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*for a living planet*

WWF WTO  
HONGKONG 2005



BIODIVERSITY  
CLIMATE CHANGE  
CONVERGING TECHNOLOGIES  
CONSUMERISM  
DEBT AND AID  
DEFORESTATION  
DEMOGRAPHIC CHANGE  
FRESHWATER SUPPLY  
GDP  
GEOPOLITICAL CHANGE  
GOVERNANCE



The background features a complex, abstract pattern of overlapping, angular shapes in a vibrant orange color against a solid black field. These shapes resemble stylized architectural elements or perhaps a microscopic view of a material. The text is centered and consists of ten lines, each representing a global issue.

HIV AIDS AND MALARIA  
INEQUALITY  
INNOVATION  
NUTRITION  
OVERFISHING  
SANITATION  
SECURITY  
SOIL EROSION  
TOXICS  
URBANISATION

WMF

WTO

HONGKONG

2005

GLOBAL

CHALLENGES

AND

WORLD

TRADE

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## 1. INTRODUCTION

Throughout this paper we refer to a set of “global challenges”, such as biodiversity loss, climate change and HIV/AIDS. There has been a tendency in the past to pigeonhole such global challenges as “developmental”, “environmental” or “economic”. But this makes little sense: they are all increasingly interconnected. Some of these challenges and their interconnections are highlighted on p. 9–11.

Trade and investment flows often form an important part of the fabric of these interconnections, and many global challenges can be engaged, in part, through the rules that govern these flows. This is not, of course, to suggest that such rules alone can equip us to meet these challenges. But adequate rules can form an important part of the response, whilst inadequate rules can certainly make the problems worse. The importance of fair trade rules in addressing global poverty problems have been highlighted by campaigns such as “Make Poverty History”, focussing on the crucial and simultaneous challenges of correcting injustices in world trade, relieving the burden of debt, and making aid more effective.

Unless World Trade Organization (WTO) rules are shaped to contribute to meeting global challenges, they will at best divert attention from the urgency of addressing them, and at worst undermine the development of other processes intended to do so.

WWF is well aware that today’s WTO does not present the best forum for innovative thinking about how international trade rules can be used to help address global challenges. In some circumstances, the pursuit of trade liberalisation can lead to positive steps to meet these challenges. Equally, there are many instances where trade liberalisation undermines such progress. Either way, the economic policies promoted by the WTO have been shaped not by a coherent approach to simultaneously addressing a range of global challenges, but rather in response to short-term national self-interest.

Sooner or later the role of trade rules in meeting these global challenges will need to be re-examined. WWF believes that there are several things, pertaining to the entire WTO agenda, that seem clear:

- The range of global challenges that confront us can be met only through the concerted engagement of both developed and developing countries. This kind of engagement will emerge only when developed countries take significant practical steps to demonstrate that they can move beyond viewing international trade negotiations as just another vehicle to promote their short-term national self-interest.
- Whilst there are clearly occasions on which several of these global challenges can be addressed simultaneously through so-called “win-win” policies, it will often be the case that balances must be struck, and trade-offs made, between different outcomes. Exclusive emphasis on those instances where “win-win” solutions seem possible risks postponing more thorough – and politically difficult – choices.
- These balances must be struck in an ongoing, context-dependent, transparent and participatory way, with adequate safeguards against protectionism and privileging the urgent needs of developing countries.
- The current expertise of the WTO, and the organisation’s decision-making processes, make it ill-equipped to strike these balances. In meeting global challenges it will also be necessary to draw on the expertise of other international bodies.
- Serious engagement with these challenges requires a long-term perspective. This is in part because many of them will intensify during the years to come. But it is also because we have to make sure that we address immediate challenges in a systemic way, rather than through short-term solutions that risk storing up problems for the future.

The foundations for a re-examination of the way trade rules could solve these shortcomings and help to address global challenges could be laid at the WTO Ministerial meeting in Hong Kong. Not in the formal negotiations, perhaps, but during speeches, side-events and informal discussions by progressively minded politicians. In this paper, WWF examines several key issues in the current WTO round of negotiations. These issues have been chosen either because of their long-term strategic importance, the political capital which is being invested in them today, or the immediate prospects for current negotiations to help meet global challenges. They are not intended to comprise an exhaustive list of opportunities for better shaping international trade rules to help meet global challenges. For example, negotiations on the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) are clearly of great relevance to challenges such as biodiversity loss,

food security and economic development – but are not addressed in this paper. For each of the negotiation topics addressed in this paper, WWF has identified three sets of concrete proposals:

1. Proposals for **new leadership**. These are proposals that situate the WTO in the context of a broader view of international governance, offering opportunities to advance the long-term political agenda, outside the formal negotiating framework. As such they require new political leadership and vision. Governments could put forward such proposals in written position papers and ministerial interventions prior to the WTO Ministerial, and in speeches and side events at the Ministerial itself. These criteria will form an important part of WWF's assessment of the role of individual governments and ministers in the negotiations.
2. Proposals for **modest progress**. These proposals suggest how the formal negotiations could be used to help establish the foundations for meeting global challenges in the longer-term. They could be pursued by individual countries through their position papers and interventions in the formal negotiations. These are one set of criteria by which WWF will be assessing any agreement that might be reached in Hong Kong, or in the overall Doha round
3. Proposals to ensure **no backsliding**. These are outcomes that would prove counterproductive in the long-term, and that should not be agreed. They comprise the second set of criteria by which WWF will be assessing any agreement in Hong Kong, or in the overall Doha round.



## II. INTERCONNECTED GLOBAL CHALLENGES

Throughout this paper WWF refers to a set of “global challenges” (see examples on next page) . Many of these – like inequality – are clearly problems which should be tackled internationally. Others – like the emergence of new economies – are to be welcomed, but nonetheless bring attendant challenges of their own. By referring to these challenges as “global”, WWF does not imply that they are encountered equally throughout the world. Rather, WWF means that if they are to be addressed, this must be through concerted international engagement.

There is a tendency to try to isolate and prioritise these concerns. Often this is a tacit prioritisation, reflected simply as a bias in policy-making processes. But attempts have also been made to prioritise them explicitly – for example by “costing” the likely impacts of some of the different challenges that we face.

These challenges, though, are intimately interconnected. Consider, for example, the nexus between climate change, trade in oil, the economic fortunes of oil-rich developing countries, international conflict, and terrorism. Or the connections between demand for red meat, trade in fodder for beef-cattle, Brazil’s export-led growth strategy, international debt and the deforestation of the Amazon. Or aging populations in Europe and Japan, increased pressure on pension-funds for high rates of return, foreign direct investment into China, growth in Chinese demand for raw materials, and illegal logging in Indonesia.

Such interconnections make prioritisation difficult, and point to the need to formulate our responses on a case-specific basis through deliberative processes reflecting the full range of relevant expertise. In this paper, WWF suggests how this might be done on some key items of the current WTO negotiating round.

