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Trade and Environment: How Real Is the Debate?

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Globalization and liberalization are the twin processes marking the beginning of the twenty-first century. Today, we are confronted with maxims such as "Making Globalization Social and Green"[1] or "Globalization with a Human Face." A myriad of new standards is in the making to handle the devastating effects of globalization on developed and developing countries alike. Yet, without a doubt, developed countries are the front-runners. Green consumers, healthy consumers, and safe consumers are now in the driving seat. Today, trade wars are erupting even between the United States and the European countries on genetically altered crops and modified food, threatening trade and investment flows accounting for more than US$2,000 billion annually and providing 14 million jobs on both sides of the Atlantic.[2] What are the underlying motives? Are they truly anxiety and concern for food safety, the environment, morality, and concern for human kind? Or are these kinds of trade wars driven by world hegemony and by commercial interests with billions of dollars at stake? Is linking trade to environment a justified concern with genuine environmental goals? Or are additional protection measures at play? Where do the developing countries fit into all this, with their resource constraints, poor information flows, and lack of scientific knowledge?

1. Background

The relationship between trade and environment is complex and critical. It is over-burdened with suspicion and strained by misunderstandings that need to be addressed and clarified. To that end, it is appropriate to go back as far as the issuing of the Brundtland report in the mid-1980s. Brundtland, the Prime Minister of Norway at that time, chaired a group of eminent personalities. In her famous report, she drew the attention of the international community to the interface between environment and development in the newly introduced phrase "sustainable development." When introduced at the 39th General Assembly in 1985, it was met with a great deal of scepticism on the part of developing countries in general. The notion of sacrificing today's development to preserve the environment for the development of future generations was viewed with resentment and misgivings. It took the international community several years and a huge effort to work out a smooth relationship between development and environment and to establish close linkages between them. This culminated in an Agreement at the UN Conference on Environment and Development (UNCED) held in Rio de Janeiro in 1992. The Agreement has established fundamental principles to be observed and specific measures to be undertaken for the attainment of environmental goals, all framed in a detailed programme of action: Agenda 21. Some of the key principles of the Rio Declaration are particularly pertinent to our discussion:

> The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations. (Principle 3)
>
> Eradicating poverty is an indispensable requirement for sustainable development. (Principle 5)
>
> States have common but differentiated responsibilities in regard to promoting sustainable development. (Principle 7)
>
> There should be a diffusion and transfer of technologies. (Principle 9)
>
> States should co-operate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries. (Principle 12)[3]

Agenda 21 set out specific measures on trade; in particular, the promotion of "an open, non-discriminatory and equitable multilateral trading system that will enable all countries—in particular, the developing countries—to improve their economic structures and improve the standard of living of their populations through sustained economic development."[4] In addition, a range of measures was agreed for the transfer of technology and the provision of new and additional financial resources to the developing countries for the implementation of the programme. Hence Agenda 21 set the basic principles as well as the overall framework within which the international community shoulders its burden of responsibility and has to work in order to protect, preserve, and enhance the environment together with the development process, particularly in developing countries.

Nevertheless, in parallel to that event and far away in Geneva, while trade representatives were busy negotiating the Uruguay Round Agreements of the soon to be World Trade Organization, environmentalists were determined to integrate environment in the trade debate. Their intentions and motives were questioned at a time when the Rio Conference had just been successfully concluded. Were developed countries thinking of backtracking on the commitments and obligations they had agreed to within the framework of the UN Conference? Were developing countries justified in their apprehensions about the trade debate? Were these apprehensions legitimate? It did not take long for such doubts to be proved well founded. In addition to the persisting divisions in the ongoing debate in the World Trade Organization, the lack of progress in the mid-term review of the Rio Programme of Action in New York in 1997 was yet further proof of the doubts and suspicions aired by developing countries. There has been obvious, and regrettable, backtracking on the obligations undertaken by the developed countries, especially in regard to improving market access for developing country exports, the transfer of technology, and the provision of new and additional resources. (In regard to financial resources, it was estimated that the developing countries would require US$125 billion, in the form of grants and concessions, from the international community to implement the activities specified in Agenda 21. This requirement remains unmet.) Moreover, in the view of many developing countries, developed countries are in effect retreating from the holistic approach to sustainable develop-

ment agreed at Rio. Their focus is now on unilateral measures and on environmental conditionalities attached to trade and investment. This trend is inimical to the attainment of both developmental and environmental goals.[5]

2. The trade and environment debate in the WTO

Though initially developing countries resisted debating the trade/environment relationship in the World Trade Organization (WTO), they reluctantly came to an agreement towards the end of the Uruguay Round. A decision was issued at the Marrakesh Ministerial Conference (1994) to that effect. A Committee on Trade and Environment was established to cool the heat created by the non-governmental organizations (NGOs) and to allow for a smooth signing and ratification of the Uruguay Round Agreements and the creation of the WTO. Dealing with the relationship between trade and environment in the WTO has gone through various phases, at some points being a leading priority in the framework of the WTO work, at other times being less attractive and thus occupying a lower profile. At no time were developing countries the *demandeurs;* on the contrary, they succumbed to pressure on many occasions.

In all this, the central question remained how to bring the trade and the environmental systems closer together without undermining either system, knowing that they are not necessarily always compatible. In fact, the two regimes are often even in conflict. The environmental regime allows for measures that go beyond a country's borders, for the sake of protecting the environment, whereas such a measure would amount to a flagrant violation of WTO rules and regulations, which do not allow for extra-territorial measures. The problem goes even further. Today we see growing concern by environmental groups at the national level forcing the issue of *national sovereignty* against the country's obligations to abide by WTO judgements. A case in point is the well-known dispute regarding "Import Prohibition of Certain Shrimp and Shrimp Products" between the United States on the one hand and Thailand, India, Pakistan, and Malaysia on the other hand. Unhappy with rulings on the matter by the WTO dispute settlement panel and the Appellate Body, a coalition of

US environmental groups raising the issue of national sovereignty succeeded in winning a ruling from the US Court of International Trade that went against the WTO panel. There is no doubt that this ruling from the Court of International Trade will handicap US efforts to comply with the WTO panel and Appellate rulings.[6] The environmentalists believe that the United States is compromising its national sovereignty for the sake of its international obligations.

