a hypothetical WTO challenge inhibit the development of further MEA trade measures if MEA negotiators find them necessary for the implementation of the agreement.

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### ***Do WTO rules disallow certification and labelling schemes for sustainable products?***

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The WTO treatment of certification schemes, such as the Forest Stewardship Council (FSC) certificate for



sustainably harvested timber, and ecolabels – indicating energy consumption, for example – is another area of disagreement, identified for discussion under the DDA. The use of such labels is becoming increasingly common, providing concerned consumers with information on the impact of the products they buy.

Many of these schemes are voluntary and can be applied for by manufacturers, importers and retailers; the WTO treatment of voluntary measures such as these is still debated. Its treatment of mandatory labelling requirements – for example, for GM products (see above) – is similarly controversial and, as with the MEAs debate, it is difficult to reach any clear conclusion. The arguments identified above with respect to product standards and PPMs – whether the labelling requirements can be scientifically justified, or whether they are discriminatory – will be important in reaching a resolution of the debate. There has been only one GATT dispute to date involving ecolabels: the tuna-dolphin case, where the US label indicating ‘dolphin-friendly’ tuna was found to be acceptable as it did not lead to unfair discrimination between domestic and imported products.

### ***Will WTO rules prevent action being taken against imports of illegal timber?***

Much public and governmental attention has been paid in recent years to the extent to which consumer demand for timber helps to drive illegal logging in producer countries. In October 2005 the EU agreed a new regulation establishing a licensing scheme for imports of timber and timber products from producer countries participating in bilateral agreements (it is hoped that the first of these will be signed in 2006). All such imports will be checked for legality of production and export, and only verified legal products will be allowed into the EU. The hope is that by denying external markets to illegal products, this initiative will reinforce producer-country efforts to control illegal logging and the environmental, economic and social damage it causes.

This timber licensing system is similar in principle to other licence or permit schemes in existence under MEAs, such as CITES or the Montreal Protocol (see above). The major difference is that as no multilateral agreement exists in this area, the system has to be built up through bilateral agreements. It seems highly unlikely that any WTO dispute would arise in this case; the countries participating in the scheme are clearly not going to raise one, and although countries not directly affected could do so, there would be no benefit to them.

WTO rules are likely to be of more relevance if a consumer country were to impose a blanket prohibition on the import of illegal timber. If this took the form of a border measure – a requirement to provide proof of legality at the country’s border – it could be found to be in breach of WTO rules, though GATT Article XX could provide a justification. However, if the requirements on imports were different from those on domestic production, a WTO case could

certainly be made, on the grounds of discrimination. This kind of issue is currently the subject of discussion within the EU, though there are other means, such as the use of criminal law, which may achieve a similar aim.

It is true, however, that the whole area of trade in illegal products – which can be encouraged by the scaling down of border checks consequent upon trade liberalization – has hardly ever been discussed within the WTO. Given the growing importance of measures designed to exclude undesirable products from world markets (for example, illegal goods or, in the case of the Kimberley Process, conflict diamonds), this may change in the future.

### ***Do WTO rules prevent countries from adopting high animal welfare standards?***

Concerns have been raised that WTO rules could be used to challenge established animal welfare legislation, such as regulations governing slaughtering or rearing procedures for farm animals, or the EU law banning imports of fur caught in leghold traps. WTO regulations apply only to traded products, so products produced solely for domestic markets would not be affected directly – though they might of course be undercut by cheaper imported products produced with poorer standards of animal welfare.

Under threat of a WTO challenge, the EU did indeed suspend its import ban against fur caught in leghold traps from the US and Canada, and instead signed agreements with them – widely criticized by NGOs as too weak – to reduce the use of such traps. The vulnerability of the EU measure to a WTO challenge derives from the fact that it would benefit domestic fur producers, using fur farms, at the expense of trapped-fur importers.

Since a WTO dispute case was in fact never brought, it is not clear whether the WTO would actually have ruled against the EU ban. This is a good illustration of the psychological power of the system: the fear of a WTO challenge may lead policy-makers to modify their actions even when such a challenge may have been neither likely nor successful. The exceptions listed in Article XX of the GATT provide potential cover, and all the arguments about PPM-based trade measures (see above) are also relevant. The key question on which a dispute panel would have to rule is whether the distortion in trade following from the ban could be justified by the benefits of the measure to animal health and welfare.

### ***Will liberalization of trade in agriculture be good or bad for sustainable environment?***

Three-quarters of the world’s poor live in rural areas. Agriculture accounts for about 27% of GDP and export earnings in developing countries, and half of employment. Yet at the same time, agricultural markets around the world are the most heavily

protected; in OECD countries, the average tariff rate for agricultural products is 60%, twelve times the rate for industrial products. Developed countries also protect their agricultural sectors through subsidies worth \$1 billion a day, more than the entire GDP of sub-Saharan Africa. This structure of tariffs plus subsidies has resulted in a hugely distorted world market for agricultural products. Developing countries are prevented from benefiting from their comparative advantages of cheap labour and land; many potential food exporters in fact rely on cheap imports because their domestic production has been destroyed by subsidized exports from OECD countries.

This helps to explain why, as noted above, the key item at the Hong Kong WTO ministerial will be agricultural liberalization, particularly in terms of export subsidies, domestic support and limitations on market access. Success in this area will clearly benefit the big developing countries of the G20, such as Brazil, India or South Africa, which have large and competitive agricultural sectors. It will be of much less immediate benefit to the poorer developing countries of the G33, which are most interested in retaining their right to protect their own farmers, for example by defining a group of special products that developing countries would be allowed to protect, and using special safeguard mechanisms to defend their products from increased imports. Poor countries currently enjoying trade preferences may in fact lose out if trade barriers come down and other countries gain similar access to the same markets – as well as suffering from any rise in food prices associated with the ending of export subsidies. Poor countries thus tend to favour less liberalization, introduced over a longer period of time, in order to protect their preferences for as long as possible.