**Biodiversity:** Over the past few hundred years, humans have increased the species extinction rate to as much as 1,000 fold the background rate typical over the planet's history.<sup>1</sup> This high rate of biodiversity loss will continue up to 2050 according to every scenario developed by the Millennium Ecosystem Assessment.

**Climate Change:** An unprecedented joint statement from the world's main national scientific academies (France, Russia, Germany, United States, Japan, Italy, Canada, Brazil, China, and India) in June 2005 urged the leaders of the G8 summit to commit to taking prompt action to reduce emissions of green-house gases, based on the principles of the UNFCCC (United Nations Framework Convention on Climate Change).<sup>2</sup> The scenarios developed by the Intergovernmental Panel on Climate Change project an increase in global mean surface temperature of 2.0–6.4 degrees Celsius above pre-industrial levels by 2100, increased incidence of floods and droughts, and a rise in sea level of up to 88 centimetres between 1990 and 2100.<sup>3</sup>

**Converging technologies:** The impacts of new technologies will vary greatly. For example, new information and computer technologies offer the possibility to dematerialise many services – such as replacing business travel with video-conferencing. But in reviewing nano-technologies, the reinsurer Swiss Re, found that “insufficient research has been done to say with any certainty whether nanoparticles or products containing nanoparticles actually pose a threat.”<sup>9</sup>

**Debt of developing countries:** In 1970, the world's poorest countries (roughly 60 countries classified as low-income by the World Bank), owed \$25 billion in debt. By 2002, this was \$523 billion. The G8 summit at Gleneagles in July 2005 made debt cancellation a main issue and the agreement on a write-off for some of the poorest countries was characterized as a “historic breakthrough”. But with the relief spread over some 40 years, amounting to \$1 billion per year, the current value of the deal is about \$17 billion and the debt burden of many developing countries will continue to heavily constrain their development policies.<sup>4</sup>

**Demographic change:** By 2050, the share of the population aged above 60 is expected to reach 33% in developed countries, compared to 19% in 2000. Similar trends are apparent in some developing countries – in particular China, with corresponding figures of 30% in 2050 and 10% today.<sup>14</sup> This will have important implications for how and where pension funds are invested, and the extent to which these investments undermine attempts to meet other global challenges.

**Freshwater supply:** Some 1.1 billion people still lack access to improved water supply, and more than 2.6 billion lack access to improved sanitation. Water scarcity affects roughly 1–2 billion people worldwide. Since 1960, the ratio of water use to accessible supply has grown by 20% per decade.<sup>5</sup> One of the indicators of Millennium Development Goal 7 is to reduce by half the proportion of people without sustainable access to safe drinking water.

**HIV/AIDS and malaria:** Malaria alone is responsible for 11% of the disease burden in Africa, and it is estimated that Africa's Gross Domestic Product could have been \$100 billion larger (roughly a 25% increase) in 2000 if malaria had been eliminated 35 years ago.<sup>6</sup> Millennium Development Goal 6 singles out HIV/AIDS and malaria as major diseases that need to be tackled.

1 Millennium Ecosystem Assessment Synthesis Report, p. 59

2 <http://www.the-scientist.com/news/20050607/01>

3 Millennium Ecosystem Assessment Synthesis Report, p. 29

4 <http://www.globalissues.org/TradeRelated/Debt/g8summit2005.asp>

5 Millennium Ecosystem Assessment Synthesis Report, p. 25

6 Millennium Ecosystem Assessment Synthesis Report, p. 106

7 Millennium Ecosystem Assessment Synthesis Report, p. 25

8 Millennium Ecosystem Assessment Synthesis Report, p. 25

**Inequality:** On many measures, inequality in income and other measures of human well-being has increased over the past decade. A child born in sub-Saharan Africa is 20 times more likely to die before the age of five than a child born in an industrial country, and this disparity is higher than it was a decade ago. During the 1990s, 21 countries experienced declines in their rankings in the Human Development Index (an aggregate measure of economic well-being, health, and education); 14 of them were in sub-Saharan Africa.<sup>7</sup> In 2001, 1.1 billion people survived on less than \$1 per day of income.<sup>8</sup> One of the indicators of the Millennium Development Goal 1 is to reduce by half the proportion of people falling into this category.

**Nutrition:** Despite the growth in per capita food production in the past four decades, an estimated 852 million people were undernourished in 2000–2, up 37 million from the period 1997–99.<sup>10</sup> One of the indicators of Millennium Development Goal 1 is to reduce by half the proportion of people who suffer from hunger. Conversely, the World Health Organisation projects that “the growth in the number of severely overweight adults is expected to be double that of underweight during 1995–2025”. By 2025, 45–50% of Americans, and 20% of Brazilians, may be obese. Already obesity accounts for up to 7% of the annual health care budget in some developed countries.<sup>11</sup>

**Overfishing:** The biological capability of commercially exploited fish stocks is probably at a historical low. The FAO estimates that about half of the commercially exploited wild marine fish stocks, for which information is available, are fully exploited and offer no scope for increased catches. Fishing pressure is so strong in some marine systems that the biomass of some targeted species, especially larger fish, and those caught incidentally, has been reduced to one tenth of levels prior to the onset of industrial fishing.<sup>12</sup> Demand for both freshwater and marine fish will expand because of increasing human

population and changing food preferences, and the result will be an increasing risk of a major and long-lasting decline of fisheries.<sup>13</sup>

**Security:** An OECD study recently projected that “[t]errorism will probably be a key feature of conflicts in the coming decades. Its recent mutation makes it liable to cause immense human and economic damage.”<sup>15</sup>

#### **Single-minded pursuit of GDP growth:**

Robert Kennedy commented in March 1968: “The gross national product does not allow for the health of our children, the quality of their education, or the joy of their play. It does not include the beauty of our poetry or the strength of our marriages; the intelligence of our public debate or the integrity of our public officials. It measures neither our wit nor our courage; neither our wisdom nor our learning; neither our compassion nor our devotion to our country; it measures everything, in short, except that which makes life worthwhile.”<sup>16</sup> This view was more recently echoed by Alan Greenspan, Chair of the US Federal Reserve Board: “[GDP] is not necessarily a measure of welfare or even a significant measure of standards of living.”<sup>17</sup>

**Soil erosion, nutrient mining and overloading, desertification and salination:** Excessive nutrient loading will increase markedly in the next decades.<sup>18</sup> As global demand for food crops is projected to grow by 70–85% between 2000 and 2050, intensification of agriculture is likely to exacerbate other problems such as desertification, salination and soil compaction.

**Urbanisation:** The UN projects that 95% of future population growth will take place in urban areas, virtually all of it in developing countries. That means 2–3 billion more city-dwellers in developing countries by 2050 and a massive challenge for sanitation and disease control. This is recognized by Millennium Development Goal 7.