Today, after five years of intensive discussion and learning about the relationship between trade and environment, many continue to have mixed feelings about how to go about this relationship. Traders and environmentalists have many a time stood helpless and perplexed in front of this conundrum, which turns on how to accommodate environmental concerns in trade policy without tampering with the trade rules. Striking a balance between the need for governments to protect and preserve the environment, on one hand, and avoiding the usage of environmental measures as a new trade protection measure, on the other hand, remains a sensitive and highly controversial issue.

It was only after long and informed reasoning that many realized beyond a doubt that the two systems could not remain under the same roof, because their objectives vary as well as their methods of implementation. That does not mean, however, that trade and environment are not mutually supportive. In many instances they are. Nevertheless, all the efforts to incorporate environment within the WTO system were to no avail. Based on this, Renato Ruggiero, the outgoing WTO Director-General, was brave enough to come up with a solution, which is—to my mind—straightforward and simple. He explained that all we need is a multilateral rules-based system (similar to that of the WTO) for environment—a World Environment Organization to be the institutional and legal counterpart to the WTO. Such a proposal has been put forward on a number of occasions, the last being the High Level Symposium on Trade and Environment in the WTO on 15 March 1999.[7] There has been agreement with this viewpoint. "Indeed, nothing would advance 'trade and environment' harmony more than the creation of a Global Environmental Organization to work alongside the WTO," wrote Daniel C. Esty of Yale University in his presentation to the High Level Symposium.[8]

Realizing the immense difficulties involved in resolving the trade and environment relationship and easing the tension that had developed in the

WTO in this regard, the European Commission proposed a high-level "political" conference to bring trade and environment ministers together in the WTO. Because the debate in the WTO seemed burdened with suspicion and scepticism, developing country representatives in Geneva felt that the timing was not propitious, especially in light of the fact that many issues remained unsolved in this relationship. In their mind, this needed further technical work before it could be brought to a political forum. Together with developed country delegations, they agreed after long deliberations to turn the high-level "political" conference into a non-official, non-conclusive symposium involving a wider spectrum of the public, notably NGOs and academia, in a brainstorming session with a view to airing all positions, including those of civil societies.

It is astonishing that, in spite of the general view that further work needs to be undertaken on all items of the agenda of the CTE, pre-determined positions are still taken. Such positions continue to press for amending the WTO rules to accommodate environment or call for the legitimization of the processes and production methods approach in the GATT system, irrespective of the wide-ranging and serious implications for developing countries and their methods of production. In addition, little tribute is paid to the concerns of developing countries in general. Market access and the new environmental conditions are key in this respect. The pretext that competition among nations is creating downward pressure on environmental standards is causing new protectionist measures to be arbitrarily imposed. The debate has revolved around these and other issues for the past few years. Developing countries have defended their interests and stood firm for positions that today might warrant more explanation and definition. The next phase of negotiations will be not less but certainly more controversial, and developing countries will again have to aggressively defend their positions.

3. The basis of the WTO trade/environment debate

It is worth noting that the trade and environment debate in the WTO is set within a consensual framework and based on three essential premises. These I would call the three Cs: *C*onsistency with the level of development, the *C*ompetence of the world trading system, and allaying fears of additional *C*onditionality. Let me elaborate further.

First, no one denies the importance assigned to the protection and preservation of the environment in the Preamble of the Marrakesh Agreement Establishing the World Trade Organization.[9] But, it is equally true that the Preamble emphasized that this be done in a manner consistent with the needs and concerns of countries at different levels of economic development. What is of significance here is that the importance accorded to environment was not absolute, but linked to countries' levels of development. I could even argue that priority was given to development, because the protection and preservation of the environment can be achieved only to the extent that this is consistent with the level of development.

It is not difficult to draw a comparison between the WTO Preamble and Rio Principle 7, cited earlier, concerning the common but differentiated responsibilities of states in regard to promoting sustainable development. This principle was the anchor for the UNCED. It accepted that the Northern countries had a greater responsibility for meeting the costs of adjustment because of their larger role in environmental degradation as well as their economic capacity to absorb more costs. The developing countries still needed to grow and develop (sustainably, of course) to meet their people's needs. The North also made a commitment to provide adequate financial resources and technology transfer to facilitate the South's transition to sustainable development.[10]

Secondly, the Marrakesh Ministerial Decision on Trade and Environment[11] was clear in setting the terms of reference for WTO work on trade and environment. The fourth paragraph of the Preamble stipulates that the coordination of policies in the field of trade and environment should be done without exceeding the competence of the multilateral trading system. Again of utmost significance here is that the negotiators were adamant that the "competence of the multilateral trading system" is limited to trade policies and those aspects of environmental policies that may result in significant trade effects for its members.

Thirdly, in order to allay any possible fears of a new "green conditionality" attached to market access opportunities, thus nullifying the benefits accruing from trade liberalization within the context of the Uruguay Round, the 1996 Singapore Ministerial Report on Trade and Environment[12] stressed the following:

1. the WTO is not an environmental protection agency and it is assumed that the WTO itself does not provide an answer to environmental problems;
2. environmental problems require environmental solutions, not trade solutions;
3. no blank cheque for the use of trade measures for environmental purposes;
4. trade liberalization is not the primary cause of environmental degradation, nor are trade instruments the first-best policy for addressing environmental problems;
5. GATT/WTO agreements already provide significant scope for members to adopt national environmental protection policies, provided that they are non-discriminatory;
6. secure market access opportunities are essential to help developing countries work towards sustainable development;
7. increased national coordination as well as multilateral cooperation are necessary to address trade-related environmental concerns adequately.

It is worth stressing that the first WTO Ministerial Conference was keen to elucidate the reality of the relationship and its rightful stance in the multilateral system. It was clear from the ongoing debate at the time that there was no quarrel with depicting the WTO as an environment-friendly organization. In fact, the GATT allows for any action to be taken at the national level to protect the environment, provided it is in compliance with its basic rules and regulations. Article XX ("General Exceptions"),[13] the Agreement on Technical Barriers to Trade (TBT),[14] and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)[15] are all cases in point: they give each country the right to set the level of protection that it deems appropriate on environment, provided it does not act against the basic principles of the WTO as stipulated by Article I ("Most-Favoured-Nation Treatment") and Article III ("National Treatment"). In addition, it should not constitute an unnecessary barrier to trade. I should emphasize that the "Trade and Environment" Report adopted at the first Ministerial Conference remains as valid as ever and constitutes the backbone of the ongoing debate on trade and environment. However, one thing developing countries were keen to elucidate was that the report does not represent a legal

instrument, hence does not alter or touch upon the rights and obligations of WTO members.