The impact of trade liberalization on the environment is similarly mixed. Subsidies for agriculture in developed countries have often had significantly damaging environmental impacts through the intensive cultivation they support, with accompanying high use of energy and chemicals. Conversely, however, support for farmers is increasingly delivered through assistance with explicit environmental and countryside management goals, such as protection for local habitats or water quality, or support for declining rural communities – the so-called ‘multifunctionality’ of agriculture. In the EU, these schemes now account for 3–4% of the agricultural subsidy budget, but while they play a crucial role in addressing environmental and rural problems, many WTO members fear that these measures are protectionist in effect if not in intent. The EU’s sustainability impact assessment of the partial liberalization of agriculture thought to be a probable outcome of the Doha Round suggested that while the overall economic and social impacts would be positive (though not for the poorest developing countries or small island states), the environmental impact would be negative, increasing stress on natural resources and raising transport levels.

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### ***Do WTO rules prevent consumers from choosing locally produced food?***

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Agricultural liberalization may also affect the ability of consumers to purchase locally produced food, which they may prefer to do in order to help support the local economy, and particularly small producers and retailers, and in response to an awareness of the environmental impact of transporting food over long distances, particularly by road or air. As discussed above, the removal of subsidies and trade barriers will help countries with large and efficient farm sectors, at the expense of those with smaller, less efficient and more expensive agriculture. This may well make locally produced food in the richer countries less competitive and drive local farmers out of business.

This is a complex area with multiple conflicting objectives: demand for affordable food versus the need for food prices to reflect environmental externalities and to deliver decent wages to producers; access for (at least some) developing countries versus support for local production; desire to protect the environment versus uncertainty over real environmental costs. As with ecolabels and fair trade marks, the use of labelling to indicate local production is becoming more common, as is support for farmers’ markets and an increasing tendency for local purchasing bodies – schools or hospitals, for example – to try to source food products locally. It seems clear, however, that further trade liberalization in agriculture will reduce the ability of small local producers in developed countries to compete on the basis of price, forcing them to try to do so more on the basis of brand, quality or simply the fact that they are local.

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### **Conclusion**

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The discussions in each of the twelve questions examined above help to highlight the sheer complexity of the interrelationship of trade with sustainable development – and its importance. As traditional tariff barriers have fallen everywhere, trade rules increasingly affect areas of government policy, such as health, environmental, or labour standards, which they have never affected before. Similarly, the WTO has come to play a much greater part in international politics than the GATT ever did – for example, EU support for Russian accession to the WTO influenced Russia’s decision to ratify the Kyoto Protocol on climate change, bringing that agreement into force. Trade and trade policy are now at the centre of national and international politics. That is not to say that the WTO is responsible for every aspect of globalization, although it is sometimes perceived in this way.

There is no doubt that international trade can play a vital role in promoting sustainable development across the world (though its interrelationship with the different pillars of sustainable development – economic, environmental and social – is both complex and different in each case). There is equally little doubt that current trade rules need to be reformed to better support environmental and developmental objectives. But whether the Doha ‘Development Round’ will do this remains an open question.

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## Guide to further reading

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- Tom Crompton and Pete Hardstaff, *Eat This: Fresh Ideas on the WTO Agreement on Agriculture* (Royal Society for the Protection of Birds, 2001):  
**[www.rspb.org.uk/Images/Report%20-%20Eat%20This%20Fresh%20Ideas%20on%20the%20WTO%20AoA\\_tcm5-45199.pdf](http://www.rspb.org.uk/Images/Report%20-%20Eat%20This%20Fresh%20Ideas%20on%20the%20WTO%20AoA_tcm5-45199.pdf)**.
- The International Centre for Trade and Sustainable Development (ICTSD) publishes a series of papers on all aspects of this debate, together with two regular means of keeping up with the latest developments: *Bridges* journal (print) and *Bridges Weekly Trade News Digest* (electronic). All available from: **[www.ictsd.org](http://www.ictsd.org)**.
- International Institute for Sustainable Development (IISD)/UN Environment Programme (UNEP), *Environment and Trade: A Handbook* (2nd edn, 2005):  
**[www.iisd.org/trade/handbook](http://www.iisd.org/trade/handbook)**.
- ICTSD/IISD, *The Doha Briefing Series* of briefing notes:  
**[www.iisd.org/trade/wto/doha\\_briefing.asp](http://www.iisd.org/trade/wto/doha_briefing.asp)**.
- Joseph E. Stiglitz and Andrew Charlton, *Fair Trade for All – How Trade Can Promote Development* (Oxford University Press, 2005).
- Sustainability Impact Assessment: independent assessments of the impact that trade negotiations may have on sustainable development, commissioned by the European Commission and conducted by the University of Manchester: **[www.sia-trade.org/wto](http://www.sia-trade.org/wto)**.
- Third World Network, *Trade Issues/Rules and WTO* (portal website):  
**[www.twinside.org.sg/trade.htm](http://www.twinside.org.sg/trade.htm)**.
- UK Department of Trade & Industry, *Making Globalization a Force for Good – Trade and Investment White Paper 2004*: **[www.dti.gov.uk/ewt/whitepaper.htm](http://www.dti.gov.uk/ewt/whitepaper.htm)**.
- The WTO website now it includes the text of the WTO agreements, lists of dispute cases and the texts of their findings, and basic primers: **[www.wto.org](http://www.wto.org)**.

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## Energy, Environment and Development Programme

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