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Til underretning for Folketingets Europaudvalg vedlægges Udenrigsministeriets notat vedrørende diskussionspapir fra Kommissionen om bæredygtig handel.

NOTAT			
UDENRIGSMINISTERIET			
Nordgruppen			
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Emne:	Diskussionspapir fra Kommissionen om bæredygtig handel.		

Begrebet "bæredygtig udvikling" er defineret i FN-rapporten "Vor fælles Fremtid" fra 1987. Rapporten, den såkaldte Brundtland-rapport, blev udarbejdet af en kommission under ledelse af den tidligere norske statsminister Gro Harlem Brundtland. Ved bæredygtig udvikling forstår rapporten en proces, der tager højde for beskyttelse af miljøet, samtidig med at den fremmer arbejdstagernes rettigheder og den økonomiske og sociale udvikling under hensyn til kommende generationers behov.

Sammenhængen mellem international handel og bæredygtig udvikling er et centralt spørgsmål i bæredygtighedsdebatten. Handel indvirker på såvel miljøet som arbejdstagernes rettigheder og den økonomiske og sociale udvikling. Handelen skal i sig selv være bæredygtig, men den kan og bør herudover yde et bidrag til fremme af bæredygtig udvikling

Den tiltagende, internationale opmærksomhed omkring forholdet mellem handel og bæredygtig udvikling kan bl.a. illustreres af følgende:

- Det europæiske Råd forventes på dets møde i Göteborg den 15.-16. juni 2001 at bringe arbejdet med udformning af en EU-strategi om bæredygtig udvikling væsentligt fremad. Der lægges i forberedelsesarbejdet til Göteborg-mødet vægt på det bidrag, som handel og investering bør yde.
- På det OECD-ministermøde om bæredygtig udvikling, som Danmark sammen med Frankrig har taget initiativet til, og som vil finde sted 15.-17. maj 2001, forventes vedtaget en politisk erklæring. Til brug for ministermødet udarbejdes et analytisk papir, som bl.a. behandler samspillet mellem bæredygtig udvikling, handel og investeringer.
- Brug af WTO som redskab til at virkeliggøre målsætningen om bæredygtig udvikling er et hovedmål for EU i de igangværende internationale drøftelser om iværksættelse af en runde af frihandelsforhandlinger i WTO.

EU-Kommissionen har som bidrag til de igangværende overvejelser fremlagt et diskussionspapir med titlen "Ikke-handelsmæssige virkninger af handelspolitikken {{SPA}} spørgsmål, målsætning bæredygtig udvikling."

Papiret behandler indledningsvis forholdet mellem handel, handelspolitik og bæredygtig udvikling. Det indledende afsnit omtaler forholdet mellem handel, vækst og miljøet og mellem handel, vækst og fattigdom. Dernæst behandles redskaber til at måle nævnte sammenhænge ("bæredygtighedsvurderinger"). Papiret behandler spørgsmålet om, hvad disse sammenhænge betyder for det internationale handelssystem, herunder for WTO og for regionale og bilaterale handelsaftaler.

Et afsnit beskæftiger sig med mulighederne for at fremme bæredygtighedsmålsætningen ved i selve formuleringen af forskellige politikområder i højere grad at inddrage aktører, især udviklingslande og civilsamfund, med en mulig interesse i at gøre handelspolitikken mere bæredygtig. Papiret behandler endvidere en række enkeltspørgsmål, herunder landbrug, fiskeri, sundhed, intellektuelle ejendomsrettigheder, fre mstillingsprocesser og {{SPA}}metoder (PPMs), multilaterale miljøaftaler (MEAs), forsigtighedsprincippet, virksomheders ansvar for bæredygtig handel og forskelle i de måder, hvorpå bæredygtighed kan integreres i handelspolitikken.

I et konkluderende afsnit nævnes, at handel kan bidrage til bæredygtig udvikling, og at konkretiseringen heraf kræver en grundig debat, som Kommissionen med sit papir har ønsket at give et vægtigt bidrag til. Kommissionen stiller betydelige forventninger til debatbidragene fra repræsentanter for civilsamfundet.

Kommissionens papir, der endnu ikke foreligger på dansk, vedlægges.

Handel og bæredygtig udvikling er omtalt på Udenrigsministeriets hjemmeside www.um.dk/udenrigspolitik/handel/tidligeremaneder

Udenrigsministeriet, den 1. februar 2001



EUROPEAN COMMISSION

Directorate-General for Trade

Directorate F - Trade questions in the field of agriculture, biotechnology, standards and certification, and new technologies; investment; sustainable development; export credits

Brussels, 25 January 2001

D(2000)

Note for the Attention of the 133 Committee

SUBJECT:

"SUSTAINABLE TRADE"

Informal Working paper {{SPA}} rev. 1

ORIGIN: DG Trade

OBJECTIVE: For information and discussion

This slightly amended version of the paper circulated on 19 January 2000 contains a number of small, essentially non-substantive corrections.

133 COMMITTEE
MD : 020/01 REV1
SOURCE : Commission
FOR : Information/discussion
DATE RECEIVED : 26/01/01

INFORMAL DISCUSSION Paper

Rev.1

The non-trade impacts of trade policy {{SPA}} asking questions, seeking sustainable development

8 January 2001

Introduction

This informal paper is designed to provide one basis for a debate among interested players on the role of trade in pursuing sustainable development. It is an attempt to provide grounds for dialogue. It draws on the debate in Europe over the last few years about the consequences of trade and globalisation and about the validity of established EU trade policy prescriptions. This paper examines some of the main elements of the relationship between trade and sustainable development. Although it indicates some possible ways forward, this is not intended to define the limits of the issues to be dealt with.

DG Trade will organise debate around this theme in the early months of 2001. We will do so in Brussels and elsewhere. We will use regular contacts with Member States, the Parliament, the Economic and Social Committee, third country parties and civil society as a whole. All interested in organising or participating in such debate should consult the website for details: http://europa.eu.int/comm/trade/index_en.htm

As the EU pursues a policy of sustainable development at home, it follows that sustainable development should become a central objective for its trade policy makers. The question is whether this requires adjustments to established behaviour:

- do Community trade policies promote sustainable development in all relevant fields of national policy making, encouraging third countries to enhance sustainability within their field of responsibility?
- does the current set of international, multilateral trade rules create international regulatory obstacles to sustainable policies in countries and regions taking part?
- do current patterns of trade have negative impacts on stable sustainable growth, on the integration of developing countries in the world economy, social progress worldwide or on the established objective of environmental integration and sustainable development?

Furthermore, the specific topics which arise in the debate on trade and sustainable development themselves raise questions to which we need to be able to provide answers:

- some of our trading partners point to potential synergies between trade and sustainable development which could arise from the substantive reform of certain Community policies, i.e. agriculture and fisheries: how far could EU policy in these areas produce these synergies?
- some argue that multifunctionality in agriculture is merely protectionism in disguise: how can we ensure that protectionism is avoided whilst maintaining sustainable rural areas?
- what sort of trade offs would be necessary in order to ensure greater security and predictability for developing country agricultural exports?
- what sort of safeguards need to be built into the system to help ensure that genuine environment measures are neither distorted and to prevent their having a protectionist effect?
- bearing in mind that the neither subsidised nor unsubsidised fisheries produce fish at prices which reflect their true scarcity, how could (or should) the New Round of trade liberalisation negotiations help to create sustainable fisheries?
- how can we better argue the case that poverty alleviation and *sustainable* development must by definition go hand in hand?
- does labelling have the potential to square the PPM (process and production methods) circle, or could it open the door to a panoply of barriers to market access for developing country products? How can labelling schemes be designed so as to avoid possible pitfalls?

- to what extent is there a place for ethics-based issues in a debate on trade and sustainable development?
- to what extent are the results of WTO dispute settlement and the absence of a challenge to a multilateral environmental agreement (MEA) in the WTO changing the debate on the relationship between WTO rules and MEAs?
- if, in the final analysis, the application of the precautionary principle in science-based risk management is at the discretion of policy makers and politicians, how can one best avoid its potential use for protectionist purposes?
- how can we best ensure that trade and health issues produce an outcome supportive of sustainable development and bring gains to those whose need is greatest?
- now that the OECD guidelines for multinational enterprises have been modernised and updated what should the next steps in this sphere be?
- policy changes in some sectors might impose significant impacts on particular sectors of the population or in specific areas. How should these be dealt with?
- how can we produce a negotiated result which can be seen to make a positive and measurable contribution to sustainable development? What should the role of a Sustainability Impact Assessment be?
- how can we ensure broad support for trade liberalisation geared to sustainable development, in particular given the fact that costs and benefits might not be borne equally?
- how can the WTO better address trade and sustainable development issues? What kind of institutional changes are advisable?
- how can we make this discussion process as open as possible and help ensure broad input to the debate?