I shall now turn to a few of the specific issues that were subject to intensive debate at the CTE. I start with the interrelationship between multilateral environment agreements and the WTO, followed by the complex relationship between the Agreement on Trade-related Intellectual Property Rights (TRIPS) and environment. I then deal with eco-labelling as a life-cycle analysis and the problem of process and production methods. Finally, I address market access and competitiveness as prime issues of interest to developing countries in the trade and environment debate.

4. Some specific issues in the debate

The relationship between multilateral environment agreements and the WTO

The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements (MEAs), was a topic that was extensively debated and subject to the most controversy. In spite of the long and tedious discussions throughout the previous five years or so, little rapprochement, if any, was achieved. Views on a number of issues were and remain wide apart; the definition of MEAs, Article XX, the issue of process and production methods, the effectiveness of trade restrictions and whether they were the most appropriate instruments to advance environmental policies are but a few of these issues.

The relationship between the multilateral trading system and the multilateral environmental agreements raised numerous difficulties and controversies. These ranged from issues of hierarchy and compatibility between the two entities to the comprehensive framework of the MEAs, which combine a mixture of incentives and trade measures to deal with environmental externalities. In the framework of MEAs, positive measures—such as improved market access, capacity-building, additional finance, and access to and transfer of technology—were considered to be effective instruments to assist developing countries to meet multi-

laterally agreed environmental targets. This was in sharp contrast to the much-disputed effectiveness of trade measures applied as sanctions under the purview of the WTO. The scope for trade measures pursuant to MEAs under WTO provisions and their unilateral application to address environmental problems that lie outside a country's national jurisdiction led to wide disagreement and were strongly contested.

In this debate, developing countries had to defend themselves on a number of fronts. First, developing countries continued to argue against developed countries' intentions of arming the WTO with additional power to protect the environment, because this would have the effect only of elevating trade measures, i.e. sanctions to be considered as priority tools for the environment. This would undermine the international consensus reached on a whole range of positive measures negotiated at length within the framework of the multilateral environmental agreements. Isolating the trade measures would not serve the purpose and could prove to be detrimental to the environment because they deprive developing countries of an assured source of resources. Such resources could be directed, among other things, towards the protection of the environment. Furthermore, in order to determine the necessity and effectiveness of the trade measures, these would have to be assessed together with other measures in a holistic framework, such as the one provided for by the multilateral environmental agreements. Countries cannot press for the use of trade measures just because they are less expensive and hence more appealing to politicians, without weighing the pros and cons of such usage in an objective and comprehensive manner. On the contrary, MEAs should provide developing countries with the "carrot" to entice them to comply with their obligations under such agreements, if—as proclaimed—the ultimate goal is to preserve and protect the environment.

Secondly, regarding the issue of hierarchy, at the Singapore Ministerial Conference of the WTO in December 1996,[16] developing countries succeeded in undermining the attempts by developed countries to give the MEAs superiority over the WTO's settlement of disputes. The underlying reasons were clear: developing countries refused the dominance of environmental considerations, as advocated in the MEAs, over the WTO Dispute Settlement Understanding (DSU) as guided by the key principles of the trading system, notably most-favoured-nation and

national treatment, as well as the rejection of unilateral measures. Developing countries felt that on no account should they give up or weaken their inalienable rights to have recourse to the WTO DSU by giving primacy to settling disputes through the MEA. That did not mean, however, that MEAs were disregarded. They remain a viable option for disputants to settle their disputes, if they so wish.

The repeated attempts by the European Commission to reinterpret or even add an amendment to the WTO rules that would prioritize environment or make it an exception through what they would like to perceive as an "environmental window" were doomed to failure. Developing countries have stood firm against any amendments to the WTO rules in order to legitimize inconsistent trade measures in the WTO. They insisted that any effort to reopen the WTO rules would mean imposing environmental conditionality on trade and would give sufficient ground for unilateral measures that would amount to protectionism and restriction of market access under the disguise of protecting the environment. It was also recognized that, in principle, trade measures taken pursuant to MEAs were not to be challenged by the WTO membership, because the majority are also members of the MEAs. Furthermore, trade measures within the MEAs—as multilaterally agreed upon—were tolerated, and many of them were even pushed by developing countries themselves. This was the case with the Basel Convention and the Prior Informed Consent Convention on Hazardous Chemicals.

It is surprising that voices are still raised in favour of effecting substantive changes in the GATT. The first of these would involve amending Article XX on the pretext that, as it is currently applied, it gives prominence to trade goals over environmental ones. In my view this is the wrong way to look at things. The WTO's main concern is implementing trade goals. It is entitled to rectify any wrong-doings in the area of trade, but it is not within the competence of the organization or its trade representatives to deal with issues going beyond trade and trade-related issues, be they environment, human rights, child labour, or other social issues. In addition, it has been stated that Article XX is flexible enough to accommodate legitimate environmental concerns. It was precisely with this in mind that negotiators stressed the competence of the multilateral trading system in the fourth paragraph of the Preamble of the Marrakesh Ministerial Decision on Trade and Environment.

Another substantive amendment to the current GATT structure that would facilitate peace between the trade and environment camps would involve the recognition by GATT that, in an ecologically interdependent world, *how* things are produced is often as important as *what* is produced. In particular, environmental standards that relate to processes and production methods (PPMs) cannot always be rejected and judged indiscriminately to be violations of GATT.[17] On the other hand, accepting the introduction of PPMs in GATT/WTO would amount to the imposition of a country's domestic environmental values or policies on other countries. As environmental standards and PPMs are based on values that differ from one society to another, it would be difficult to internationalize PPMs and require all countries to follow the same production methods. On the other hand, we have to distinguish between environmental standards that are product related, such as disposal and handling, with which I have no quarrel, and non-product-related standards, which do not affect the final product.

The risks of setting and accepting ecological standards for PPMs in GATT today are twofold. First, these standards would most likely be the ones used in developed countries, thus allowing environmental standards to be easily manipulated for protection purposes. Second, setting ecological standards for PPMs could be used as an opening for over-stretching the concept in the future and taking it as a precedent to incorporate other non-trade-related goals, such as labour standards, human rights, good governance, and all sorts of other domestic pressures that have hardly any relationship with the WTO.