9 [http://www.wired.com/news/medtech/0,1286,64235,00.html?tw=wn\\_tophead\\_5](http://www.wired.com/news/medtech/0,1286,64235,00.html?tw=wn_tophead_5)

10 OECD, “Emerging Systemic Risks in the 21st century”, 2003, p. 106

11 International Union of Nutrition Scientists (see <http://www.iuns.org>)

12 Millennium Ecosystem Assessment Synthesis Report, p. 117

13 Millennium Ecosystem Assessment Synthesis Report, p. 173

14 OECD, “Emerging Systemic Risks in the 21st century”, 2003, p. 39

15 OECD, “Emerging Systemic Risks in the 21st century”, 2003, p. 106

16 University of Kansas address, March 1968

17 Press conference, 7 December 1999

18 Millennium Ecosystem Assessment Synthesis Report, p. 17

### III. MARKET ACCESS IN GOODS<sup>19</sup>

DMD paragraph 13 [Agriculture]: “[W]e commit ourselves to comprehensive negotiations aimed at: substantial improvements in market access...”

DMD paragraph 16 [Non-agricultural products]: “We agree to negotiations which shall aim, by modalities to be agreed, to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries.”

There are understandable concerns amongst developing countries that current negotiations will result in further disproportionate liberalisation of their own markets. Tariff regimes can be an essential component of development strategies – for example, in the course of protecting vulnerable agricultural producers, or nascent industries, in developing countries. However, tariff regimes are largely ill-suited to addressing many of the other global challenges that we face. Indeed, developed countries maintain high tariffs and tariff escalation in particular on goods of export importance to developing countries<sup>20</sup>, undermining progress on international development goals. It is therefore difficult to foresee reasons for the continued application of tariffs by developed countries. Nevertheless, dismantling these regimes in developed countries will sometimes have negative impacts – from the erosion of preferences for some developing countries, to greater incentives for unsustainable natural resource exploitation<sup>21</sup>. Attempts to assess the aggregate impacts of tariff removal are difficult. There will be many circumstances under which liberalisation of a particular commodity by a particular country will both contribute to, and detract from, specific attempts to address different global challenges; nor need the implications be apparent in the short-term – the effects may be manifest many years later.

If such negative effects are to be minimised, this will require a sophisticated approach to both dismantling current tariffs, in particular tariff escalation and tariff peaks, and context-specific use of alternative policy mechanisms to address global challenges. For instance, alternative mechanisms are needed to support the export of goods and services which contribute to the pursuit of development strategies. These could include a range of measures from transitional assistance packages for developing countries suffering preference erosion, to public procurement policies aimed at supporting key export industries in developing countries. It is essential that such measures are objective, transparent and adopted only after international consultations.

Of critical importance here is the way in which these changes are sequenced, and how new measures are applied. Over the course of this process, it will be essential to demonstrate to developing countries that their specific needs can be addressed.

<sup>19</sup> See also section V on “Environmental Goods and Services”.

<sup>20</sup> See for instance OECD, 2003, “The Doha Development Agenda: Welfare gains from further multilateral trade liberalisation with respect to tariffs”, TD/TC/WP(2003)10/FINAL, or OECD, 2004, “Trade preference erosion: Potential economic impacts”, OECD Trade Policy Working Paper No. 17.

<sup>21</sup> For example, a recent Sustainability Impact Assessment study commissioned by the EU projects that dismantling tariffs on timber products will exacerbate problems of deforestation. The report can be downloaded from <http://www.sia-trade.org/wto/Phase3B/Reports/ForestFR19June05.pdf>.

Under the current WTO rules, agricultural products are treated in a very different manner from other goods. However, under a trading system properly designed to address the needs of the poorest, there are no a priori reasons why goods defined as “agricultural”<sup>22</sup> should be subject to fundamentally different treatment from other goods. Hence, while our proposals for “moderate progress” or for “no backsliding” vary between the two groups of products due to the structure of the ongoing negotiations, proposals for new leadership are common to the two categories:

### Some proposals for new leadership

In particular, governments should use their communication materials and political interventions to recognise:

- that tariffs present an important component in the economic development strategies of many developing countries, and that new disciplines on market access provisions must not compromise the scope of developing countries to use this policy tool.
- that in other respects tariffs present an inefficient instrument for addressing the challenges confronting us, and that most developed country tariffs, in particular tariff escalation and tariff peaks, should be progressively dismantled.
- that the contribution which trade in particular goods will make to addressing global challenges will be context-specific, and must be reviewed on an ongoing basis through the oversight of a purpose-built international forum drawing on a broad range of expertise, whose recommendations should form the basis for market access negotiations.<sup>23</sup>
- that any new approach to market access must first confront the problems facing developing countries, through (i) dramatically improving market access for developing country exports, (ii) offering them technical and financial assistance to encourage shifts to more sustainable production, backed by, for instance, developed countries’ public procurement strategies, technology transfers or inclusive labelling schemes<sup>24</sup>, and (iii) allowing developing countries adequate mechanisms to protect their markets from dumped products and import surges.

22 According to the Harmonized Commodity Description and Coding System (HS).

23 For more information on this suggestion, see section V on “Environmental Goods and Services”.

24 The development of schemes should include foreign producers and other relevant stakeholders; criteria should be transparent, objective and allow for flexibility to take account of local conditions; and the implementation of schemes should address specific obstacles encountered by different producers.



## AGRICULTURAL MARKET ACCESS

Global agricultural production, and rural communities throughout the world, face a number of challenges, some of which already have immense impact today, others of which present a growing threat. These include food security and poverty reduction, urbanisation, water shortage, desertification, nutrient mining, salination, eutrophication, declining biodiversity and the impacts of climate change. In addition, of course, trade in agricultural produce is central to the economies of many developing and middle-income countries.

Due to the Structural Adjustment Programmes of the World Bank and the IMF and the outcomes of the Uruguay Round, developing countries have experienced a far more extensive opening of their markets than developed countries. At the same time, the market access to developed countries for their agricultural products has not yet been significantly improved. In addition, very few developing countries can make use of the special safeguards (SSG) to protect their internal markets against sudden import surges. It must be ensured that developing countries can use appropriate instruments to protect their domestic commodity markets (which are important for their food security and agricultural development) whilst simultaneously gaining improved market access to developed countries.

However, a debate on the sophisticated measures necessary to address the different challenges will not be achieved whilst developing WTO Members see the trade policy of many developed countries as being driven primarily by protectionist interests. If political progress is to be made in addressing the challenges that confront us, significant concessions must first be made by developed countries.