Apart from the above, might there be other issues which need to be addressed? If so, DG Trade is ready to consider any other elements which are relevant to a constructive debate. This paper offers our basis for such a debate:

- in sections 1 and 2 we trace the linkages between trade, growth, environment and development, and how the impact on sustainable development can be measured;
- in sections 3 and 4 we look at the particular multilateral and regional trade contexts;
- in section 5 we summarise how changes to trade policy making can help to improve the benefits of open trade;- in section 6 we look in more detail at some of the hard issues: this is a non-exhaustive look at issues raised so far by civil society. It also provides preliminary indications of how the Commission might respond to these issues- section 7 concludes with some remarks on the framework for the ongoing process of refining trade policy to make it even more supportive of sustainable development and the role of civil society herein.

Clearly, any view of these issues will reflect each player's perspectives of the debate. The ideas articulated in this paper represent policy as it currently stands in this ongoing process of reflection and deliberation. We hope they will encourage others to come forward with their own policies, ideas and contributions to the debate.

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- **Trade, Trade Policy and Sustainable Development**

International trade is one means by which the world's economic actors cooperate to enhance growth and meet the needs of the world's consumers. Within the European Union, a properly regulated open market aims to allow citizens freedom to interact and to satisfy their aspirations. In the world economy, the rules of international trade provide a framework for developing open international economic relations and the peaceful resolution of trade disputes. Trade thus reflects domestic EU goals and values. As the EU pursues a policy of sustainable development at home, it follows that sustainable development should become a central objective for trade policy makers.

What exactly is sustainable development? It was defined by the 1987 Brundtland Report "Our Common Future" as a process that "meets the needs of the present without compromising the ability of future generations to meet their own needs". This is understood to mean that both developed and developing economies pursue development strategies that secure non-inflationary growth while preserving environmental resources and promoting social equity. The balance to be struck between these three components of sustainable development is the subject of much controversy.

1.1. Trade, Growth and Environment

International trade in food, goods and services, and international flows of capital, people and know-how, are parts of the process of globalisation and of the process of economic growth. Growth depends on global productivity. Trade and investment liberalisation is critical to the creation of competitive markets. Removing obstacles to economic activity between countries will increase the efficiency of the world economic system. It will allow the same level of production with less resource depletion and pollution. Liberalisation provides a more effective market world-wide and gives producers a powerful incentive to adopt more efficient production practices.

With the right national (and if possible, international) non-trade policies, trade liberalisation can reduce pressure on the environment by creating export opportunities for developing countries to diversify away from dependence on primary resources. Liberalisation can speed up the spread of environmentally sound technologies, goods and services, thereby improving waste water treatment and waste recycling practices, for instance. Such progress reduces the risk of activities such as tourism damaging eco-systems in emerging economies.

1.2. Trade, Growth and Poverty

Many studies have tried to establish a link between trade openness and economic performance, in spite of the obvious econometric difficulties in isolating the trade effects from many other economic factors and policies. There is a widespread consensus among academics that trade openness reinforces economic growth and that where countries, both developed and developing, trade more they tend to grow more rapidly. The evidence from several empirical studies using a variety of methodologies seems rather convincing in establishing this positive link.

Some observers have argued, however, that, in spite of trade promoting higher economic growth, this does not translate into either economic convergence between countries or a reduction of poverty within countries. Although it is accepted that there is evidence about lack of income convergence worldwide, a recent study has shown that countries that trade extensively with one another tend to show relative income convergence.

The Links in the Chain

Below are examples of possible links between trade flows, trade liberalisation or trade rules, and sustainable development:

(1) Trade flows can evolve with international shifts in comparative advantage, (independent of government intervention to stimulate activity) to create new market access or to write new rules. Trade thus affects the level of economic activity, by creating more eco-efficient resource allocation within economies, but possibly (if the economy is on an environmentally unfriendly path) by stepping up pressures on scarce resources or biodiversity. Trade can diffuse new, ecologically sound goods, services and technologies, or it can boost demand for unsustainable production. The consequence of trade can only be judged case by case, country by country. In this sense, there is nothing special about the "trade impact" as such: it is simply a further contribution to growth and hence to greater use of resources.

(2) Trade incentives can magnify all the effects above. This can be good if such incentives mean better eco-efficiency at lower cost (one principle of the Framework Convention on Climate Change) but they may boost unsustainable activity. Reducing such incentives is desirable. They may be "WTO-legal" but not environmentally friendly. Case-by-case analysis is needed.

(3) Trade liberalisation also intensifies and accelerates the trends identified in (1). If this means new pressures on a fragile regulatory framework in a particular sector, it should be possible to reconcile liberalisation with broader non-trade needs. This implies devoting more resources to preparing a more robust regulatory framework. Take the case of trade in timber. Further liberalisation should be accompanied by developing and enforcing better international certification of sustainably managed forestry.

(4) Trade-related rules may themselves have a direct impact on national sustainable development strategies. They are meant to prevent discrimination among foreign suppliers of goods and discrimination between national and foreign suppliers of goods. WTO rules

also include carefully crafted safeguards (so-called "regulatory carve-outs") for the national right to regulate. Sometimes, the need for regulation in some areas appears or grows (e.g. GMOs) or becomes more deeply felt by more countries around the world (e.g. consumer protection). Then one must ask if WTO regulatory carve-outs are adequate (e.g. does the TBT code guarantee consumers rights to information on labels even though the issue is not linked to safety? The answer, for us, is yes) and yet not open to abuse (e.g. should regulators be able to set arbitrary limits on the numbers of operators in a sector to avoid excessive competition? The right answer seems to be no). Trade rules generally pment objectives. We need to ensure that this remains the case, and that WTO rules are determined by its members rather than through unpredictable developments in case law. The next Round should review relevant WTO rules from the sustainability angle.

Turning to the impact of trade on poverty, it would be tempting to argue that, if trade promotes economic growth as was said before, then it should have a positive impact on poverty reduction. It is generally accepted, however, that this depends on many other aspects beyond trade, from domestic policies such as education and health, to institutions and governance.

Available evidence tends to indicate that trade liberalisation is generally a positive contributor to poverty alleviation, not only because it reinforces growth but also by allowing people to exploit their productive potential, curtailing arbitrary policy interventions and helping to insulate them against shocks. Yet it needs to be complemented and reinforced by the right domestic public policies, both in general and in particular to ease adjustment costs. This being said, there is no simple one-to-one relationship between trade and poverty in all cases. Moreover, poverty could be exacerbated by trade for some in the short run and, even in the long run, trade reforms will create winners and losers.

Trade liberalisation alone cannot capture all these benefits. The most dynamic and open economies in the world are also those with the most sophisticated domestic regulations to ensure that production does not harm the environment, or endanger human health and safety. Developing countries have a hard task ahead in achieving sustainable growth while developing regulatory systems to keep pace with it.

1. Measuring these Impacts: SIA

How should the impact of trade liberalisation on sustainable development be assessed? A team of European experts in environment and development issues has produced a recommended methodology for carrying out sustainability impact assessments (SIA) for the Commission.

The technique will be applied to the WTO built-in Agenda as well as to the broader Round the EU seeks to launch. SIA should enable European policy makers and other interested parties to understand more clearly how the next WTO trade liberalisation package can contribute to sustainable development.

With the help of Sustainability Impact Assessment, it will be necessary for the EU to focus negotiating effort on objectives that can advance trade growth while enhancing sustainable development worldwide. The SIA will also enable us to identify policy areas where trade liberalisation is desirable, but where the impact of liberalisation will be enhanced if accompanied by more "flanking" measures. These would probably fall outside the field of trade policy, but would enable developing countries, for example, to make sure extra growth does not harm the environment. The need for such capacity building has from the start been central to the Community's approach to WTO negotiations. It is one of the reasons why Europe has stressed the need for the WTO to pursue more coherent policy making, both on trade, but also in co-operation with the IMF, World Bank and other major international organisations.

SIA can only be one input in the making of a sustainable trade policy. The political conclusion to be drawn from such an assessment is ultimately a matter for the Council, Parliament and Commission, and for WTO members. Still, those who decide on a WTO package will be better informed on linkages between trade and other policy areas. SIA will also draw in new actors to help shape the EU policy debate.

Next Steps for SIA

The SIA methodology needs to be refined. The next phase of the SIA project will consist of continuous analysis of possible trade liberalisation outcomes, assessing likely impact on social, environmental and economic developments against a set of objective indicators for Europe and for other participating countries. Some of this analysis can be quantitative, and will draw on familiar techniques such as computerised general equilibrium modelling. Other aspects will be

mainly qualitative, either because the issues at stake are not quantifiable or because the statistical data do not exist.

In this next phase:

The trade liberalisation packages to be studied will mostly consist of non-comparable components (import duty cuts, rule changes, technical assistance). Each component may produce a different impact on a series of growth, social and environment indicators. In the pilot phase, SIA used nine indicators: average real income; employment; net fixed capital formation; equity and poverty; health and education; gender inequality; environmental quality of air, water and land; biological diversity; and other natural resource stock.