The Shrimp-Turtle *dispute*

It is worth referring briefly to the *Shrimp-Turtle* dispute. In this case, the two rulings (by the dispute settlement panel as well as by the Appellate Body) are precedent setting. The dispute was the first concerning a trade embargo based solely on domestic environmental legislation forced by the United States as the only country that interprets Article XX so broadly as to allow for extra-territorial measures to protect the environment beyond its territories. It was obvious from the very beginning that the issue at stake was not a trade measure mandated by an MEA (in this case the Convention on International Trade in Endangered Species of Wild Fauna and Flora [CITES]), but a measure to address a global environmental concern applied unilaterally by one country.

For the United States, the case involved the right of WTO members to take measures under Article XX (b) and (g)[18] of GATT 1994 to conserve and protect natural resources, as reaffirmed and reinforced by the Preamble to the WTO Agreement. For the complainant, it was a case about the imposition of unilateral trade measures designed to coerce other members to adopt environmental policies that mirrored those in the United States. The United States based its entire defence on Article XX, which allows countries to take measures contrary to GATT obligations when such measures (a) are necessary to protect human, animal or plant life or health; (b) relate to the conservation of exhaustible natural resources.

In this case, the United States argued that a trade measure was necessary because sea turtles were threatened with extinction and the use of turtle excluder devices on shrimp nets was the only way effectively to protect them from drowning in shrimp nets. The panel, however, stressed the WTO's preference for multilaterally negotiated solutions.[19] Furthermore, the panel focused its analysis on the headnote or "chapeau" of Article XX, which requires legitimate trade restrictions to be applied "in a manner, which would not constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade." The panel found that interpreting the chapeau in a way that would allow importing countries to restrict market access according to exporters' adoption of "certain policies, including conservation policies" would mean that "GATT 1994 and the WTO Agreement could no longer serve as a multilateral framework for trade among Members." Such an interpretation, the panel felt, could lead to "conflicting policy requirements" because exporting countries would need to conform with different domestic policies in importing countries, thus threatening the "security and predictability of trade relations" under WTO agreements. It therefore drew the conclusion that "certain unilateral measures, insofar as they could jeopardize the multilateral trading system, could not be covered by Article XX."[20]

The panel reaffirmed the logic of developing countries that the WTO cannot be made responsible for safeguarding all kinds of different interests. This would give leeway to members to pursue their own trade policy solutions unilaterally, thus reinstating power politics. This would certainly amount to an abuse of Article XX exceptions, as the panel put

it, and thus threaten the preservation of the multilateral trade system based on consensus and multilateral cooperation. It is worth recalling at this juncture that to do away with a power-based system and replace it with a rule-based one was an essential objective of the seven-year Uruguay Round of negotiations, which hardly anyone would want to give up today.

Without much ado, the Appellate Body also concluded that the US measure was "unjustifiably discriminatory."[21] In its ruling, the Appellate Body was more cautious and less blunt than the panel. Trying to find some "political" justification for the US measure, it characterized the ban "as an appropriate means to an end," although its application was at fault. It attributed the unjustifiable nature of the discrimination to the failure of the United States to pursue negotiations for consensual means of protecting and conserving sea turtles, resulting in the "unilateral" application of its trade measure. The Appellate Body further agreed that the United States had applied the measure in an "arbitrary and discriminatory" manner between countries where the same conditions prevail, contrary to the requirements of the chapeau of Article XX. The application was discriminatory in giving a longer grace period to Caribbean countries than to Asian nations, in not transferring technology to them on similar terms, in its lack of transparency, etc.

The Appellate Body then stressed that it had not decided that the sovereign nations that are members of the WTO cannot adopt effective measures to protect endangered species, such as sea turtles; "Clearly, they can and should."[22] It stressed that protection and preservation of the environment are of significance to WTO members, provided that "they [sovereign states] act together bilaterally, plurilaterally or multilaterally, either within the WTO or in other international forums." Finally the Appellate Body decided that, "although the measure of the US in dispute in this appeal serves an environmental objective that is recognized as legitimate under paragraph (g) of Article XX of GATT 1994, this measure has been applied by the US in a manner which constitutes arbitrary and unjustifiable discrimination between Members of the WTO, contrary to the requirements of the chapeau of Article XX."[23]

Although the US ambassador to the WTO hailed the Appellate Body's ruling as a success for the US position, a similar sense of victory was neither felt nor expressed by US environmental NGOs, which, as

mentioned earlier, had brought the case to the US Court. The Appellate Body ruling, in my view, does not amount to a reversal of the panel ruling, as some would like to have it, but rather falls under what the Singapore Ministerial meeting attempted to elucidate. GATT/WTO agreements do provide significant scope for national environmental protection policies, provided they are not discriminatory in nature. Moreover, countries should seek joint and not unilateral action. This is how, I believe, the Appellate Body findings and conclusions should be regarded. This decision is an attempt not to overturn the consensus reached in the WTO CTE, but rather to strengthen it. In fact, the Appellate Body pronounced itself clearly against WTO-inconsistent trade measures applied unilaterally to address extra-jurisdictional environmental problems. It thus underlined what WTO members had succeeded in injecting into the factual part of the Singapore report. It was explicitly mentioned that "all delegations except one"[24] stated that they consider that the provisions of GATT Article XX do not permit a member to impose unilateral trade restrictions that are otherwise inconsistent with WTO obligations for the purpose of protecting environmental resources that lie outside its jurisdiction. In any event, arguments in favour of reinterpreting Article XX to address environmental concerns (as put forcefully by those who want to see Article XX amended or reinterpreted) for fear of the trend by the Appellate Body to expand—on its own—the meaning of Article XX, remain void. There is no doubt that neither the Appellate Body nor the panels are entitled to attempt to interpret the WTO rules. *Interpretation of the rules is the sole right of the membership.*

The environment and trade-related intellectual property rights

The relationship between environment and trade-related intellectual property rights (TRIPS) is yet another example of the underlying conflict in the WTO between the urge to protect the environment on the one hand and the tools made available for such an objective in the framework of the TRIPS Agreement, on the other hand. Here the case is quite the reverse. The TRIPS Agreement as negotiated and pushed for by the developed countries has proven to be unfriendly to the environment. In fact, reading carefully through the TRIPS Agreement, one

cannot fail to realize that environmental concerns did not really occupy a priority at the negotiating table then. It has become clear only over the past few years that a number of provisions in the TRIPS Agreement go against the objectives of Agenda 21 and the various multilateral environmental agreements in regard to access to and transfer of technology to help maintain and protect the environment. The outcry came first from non-governmental organizations engaged in development and environment in developed and developing countries alike.