### Some proposals for modest progress

In particular, developed country governments should agree:

- to honour the 2004 “July package” understanding<sup>25</sup> that the highest tariffs should be reduced the most. This will entail greatly reducing developed country tariffs on imports of agricultural products from developing countries.
- to provide tariff-free access to all agricultural products originating from least-developed countries (LDCs), and agree to abandon tariff escalation and tariff peaks on agricultural products originating from all developing countries.
- that it should be the prerogative of developing countries themselves to decide whether to reduce import tariffs on basic food commodities important for food security, livelihoods and agricultural development. Specifically, agree that developing countries are provided with:
  - a “special products” category, which would allow them to designate commodities vital to livelihoods, food security, rural development and the environment and exempt them from tariff cuts.
  - a “special safeguard mechanism”, which would allow them to temporarily raise tariffs as a response to import surges or fluctuating prices.

<sup>25</sup> See WTO document symbol WT/L/579.

- to exempt LDCs from tariff reduction commitments, including binding of tariffs.
- to technical and financial assistance packages for developing countries whose preferences are being eroded as a result of tariff reductions, in order to help them adapt through diversified and sustainable production.
- to support capacity-building in developing countries, particularly in LDCs, for them to be able to comply with non-tariff measures such as health, food safety and environmental requirements in foreign markets.

### **No backsliding!**

If nothing else, developed country governments should

- not negotiate derogations from tariff cuts for “sensitive products”.

## **NON-AGRICULTURAL MARKET ACCESS**

Non-agricultural market access (NAMA) negotiations include negotiations on both tariffs and so-called non-tariff measures, ranging from health, safety and environmental standards to export restrictions.

Under the tariff negotiations, the reduction of tariff escalation and peaks in developed countries carry the clearest potential for improving livelihoods of the poor. However, the impact of such reductions also depend on the broader context: For instance, the development of an industry for forestry products following an abolition of tariff escalation in main importing markets of timber may lead to depletion of the exporting country’s natural resources if law enforcement is deficient and illegal logging increases.

The negotiations on non-tariff measures could provide a forum for dialogue on the development of national regulations, in order to promote “soft harmonisation” (i.e. that does not affect the substantive level of national regulatory standards but that attempts to co-ordinate technical regulations) and improve market access particularly for developing countries. It is important, however, that such negotiations do not degenerate into bargaining away legitimate regulatory standards.

### Some proposals for modest progress

In particular, governments should agree to:

- extend tariff-free market access to LDCs, whilst exempting them from commitments to reduce tariffs, including binding tariffs. Technical and financial assistance packages should be extended to LDCs to address any negative implications of increased market access on their natural resources.
- sequence the dismantling of other tariffs according to the contribution that increased market access will make to addressing global challenges (see section V on “Environmental Goods and Services”).
- eliminate tariff peaks and tariff escalation in developed country markets for imports from developing countries.
- use the negotiations on non-tariff measures as a forum to eliminate complex and non-transparent non-tariff barriers that can off-set benefits obtained by tariff reductions, and to improve rules that can act as effective barriers to products of developing countries, such as rules of origin, anti-dumping regulations or technical requirements<sup>26</sup> insofar as these do not jeopardise the level of domestic standards. These negotiations should be guided by the concerns of developing countries. Outcomes may include harmonisation of standards, increased flexibilities to take into account the local conditions of the exporter, and technical and financial assistance to help developing countries improve their own standards.

### No backsliding!

If nothing else, governments should:

- not agree formula-based “line-by-line” tariff reduction requirements.
- not ban export duties as a tool in development policy or revenue-raising.
- not use the negotiations on non-tariff measures to undermine legitimate health, safety and environmental standards.

<sup>26</sup> South Centre, “Selected list of most prominent development issues in the NAMA negotiations”, March 2005.

## TRADE IN SERVICES<sup>27</sup>

DMD paragraph 15 [Services]: “The negotiations on trade in services shall be conducted with a view to promoting the economic growth of all trading partners and the development of developing and least-developed countries.”

Services make up an increasing share of the world economy. This is both due to economic development (services tend to make up a larger proportion of developed economies as basic material needs are satisfied<sup>28</sup>) and to structural changes in the world economy.<sup>29</sup> Hence, the extent to which services are traded is becoming increasingly crucial to our societies.

Trade in services can, under certain circumstances, help in meeting global challenges. For instance, a shift of trade from goods to services may lower the impact on natural resource consumption,<sup>30</sup> and labour-intensive service sectors in developed countries may provide employment opportunities for under-employed work forces in developing countries.

However, whilst trade in services may, under some circumstances, be beneficial in meeting global challenges, what is the merit of GATS as a mechanism to boost this trade? It has been argued that commitments under GATS will provide foreign service providers with greater legal certainty – something which is particularly important where investments are involved (that is, under so-called GATS “mode 3”; service provision through commercial presence). But the evidence does not seem to show an increased flow of foreign direct investment (FDI) to these countries: An UNCTAD study found that *“there is no empirical evidence to link any significant increase in FDI flows to developing countries with the conclusion of GATS.”*<sup>31</sup>

If such benefits are not enjoyed, it seems difficult to find arguments for developing countries to negotiate restrictions on their policy space through specific commitments under GATS. If these countries are willing to make commitments at all, it is essential that these contain broad, horizontal conditions on market access and national treatment.<sup>32</sup> Countries should avoid comprehensive commitments in sectors that have not been fully developed domestically, or that have not been subject to careful strategic assessment. There are no service sectors where limits

<sup>27</sup> See also section V on “Environmental Goods and Services”.

<sup>28</sup> See Greg McGuire, “Trade in services – market access opportunities and the benefits of liberalization for developing economies”, UNCTAD/ITCD/TAB/20.

<sup>29</sup> The “unbundling” of previously vertically integrated industries has led to increasing service inputs in value chains of merchandise that are becoming increasingly globalised through outsourcing and offshoring: An old-style manufacturer of shoes would take care of the entire value chain from manufacturing to marketing. Today, the “producer” of shoes will rely on services from a number of providers: Starting with the different stages of manufacturing through to logistics and marketing. This demonstrates the somewhat blurred and arbitrary nature of distinctions between goods and services.

<sup>30</sup> Consider for instance the dematerialisation of information and entertainment from physical storage (books, CDs etc.).

<sup>31</sup> UNCTAD “A Positive Agenda for Developing Countries: Issues for Future Trade Negotiations”, 2000.

<sup>32</sup> The extent of such “specific commitments” regarding national treatment and market access is highly uncertain given the paucity of GATS case-law. “National treatment” comprises a ban on de facto discrimination, which could lead to policies being challenged where these have the effect of favouring domestic investors, even where these may be more environmentally sound. Also, the GATS general exceptions article is particularly weak: It implies a necessity test of measures taken by WTO Members and it does not include any reference to the impact of trade in services on the non-organic environment. See for instance WWF and CIEL discussion paper “GATS, water and the environment”, October 2003. See also E. Borrero and G. Raj, “GATS Conditions to Achieve Developing Country Policy Objectives”, Occasional Paper 13, South Centre, March 2005.

to market access and national treatment of foreign service providers should be dismantled as a matter of principle. Rather, commitments should be made following full consideration of national and local contexts.