SIA will look at impacts in developing countries and regions as well as in the EU and other developed countries. But there are huge variations in data available. There is no single simple policy response: the balance to be struck between objectives (growth, equity, ecology: the so-called triple bottom line) is determined by social preferences and prevailing circumstances in each society. The balance will legitimately vary both over time and among countries examined. The Commission will continue to share the results of its own SIA with all trading partners, but believes each country should integrate sustainability into its trade policy on the basis of its own needs.

The SIA can also identify areas where trade is not a determining factor. For example, it was highlighted by some in pre-Seattle debate that forest product duty reductions were unsustainable. One review found that zero import duties world-wide on forest products would induce a 1 percent increase in overall consumption, whereas the mere extrapolation of current consumption patterns and foreseeable demographic or economic trends (whatever the duty) would lead to a 50 percent rise in consumption over the next decade. This analysis suggested that issues such as encouraging sustainable forest management and facilitating stronger rules for certifying sustainable timber production may be more important than tariff reductions for promoting consumption.

The EU can thus check whether trade negotiations can produce more trading opportunities which are compatible sustainable development. Furthermore, integrating sustainability into trade negotiating objectives, both in the EU and WTO, should boost economic welfare while enhancing international co-operation. We can pursue economic, environmental and social equity goals simultaneously. SIA will be built into the EU-ACP regional trade negotiations now mandated and may also be applied to other major negotiations (e.g. EU-Mercosur).

To sum up, SIA is an important tool for ensuring that further trade liberalisation contributes not just to growth, but to equity, ecological efficiency and environment protection. It can also help to identify whether trade is a key issue for sustainability. The Commission is committed to using SIA as a contribution to policy-making on important multilateral trade negotiations and will, where possible, submit at least an outline assessment to the Council in trade negotiations from now on.

3. What this means for Multilateral Trade

Sustainable development is not alien to the WTO: the concept is enshrined in the first preambular clause of the Marrakech Agreement establishing the WTO. However, trade policy is more than the sum of WTO rights and obligations, both for the EU and for other WTO members. The WTO leads in the development of trade policy world-wide, but developing a sustainable trade policy depends on national actions that go well beyond abiding by WTO agreements. As mentioned above, so-called "non-trade flanking measures" will most often be completely outside the WTO's remit.

Despite this, public debate on trade and sustainable development usually focuses on the WTO. This is hardly surprising, since trade policy is clearly international in nature, which is why governments wanted a strong multilateral institution for the orderly development of their trade relations. Trade policy, more than any other, needs to be pursued within a framework of international commitments and is often developed in multilateral negotiations.

The Commission is convinced that the WTO is a vital institution of global governance whose primary function is to guarantee the "rule of law" in international trade relations. Through successive rounds of trade negotiations, governments have agreed to liberalise their trade regimes progressively, on a non-discriminatory basis, and to set up commonly accepted rules to govern their trade relations. The alternative would be a system based on bilateral negotiations and power diplomacy

which would work against the interests of small countries and developing countries. Even large trading countries would suffer since the WTO provides a generally accepted means of solving and preventing trade disputes. It can be argued that a rule-oriented trading system particularly benefits small firms, since multinational corporations have more resources to overcome trade obstacles and to adapt to changes in trade regimes.

3.1. The EU approach to a more sustainable WTO

A Sustainable WTO

Some specific topics for negotiations that would enhance the WTO's contribution to sustainable development are:

- a) Substantial improvements in market access across the board, including products that developing countries are likely to export. This would imply (a) the EU and other developed countries being willing to liberalise substantially in sectors where developing countries are competitive; and (b) ensuring that the subsequent increase in production takes place within a framework of technical assistance or other policies that limit risks of environmental or social degradation.
- b) New WTO rules on investment, competition and trade facilitation to improve governance of the world economy. The contribution of such rules to development should be an important objective of the negotiating process. New rule making in these areas should contribute to enhancing the regulatory capacity of developing countries and help all countries to address new challenges raised by globalisation.
- c) Clarifying and, if necessary, improving existing WTO rules from a sustainable development perspective.
- d) Improving the transparency of EU and WTO trade policy-making processes.

Still, the Multilateral trading System could be improved. The EU strongly supports a new Round of multilateral trade negotiations because it believes in the need for better market access opportunities and better multilateral rules. Indeed, we consider that the WTO could contribute significantly to promoting sustainable development and that this should be the central objective of a New Round of Trade negotiations.

We should remember that the WTO is and will remain a trade institution. National governments or other international organisations will stay responsible for more concrete, directly applicable aspects of sustainable development. So a coherent approach to global governance should imply:

- a) Parallel efforts to reinforce international organisations responsible for development co-operation and environment, or social dimensions of sustainable development; and
- b) Reinforced co-operation between the WTO and those international organisations.

3.2. Some key issues

3.2.1. Environment

As regards the relationship between WTO and environment policy, the key issue is a clarification of WTO rules. Some fear that WTO obligations are an obstacle to sound environmental policies in the EU and world-wide. This is plainly wrong. The latest dispute settlement trends, including the WTO Appeals Body findings on hormones and on shrimp/turtle, show the contrary. The WTO does not seek to second-guess national decisions as to the level of safety each country decides to ensure for its citizens, or the level of protection sought for animals in danger of extinction.

The WTO, however, does exercise its role as a guardian of due process and sound government principles. For example, it does ask for objective scientific analysis to be carried out as a basis for decisions taken to apply the Precautionary Principle in a way that might affect trade. It requires countries concerned to agree on certain types of trade measures imposed for environmental purposes, rather than applying them in an arbitrary or unilateral way.

This is the lesson learnt from criticisms of US policy to ban imports of shrimp from countries whose protection of sea turtles the US administration thought was inadequate. The EU has nothing to fear from a requirement that government decisions be made transparently, objectively and, if appropriate, on the basis of international co-operation, and EU exporters have much to gain if such requirements are developed world-wide. That is why it wants clear statements confirming recent encouraging

jurisprudence, so that WTO members have permanent benchmarks on sustainable development principles in WTO rules. Such benchmarks should clarify the role of the Precautionary Principle, firmly inscribed in WTO for health and veterinary purposes. It would be useful to clarify that genuinely environmentally motivated subsidies are legitimate and that multilateral environment agreements and associated trade measures are also respected by trade law.

Further thoughts on specific key issues in the trade and environment debate can be found below in sections 6.5 (Process and Production Methods), 6.6 (Multilateral Environmental Agreements) and 6.7 (Precaution).

Trade and Environment - the Story so far

The current debate on trade and sustainable development marks an evolution from earlier discussions on trade and environment in which the Community was also a leading voice. The Community has consistently supported both a high level of environmental protection combined and an open, equitable and non-discriminatory multilateral trading system.

In the process for setting up the WTO the Community was active in calling for the creation of a Committee on Trade and Environment (CTE) within the WTO. Since the inception of the CTE, the Community has played an active role in striving to push forward Committee's discussions on the ten items of the Committee's Work Programme. In the run-up to the 1996 WTO Ministerial the Commission presented to the Council and the European Parliament a Communication on Trade and Environment 54 final of 28.02.1996) which formed the basis for the Community's position at that summit and afterwards. The Community also submitted non-papers to the CTE, inter alia on market access and on eco-labelling, to feed into discussions there.

In 1999, inspired by a proposal from the European Commission, a High Level Symposium on Trade and Environment was held at the WTO. It was held back to back with a similar symposium on Trade and Development, an indication of the growing awareness among the protagonists of the trade, environment and development continuum. The symposia provided useful fora for a constructive and open exchange of views between WTO Members' officials and Ministers, representatives from business and trade unions and civil society in the approach to the 1999 WTO Ministerial in Seattle.

At Seattle, the Community was at the vanguard of efforts to further enhance the relationship between WTO rules and WTO Members' environmental policies. It put forward an agenda calling for Ministers representing WTO Members to reaffirm the organisation's commitment to sustainable development as set out in the preamble establishing it. The Community also argued that sustainable development should be the underlying objective of a New Round of trade liberalisation negotiations. Environmental concerns to be mainstreamed throughout them. Furthermore, it flagged up three key environmental issues which it felt were in particular need of clarification: the relationship between WTO rules and a) MEAs, b) process and production methods and labelling, and c) environmental principles, especially the precautionary principle.

3.2.2. Labour

The EU's approach to the issue of trade and labour is a good example of an area in which the WTO contribution should focus on policy dialogue and analysis. The Council has clearly stated the EU's firm opposition to any protectionist or sanctions-based approach to the issue of trade and core labour standards. At the same time, it is clear that the WTO must take part in a broader dialogue to promote better understanding of the links between trade and development. Such dialogue should include a wide range of social development issues of broad concern. For instance, there is a need for better understanding of the relationship between trade liberalisation, job creation and the fight against poverty, including its gender dimension. Institutions such as the ILO, WTO, UNCTAD and the World Bank should take part in such a dialogue. Their participation could improve national policy-makers' ability to gauge the social impacts of trade liberalisation, so develop policies to maximise positive impacts and limit negative effects. Where appropriate, such policies should be supported through international co-operation.