India was one of the few countries that, at an early stage in the work of the CTE, recognized the real problem in reconciling intellectual property protection, as laid down in the TRIPS Agreement, with the objectives and provisions on transfer of technology incorporated in some of the MEAs.[25] It failed, however, to summon the necessary backing on the part of the developing countries on this topical issue. The primary reason was the complexity of the issue itself. Hardly any developing countries were grabbed by this difficult and composite relationship, because they were still struggling with other outstanding commitments emanating from the Uruguay Round. Coping with the various provisions of the TRIPS Agreement was not a priority, because they felt they had ample time until the transitional period expired.

As we get closer to the implementation of the TRIPS Agreement and with environment looming as a topic in the Millennium Round, developing countries ought to look more seriously at this issue. Let me hasten to say that at no point in my argument should it be taken that developing countries are trying to back-pedal on their commitments. It none the less remains a fact that the TRIPS Agreement as negotiated was put in a very narrow context and with limited objectives, i.e. to lay down minimum standards for the protection of the owner, the titleholder, and the patentee, conferring on them exclusive rights. This goes against a whole myriad of legitimate and valid concerns; topping the list are socio-economic and developmental issues, the environment, technology transfer, and fair and open competition. It is no secret that, for these as well as other reasons, developing countries remained inimical to such an agreement until the eleventh hour. It was only under pressure of the "Single Undertaking" commitment that they were obliged to accede to it.

Addressing the relationship between the TRIPS Agreement and environment, the CTE focused in its deliberations on two main issues:

1. the generation of, access to, and transfer of environmentally sound technologies, and
2. the contradiction between the TRIPS Agreement and the Convention on Biological Diversity.

In regard to the first issue, the question concerns what happens if TRIPS put such technologies beyond the reach of developing countries. This would undoubtedly have a negative impact on the environment and on the stringent efforts developing countries are making to cope with the environmental requirements. It is true that Article 7 of the TRIPS Agreement stipulates that patenting should encourage the promotion of technological innovation and the transfer and dissemination of technology, to the mutual advantage of producers and users and in a manner conducive to social and economic welfare. This, however, has not yet materialized owing to the fact that developing countries are still benefiting from the transitional period of the implementation of the Agreement. Nor has any empirical evidence sustained this argument so far. Hence, the question remains how TRIPS link up with the objective of facilitating access to and transfer of technology "on fair and most favourable terms"[26] to assist in the conservation of the environment and promote sustainable development.

As for the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD), this heads the list of concerns of developmental and environmental NGOs in the North as well as in the South. The contradiction between TRIPS and the CBD is not implicit. There are doubts about the compatibility of the various provisions of the TRIPS Agreement with the clear objectives of the Convention as it relates to the conservation and sustainable use of genetic resources. The underlying disparity between the timely transfer of relevant biotechnology as agreed in the CBD and Article 33 of TRIPS, which provides for a term of protection of at least 20 years, remains a point of contention and a source of serious concern. This is even more so for developing countries when they start implementing the TRIPS Agreement by the year 2000.

It was only after the conclusion of the TRIPS Agreement and after its adoption within the framework of the Uruguay Round that questions regarding the compatibility between TRIPS and the CBD started to

surface. Equitable sharing of the benefits arising out of the utilization of the knowledge systems of indigenous communities and fair trade-offs between access to genetic resources and the transfer of technology remain the essence of the CBD, as agreed notably in Articles 15 and 16 of the Convention.[27] However, concerns were expressed about the negative impact of TRIPS in the fields of agriculture, nutrition, and health care, because they would inevitably lead to an extension of the monopoly control of transnationals over production and distribution in these vital areas for developing countries. Moreover, the TRIPS Agreement does not try to curb the commercial exploitation of genetic resources or deal with the sharing on a fair and equitable basis of the benefits arising out of the patenting of genetic resources. Much has been said with respect to the usage and applicability of Article 31(k) of the TRIPS Agreement regarding compulsory licensing for the public domain, as permitting the necessary flexibility. With all the strings attached to this article, however, the question arises whether it truly serves the purpose of facilitating access to and transfer of technology, including biotechnology, on fair and most favourable terms, as stipulated by Article 16.2 of the Biodiversity Convention. This issue undoubtedly requires more in-depth study.

Because of these fundamental controversies and whether or not environment becomes an issue in the next multilateral trading round or is mainstreamed in the various agreements, environment will have to be an integral part of any review process of the TRIPS Agreement. The different available alternatives should be weighed and carefully studied. Three main options, which set the framework for the overall trade and environment debate, come to mind:

1. to agree on the relevance of Article XX as a general exception in the context of the TRIPS Agreement when specifically addressing biodiversity and the sustainable use of genetic resources;
2. to decide whether the TRIPS Agreement or the Convention would prevail in the event of a dispute and how it would work out between parties and non-parties to either; and
3. to keep the issue open, to be addressed and settled on an ad hoc basis by panels in the event of a dispute.

It is worth stressing at this juncture that developmental and environmental NGOs from the North as well as from the South latched on to

the issue that developing countries should have been tackling in depth much earlier. Their views should not be neglected, otherwise developing countries might at some point find themselves on the defensive and be confronted with the same kind of arguments raised against the TRIPS Agreement, namely that it was negotiated entirely out of the public view; it might then perhaps be too late. The recent failure of the lengthy negotiations on the Multilateral Agreement on Investment in the Organization for Economic Cooperation and Development (OECD) is a case in point. It clearly denotes the strength and skills of environmental NGOs and, if they feel sidelined, TRIPS could be next in turn.

Eco-labelling

Eco-labelling is another highly controversial issue. Compared with other voluntary standards, such as packaging, labelling, or even recycling requirements, it has attracted much attention in the trade and environment debate in the WTO. In spite of the fact that it was discussed extensively prior to the Singapore Ministerial Conference as well as in the framework of the review process of the Agreement on Technical Barriers to Trade, hardly any decision has materialized to date. The issue has raised a number of practical, conceptual, and systemic problems. It might sound strange and be difficult to comprehend, but the more the debate is focused on the core of the issue at hand, the more the gap between the various views widens.