Any negotiations on trade in services should consider carefully the links to trade in goods. Indeed, any service will in one way or another have at least marginal impact on the consumption of goods and of natural resources. This means that negotiations on trade in goods and services should take place in an integrated manner to weigh different legitimate long and short-term interests. Liberalisation of trade in for example forest products should take account of different national regulations on forestry and of specific commitments that different countries are ready to make on forestry services under GATS. Conversely, negotiations on forestry services should consider the impact of tariffs and non-tariff measures related to forest products.

#### Some proposals for new leadership

In particular, governments should use their communication materials and political interventions to agree:

- on the need to evaluate the combined impact of liberalising trade in goods and services before concluding current services negotiations.
- that the contribution which trade in particular services will make to addressing global challenges will be context-specific, and must be reviewed on an ongoing basis drawing on a broad range of expertise through a purpose-built international forum, whose recommendations should form the basis for negotiations.

#### Some proposals for modest progress

In the course of the negotiations, governments should agree:

- that sustainability impact assessments of liberalisation of trade in services should be undertaken before proceeding further with negotiations on specific commitments or on additional GATS disciplines.
- on an emergency safeguard mechanism that provides effective protection against unintended consequences of any specific commitments, and which more generally protects developing countries' national policy objectives including the development of domestic service industries.<sup>33</sup>

<sup>33</sup> Cf. ASEAN members paper outlining proposals and questions in this regard: WTO document symbol S/WPGR/W/30.



**No backsliding!**

If nothing else, governments should:

- not agree to benchmarking of offers for new specific commitments.
- not seek any new specific commitments on sectors from countries where they would constrain countries from implementing their development strategies.
- not agree to any disciplines on domestic regulation under GATS Article VI.4 that might restrict public policy choices.
- not develop subsidy disciplines for services based on existing WTO agreements<sup>34</sup> and in particular not restrain developing countries' ability to subsidise domestic service providers.

34 I.e. the WTO Agreements on Subsidies and Countervailing Measures and on Agriculture

## V. ENVIRONMENTAL GOODS AND SERVICES

DMD paragraph 31(iii) [Trade and environment]: “We agree to negotiations [on] the reduction, or as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.”

Trade in all goods and services has a complex series of impacts, some negative, some positive. It is very difficult to foresee that any “listing” of goods attracting tariff concessions, or classification of services subject to specific commitments, could be of benefit to the environment under all circumstances. One country’s “environmental” goods or services may exacerbate problems in another country (for example, where energy or transportation systems differ, or depending on whether recycling schemes are in place<sup>35</sup>). Moreover, today’s “environmental” goods or services may worsen environmental performance tomorrow (for example, through partially cleaning an otherwise dirty industry and thus extending its lifetime when this has already been superseded by new technologies).

Even were it imaginable to list certain goods or services as inherently environmentally friendly, it seems certain that these goods or services would have context-specific implications for other global challenges – poverty alleviation, for example. Given the interconnected nature of many global challenges, rather than addressing “environmental” concerns under negotiations on “environmental goods and services”, and “developmental” concerns under negotiations on special and differential treatment provisions, we should seek approaches which allow a range of challenges to be addressed in the course of all negotiations on market access.

Although negotiations on environmental goods and services have attracted relatively little attention in the current round of negotiations, these are seen by some WTO Members as offering the prospect of real progress on the trade and environment agenda.<sup>36</sup> But quite apart from the fact that a “list” approach to these negotiations is likely to be counter-productive in terms of the environmental impacts of liberalised trade, there is a danger that this will perpetuate the perception that the global challenges that face us can be easily addressed through promoting trade in a select few goods or services.

Both the definition-based (as advocated by the EU), and the product-based (as advocated by the US) approaches to the environmental goods negotiations fail crucially. Rather than responding to a demand (proceeding from a set of challenges, asking “how is trade best pressed into service to help address this problem?”) the negotiations are largely supply-driven (proceeding from the question “how can market access for specific goods and services be increased?”).

We need to develop demand-driven and context-specific definitions of environmental goods and services, drawing on relevant expertise through a purpose-built international forum. After establishing such an approach to identify

35 For example, photovoltaic cells and their batteries may pollute water courses if adequate disposal facilities are not available. See, for example, [http://www.dti.gov.uk/renewables/renew\\_1.3.3.htm#Pollution](http://www.dti.gov.uk/renewables/renew_1.3.3.htm#Pollution).

36 For services, the Services Sectoral Classification List (WTO document MTN.GNG/W/120) comprises a category for environmental services which mainly groups services aimed at mitigating and treating pollution. Proposals on the table to redefine this classification do not fundamentally depart from this approach. As to goods, a number of proposals have been made which generally attempt to define “environmental goods” through listing products.

particular goods and services in a context-specific way, we need to explore a range of mechanisms to promote their trade.

Proposals by WTO Members should be based on objective and transparent principles and procedures for defining environmental goods and services. The benefits of sophisticated approaches to these negotiations are already being discussed in a number of key countries such as Brazil, China, India and the EU. Elements of the Indian “project approach” represent one important attempt to initiate more thoughtful debate.

### **Some proposals for new leadership**

In particular, governments should use their communication materials and political interventions to:

- state that rather than developing a “list” of inherently “environmental” goods or services, all negotiations on market access should consider how liberalisation of trade in particular goods and services, in a specific context, will contribute to meeting the global challenges that confront us – or how they might otherwise detract from attempts to meet them.

### **Some proposals for modest progress**

In the course of negotiations, governments should:

- commit to create a purpose-built international forum drawing on a broad range of expertise in order to develop demand-driven and context-dependent criteria with feedback/evaluation mechanisms by which environmental goods and services will be identified, and to conduct assessments of potential liberalisation. This should take the form of an agreement by WTO Members that this purpose-built international forum will develop and apply a set of criteria for deciding on whether or not a particular good or service should be eligible for tariff concessions or specific commitments.

### **No backsliding!**

If nothing else, governments should:

- not pursue a list-approach to identifying goods or services in a context-independent and static way. In particular, negotiations on environmental goods and services should not focus on end-of-pipe technologies (particularly where these fail to support sustainable economic development in developing countries).

## VI. AGRICULTURAL SUBSIDIES

DMD paragraph 13 [Agriculture]: “... [W]e commit ourselves to comprehensive negotiations aimed at: [...] reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support.”

Many global challenges affect rural communities and global food production throughout the world (see section II on “Interconnected Global Challenges”). The agricultural subsidy regimes employed by developed countries serve to make many of these problems worse.