3.2.3. Sustainable trade must also include a development dimension

Globalisation and integration in the world economy through trade and investment is bringing major benefits to emerging economies yet economic and social conditions in many least-developed countries, including most of sub-Saharan Africa, have increasingly lagged behind. There is a split between a group of middle-income developing countries trading successfully and nearly 80 developing and transition economies, comprising 35% of the world's population, where participation is marginal.

Reversing this trend has become a major policy objective for both developed and developing countries, and trade policy reform is one key element. Fuller integration of countries and regions into the multilateral trading and investment system would enhance conditions for more rapid investment and overall economic growth by providing more favourable and secure market access and by fostering the expansion and diversification of exports. Obviously, trade policy must be an integral part of overall development and poverty reduction strategies. It has also to be recognised that conflict and instability need to be dealt with first: peace, stability, and good governance are preconditions for any real progress.

The challenge for LDCs and many low-income countries is to use the opportunities the multilateral trading system offers and pursue trade policy reforms despite structural economic weaknesses, supply-side constraints and, in some cases, social and political instability.

A new WTO round would provide an opportunity to enhance the organisation's contribution to meeting the development challenge. All developing countries stand to benefit from better market access and from an improved framework of multilateral rules. The European Commission, however, feels much can be done without waiting for the launch of a new Round. We have, therefore, proposed further action to ensure duty free and quota free access for exports from least developed countries and develop a more coherent and integrated approach to trade-related technical assistance.

Better market access alone is not a panacea for LDCs' problems. After all, most are ACP countries which have long enjoyed very favourable access to EU markets. Despite this, their share of the EU market has steadily declined. This points to the need for a wide range of supply-side reforms, including further ACP domestic economic liberalisation. Such reforms require consistent support from the international community. That is the idea behind the Integrated Framework for Trade-related Technical assistance for LDCs, jointly sponsored by the WTO, WB, IMF, UNDP and UNCTAD. But the Framework's performance has been disappointing so far and improving it is a matter of the highest priority.

3.2.4. Capacity Building

Technical assistance should also include capacity building for the implementation of existing agreements, or in connection with the negotiation of new agreements. And it should cover improving developing countries' regulatory capacity to address the sustainability impacts of additional trade liberalisation. The EU has proposed a more coherent, integrated approach to trade-related technical assistance.

This new approach to technical assistance should result in more operational trade-related development policies. It greatly exceeds the capacities of the WTO, which would need to work closely with development organisations and other institutions with sectoral expertise. It would also require strong commitment from all bilateral donors and full partnership with developing countries.

The EC and its Member States provide more than 50% of world overseas development assistance and have been actively involved in supporting trade-related technical assistance. The recent Communication on Development Policy identified as a priority the increase of technical assistance related to trade. Over the next year, the Commission intends to boost its trade-related technical assistance in both quality and quantity. This will require closer co-ordination between the Community and Member States, as well as with other multilateral organisations and bilateral donors. The EU will mainstream support for sustainable trade policy reform. In particular, the EU will support trade policy reforms in developing countries that include strategies aiming to ensure the economic, social and environmental sustainability of trade and investment policies. Analysis will further focus on trade-reform impact on poverty and gender issues. Results should support decision-makers in the fine-tuning and phasing of reforms as well as in establishing accompanying support-measures.

4. Regionalism and Bilateral trade: do the Impacts Differ?

Sustainable development considerations are also taken into account in the Community's various bilateral and regional trade agreements. Agreements mainly with developing countries generally have the development dimension covered; environmental considerations are taken into account but the social aspect is perhaps that for which there is least provision.

In the **Cotonou Agreement with ACP** countries, the Parties reaffirm their commitment to promoting the development of international trade so as to ensure sustainable and sound management of the environment, in accordance with international conventions and undertakings and with regard to their respective levels of development (Articles 32 and 49). Provision is made for the special needs and requirements of ACP States to be taken into account in the design and implementation of environment measures. Bearing in mind the Rio Principles and with a view to reinforcing the mutual supportiveness of trade and environment, the Parties agree to enhance their co-operation in this field. In particular, co-operation aims at coherent national, regional and international policies, reinforcement of quality controls of goods and services related to the environment, and the improvement of environment-friendly production methods in relevant sectors.

In the case of **Mexico**, the 1991 Framework Agreement for Co-operation with the EU refers to the protection and improvement of the environment. Article 31 covers problems caused by the contamination of water, soil and air, erosion, desertification, deforestation and over-exploitation of natural resources and the growth of towns, as well as those relating to the productive conservation of forest and aquatic flora and fauna.

The Contracting Parties undertake to establish and strengthen public and private environmental structures and to introduce laws, standards and models. Provision is also made for research, training, information and public awareness measures, and for studies and technical assistance. These activities are supported by a commitment to organise meetings, seminars, workshops, conferences and visits by officials, experts, technical personnel, entrepreneurs and others active in the field of the environment, as well as by the exchange of information and experience on major environmental issues.

Building on this, the Economic Partnership, Political Co-ordination and Co-operation Agreement between the EU and Mexico (1 October 1999) states (Article 34) the need to take the preservation of the environment into account in all co-operation measures undertaken by the Parties.

The Agreement states that co-operation should aim at preventing degradation of the environment and promoting the conservation and sustainable management of natural resources. It also covers, inter alia, the exchange of information and experience on environmental legislation; for encouraging the use of economic incentives to promote compliance; and strengthening environmental management at all levels of government. Provision is made for co-operation between the Parties leading to the conclusion of a sectoral agreement in the field of environment and natural resources if deemed appropriate.

The Agreement on Trade, Development and Co-operation between the EU and **South Africa** (8731/99) contains an "exceptions" article that allows for prohibitions or restrictions based on "the protection of health and life of humans, animals or plants". Environmental elements are also contained in articles regarding co-operation in areas such as energy, transport, tourism, etc. Article 84 establishes that the Parties will co-operate to pursue sustainable development through the rational use of non-renewable natural resources and the sustainable use of renewable natural resources, thus promoting protection of the environment; prevention of its deterioration and the control of pollution. The Parties also aim to improve the quality of the environment and work together to combat global environmental problems and special consideration is given to the development of capacity in environmental management. Provision is made for a dialogue for identifying environmental priorities and for the review of earlier South African policies on the state of the environment, for example as relates to urban development, management of waste, etc.

As regards the **ASEAN** countries, Article 3 of the 1980 Co-operation Agreement between them and the EU and ASEAN refers to economic co-operation whereby the Parties agree to encourage and facilitate co-operation in the fields of science and technology, energy, environment, transport and communications, agriculture, fisheries and forestry.

ASEM (Asia-Europe Meetings) has also encouraged co-operation. At ASEM III (Seoul 2000), leaders acknowledged that the degradation of the natural resource base and, in particular, the problem of energy and environment, was a challenge for all ASEM partners. They reiterated their commitment to addressing global environmental issues, to ensuring a successful Sixth Conference of the Parties to the UN Framework Convention on Climate Change (November 2000), and to working towards the early entry into force of the Kyoto Protocol. Leaders also endorsed ASEM initiatives in the environmental field, including Co-operation on Forestry Conservation and Sustainable Development.

The Asia-Europe Co-operation Framework 2000 (AECF), adopted at ASEM III, sets out the principles, objectives, priorities and mechanisms for the ASEM process for the period 2000-2010. Key Priorities include tackling global environmental issues, striving for sustainable development, and supporting the work of the Asia-Europe Environmental Technology Centre (AEETC) in Bangkok.

The 1996 Interregional Framework Co-operation Agreement between the EU and **Mercosur** sets out the need to take account of environmental protection in all the Parties' co-operation activities (Title III). Under Article 17, the Parties agree to encourage awareness of environmental issues and the rational use of natural resources in all fields of interregional co-operation. They also agree to devote special attention to measures connected with the international dimension of environmental problems. Co-operation is foreseen in the form of exchange of information and know-how on regulations and standards; training and education; technical assistance, joint research projects and institutional assistance.

Building on this, the Preamble of the Directives for the negotiation by the Commission of an Association Agreement between the EU and Mercosur establishes the need to promote economic and social progress for their peoples, taking into account the principle of sustainable development and environmental protection requirements. In the "Economic Co-operation" chapter, point 13 refers to co-operation in the field of the environment: the aim of co-operation is to promote the protection of the environment and the rational use of natural resources in pursuit of sustainable development.

In particular, co-operation is to focus on:

- projects aimed at strengthening Mercosur's environmental structures and policies;
- exchange of information and experience, including on rules and standards;

- environmental training and education;

- technical assistance and joint regional research programmes.

The **TEP** Action Plan (Chapter 3.6: Environment, §12 and 15) provides for the establishment of a TEP Environment Group to discuss and negotiate a TEP environment work-plan focusing on the interface between trade and environment.