The complexity of the issue arises from the fact that eco-labelling schemes are based on life-cycle analysis, which involves processes and production methods (PPMs). In other words, eco-labelling is interested in the product during its entire life cycle: the sourcing of raw materials, production, consumption, and disposal.[28] This approach requires, in and of itself, large amounts of information when products or materials are imported, which may cause enormous practical problems, especially for developing countries.[29] In addition, specific PPM-related criteria based on domestic conditions and priorities in the importing country may be less appropriate in other countries. Whereas there is no question that each country has the right to institute domestic regulations on eco-labelling, the concern is that it should not be used for protectionist

purposes—applied by some countries selectively to products that are imported or that compete with their own products.

The principal fear of developing countries in dealing with the issue of eco-labelling in the WTO is that an attempt will be made to extend the coverage of such labelling—even though voluntarily—to non-related PPMs. They fear not only the whole range of implications for their exports that such an extension would produce but more the systemic problem it raises in the WTO. It would amount to writing new rules for a system that has so far served the international community and the world trading system well. The problem of subjecting eco-labelling to WTO rules and disciplines lies in the conflict that would arise with the product-based rules of the GATT/WTO trading system. Discriminating between "like products" and making market access conditional on complying with PPMs, thus legitimizing unincorporated PPMs, which are not product related, would upset the entire multilateral trading system and would have devastating effects, in particular on developing country exports.

Developing countries have recognized that what is being put into question—through using eco-labelling as a litmus test—is the basic criteria and characteristics that have so far governed the multilateral trading system. Through eco-labelling, the WTO would become more and more deeply involved in the realm of domestic policy and intervention from the outside would be allowed to set national priorities. On this basis, most developing countries have insisted that eco-labelling is inconsistent and should not be accommodated within the WTO system. This was strongly supported by the fact that the negotiating history of the TBT Agreement upheld their view that unincorporated PPMs were not covered by the Agreement.[30] While admitting the role that equivalence and mutual recognition could play in helping them meet the requirements of foreign schemes, they insisted that accommodating unincorporated PPMs would amount to creating scope for the extra-territorial imposition of national standards. This, they felt, would have significant consequences for the trading system as a whole.[31]

Furthermore, as stated earlier and as emphasized by the Preamble of the WTO Agreement, environmental objectives should be *consistent* with the level of development. The prevention of product differentiation on the basis of unincorporated PPMs allows countries to set standards,

whether environmental or otherwise, that are appropriate for their level of development. In other words, it allows countries to trade their developmental needs against their needs for environmental protection in a manner that is consistent with how they themselves value these needs (and not on the basis of how others value them for them).[32]

What I would like to add here is that the debate in the CTE on eco-labelling schemes has triggered a similar heated debate between environmentalists and business groups. The former have criticized what they consider to be the narrow perspective of international trade rules, noting that PPMs are fundamental to minimizing the environmental impact of a product during its life cycle. Business groups see trade rules that distinguish between products solely on the characteristics of end products as relevant and appropriate. Like many developing countries, they view the introduction of PPMs into the trade debate as the beginning of a slippery slope, where loosely related production factors would become the basis for trade barriers.

Lastly, it is essential to recall Principle 11 of the Rio Declaration in this context, which stipulates that environmental standards, management objectives, and priorities should reflect the environmental and developmental context to which they apply. The standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.[33] Accordingly, the disciplining of eco-labelling schemes should be on the basis of equivalencies and mutual recognition, where each country sets its standards according to its own values, as stipulated by Agenda 21. The aim of harmonizing or internationalizing PPMs on the basis of any set of multilateral guidelines is in contradiction to what the international community agreed upon unanimously in Agenda 21. What is even more risky is that such an attempt would be detrimental to the trading system, at a time when all countries are embracing and respecting its rules.

Market access and competitiveness aspects of the trade/environment debate

One cannot address the interface between trade and environment without looking at the market access and competitiveness aspects of this relationship. These aspects tended to be underplayed and even overlooked at the beginning of the debate, for the obvious reasons stated

earlier. It is needless to reiterate that the whole debate was triggered by developed countries targeting specific issues of concern to themselves. As developing countries gradually became aware of the underlying reasons and objectives of this debate, they rightly pushed issues of their own to the fore. It should be stressed, however, that this move by developing countries was on no account aimed at eventually achieving trade-offs. On the one hand, their refusal to amend or reinterpret Article XX or to introduce non-related PPMs was based on systemic principles, which cannot be subjected to bargaining, because this would alter the very essence of the system. On the other hand, the purpose of bringing in market access and competitive concerns was to add balance to the lopsided debate, and put it in its proper perspective.

From the very beginning the debate on this issue was set in a North–South context. This has harmed rather than helped the debate advance. False allegations continue to be made by firms in countries with high environmental standards and high costs of compliance that they are often undercut by competition from companies based in countries with less strict regulation and lower costs. In theory, this could lead to entire industries departing for countries with lower standards, the so-called "pollution havens." So far, however, there is no evidence of this happening. The reverse—that high environmental standards were a factor in location decisions or have led to the relocation of industry—has also not occurred on a large scale.

The debate on market access from the perspective of developing countries tends to be twofold. They want to ensure first that existing market access conditions are not eroded by emerging environmental requirements and second that additional market access—through what can be perceived as win–win situations—will help promote environmental protection and sustainable development. In this context developing countries have tried to concentrate on identifying sectors of export interest to them. These could be textiles and clothing, leather, footwear, furniture and other consumer goods, and other labour-intensive sectors, where environmental measures could affect existing market access opportunities and thus possibly nullify or impair the Uruguay Round results. In fact, empirical studies, mostly done by the UN Conference on Trade and Development (UNCTAD), show that the sectors of interest to developing countries are those most affected by environmental standards often set unilaterally by the importing governments. Such standards

negatively influence developing countries' market access, even though the environmental effects of, say, textile production might mainly be local and do not affect the final characteristics of the product. In addition, there are few—if any—trans-boundary externalities.

