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# Bridges Trade BioRes

*News, events and resources at the intersection of trade and biodiversity*

Vol. 6 No. 1, 20 January 2006

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## Hong Kong Ministerial Meeting

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### ENVIRONMENT @ HONG KONG: MOMENTUM ON FISH, LITTLE PROGRESS OTHERWISE

Environment-related negotiations clearly took a backseat vis-à-vis the main negotiating priorities in at the Hong Kong Ministerial Conference on 13-18 December in Hong Kong (see In Brief, this issue). Nevertheless, environment-related discussions cropped up in a number of informal, green room and plenary discussions, as well as on the sidelines of the conference. While fisheries subsidies were not negotiated at the WTO meeting, a high-level press conference succeeded in raising public attention around the issue and may help to stimulate negotiations after the Hong Kong meeting. Despite valiant attempts to place environmental goods and services and the intellectual property rights-biodiversity linkage higher on the political agenda, virtually no progress was achieved in these areas, putting pressure on the proponents of these negotiations to mobilise support over the next few months.

#### Fisheries subsidies

The 7 December draft Ministerial text on fisheries subsidies -- along with the rest of the text on WTO rules (anti-dumping, subsidies and countervailing measures) -- was left unchanged in the final Ministerial Declaration (see Bridges Trade BioRes, 9 September 2005, <http://www.ictsd.org/biores/05-12-09/story1.htm>). The Ministerial Declaration calls on Members to strengthen disciplines on fisheries subsidies, including by identifying and prohibiting subsidies that contribute to over-capacity and over-fishing. It notes that "appropriate and effective special and differential treatment" should form an integral part of the negotiations, highlighting the sector's importance to poverty reduction, livelihood and food security concerns. The text for the first time explicitly links subsidies to over-capacity and over-fishing and acknowledges the need for addressing this link, overcoming strong resistance from Japan and Korea in the early stages of the Doha Round on negotiating fisheries subsidies disciplines.

Some observers, including several small vulnerable coastal states, expressed concern in the corridors over the scope of the text given that it does not explicitly restrict discussions to trade-distorting subsidies. Others

also voiced concerns that the WTO should not become the arbitrator defining and deciding about the condition of a fishery, calling for other institutions, such as the UN Food and Agriculture Organisation and regional fisheries management bodies, to be involved in the negotiations and resulting disciplines.

On the sidelines of the Ministerial meeting, a high-level press conference managed to keep the issue on the table. Senior officials from the US, EU, New Zealand, the Philippines, Brazil, Chile and Senegal joined forces with the UN Environment Programme (UNEP) and the environmental group WWF to call for urgent action on disciplining fisheries subsidies in the WTO. Pointing to the dire state of global fisheries, they urged Members to take advantage of the opportunity provided by the Doha mandate to promote trade liberalisation that also safeguards environmental and social objectives. New Zealand, the US and Chile -- all members of the so-called 'Friends of Fish' group which is the driving force behind the negotiations -- emphasised the environmental dimension of the talks. Brazil, Senegal and the Philippines stressed the need for effective special and differential treatment to account for the particular needs of developing countries. Many saw the fact that the EU and US (and other Friends of Fish) as well as Senegal came together to push for intensified negotiations as an important symbolic push for the talks.

### **Environmental goods and services**

Under the trade and environment negotiating mandate in paragraph 31 of the Doha Declaration, only environmental goods and services (EGS) made a noticeable appearance in Hong Kong. These discussions related to the mandate embodied in paragraph 31(iii) which calls for the reduction (or possibly elimination) of tariff and non-tariff barriers to EGS. Discussions reflected ongoing divisions over the approach to take to liberalising EGS trade. Developed and newly industrialised countries, such as the US, New Zealand, the EU, Chinese-Taipei and Korea, favoured a 'list approach', i.e. identifying a list of environmental goods for liberalisation, and were looking for language that would steer talks in that direction. Many developing countries, on the other hand, would like to keep options open for other approaches, such as India's 'environmental project approach' which would allow countries to temporarily liberalise trade in EGS associated with self-designated environmental projects.