The TEP will co-ordinate with the US-EU High Level Environmental Bilateral Consultations. Its work will cover: developing common objectives on trade and environment to guide joint work in relevant fora; promoting greater co-operation between US and EU scientists and regulators on environment issues; informing trade negotiators of the potential impact of other TEP negotiations on environmental interests; developing common approaches to trade-related issues in the negotiation and implementation of multilateral environmental agreements. The TEP supports Transatlantic Environment Dialogue (TAED) involving a broad spectrum of environmental NGOs to inform EU and US governments on environmental issues, including those in the TEP process.

• **Improving Trade Policy Processes in the EU and in the WTO**

Trade policy can touch on almost any area of human activity. It is important, however, to recognise issues affecting developing countries which may have emerged via the globalisation debate, but which are best dealt with through channels other than the WTO or through trade negotiation.

The Commission has been taking steps recently to develop a process that involves all those with a potential interest in a sustainable trade policy for Europe. Trade policy used to be a relatively narrow field of activity, primarily of interest to exporting or importing businesses and to national or international civil servants. This has changed with growing public awareness that international trade talks can have a local and non-economic impact. In response, the European Commission made an effort in the run-up to Seattle to convene broad meetings of interested parties, to enable dialogue among legislators, NGOs, academic experts and suppliers or importers of goods and services.

Since Seattle, the Commission has begun to develop a clearer structure for this dialogue. With the help of a contact group representing European civil society, the Commission is now committed to developing a rolling programme of trade policy dialogue. Monthly issue-group meetings take place, with each agenda focusing on specific subjects, as a way of improving contacts between Commission services and those with an interest in each policy area, as well as better all-round understanding of issues that need further analysis or debate.

We need continued feedback of this sort from civil society on this broadening of the trade policy debate. We recognise that this will take time and that processes will have to be adjusted as needs evolve. Broadening the debate implies new initiatives beyond those in Brussels and at EU level, as civil society is more densely organised at local level, or at the Member State level. Distance and language can both be obstacles to communicating concerns to Brussels. How far will developments underway at EU level stimulate similar initiatives at national and at local level throughout Europe?

Similarly, in June 2000, Commissioner Lamy welcomed the creation of a "European Rio+10 Coalition" under the auspices of the European Movement and European Partners for the Environment. It will lend its support to the efforts of civil society and business to develop a positive vision for the 2002 Summit which should include a focus on the contribution trade can make to sustainable development.

External Transparency: EU proposals

- Ensuring immediate derestriction of most WTO documents.
- Enhancing contacts and the exchange of information between the WTO Secretariat and NGOs.
- Ensuring informal dialogue such as symposia with civil society on a broader range of WTO issues.
- Opening meetings of the Trade Policy Review Mechanism (TPRM) to parliamentarians and NGOs of the country under review where possible.
- Holding an annual open meeting of the WTO. This could enable discussion of a report on WTO activities, and include a symposium for dialogue with civil society as well as discussion panels with the heads of other international organisations.

- Holding a meeting of parliamentarians of WTO members on a yearly basis, back to back with an annual open WTO meeting. Greater involvement of national parliaments in WTO activities would help foster greater public understanding and support for the multilateral trading system. A WTO Parliamentary Consultative Assembly could also be set up.

- Existing WTO guidelines could be reviewed to strengthen procedures for consultations with NGOs. A formal accreditation system for NGOs could be set up.

Seven years after the end of the Uruguay Round, it is also time to think about improving the WTO as an institution. Globalisation means all institutions need to adapt to the growing complexity of the issues they cover. As WTO membership grows, it needs to become more effective and transparent, and better involve all members at a time when trade policy issues are increasingly a matter of public interest.

That is why the Community has already presented proposals in Geneva to improve the functioning of the WTO. These include both issues of internal and external transparency. We intend to ensure, both within Europe and in the WTO, that the processes by which trade policy is defined and executed have a higher degree of transparency.

6. Some other hard issues

This section looks at nine "case studies" where post-Seattle debate has identified a strong potential link (and sometimes potential conflict) between trade policy and sustainable development. Some of these cases have already been introduced into the DG Trade issue group debate. Others not. The list of cases is not intended to be exhaustive.

6.1. Agriculture

Beyond its primary function of producing food and fibre agriculture contributes to the achievement of a number of other important societal goals: it performs a multifunctional role. Apart from its production function, agriculture encompasses other functions such as the preservation, the management and enhancement of the rural landscape, the protection of the environment, including against natural hazards and a contribution to the viability of the rural areas. Agriculture must also be able to respond to consumer concerns, for example those regarding food quality and safety.

As societal goals evolve it is crucial that appropriate policy measures be adopted in order to enable agriculture to continue to contribute to these goals. These policy measures should be tailored to meet specific goals in the least trade distorting way.

The Agreement on Agriculture recognises the need for a certain balance between the on-going multilateral reform process of agricultural policies and WTO Members' non-trade concerns (NTCs). For the EU, safeguarding the existing multifunctional character of its agriculture, as well as enhancing its multifunctional role for the future, is such a non-trade concern.

Multifunctionality is not simply externalities arising from agricultural production. Nor is it divorced from an institutional and political context. It is a fact that European society cares about the multiple functions of agriculture and as a result policies have been established to ensure their supply. Such functions are, of course, interdependent with agricultural production (and between themselves) and are valued by society in their own right.

A discussion of the various aspects of multifunctionality implies referring to broad concepts, in particular the territorial and the public good dimensions. The preservation and enhancement of rural landscapes as shaped by agriculture, the prevention of de-population in remote areas and the development of balanced and viable rural areas can be looked upon as public goods or services. As they are often not or not sufficiently rewarded by the market, there is a tendency to underprovide these services. Additionally, depriving society from the benefits of a public good (e.g. the cultural landscape) leads to a decrease in society's welfare.

6.1.1 Environmental function

Society places an increasing value on the preservation of the environment and semi-natural habitats, and the scenic features of cultivated traditional landscapes. Indeed, apart from their biological and ecological interest, cultivated landscapes and habitats also have aesthetic, cultural and historic qualities and contribute to the general well-being of society. This is particularly true in the European context where traditional farmed landscapes, semi-natural habitats and biodiversity are important features of the countryside and have evolved over the centuries alongside a human presence and activities pursued on this land, notably farming.

The high cultural and nature values of the farmed landscape can be harmed by both the intensification of agriculture and the marginalisation or abandonment of agricultural land. The respect of minimum standards ensuring sustainable resource use and prevention of pollution can be considered to fall under good agricultural practice. It is perceived that rules of "good agricultural practice" are generally not seen as an infringement on private property rights.

Under such circumstances, the polluter pays principle requires that compliance costs fall on the farmers. In cases where society demands more from the farmer than what can be considered good agricultural practice, however, for instance preservation of certain landscape features or actions to enhance biodiversity, the farmer is providing a public good or service, which does not or not sufficiently come about without policy intervention.

6.1.2 Rural function

Maintaining agricultural activities, in particular in remote or peripheral areas where there are few other possibilities of gainful employment, is important to prevent de-population, the social and economic cost of which is high for society, and to ensure that human activities and presence are well-balanced throughout the territory. This objective is especially relevant in the European Union (80% rural) where population density and the level of economic development vary significantly among rural areas.

In the past, the rural function of agriculture was mainly assured by production support policy. Relatively high price support meant that regions with higher production costs could also survive. With further reductions in price support farming in many intermediate and less favoured areas could come under severe pressure. Other forms of support are. These should be so designed so as not to increase agricultural production, but to preventing the disappearance of agricultural and the rural livelihood attached to it in whole regions.

6.1.3 The multifunctional role of EU agriculture: examples of policy instruments

Under the Agenda 2000 reforms the so-called second pillar of the CAP comprising the environmental and rural functions has been reinforced, implying a further shift away from generic market support (the first pillar) to targeted agri-environmental and rural development measures. A range of programmes and measures have been brought under a common rural development regulation covering the accompanying measures to the 1992 reform (agri-environment, early retirement and afforestation) , aid for structural adjustment and to young farmers, investment aids, processing and marketing aids, diversification aids and the less favoured areas (LFA) scheme to promote continued agricultural land use and low-input farming systems.

Current EU policies aiming at supporting the multifunctionality range from general services such as research projects, education and training, facilitation of private initiatives and public infrastructure, to support measures targeted at producers, and application of regulatory standards. Given the diversity and variety throughout the EU, many of the measures can be adapted to local conditions and managed through local projects. EU regulations provide for framework by setting objectives and defining general criteria and principles. Agenda 2000 reinforces the scope for such policies, while simplifying the regulatory framework and allowing for more flexibility at local level.

Agri-environmental payments are made through a series of programmes, some of them targeting strictly delimited "environmentally sensitive areas". These payments promote conversion to organic farming; non-organic farming with environmental improvements; maintenance of existing low-intensity systems to maintain traditional landscapes and/or high natural-value sites; rearing local breeds in danger of extinction; and non-productive land management such as environmental set-aside and preservation of features like stone walls and hedges.

Structural and rural development measures comprise a range of instruments. These measures are generally implemented in an integrated, multi-disciplinary and multi-sectoral way, with a clear territorial dimension and adapted to local conditions. Of particular importance for enhancing the multifunctional role of farming are investment aids, less favoured areas (LFA) schemes and the LEADER programme.