Furthermore, UNCTAD's studies have also demonstrated that small and medium enterprises (SMEs) in developing countries have encountered difficulties in complying with environmental policies emerging in the above-mentioned sectors. Such policies have had significant effects on the competitiveness of SMEs in developing countries and have in many instances acted as barriers to trade. A number of reasons have been cited, among them are the following:

- The possibility of compensating for the loss of competitiveness in some sectors by gains in others is higher in economies that are diversified and dynamic, which are not necessarily the main characteristics of developing countries' economies.
- Developing country exporters are normally price-takers, because they compete on price rather than on non-price factors such as technology and ideas. Consequently, any environmental requirement resulting in cost increases reduces export competitiveness. It nevertheless may vary from one industry to another as well as among developing countries at different stages of development and with varying capability to integrate innovative approaches.
- The problems of adjustment are higher for SMEs in developing countries, especially as they are important players in the export promotion strategy for sectors such as textiles, clothing, and footwear. Thus the need to examine the possible conflict between the export promotion strategies of developing countries and the need to comply with environmental requirements and their effects on competitiveness becomes all the more relevant.
- The variable cost component of complying with environmental standards is higher in some sectors than in others. Again, evidence has shown that it is higher in sectors of interest to developing countries, especially leather and footwear, as well as textiles and garment sectors. For example, in leather tanning, the cost of the chemicals required to meet international standards is approximately three times the cost of conventional chemicals.[34]

Two additional topics are germane to the market access and competitiveness debate: the internalization of environmental costs, and charges and taxes for environmental purposes. Though these topics are not new and have in fact been debated at length, they remain contentious and difficult, especially if the idea is to add them to the trading agenda.

The concept of internalization remains difficult to adopt in GATT on the grounds that it interferes with the efficiency of the comparative advantage principle, which is central to the free trading system. The tendency to consider the lack of internalization as a kind of "implicit subsidy" that would be actionable under GATT/WTO is a non-starter. Furthermore, environmental externalities are in principle not distinguishable from other factors, such as education, infrastructure, and social policy, that contribute to the comparative advantages and thus competitiveness edge of an economy. Are we to conclude that the costs of all these factors are to be integrated in production processes under the auspices of the multilateral trading system? The internalization of environmental costs by domestic producers in no way conflicts with GATT principles. However, it becomes problematic under GATT if countries start implementing trade policies on the basis of whether or not foreign producers have internalized their environmental costs. GATT would be more concerned with the trade-distorting or discriminatory effect of such a policy, and with its necessity and effectiveness, rather than with its environmental objectives.

As for charges and taxes for environmental purposes, no one can deny the validity and effectiveness of imposing taxes as such. But what is occurring here is the imposition of taxes on a phenomenon that is not quantitative. Forcing producers to incorporate environmental externalities by imposing taxes on products made with polluting processes is based on the assumption that the costs to the polluting firm and the damage caused by the pollution are known. Moreover, if this is true at the national level, it can only be more complex and difficult if an importing country aims at adjusting such costs at its borders by imposing border tax adjustments on its "like" imports. In addition, the question of what would be an appropriate tax for pollution that would be accepted internationally is still open.

Border tax adjustments (BTAs) should pass the necessity and effectiveness test to find out how pertinent they are to the environment, before

even debating how to impose them at the border. The effectiveness of border tax adjustment is doubted and even contradicts the view, widely acknowledged by developing and developed countries alike, that environmental problems should be addressed at source. So how can a tax imposed on final products, as a border tax adjustment, be effective for problems that should be dealt with as far upstream in the production process as possible?[35] As rightly pointed out by UNCTAD, it is generally better if the tax is levied on the production and extraction process causing the environmental problems rather than on the resulting product. In other words, a tax levied internally by the producing country would be more effective at dealing with environmental problems at their source. GATT neither prohibits nor prevents a country from pursuing a policy of taxation or regulation with regard to environmental protection as long as these policies apply only to its domestic consumers and producers. In fact, one can even go one step further. For BTA on imports to pass the compatibility test in GATT, it has to meet the following conditions:

(a) the tax is product related;

(b) the imported product has not been taxed in the country of origin, to avoid double taxation;

(c) the imported product has caused trans-boundary pollution and the polluting input was not consumed domestically.

Similarly to their stance on process and production methods in eco-labelling, developing countries insist that there should be an explicit reference to addressing charges and taxes that relate only to products or product characteristics that are covered by WTO provisions. In any event, the environmental effectiveness and potential trade effects of levying environmental taxes and charges, particularly on market access and competitiveness, remain questions open for debate.

Before concluding, let me state that no one can deny the fact that the relationship between trade and environment has been debated extensively in the WTO. This has undoubtedly helped clarify the status of this relationship in the framework of the organization and shape positions in response to the underlying motives and objectives. Today, even before settling this complex relationship, other more difficult and cumbersome issues are emerging, such as linking trade to labour standards. Though

from the very beginning such an inclusion has met with strong objections, it will continue to be pushed in the WTO mainly by the United States—for obvious reasons, which neither time nor space permit to be addressed here. One thing is clear, however. Developing countries have to stand firm on their positions on trade and environment as regards changing the rules. Such a move would only serve as a prelude to the integration of the "social clause" in the WTO, which has wider implications for developing countries and should be of more serious concern.

5. Conclusion

The Seattle Ministerial Conference in December 1999 and the proposed Millennium Round will be a turning point for the trade and environment debate. It will decide on the future course of the debate. One thing remains clear. A great deal of work and education continue to be needed before drawing conclusions or reaching the stage of negotiating rules and disciplines, not to mention changing the rules, as some would like to happen. The trade and environment relationship continues to be an area prone to difficulties, complexities, and most of all sensitivities. Throughout this chapter I have tried to show that so far the CTE has worked within a consensual framework. To try to tamper with this framework in order to incorporate additional objectives will necessitate a new consensual framework. The attempts by the international community to forward some alternatives remain in the very early stages and will need further in-depth study. The following are a few of the options:

1. To carry the debate forwards in the CTE in parallel with the Millennium Round, with a view to bringing the two ends closer. This option is hardly likely to achieve results because, in the view of many people, the CTE has exhausted the debate.

2. The so-called "Ruggiero" option presented earlier: a World Environment Organization to be the counterpart to the WTO. This is a pragmatic and likely workable option in view of the difficulties encountered so far, though it is still resisted by mainly developed countries and their NGOs. Some developed countries, notably the EU countries, Norway, Switzerland, and Canada, continue to believe that the WTO, with its strong and enforceable dispute settlement mechanism, is an

appealing instrument for policy makers, particularly in the field of environment. Many NGOs continue to be convinced that the trading systems should provide the necessary flexibility for the sake of the environment, which is undoubtedly their priority.

3. Mainstreaming environment in the various agreements, such as Agriculture, TRIPS, Textiles and Clothing, and others. The degree of complexity and controversy inherent in this option, which is still to be tested, is difficult to anticipate. However, care should be taken because this option carries with it the inherent risk of doing away with the sensitive balance carefully negotiated in the CTE between issues of interest to developing and developed countries alike, thus thwarting the possibility of trade-offs, if any. With this option, issues of market access would be spread thinly over different agreements, leaving the two topics of concern to developed countries, i.e. the relationship between trade and environment and PPMs, to be negotiated separately.