During informal meetings in Hong Kong, the list supporters and India managed to agree on common text that would have instructed Members to clarify the coverage of goods and their relation to services, taking into account the capacity constraints of developing countries and the centrality of the environmental rationale of the negotiations. However, a number of Members -- including South Africa, Colombia, Egypt and other Latin American countries -- opposed the text. These countries feared that the proposed language could be seen as favouring the list approach and could change the mandate of the negotiations.

Due to time constraints and a general reluctance to move the negotiations to the Green Room level given the relative importance of the issue, countries in the end agreed on brief, non-committal language that simply instructs Members to "expeditiously complete the work" under paragraph 31(iii). While this solution is unlikely to provide the impetus to the negotiations that some delegations had been looking for, some felt that the informal discussions had at least served to help build greater understanding of the respective perspectives among the negotiating parties. Others also expressed satisfaction with the fact that the virtual agreement on the alternative text had shown a growing acknowledgement of the capacity constraints that developing countries face as well as the centrality of environmental objectives.

### **Intellectual property and biodiversity**

Ahead of and during the Ministerial meeting, India was the driving force behind efforts to place discussions on the relationship of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) and the Convention on Biological Diversity (CBD) high on the political agenda (see Bridges Trade BioRes, 9 December 2005, <http://www.ictsd.org/biores/05-12-09/story2.htm>). India would have liked to see an explicit negotiating mandate to be included in the Ministerial Declaration calling for an amendment to the TRIPS Agreement that would require patent applicants to disclose the origin of genetic resources and associated traditional knowledge, along with evidence of prior informed consent and benefit-sharing in their application. Brazil, Kenya and Peru also joined in the effort, albeit with various degrees of forwardness. Brazil raised the issue in the Heads of Delegation meeting, but generally kept a comparatively low profile. Kenya circulated a written proposal that would have narrowed down work on the TRIPS-CBD relationship to the three requirements in the TRIPS Council, but did not raise the issue in the negotiations.

Peru's proposal provided the weakest language of the ones put forward by simply suggesting intensifying discussion on the three requirements. Some observers were surprised at the proposal's low level of ambition given the central role that Peru has so far played in pushing the issue in the WTO and implementing related obligations at the national level. Speculations were raised over a possible link between the Peruvian stance and the recently concluded free trade agreement with the US which includes a side-letter that highlights the use of contracts on access to genetic resources or traditional knowledge.

The EU would have been willing to support an explicit reference to negotiations on the CBD-TRIPS relationship if it had been coupled with a similar mandate for negotiations to extend the additional protection already provided to geographical indications for wines and spirits to other products (GI extension). However, in the end -- to the great frustration of both India and the EU -- neither of the two negotiating mandates found mention in the Declaration due to stiff resistance from the US and others, including Canada and Australia. These countries have repeatedly argued that no conflict existed between the TRIPS Agreement and the CBD and thus no amendment to the TRIPS Agreements was needed.

The text in the Hong Kong Ministerial Declaration remained the same as included in the 7 December draft Declaration, simply taking note of the work undertaken on the TRIPS-CBD relationship and GI extension under Paragraph 12(b) of the Doha Declaration (on implementation issues). Nevertheless, the proponents of negotiations on the CBD-TRIPS relationship can claim some modest progress, given that the Hong Kong text for the first time adds the CBD-TRIPS relationship as one of the issues explicitly mentioned under the implementation mandate (along with GI extension).