6.2. Fisheries

Fisheries has been the subject of increasing debate in recent years as concern has grown about the impact of current levels of fishing on the world's fisheries resources. There is broad agreement that the main cause of stock depletion is bad management of fisheries resources as well as recognition of the complexity of the issues which need to be addressed in order to move towards sustainable fisheries management.

Fisheries suffers from the so-called tragedy of the commons: markets often fail to internalise or reflect the real scarcity of fisheries resources. There are some similarities to the challenges posed by climate change: both represent a global resource to which no (or inadequate) property rights are ascribed and therefore there is no incentive for any individual

actor to limit their consumption. For fisheries this means there is no incentive for individual fishers to conserve where there is unlimited access to the resource base: if they do not catch the fish, the next fisher will.

Discussions on fisheries and fisheries management continue in a number of international fora, including the FAO, the WTO and the OECD. We believe that the most appropriate forum for work on sustainable fisheries is the FAO: not only does its mandate specifically cover the issue, it has wide membership, including both developed and developing countries.

As about one third of fish production is traded the quest for sustainable fisheries is also of relevance to efforts to achieve synergies between trade and sustainable development. There has been much discussion on fisheries within the WTO's Committee on Trade and Environment but the debate has tended to focus on subsidies, particularly those granted to their fleets by developed countries, and their possible effects on over-capacity. The debate is hindered, however, by the lack of a global definition of what constitutes a subsidy.

A recent report by the OECD, however, showed that more than three quarters of developed country support to fisheries was actually for general services such as infrastructure (ports) and enforcement and research, in other words activities which do not lead directly to over-capacity. On the contrary, enforcement and research are actually essential for ensuring the sustainable use of fish stocks and aquatic systems. The debate is further complicated by the fact that with many other subsidies it is difficult to distinguish clearly between those which are environmentally beneficial and those which are environmentally harmful. Furthermore, the fastest growth in capacity and take is in non-subsidised fleets in countries with low operating costs.

Removal of those subsidies to fisheries which can be accurately identified as being environmentally harmful will no doubt have a role to play in achieving sustainable fisheries and has the potential to produce a so-called win-win situation. It is clear, though, that not only would tackling this aspect alone be but a drop in the ocean, any positive effects it may have would soon be offset by the surging capacity of unregulated fleets.

The key to sustainable fisheries lies, therefore, in securing some form of agreement on sustainable fisheries management at international level which addresses all the factors which have an impact on stocks. We are willing to engage in meaningful discussion in order to achieve such a result but if real results are to be reaped the discussion must be comprehensive, serious and include all players.

6.3. Health

The issue of "trade and health" emerged just before the WTO Ministerial in Seattle in December 1999. It was triggered by concerns that the compulsory licensing rules of the WTO TRIPs agreement could hinder the development of policies to give patients in developing countries access to appropriate medicines for serious diseases, notably AIDS.

Subsequent analysis showed that the problem of access to health in developing countries is much more serious, and much more complicated. Indeed, it is so serious that it required the Commission, the Council and other interested parties to take a broad multidisciplinary approach. No other issue has received as much attention in post-Seattle Commission debate with business, NGOs and other interested parties.

Among the areas now being considered are: the relationship between private and public research, and current and foreseeable needs for new treatments for key diseases; the relationship between intellectual property rights and the availability of certain drugs; the need to devote more attention and resources to developing adequate health service infrastructures in developing countries, given current epidemics; and the contribution that trade policy itself can make to solving health problems, for example through removing tariff or regulatory obstacles to the approval and marketing of medicines or to the enhancement of health services.

The Commission regards this process as a potential success story for sustainable trade. The European debate focussed on WTO policy aspects of the health issue at first, but rapidly developed an understanding of the wider range of issues at stake. The outcome is a process capable of yielding early results. The European contribution to the G8 declaration on this subject in Okinawa (July 2000) marks a step towards an overall strategy in this area.

6.4. Intellectual Property Rights (IPR): TRIPs and Biodiversity

The debate on the relationship between TRIPs and biodiversity is an issue that goes beyond the mere review of Article 27.3(b) of TRIPs. In 1999, the TRIPs Council started reviewing Article 27.3(b) TRIPs, which deals with the patentability of life forms, including the protection of plant varieties. At this occasion the broader issue of the relationship between intellectual property right protection and biological diversity (as promoted in the Convention on Biological Diversity-CBD) was also raised, even though *stricto sensu* not covered by the scope of this article. Throughout the first phase of the review (1999-

March 2000), the EU's position was that it provides a basis for discussions of issues falling clearly inside the legal scope of Article 27.3(b) of TRIPs (*i.e.* definition of technical terms such as microbiological processes, exclusion of plants and animals from patentability, etc.) and does not provide for a re-negotiation of the Article itself

Article 27.3(b) of TRIPs gives WTO Members a large degree of flexibility with regard to patentability of life forms. WTO Members are not obliged to allow patenting of plants and animals. They are only obliged to provide patent protection to inventions related to micro-organisms and non-biological or micro-biological processes for the production of plants and animals, and to grant *sui generis* protection to plant varieties.

The EC biotech Directive reflects the flexibility provided to WTO Members by the TRIPs Agreement. It addresses some fundamental ethical concerns: it excludes, for instance, non-ethical inventions such as cloning of human beings from patentability and provides that a farmer may freely use, on his own farm, seeds obtained from the harvest of patent protected plants.

The EU supports the TRIPs Council's examination of the definitions and notions used in Article 27.3(b) (such as e.g. microbiological processes, essentially biological processes etc.). It should also use this opportunity to clarify the benefits and limitations offered by different national schemes for the protection of plant varieties and promote the definitions used in the *acquis communautaire*.

The Commission is open to developing country concerns, and has taken note of all proposals made by developing countries in the preparation of the Seattle Ministerial Conference, some of which have been recirculated in the context of the 27.3(b) review. However, a recent study made upon DG Trade's request suggests that the search for solutions to the developing countries' concerns on TRIPs and biodiversity does not necessarily lie within the scope of Article 27.3(b) itself. To be found in providing for the appropriate legal and political instruments to better enforce objectives of the Convention on Biological Diversity and possibly in the amendment of other Articles of the TRIPs Agreement (e.g. Article 29 to insert a disclosure of origin obligation or Article 23 on the additional protection of geographical indications). From a tactical point of view, these issues would be better dealt with within the framework of the new round, partly as part of a comprehensive package for developing countries.

Ethical and moral concerns (related to the patentability of life forms and other issues) may also be addressed and considered carefully, and different societal values may be taken into account. The EU has established the scope for the legal protection of biotechnological inventions in Europe via Directive 98/44. The EU should support solutions presented by other WTO members within the TRIPs Council which are not inconsistent with the provisions laid down in the Directive. It should be recalled that Article 27.3(b) provides for sufficient flexibility.

The relationship to the conservation and sustainable use of genetic material needs more in-depth examination, although it is not within the direct scope of Article 27.3(b). Appropriate solutions may be found under the CBD and FAO. The EU should promote the positive effects of using intellectual property rights when negotiating access and benefit sharing agreements on genetic resources and should support the work currently taking place in WIPO (World Intellectual Property Organisation) on this matter.

6.5. Process and Production Methods (PPMs)

At Seattle the EU called for a clarification of the relationship between WTO rules and Non-Product Related Process and Production Methods (NPRPPMs) requirements and, in particular, of the WTO-compatibility of eco-labelling schemes based on a life-cycle approach. To be successful, we argued, this would require the definition of a clear, transparent and non-discriminatory process for the creation and administration of such schemes. Subject to such important procedural safeguards, there should be scope within WTO rules to use such market based, non-discriminatory, non-protectionist instruments as a means of achieving environmental objectives.

Labelling schemes could be one way of trying to deal with the NPRPPM issue. The NPRPPM question is one which is unlikely to go away; on the contrary it will almost certainly become more important. EU consumers are increasingly concerned about a growing range of NPRPPM issues which they feel affect their everyday lives. At some point the international community will probably have to square the NPRPPM circle either through a negotiated solution or by an imposed settlement of the DSM. Given the far-reaching implications of the concept of NPRPPMs, however, it will be difficult to find a ring-fenced solution for any one particular area without opening a Pandora's box of implications for a swathe of other domains.

There is a growing list of PPMs which are not related to the product but which are nevertheless considered to be important for scientific (e.g. climate change, ozone depletion, deforestation) or social (e.g. consumer choice, societal preferences, animal welfare) reasons or sometimes both. Environmental reasons might include a combination of scientific and social reasons: a PPM which led, say, to the extinction of a particular species in the wild could be argued against on scientific grounds (because of its role in an ecosystem), as well as on social grounds (its intrinsic value or beauty).

It is increasingly clear that how a good is made is important and can no longer be dismissed as a luxury or detail of concern only to developed countries. Indeed, there are several instances where the importance of NPRPPMs has already been recognised by the international community. For example, the signatories to the Montreal Protocol on Ozone Depleting Substances (ODS) have agreed to impose trade restrictions on goods made with (but not containing) ODS; and the importance of how a good is made is recognised in GATT Article XX (e) regarding the products of prison labour.