In spite of tremendous efforts not to label the trade and environment debate as a North–South issue, these have hardly borne fruit. No one can deny that there is evidence of a conflict between developed and developing countries, which will continue and deepen unless the existing doubts about linking environmental interests with protectionism dissipate. *The challenge is to separate protectionism from environment.* The environment cannot be safeguarded and enhanced through trade sanctions. Benefiting the environment must be through access to technology, increased awareness, financial resources, and access to markets, without which developing countries will find it extremely difficult to generate the resources necessary to protect their domestic environments and the global commons.

Let me conclude by stating how Rubens Ricupero, the Secretary-General of UNCTAD, perceives the trade/environment relationship:

> Trade and Environment are two poles in a dialectical thesis, where the resulting synthesis should conciliate the two ends. Unlike many would like to believe, linking trade to environment does not come as something natural. To reconcile these two ends necessitates tremendous efforts—and not without sacrifices—where environment should not be treated as a late consideration or an afterthought.[36]

The way to deal with environmental problems is to go to their roots and integrate environment in the decision-making process from the very beginning. This requires the provision of the necessary technology and making available the necessary financing, knowledge, and expertise for the preservation and protection of the environment.

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Notes

1. *Herald Tribune,* 15 March 1999.
2. Stuart E. Eizenstat, US Undersecretary of State for Economic Affairs, "Why We Should Welcome Biotechnology," *Financial Times,* 16 April 1999.
3. Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, Rio de Janeiro, June 1992.
4. "Report of the United Nations Conference on Environment and Development," Rio de Janeiro, 3–14 June 1992, Chapter 1, Objectives 2.9 (a), p. 3.
5. "Trade and Environment: A Developing Countries' Perspective," a paper presented by the Dominican Republic, Egypt, Honduras, and Pakistan to the WTO High Level Symposium on Trade and Environment, 15–16 March 1999.
6. "Legal Wrangle Engulfs US Shrimp Dispute," *Financial Times,* 14 April 1999.
7. Opening remarks by Renato Ruggiero to the WTO High Level Symposium on Trade and Environment, 15 March 1999.
8. Daniel C. Esty, "Economic Integration and Environmental Protection: Synergies, Opportunities, and Challenges," Yale University, 5 March 1999 (draft presented to the WTO High Level Symposium).
9. GATT, *The Results of the Uruguay Round of Multilateral Trade Negotiations, The Legal Texts,* 1994, p. 6.
10. Martin Khor, "Trade, Environment and Sustainable Development: A Developing Country View of the Issues Including in the WTO Context," paper presented to the WTO High Level Symposium on Trade and Environment, 15 March 1999.
11. Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, signed Marrakesh, 15 April 1994.
12. WTO CTE, *Report (1996) of the Committee on Trade and Environment,* WT/CTE/1, 12 November 1996.

13. Article XX ("General Exceptions") gives ample opportunity to use measures to protect (a) public morals, (b) human, animal, or plant life or health, etc. The chapeau of the Article stipulates that these measures should not be applied in a manner that would *constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.*
14. The Agreement on Technical Barriers to Trade deals basically with technical regulations and international standards, including packaging, marking, and labelling requirements, and procedures for assessment of conformity. It further makes sure that these regulations and standards should not constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade.
15. The Agreement on the Application of Sanitary and Phytosanitary Measures forms an integral part of the Agreement on Agriculture. It reaffirms in its Preamble that no member should be prevented from adopting or enforcing measures necessary to protect human, animal, or plant life or health. These measures are subject to the requirement that they are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between members where the same conditions prevail or a disguised restriction on international trade.
16. The 1996 Singapore Ministerial Conference was the first ministerial meeting of the WTO.
17. Esty, "Economic Integration," op. cit.
18. Article XX (b) (g) stipulates that any country subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination could take measures: (b) necessary to protect human, animal, or plant life or health; (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.
19. *United States–Import Prohibition of Certain Shrimp and Shrimp Products,* Report of the Panel, WT/DS58/R, 15 May 1998, paras. 278–300.
20. Ibid.
21. *United States–Import Prohibition of Certain Shrimp and Shrimp Products,* Appellate Body Report, WT/DS58/AB/R, adopted 6 November 1998.
22. Ibid., para. 185.
23. Ibid.
24. It is no secret that the "one" delegation was the United States.
25. Non-paper by India for the Committee on Trade and Environment, "The Relationship of the TRIPS Agreement to the Development, Access and Transfer of Environmentally-sound Technologies and Products," 20 June 1996.
26. This is a term used in some MEAs and is of particular interest to developing countries because it is interpreted by many of them as meaning "on preferential and non-commercial terms." Indian Non-paper, op. cit.
27. Article 15 emphasizes the sovereign rights of states over their natural resources. It further stresses that access to genetic resources is to take place on terms that are environmentally sound and on a mutually agreed basis, and to be subject to prior informed consent of the party providing the resources, unless otherwise determined by that party. Article 16 implies a central role for access to and transfer of technology in the conservation and sustainable use of biodiversity resources. It further stipulates

that such transfer of technology shall be provided on favourable terms, including concessional and preferential treatment as mutually agreed.
28. See Chapter 9 in this volume, and *Report (1996) of the Committee on Trade and Environment,* op. cit.
29. R.Vossenaar and R. Mollerus, "Eco-labelling and International Trade: Possible Effects on Developing Countries," UNCTAD, ITC/233/lB/96-II-TP, 1996.
30. *Negotiating History of the Coverage of the Agreement on Technical Barriers to Trade with Regard to Labelling Requirements, Voluntary Standards, and Processes and Production Methods Unrelated to Product Characteristics,* WT/CTE/W/10 and G/TBT/W/11, 29 August 1995.
31. Chapter 9 in this volume, p. 233.
32. Ibid., p. 230.
33. This should also apply to ISO schemes, especially ISO-1400, because their unbiased formation is highly doubted by many developing countries. Such schemes cannot be forced into the WTO as internationally agreed ones, as long as developing countries in practice remain outside the effective frame of decision-making in such standard-setting bodies and organizations.
34. UNCTAD, "Environmental Policies, Trade and Competitiveness: Conceptual and Empirical Issues," TD/B/WG.6/6, 29 March 1995.
35. Ibid.
36. Rubens Ricupero, UNCTAD Workshop, Viet Nam, July 1997.