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## **COMMENTARY ON THE WTO MINISTERIAL MEETING**

*By Doeke Eisma, Chairman, and Pieter van der Gaag, Project Leader Policy Coherence, IUCN National Committee of the Netherlands*

The preamble of the WTO agreement puts sustainable development at the heart of the organisation. So how well did the WTO Members do at the Ministerial Conference in Hong Kong? Based upon the poor progress made on environmental issues, one minister suggested that countries for now do not seem ready to add the element of sustainability to their work, the preamble of the WTO agreement notwithstanding. Certainly, increasing the complexity of what is in front of negotiators now might make achieving success in the trade round nearly impossible, especially in the middle of a WTO crisis in which the world's largest blocks seem unable to find common ground, even in high-profile negotiations such as those on agriculture. This might lead one to presume that, for the time being, negotiators consider including sustainable development in their agenda as 'something' for the 'next time'.

However, short-term gains that may result from trade liberalisation may prove devastating to achieving long-term sustainability. For example, the proposal submitted in October 2005 by Canada, Hong Kong China, New Zealand, Thailand and the US to reduce tariffs on forest products argues that such liberalisation will probably increase the value of exports for producer countries, increase the volume of trade and as such increase revenue, resulting in positive social impacts in the short term and a greater ability to invest in proper management. However, these predictions can be juxtaposed with the conclusions of the UN Millennium Ecosystem Assessment, which warns that increased trade in forest products coming from badly managed forests will exacerbate deforestation and biodiversity loss to an extent that the long term effects will likely result in a loss of this economic base. As the Millennium Ecosystem Assessment shows, the problems our ecosystems are facing are urgent and WTO negotiators need to deal with these issues this time.

### **Why Trade?**

Many biodiversity effects can be linked to 'trade'. The increased demand for soy-based fodder for hogs in Europe can be linked to the conversion of Amazon Forests to soy plantations, with devastating impacts on deforestation, desertification, biodiversity and carbon sequestration. The increasing demand for vegetable oils, not only in food products but also soon for bio-energy, can clearly be linked to the conversion of South-East Asian forests to palm-oil plantations. The dumping of milk-powder onto markets impacts -- through the

inability of local dairy producers to invest in suburban dairy farms -- on desertification in sub-Saharan countries that is linked to grazing cattle herds.

### **So what did happen around the environment in Hong Kong?**

In the non-agricultural market access negotiations, discussions took place on the side on how to address non-tariff barriers, including standards relating to the environment, but nothing was agreed on. The series of environment-related negotiating issues under Paragraph 31 of the Doha mandate have all been left unresolved. The negotiators simply agreed to continue to work on addressing the relationship between multilateral environment agreements (MEA) and WTO rules, but at least negotiators did not drop this discussion. The same holds true for the negotiations focusing on the relationship between the TRIPS Agreement and the Convention on Biological Diversity. The negotiations on environmental goods and services did not move forward one inch from where they were left prior to the Hong Kong meeting. What this clear lack of progress may signify is a view amongst trade negotiators that the environment is a secondary issue, and that the negotiations had more important issues to tackle first. Regrettably, it shows that there is still little understanding of the direct link between ecosystems and trade policy, and thus the importance of considering and addressing the environment/trade policy linkage.

In this context, environmentalists must play a more active role in researching and clarifying the relationships between trade regimes and ecosystem degradation and biodiversity loss. They need to understand what the industrial goods and agriculture negotiations will mean for natural resource use and ecosystem services in order to be able to better safeguard these resources and services. Environmentalists still lack some of the basic understanding -- a few environmental economists amongst us aside -- what the liberalisation of trade means for quantities of trade flows; how and if producers can re-invest revenues earned from trade into sustainable management of resources, including in environmental technology for those sectors; and whether trade liberalisation will enhance the ability to produce goods more efficiently and to use natural resources sustainably. Environmentalists must do more to link their knowledge about commodity chains and ecological footprints to economic rule-making. Let the lack of priority given to environmental issues in Hong Kong result in more interaction between environmental groups and trade policy makers at home and in Geneva.

Yet tucked away in a small corner of the negotiations something important did happen. In the Negotiating Group on WTO Rules the unsustainable exploitation of fisheries was cause for consensual movement on disciplining fisheries subsidies based on their contribution to overfishing. Thus, environmental protection is no longer only a justified cause for deviating from the rules (as embodied in Article XX of the GATT) but an agreed goal worth pursuing.