Scientific progress is also pushing at the limits and relevance of decades old terms such as *like product*. Genetic modification allows the production of goods which to many people are intrinsically different from non-GMO products even though complex scientific procedures might be needed to distinguish any variation. Cloning technology has the potential to produce *like products* par excellence yet it would be a brave policy maker who would renounce all rights to on the grounds that to do so would run counter to WTO rules.

Yet tweaking the definition of *like product* could be a dangerous path as this could risk undermining one of the fundamentals of the Multilateral trading System and could have far-reaching and undesirable consequences. A more targeted option could be to revisit the definition of *related*.

Here, the question could be posed as to the extent to which the fact that the application of any given process or production method cannot be detected in the final good also means that it is not related to the final product. To millions of people in both developed and developing countries certain process and production methods can be extremely important: for the people concerned, they are not only related to the product but a quintessential part of it even though they cannot be detected. They could be said to comprise *Related but Not Detectable Process and Production Methods* or RNDPPMs.

6.6. Multilateral Environmental Agreements (MEAs)

The Commission believes that Multilateral Environmental Agreements (MEAs) are the most effective way of tackling international environmental problems. Furthermore, the fact that trade measures MEAs may contain were negotiated and agreed by consensus in a multilateral context should be a guarantee against discriminatory action and their use for protectionist purposes.

The relationship between WTO rules and MEAs in general is unclear, however. If MEAs were deemed to justify discriminatory and protectionist action, it could set a damaging precedent for the Multilateral trading system. Similarly, subordinating MEAs to the WTO would undermine international efforts to tackle environmental problems and would fuel the arguments of those opposed to the WTO. The delay in agreeing the Cartagena Protocol on Biosafety demonstrates that this is a very real problem. How the provisions of MEAs relate to and/or could be defended, notably under GATT Article XX, is also the object of debate and interpretation. Given the growing interface between MEAs and WTO rules, uncertainty over the relationship between the two sets of rules in the WTO is increasingly affecting MEA negotiations which in our view unnecessarily exacerbates tensions between MEAs and WTO.

In particular, uncertainty surrounds the issue of non-parties to MEAs. So far, no trade measure taken pursuant to an MEA has been challenged in the WTO by a non-party. It is unsure whether this would happen in the future but the legal ambiguity surrounding the possibilities of such a challenge causes uncertainty and doubt over the effectiveness and legal status of such measures and thus weakens MEAs.

Since discussions started on this issue in the WTO's Committee on Trade and Environment (CTE), the nature of these interactions has evolved considerably. Beyond traditional trade measures in MEAs (such as in CITES or the Basel Convention for instance), MEAs containing measures which might have trade implications and which can therefore interact with trade rules are becoming part of the picture.

It is in the interest of all WTO members to ensure that the multilateral trading system makes its full contribution to the achievement of global sustainable development. As part of its contribution to the process of developing consensus across the range of issues, in October 2000 the EC submitted to the WTO a paper on resolving the relationship between MEAs and WTO rules. The paper put forward some ideas that could provide foundations for agreement on the nature of the problem and for clarifying the relationship. We hope it will be possible to reach a consensus among WTO members on the relationship between WTO rules and trade measures taken pursuant to MEAs.

We believe that the MEA issue is not a zero sum game: clarification of the relationship between WTO rules and MEAs would provide gains to all WTO members. It would provide greater legal security for both MEAs and for the WTO and reinforce the integrity of both systems; create a clearer policy making environment for both trade policy makers and negotiators of MEAs alike; multilateralism will become de facto more attractive than unilateralism without actually changing WTO rules per se; and it would prevent potential conflicts by creating clearer parameters so that WTO considerations could be factored into MEAs from the start.

In the paper, we put forward a number of complementary ideas to feed into the debate. As a foundation we seek consensus on basic principles relating to the relationship between the WTO and MEAs, including key relevant concepts developed in Dispute Settlement practice. This should also include a general clarification that MEAs are not subordinated to WTO rules.

In addition, we believe that addressing the specific issue of Non-Parties is important. For this particular purpose, some form of accommodation mechanism is, in our view, necessary to preserve trade measures taken pursuant to MEAs from undue challenge. It should be made clear however that such an accommodation system would only apply to measures specifically mandated under MEAs. While being open to other suggestions, we are considering the reversal of the burden of proof as a possibility to provide greater security without altering the rights and obligations of WTO members. The paper also set out our support for continuing the dialogue with MEA Secretariats and we indicated our openness to considering a "code of good conduct" for trade measures in MEAs, as suggested by some WTO Members.

The ongoing debate on the relationship between WTO rules and MEAs continues against the backdrop of developments in WTO Dispute Settlement. In general, we see the evolution of so-called WTO *jurisprudence* as going in the right direction. The WTO's Dispute Settlement Mechanism is a quasi-judicial system that does not operate on precedent, however: panels and the Appellate Body are not bound by previous rulings so the pendulum could easily swing the other way. Until the *Tuna* cases none of the disputes had involved an MEA; in fact, the conclusions of panels and the Appellate Body are of greatest relevance to unilateral measures. Furthermore, it is our belief that an issue such as the relationship between WTO rules and MEAs is of an importance that requires a negotiated, political solution rather than simply being left to the vagaries of dispute settlement.

Nine cases have been adjudicated under GATT Article XX. Of these, the four which have been most relevant for sustainable development are the *Tuna I*, *Tuna II*, *Reformulated Gasoline*, *Shrimp/Turtle* and *Asbestos* cases. Importantly, in none of the cases have the panels questioned the environmental objectives or policies of the countries concerned; rather they have only examined the instruments or measures used to achieve them. Until the *Shrimp/Turtle* case none of the cases had involved the interplay of GATT/WTO law and an MEA.

In their interpretation of Article XX the conclusions of the various Panels and of the Appellate Body have shown a measured evolution towards a more environmentally friendly stance. The development has not been linear, however, with the conclusions of some panels not being adopted or the Appellate Body not upholding panel conclusions. The salient points of the conclusions are centred on a number of elements such as the function and scope of the preamble, jurisdictional application and the concept of necessity.

In *Tuna I* it was ruled that it is the inconsistency with the GATT which must be justified not the policy goal itself. In *Tuna II* the Panel found there was no territorial limitation on the location of the living things to be protected under Art. XX of the GATT. GATT does not proscribe in absolute terms, it stated, measures related to things or actions outside the territorial jurisdiction of the party taking the measure. This point was reaffirmed in the *Reformulated Gasoline Case*.

The *Tuna II* Panel considered the term "exhaustible natural resources" included living creatures (dolphins) and was not limited to mineral resources or oil as originally intended by the drafters. In the *Reformulated Gasoline Case* the Panel agreed that clean air was also an exhaustible natural resource.

The *Asbestos* case was the first time a Panel or the Appellate Body upheld a trade-inconsistent measure for non-trade reasons (protection of human life or health). In the *Shrimp/Turtle* case, the Appellate Body concluded that the first preambular paragraph of the WTO contained a "recognition by WTO negotiators that optimal use of the world's resources should be made in accordance with the objective of sustainable development". Moreover, it underlined the importance of international co-operation in protecting migratory species. The Appellate Body stated that Article XX (g) was not limited to non-living natural resources and that the generic term "natural resources" was not static. It noted that Article XX (g) had been drafted more than 50 years ago but must be read in the light of contemporary concerns about the protection and conservation of the environment. Certainly, as, at the dawn of a new century, humanity finds itself with different perspectives and priorities from those of the early post-war years, as well as with a growing scientific knowledge of the fragility of the planet's life support system, this last point is one which could usefully be borne in mind in other areas related to sustainable development.

6.7. Precaution

The precautionary principle forms part of a structured approach to risk management. It covers cases where scientific evidence is inconclusive but there are reasonable grounds for concern about potentially dangerous effects deriving from a phenomenon, notably to health or the environment.

Application of the precautionary principle is necessary to ensure policies are in line with the objective of sustainable development. Recourse to the principle, however, and its relationship with international trade have been increasingly in the

spotlight, stimulating a growing debate, both within and outside the EU, about the circumstances in which precautionary action is justified.

Against this background, the European Commission adopted a Communication on the precautionary principle in February 2000 that sets out the Commission's approach to applying the principle. The Communication also provides input into the ongoing debate on the relationship between the precautionary principle and relevant international agreements, including the WTO.

The term "precautionary principle" is not explicitly used in any WTO Agreement. The Commission believes, however, that measures based on the principle are *a priori* compatible with WTO rules. Nevertheless, there is a need to clarify this relationship. In addition, there is a need to promote the international acceptance of the precautionary principle. This will help ensure that measures based on a legitimate recourse to precautionary principle, including those that are necessary to promote sustainable development, can be taken without the risk of trade disputes. It will also help reduce the risk of exporters, including in developing countries, facing new trade barriers as the result of the precautionary principle being misused to justify arbitrary trade barriers. The Commission has been at the forefront of progress in this respect, including through successful efforts to reinforce the status of the precautionary principle in Multilateral Environment Agreements such as the Cartagena Protocol on Biosafety.