It does not follow, however, that there are no circumstances under which agricultural subsidies can play a positive role in meeting global challenges. It is important that, as we scrap the most egregious subsidy regimes, we also recognise that under some circumstances subsidies can play a positive role. But if such a role is to be identified, this can only be as part of a serious attempt to assess both the present and future international impacts of any subsidy use, by taking fully into account the context-dependence of the effects of any subsidy scheme. For instance, producing crops for bio-fuels can play a significant role in combating climate change and alleviating poverty. There could be circumstances under which the production of bio-fuels should be subsidised. However, there are also circumstances where the intensive growing of crops for bio-fuels will deplete and pollute soils and freshwater, where the life-cycle greenhouse gas balance does not contribute to combating climate change, or where their production does little to reduce rural poverty. It is clear that the current focus on testing the “trade distortiveness” of a subsidy regime is completely inadequate as an approach to capturing such concerns.

Subsidy disciplines that acknowledge the positive role that subsidies can play will be designed and administered only through a process which draws on a broad range of expertise – from government representatives, through to those expert in the implications of agricultural practice for climate change. This will require the establishment of a purpose-built international forum both to determine disciplines and to ensure their implementation through dispute settlement.

### Some proposals for new leadership

In particular, governments should use their communication materials and political interventions to:

- call for the replacement of the current categorisation of subsidies based on trade distortion by a categorisation based on their contribution to addressing global challenges.

- recognise that this will require ongoing assessments of the impacts of specific subsidy regimes.
- highlight that the WTO is not equipped to carry out such assessments alone, and that a broader range of expertise should consequently be involved in the administration of new subsidy disciplines through a purpose-built international forum.

### Some proposals for modest progress

In particular, governments should agree to:

- phase out all export subsidies and credits by 2010, with implementation early in any transition phase.
- re-write the green box criteria to take into account the needs of developing countries. Consider, for example, the G20 proposal on *Review and Clarification of Green Box Criteria*<sup>37</sup> which comprises both suggestions to curb developed countries' use of so-called "decoupled payments" and to provide special and differential treatment to developing countries. Incentives should be given to fundamentally reform developed country use of direct payments. For example, a conditional cap on the green box for developed countries could be automatically lifted for countries that adhere to a "second track", revised green box.<sup>38</sup> Another approach could be a compulsory transfer of a certain percentage of green box payments in assistance to developing countries.<sup>39</sup>
- introduce a specific review mechanism of Members' agricultural subsidy regimes, through a process similar to the current Trade Policy Review. This would consider the impacts of subsidies – both positive and negative – in helping to meet a range of global challenges. Governments should agree to equip the WTO Secretariat to carry out this task in collaboration with a broad range of expertise.
- agree that the determination of the legality of agricultural subsidies should draw on a broad range of international expertise.<sup>40</sup>
- agree that de minimis domestic support in developed countries should be abolished for agricultural commodities which are exported and substantially reduced for other products.

37 Unpublished paper with reference G20/DS/Greenbox FINAL 02/06/05.

38 This revised green box might be based upon criteria which meet with the support of a majority of developing countries.

39 See for instance Santiago Perry, "Integrating agriculture trade and agri-environmental policy: Elements for a sustainable development-oriented agenda in the context of WTO negotiations", Foundation for Participatory & Sustainable Development of Colombian Small Farmers, FPSDCSF Joint ICTSD/FES Roundtable on Agriculture and Sustainable Development, Geneva, 2 December 2002.

40 This could for instance be achieved through a requirement under Article 13 of the Dispute Settlement Understanding (DSU). Also, a Permanent Group of Experts (PGE) with environmental, developmental and agricultural expertise could be established under the Agreement on Agriculture. Such a group already exists under the Subsidies and Countervailing Measures (SCM) Agreement, but this new PGE should have a compulsory role in WTO deliberations on agricultural subsidies – whether among governments or in the Dispute Settlement Body (DSB).



**No backsliding!**

If nothing else, governments should:

- not expand the scope of green box payments, other than where these are transparently aimed at addressing development challenges.
- not impose any unconditional cap on the green box.
- not place additional restrictions on de minimis domestic support in developing countries.
- not accept blue box disciplines that would make room for the current US Farm Bill's counter-cyclical payments. If blue box criteria are relaxed to not require limitation of production, this must be combined with additional disciplines for such new subsidies covered by the blue box (e.g. ceilings to payments relative to a base price and product-specific caps on total payments).

## VII. FISHING SUBSIDIES

DMD paragraph 28 [WTO rules]: “[W]e agree to negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures . . . . In the context of these negotiations, participants shall also aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries. We note that fisheries subsidies are also referred to in paragraph 31.”

DMD paragraph 31 [Trade and environment]: “We note that fisheries subsidies form part of the negotiations provided for in paragraph 28.”

The twin language of DMD paragraphs 28 and 31 reflects the unique character of the current WTO negotiations on fishing subsidies. These negotiations represent an essential test of the WTO’s ability to fulfill the mandate of its charter to expand trade and production “while allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.” If this cannot be achieved here, where the *raison d’être* of the WTO and the needs of sustainable development coincide, there can be little hope of achieving it where they diverge.

But, of course, the stakes are high in the fishing subsidies negotiations for much more than the just the WTO itself. Once a hidden problem, inappropriate subsidies are now widely recognised as contributing to the profound crisis of overfishing that threatens fish stocks and human welfare around the world.

The significance of this issue should not be underestimated. A few simple numbers tell the basic story all too clearly:

- Around 38 million people are fishers, and tens of millions more make a living in the fish processing sector.
- Demand for fish is already at an all-time high, and is projected to grow rapidly. In 1999, the FAO estimated that in Asia alone demand for fish would grow over ten years by 24 million tonnes (i.e., 25% of current annual global fish catch).
- The productivity of wild-capture fisheries has been nearly flat since the late 1980s, despite dramatic growth in global fishing capacity, which is now as much as 250% greater than can be sustainably utilised.
- According to the FAO, 75% of the world’s fisheries are now fished to their biological limits or beyond, while fishery ecosystems have been disrupted by the depletion of the large predatory species favoured by consumers.

The causes of this distressing situation are multiple and complex. But there is no longer any serious debate over the contributory role played by inappropriate fishing subsidies. Estimated by WWF to amount to at least \$15 billion annually – equivalent to more than 20% of the value of the world's commercial fish catch – the impact of subsidies on fisheries in every ocean has been recognized by the World Bank, the Asian Development Bank, the FAO, the OECD and UNEP, among others.

Yet what makes this issue particularly compelling for the WTO is the clear opportunity for improved trade rules to help solve the problem. Building on discussions within the WTO dating back to 1998, and on the mandate issued by ministers in Doha, governments have the chance to display significant new leadership on fishing subsidies here and now.

The nature and importance of this opportunity were highlighted at the 2002 World Summit on Sustainable Development, when heads of state and government identified successful completion of the WTO fishing subsidies negotiations as one of the top eight global priorities for putting the world's fisheries back on a path to environmental and economic health.