We believe this decision is a truly fundamental watershed in WTO thinking. The importance of the idea of using the protection of the natural resource base as a basis for long-term sustainable economic development cannot be overstated. Sustainably managed resources can continue to be distributed and can thereby continue to support the creation of wealth. The negotiators on fisheries subsidies understood this. Now the rest of the negotiators must understand and reflect this in their disciplines.

This understanding also opens up possibilities for the negotiators in the Committee on Trade and Environment as they try to grapple with the relationship between MEAs and their secretariats and the WTO. When natural resource protection as a goal is included in the WTO disciplines, it becomes a must to involve expert institutions, also in dispute settlement. Qualitative judgements, for example on the state of a fishery, should be left to those institutions that understand the biological dynamics of fish populations in their ecosystems. When the WTO is confronted with a need to understand an environmental problem, expert institutions should be their best ally.

The consensus on how to move forward on fisheries shows that environmental protection has something to offer to economic development. Understanding what that offer really is urgently requires more study and more involvement from environmentalists.

## HONG KONG MINISTERIAL ADOPTS DECLARATION, TALKS TO CONTINUE

WTO Members meeting for the Sixth Ministerial Conference on 13-18 December in Hong Kong were able to agree on a Ministerial Declaration that, while making some marginal progress, was in line with the low expectations for the Conference. In the Declaration, WTO Members agreed, among other things, to eliminate agricultural export subsidies by 2013 and provide duty- and quota-free market access to 97 percent of products originating from least-developed countries by 2008 (see Bridges Trade BioRes, 9 December 2005, <http://www.ictsd.org/biores/05-12-09/story3.htm>). While Members expressed relief and satisfaction that Ministers attending the meeting were able to agree on a Declaration, thereby avoiding the collapse of the meeting and negotiations in general similar to the last Ministerial Conference in Cancun in 2003, sources suggested that the failure to decide upon significant, commercially valuable changes to trade rules would challenge the ability of negotiators to reach agreement on the Doha round by the end of the year as mandated in the Declaration.

Although the EU's agreement to eliminate agricultural export subsidies by 2013 was widely cited as a key achievement of the meeting by the mainstream press, some Members noted the relatively small commercial significance of these subsidies, and that such subsidies have already been scheduled to be phased out by that time under the EU's 2003 reform of its agricultural sector. In addition, sceptics noted that the agreement on duty- and quota-free market access for LDC exports could be of limited developmental and commercial value, given that the EU already grants such access and that the US could use the three percent exemption to maintain barriers on the main products of export interest to LDCs, such as textiles. Although Members were able to agree on a few other issues -- including to let developing countries choose themselves, using a set of indicators, which agricultural products ("special products") to designate for stronger protection -- they were as expected unable to agree on crucial make-or-break issues in the talks, such as the formula for tariff reduction under non-agricultural market access (NAMA) or reducing domestic support for agriculture.

The Declaration sets an April 2006 deadline for finalising 'modalities' in the agriculture and NAMA negotiations, i.e. general parameters to guide the development of specific numbers and formula structures for cutting subsidies and tariffs (see Bridges Weekly, 18 January 2006, <http://www.ictsd.org/weekly/06-01-18/story1.htm>). Some trade sources have speculated that this deadline may be unrealistic since countries are unlikely to shift their positions fundamentally enough to achieve the needed progress in just four months.

For more analysis, see Bridges Daily, 19 December 2005, [http://www.ictsd.org/ministerial/hongkong/wto\\_daily/19\\_December/en051219.htm](http://www.ictsd.org/ministerial/hongkong/wto_daily/19_December/en051219.htm)

The Ministerial Declaration is available at [http://www.wto.org/english/thewto\\_e/minist\\_e/min05\\_e/final\\_text\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm)

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