6.8. Sustainable trade and corporate social responsibility

Sustainable development is not an objective that can be achieved uniquely by government intervention. On the contrary, sustainable development will depend on sustainable behaviour by all actors, including private enterprise and individual consumers.

In the field of business behaviour, sustainability is pursued by a mix of compulsory standards of good behaviour and voluntary initiatives. Into the first category would fall, for example, national laws implementing the recent OECD convention against bribery. Into the latter category would fall a variety of initiatives taken over the last thirty years, but particularly during the last decade. Already in 1970s, the OECD and ILO both put in place guidelines and principles for trans-national corporations. The OECD guidelines for multinational enterprises have recently been modernised and updated, following dialogue with business, trades union and other civil society organisations.

The European Commission and Member States must now think about how best to help business ensure that the implementation of those guidelines has maximal impact in Europe, both on the development of corporate social responsibility and on public perception of it. The Commission believes that developments in this area are going further and faster than the general public may be aware, and that by sharing best practice more actively among national players, it will be possible for Europe to set an even better example.

6.9. Different ways of integrating sustainability into trade policy: the case of textiles

Given the various linkages that can exist between changes in trade policy and sustainable development outcomes, the integration of sustainability into trade policy can also take various forms.

Take the example of textiles and clothing: many exports of developing countries to the market of the Union are still subject to quantitative restrictions by country and by product.

Generally speaking, the consequence of the quota system is two-fold:

- A greater proportion of Community demand is met by Community production than would be the case in conditions of unrestricted trade;
- The most competitive third countries enjoy a lower share of the part of the Community market taken by imports than would be the case in conditions of open trade, and uncompetitive third countries enjoy a correspondingly higher share. It is difficult to state at this stage which are the more competitive countries that stand to gain and the "losers".

All quantitative restrictions are due to be abolished by 1 January 2005. The consequences for the location and volume of production cannot be foreseen with certainty, as one important factor to be taken into account is whether developing countries are or not going to open their textiles and clothing markets both among themselves and then to exports by industrialised countries: although there is certainty that the quotas will be eliminated by 1.1.2005, a large proportion of developing countries maintain very high tariffs and apply significant non-tariff barriers that could still cause important distortions of trade after 2005 - and which the EC is keen to reduce. Leaving this factor aside, likely consequences can be summarised as follows:

- The current trends over the last years towards a lower volume of production in Europe, including moves from low to high value-added production but also some net loss in capacity, is likely to intensify;
- The level of imports overall is likely to rise, but within that rising import share of the EU market, the more competitive countries will take a bigger percentage than they do at present, growing not only at the expense of EU production and employment but also at the expense of production and employment in less competitive third countries. Again it is very uncertain who will be the winners and losers among DCs: and this may depend on the extent of their own mutual market opening.

To simplify the sustainability analysis of these foreseeable developments, let us focus on just two aspects:

- The social impact of production and employment loss in the European economy;
- The environmental impact of increased production in the more competitive third countries.

It is clear that, in the short run at least, a sustainability analysis would show a social cost in Europe: income and employment would both be affected. It is the objective of the EU and its Member States that overall macro-economic and structural policies in the EU should enable those losing employment in the textiles sector to take up employment in other competitive sectors. The extent to which this objective will be achieved is uncertain, varying between regions and between category (age and sex) of job losers, and depending on the effectiveness of retraining policies of Members States.

In the more competitive exporting countries, output will receive a double stimulus, as exporters there have new opportunities to gain market share at the expense both of less competitive third countries and of less competitive EU producers. A rapid increase in output in a country where environmental regulation is at present weak or inadequate will lead to increased (perhaps disproportionately increased) levels of water and air pollution (and may also incidentally correlate with negative social developments in terms of ill-regulated employment of the very young or of vulnerable female labour).

One possible theory is not to liberalise trade: this reaction is not considered as one of the practical options open to the EU, since overall it is the belief of the Commission that in the long run more open trade, particularly in products of interest to developing countries, is essential to the more equitable development of wealth around the world. In addition, the current trade policy of quantitative restrictions carries costs (to poorer consumers in the EU and to those who might otherwise be employed in the sector in developing countries) which should be weighed against the costs of liberalisation. Maybe the most important consideration is that the elimination of the quotas agreed in the Uruguay Round is now irreversible unless risking a wholesale questioning by DCs of the WTO as such because it would be a very major violation of WTO rules by industrialised countries.

Short of maintaining current policies, it is however possible to phase-in trade liberalisation over a time-scale long enough to allow governments and industries around the world to anticipate changes in demand and to ensure that the increase or reduction of production capacity around the world will take place on a smooth basis. This was one reason for the 10-year phase-out of textiles and clothing restrictions agreed during the Uruguay Round. While developing countries have complained that, in retrospect, the pace of liberalisation to which they agreed in the Uruguay Round now seems to them too slow, they are not complaining as such about the principle of such a transitional period.

If the integration of sustainability concerns into the policy of trade liberalisation for textiles and clothing were limited only to the staging of policy change, this would be a complacent attitude and unnecessarily conservative. On the contrary, additional "flanking measures" are available. On the one hand, additional public attention (and subsidy) can be and is given by Member States and within the framework of EU structural policies to help those losing their jobs and to help regions in industrial decline ("subsidies" cannot be sectoral - to compensate for less competitiveness in the sector - but help either re-orientate towards other activities or to re-train job losers). This is already the case, and in addition to established policies, a special once-off grant of €400 million was made to Portugal at the moment of adoption of the quota phase-out decisions of the Uruguay Round.

What about pollution in developing countries? Here, the Community conducts extensive environment co-operation, which can be used to respond precisely to such needs as increased pressure on clean water as a result of increasing textiles production. In general, EU aid for such matters depends on requests by donor countries. It is clear that a sustainable trade policy will give greater emphasis in the future than in the past to ensuring that developing countries understand in good time the environmental and social challenges ahead and are encouraged to develop with donor countries the policies necessary to deal with them.

As this example demonstrates, sustainable trade can act both within the definition of the trade policy itself and alongside it. Flanking measures are not a substitute for integrating environmental and social concerns in trade policy, but are one tool for doing so.

7. Conclusions

Can trade contribute to sustainable development? The answer is that it has to. The term sustainable development is not a piece of jargon that will go out of fashion and be off the agenda in a year or two; rather it has to be at the centre of our trade policy. Sustainable development, including trade's contribution to it, must be a concept and a leitmotiv for the long term.

The 1987 Brundtland Report called for development that would allow us to meet the needs of the present without compromising the ability of future generations to meet their own needs. Now, as we prepare for the summit to mark the 10th anniversary of the Earth Summit held in Rio de Janeiro in 1992, we must take responsibility for further developing trade policy to mesh even more closely with this fundamental requirement.

In mid-2001 the European Council in Gothenburg will do much to further our aims. By the spring this year, the Commission plans to come up with proposals for a sustainable development strategy for the European Union as a whole. Community policy is multifaceted, and every facet counts in achieving a sustainable outcome. DG Trade intends to make a full contribution to this process first of all by stimulating dialogue on how trade can be a force enhancing sustainable development, inter alia through the ideas set out in this document.

As the Marrakesh agreement establishing the WTO makes clear, sustainable development is an ambition for both developed and less developed countries. Relevant issues need to be raised in all key forums, at national, Community and international level, if we are to ensure that the sustainability benchmark is built into the thinking of trade policy-makers worldwide. This is not an excuse to tell developing countries what to do; it is an opportunity for the entire world to consider the ways in which an open trading system can promote environmentally-friendly growth that allows economic and social development to take place, adjusted to take account of finite resources.

In the Community, we must build sustainable development considerations into policy at the earliest possible stage including efforts to make room for sustainable, environmentally-friendly growth in developing countries. In order to achieve this, we use SIAs as appropriate. On trade policy specifically, there is a need to move towards a framework of rules that favour the integration of sustainable development into all fields of national policy-making, and which avoid creating obstacles to sustainable policies. These twin objectives for sustainable trade need to be fleshed out with new ideas, ideas which must be supportive of each pillar of sustainable development: economic, environment and social. It is hard to hit all three targets at once but to over-emphasise any one of them would be to miss the point of sustainable development. Trade policy must aim to produce an overall net positive development taking into account all three issues, stable growth, equity and ecology.

These suggestions are but the start of a process to make sustainable development and its trade dimension the common sense of our age. The contributions of civil society representatives and non-governmental organisations to this process are vital. Part of the process of further developing the Commission's ideas for a sustainable development enhancing trade policy is through our dialogue with civil society representatives in the DG Trade issue groups. Dialogue so far has brought in proper focus the main doubts and questions that need further attention but we need to ensure that the debate continues to develop. The output should help to ensure that there is a strong and valid trade pillar in the EU's sustainability strategy.