As of October 2005, momentum in the fishing subsidies negotiations is continuing to build slowly, as the Rules Group has turned away from preliminary position-taking and into more concrete discussions. Two aspects of the talks have been especially notable in recent months. First, a broad consensus has emerged among the most active delegations in favour of a new “red light” prohibition on at least some fishing subsidies. In particular, there appears to be wide agreement that subsidies contributing directly to excess fishing capacity and overfishing should be banned. While there obviously remains substantial disagreement over the appropriate scope of a new red light for fishing subsidies, this convergence of views over some elements of a ban is encouraging. Meanwhile, a series of papers on specific classes of subsidies (such as subsidies for vessel decommissioning, management services, aquaculture, and infrastructure<sup>41</sup>) has moved the talks towards more detailed technical discussions focused on the elimination of distortions at the level of fisheries production.

Second, over recent months, delegations have begun to give significant attention to the concerns of developing countries and to their need for “special and differential treatment” (S&DT) in the context of fishing subsidies. Here again, a couple of details are noteworthy. To begin with, the coalition of demandeur governments signalled in November 2004 that early discussions of S&DT should take place “in parallel” with discussion of new positive disciplines on fishing subsidies. This “early and parallel” attention to S&DT represents a departure from the negotiating sequence usually preferred by the governments of major developed economies – a recognition of the political and substantive importance of developing country concerns in the fishing

41 A paper on infrastructure had not been introduced as of this writing, but was anticipated shortly.

subsidies debate. Equally significant has been the fact that a major developing country outside the demandeur group has put forward the most technically detailed and comprehensive proposal so far, with an emphasis on concrete approaches to S&DT.

In other words, governments have made some real progress towards fulfilling the twin mandates of DMD paragraphs 28 and 31, with direct emphasis on the two core elements of that mandate – i.e., to develop new disciplines on fishing subsidies that take serious account of environmental considerations and of the special importance of the fisheries sector to developing countries. This suggests that new disciplines on fishing subsidies that meet the tests outlined below can be achieved if governments muster the political will necessary to get the job done.

### Some proposals for new leadership<sup>42</sup>

In the course of the negotiations, governments should agree :

- to new rules within the current Agreement on Subsidies and Countervailing Measures (SCM), building on the existing “traffic light” architecture, that treats some subsidies as prohibited, some as explicitly allowed, and subjects others to ex post facto challenge. More specifically, new WTO disciplines on fishing subsidies can only qualify as a genuine success if they:
  - (i) achieve a purposeful integration of environmental and social considerations into the basic fabric of the WTO rules system, so that real priority is given to shaping the rules of trade in ways that proactively encourage sound environmental stewardship and equitable development – without requiring the WTO to exceed its proper authority and competence;
  - (ii) are comprehensive, covering all fishing subsidy programs affecting wild-capture fisheries;
  - (iii) forbid harmful fishing subsidies while accommodating beneficial ones, including by
    - a. effectively prohibiting the most harmful types of fishing subsidies;
    - b. allowing and protecting fishing subsidies that promote the achievement of sustainable fisheries;
    - c. subjecting all non-prohibited fishing subsidies to effective disciplines requiring them to avoid contributing to excess fishing capacity or overfishing;
  - (iv) take account of the special needs of developing countries, and particularly of those with communities dependent on the fisheries sector, emphasising the role subsidies can play in poverty reduction and development;

<sup>42</sup> See WWF’s technical treatise, *Healthy Fisheries, Sustainable Trade* (available along with other WWF publications on fisheries subsidies at [http://www.panda.org/about\\_wwf/what\\_we\\_do/policy/trade\\_and\\_investment/our\\_solutions/fishing\\_subsidies/index.cfm](http://www.panda.org/about_wwf/what_we_do/policy/trade_and_investment/our_solutions/fishing_subsidies/index.cfm) for more detailed proposals for how new WTO rules on fishing subsidies can and should be agreed.

- (v) promote the administration of fishing subsidies programs on a fisheries-specific basis, so that proper account can be taken of the factors that most commonly distinguish harmful programs from those that are beneficial or benign;
- (vi) improve transparency and accountability by subjecting all non-prohibited fishing subsidies to effective surveillance, including through proactive monitoring and substantially strengthened WTO notification requirements; and
- (vii) provide mechanisms to guarantee that WTO fishing subsidies disciplines are administered with the appropriate participation of intergovernmental bodies and experts competent in fisheries management and protection of the marine environment, and with improved public transparency.

#### Some proposals for modest progress

In the course of the negotiations leading up to and taking place in Hong Kong, governments should:

- consolidate and strengthen the gains achieved in the talks so far by:
  - (i) noting the strong convergence of views in favor of a new SCM red light that effectively bans fishing subsidies contributing to excess fishing capacity and overfishing, and mandating that further negotiations focus in part on the technical dimensions of a future red light provision;
  - (ii) welcoming the “early and parallel” attention already being given to developing country issues, and mandating that further negotiations continue with a deeper parallel discussion of S&DT provisions within any new fishing subsidies disciplines.
- focus on issues that will be critical to the success of the negotiations, but which have so far received less attention. Specifically, rules should be agreed that:
  - (iii) address the fundamental need to improve the transparency of fishing subsidies, and to require WTO notifications to reveal the operation of fishing subsidies programmes at the level of individual fisheries;
  - (iv) include rules, criteria, and institutional mechanisms by which the fisheries context surrounding individual fishing subsidies programs can be considered, without requiring the WTO to take on issues of fact or policy beyond its institutional competence; and
  - (v) protect from undue WTO challenge those subsidies that make a positive contribution towards the achievement of sustainable fisheries.



**No backsliding!**

Given the language of the DMD and the urgent call by heads of state and government at the 2002 World Summit on Sustainable Development in Johannesburg, it is clear that failure to achieve robust new WTO disciplines on fishing subsidies would be a dangerous sliding back from the ambitions governments have articulated in this area. While undoubtedly difficult issues remain, governments have already achieved something substantial: They have made clear that WTO rules addressing harmful fishing subsidies are plausible and necessary, and that new rules can and must address issues of sustainability and development in an integrated manner. Failure to meet this opportunity with effective action, and ultimately with the agreement of balanced and enforceable new rules, would be a significant step backwards for the WTO and its member governments.

## VIII. MULTILATERAL ENVIRONMENTAL AGREEMENTS AND WTO RULES

DMD paragraph 31 [Trade and environment]: “With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudging their outcome, on:

- (i) the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question;
- (ii) procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status;”

DMD paragraph 32 [Trade and environment]: “The outcome of [...] the negotiations carried out under paragraph 31(i) and (ii) shall be compatible with the open and non-discriminatory nature of the multilateral trading system, shall not add to or diminish the rights and obligations of Members under existing WTO agreements, in particular the Agreement on the Application of Sanitary and Phytosanitary Measures, nor alter the balance of these rights and obligations, and will take into account the needs of developing and least-developed countries.”

DMD paragraph 30 [Dispute settlement]: “We agree to negotiations on improvements and clarifications of the Dispute Settlement Understanding. The negotiations should be based on the work done thus far as well as any additional proposals by Members, and aim to agree on improvements and clarifications not later than May 2003, at which time we will take steps to ensure that the results enter into force as soon as possible thereafter.”

It has been repeatedly recognised by the international community that “transboundary” or global environmental problems demand multilateral solutions. This has led to the negotiation of several hundred multilateral environmental agreements (MEAs), such as the Kyoto Protocol governing climate change or the biosafety protocol regulating trade in genetically modified organisms. WTO rules, on the other hand, are aimed at meeting challenges that are different from those addressed by MEAs – namely those associated with liberalising international trade.

Where tensions between MEAs and WTO rules arise, these need to be addressed through a process of assessing how different policy objectives will help us to address different global challenges. This process needs to draw on a broad range of expertise and stakeholders. But today there is too little acknowledgement that such tensions even arise. There is, in some quarters, an insistence that WTO rules aimed at “progressive liberalisation” are supportive of other policy objectives, such as those pursued by MEAs. But what happens when they are not?

Since 1993, WTO Members have debated whether it is necessary to clarify the relationship between WTO rules and MEAs – and if so, how this might be achieved. The negotiating mandates agreed under Doha Ministerial Declaration paragraphs 31(i) and (ii) were an attempt to address a small part of a much wider and more complex set of issues. Being limited to MEA parties, and unable to affect WTO

existing rights and obligations, DMD paragraph 31(i) leaves little scope for resolving the wider set of issues – especially those related to MEA non-parties.<sup>43</sup>

Proposals submitted in the negotiations under DMD paragraph 30 to clarify the WTO's main agreement governing the settlement of disputes – the Dispute Settlement Understanding (DSU) – might, for better or for worse, open up discussion on the wider set of issues that have been excluded from the DMD paragraph 31(i) mandate.<sup>44</sup> Ultimately, however, it should fall to a purpose-built international forum to examine the WTO-MEA relationship, as part of a coherent approach to addressing global challenges.

### Some proposals for new leadership

In particular, governments should use their communication materials and political interventions to:

- highlight that the current approach to addressing a range of global challenges is not coherent; that the pursuit of a particular set of economic policies (e.g. liberalisation) is often wrongly privileged above measured consideration of how best to tackle global challenges in a co-ordinated way.
- call for a process, orchestrated by a purpose-built international forum, to examine the relationship between MEAs and WTO rules, as part of a coherent approach to addressing global challenges.

### Some proposals for modest progress

In the course of the negotiations, governments should agree:

- to reiterate the tenets listed in the box below, all of which are based on existing international consensus, as they apply to all MEA measures and to MEA parties and non-parties, to provide guidance to WTO Members and the Dispute Settlement Body.
- that the WTO Dispute Settlement Body will not entertain disputes arising out of the implementation of MEAs until all avenues for resolving the dispute under the MEA in question have been exhausted.
- to grant to MEA Secretariats and UNEP observer status in WTO bodies and to improve information exchange between international environmental organisations (including MEA Secretariats) and the WTO.

43 See further WWF, "Multilateral Environmental Agreements in the WTO: Negotiations under Para 31(i) of the Doha Ministerial Declaration: An Analytical Paper" prepared by FIELD, March 2002, and subsequent analysis commissioned by WWF from FIELD.

44 See, for example, the US submission (TN/DS/W/74) proposing discussion on the use of international law and "gap filling" by the adjudicators of WTO disputes.

**No backsliding!**

If nothing else, governments should:

- not accept any attempts under paragraphs 31(i), 31(ii), 30, or any other area of negotiations, to undermine, whether explicitly or implicitly, the tenets listed in the box below, all of which are based on existing international consensus.
- not accept any attempts to prejudice the rights of MEA parties.
- not accept any attempts to privilege some MEAs, or some MEA measures (e.g. those based on specific trade obligations), over others.
- not accept any attempts to make any provision for WTO oversight of the implementation of existing MEAs or the negotiation of future MEAs.
- not accept any attempts to remove from the work programme of the Committee on Trade and Environment regular sessions the wider set of issues arising out of the relationship between MEAs and WTO rules, which have been discussed under Items 1 and 5 of the Marrakesh Work Programme mandated by the 1994 Ministerial Decision on Trade and Environment.

### TEN ESTABLISHED TENETS GOVERNING THE WTO-MEA RELATIONSHIP

1. Transboundary or global environmental problems demand multilateral solutions. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided.
2. Multilateral environmental policy must be made and administered within multilateral environmental fora, and not in the WTO, in accordance with each body's respective expertise and mandate.
3. Trade measures based on specifically agreed-upon provisions are necessary in certain cases to achieve the environmental objectives of a multilateral environmental agreement (MEA).
4. A range of provisions in the WTO can accommodate the use of trade-related measures needed for environmental purposes, including measures taken pursuant to MEAs. This accommodation is valuable and it is important that it be preserved.
5. WTO rules should not be interpreted in "clinical isolation" from other bodies of international law and without considering other complementary bodies of international law, including MEAs and internationally agreed principles.
6. Policy co-ordination between trade and environment officials at the national level is desirable and necessary to achieve the individual as well as the joint objectives of WTO Member governments in the areas of trade, environment and development.
7. Co-operation between the WTO and relevant MEA institutions is desirable and necessary to enhance understanding of the relationship between trade and environmental policies.
8. If a dispute arises between WTO Members over the use of trade measures applied pursuant to an MEA, they must first seek to resolve it through the dispute settlement mechanisms available under the MEA.
9. There is a benefit to having all relevant expertise available to WTO panels and the Appellate Body in cases involving trade-related environmental measures, including trade measures taken pursuant to MEAs.
10. Both the WTO and MEA dispute settlement mechanisms emphasise the avoidance of disputes, including through parties seeking mutually satisfactory solutions.

A compilation of the relevant documents establishing these tenets is available as a separate document on our website [www.panda.org/trade](http://www.panda.org/trade)

Trade and investment issues are global in scope. But different countries and different regions have widely different priorities and perspectives. For this reason, our response to these issues draws on the expertise of staff based in key locations amongst the 50 country and regional offices WWF has worldwide.

This network allows WWF to bring a truly international perspective to trade and investment debates. It allows us to engage not only with governments and companies in centres of influence in the North, but places us to work in partnership with those governments in the South which are becoming increasingly important in shaping the international agenda.

Work with us to find innovative solutions! WWF's approach is to build and foster alliances with forward thinking governments, companies and institutions. If you would like to find out more about the innovative solutions we are working on, or would like to contact members of our team around the world, please be in touch.

## 和谐社会



WWF's mission is to stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature, by:

- conserving the world's biological diversity
- ensuring that the use of renewable natural resources is sustainable
- promoting the reduction of pollution and wasteful consumption

***for a living planet®***

### **WWF International**

Avenue du Mont-Blanc  
1196 Gland  
Switzerland

[www.panda.org/trade](http://www.panda.org/trade)  
[trade@wwfint.org](mailto:trade@wwfint.org)