

The World Trade Organization, Trade and Environment

Third World Network*

After seven years of multilateral trade negotiations, the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) has been concluded with a package of agreements set to be signed at the Marrakesh ministerial meeting in April this year. This package of trade reforms will be implemented beginning 1995 under the umbrella of the World Trade Organization (WTO) which would replace the GATT. The agreements in the package encompass issues and areas not directly related to international trade but falling within domestic policy-making. Moreover, the trade package involves policy choices which ought to be within the autonomous decision-making power of the individual states and their peoples.

Even before the agreements are ratified and enforced, there are plans and demands to bring new areas under the jurisdiction of the WTO. The inclusion of such areas as environmental protection and labor and social standards, among others, is sought in view of the trade distortions

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allegedly caused by the lack or absence of such uniform rules and disciplines in global trade. All these plans have to be seen within the context of the outcome of the Uruguay Round — the WTO that will be established, and its overall effects on Southern countries.

The Round was launched at Punta del Este with a carefully negotiated mandate. Through this mandate, developing countries were promised expanded market access and increased export earnings for their goods in return for the inclusion into the GATT system of the new themes being pushed by the US and other industrialized nations such as services, investment measures, and intellectual property rights. Since the beginning, the negotiations have been conducted under the threat of unilateral trade sanctions by the US through its family of Section 301 trade laws.

The threat or recourse to these coercive measures has been used by the US to ‘expand the economic and political space’ in the world for the ‘transnationalization’ of national systems of production, distribution, trade, and consumption. This process has been carried out in the past by dismantling the power of nation-states to manage and intervene in their respective economies, in particular, by diminishing the rights and powers of Third World countries *vis-a-vis* their local communities. It has been primarily aimed at, and seems likely to result in, the creation of a new *laissez faire* world trade and economic order.

Throughout the negotiations, the GATT and Uruguay Round processes were used to modify and change the mandates, and constantly shift the balance, against the South and in favor of the North. Official and unofficial pronouncements from the North point to the *raison d’être* of restricting or dampening the competitive capacity of the enterprises and productive apparatuses of the South in the world economy that is being ‘globalized’ in the interest of the Northern transnational corporations.

While the Uruguay Round negotiating process was, in theory, based on the democratic principle of equality of participants and consensus in decision-making, the interests of the developing countries were, in reality, relegated to the background in the final determination of the outcome of the Round. The final outcome was principally determined by the two major powers — the US and the European Union — and sometimes in conjunction with Japan, through bilateral negotiations outside the multilateral process. All the others either acquiesced in or were forced to accept their decisions.

There have been many claims on purported gains and benefits of the negotiations to the world economy. A full and proper assessment of the outcome, and the subsequent gains and losses to countries and societies, is yet to be made. Yet, it is not possible to make such assessment until after 10 to 15 years. The exercise done in December 1993 at the Trade Negotiations Committee, on the basis of a GATT secretariat document, was, at best, a very partial exercise, bordering on the farcical. By econometric modelling and assuming many unknown variables, it sought to project billions of dollars worth of trade and welfare gains. At that time, the market access negotiations were still under way among the major powers, and even until mid-February 1994, the picture was not all clear. In the rule-making areas, the assessment was based on the Dunkel Draft text of December 1991. The changes that have been incorporated in the final package are all in favor of the US, while those in agriculture are in favor of the EC. These changes relax the limited disciplines and rules on their trade policy, thus, making the outcome even more imbalanced than before.

An Imbalanced Outcome

The overall results are unsatisfactory for the South and its people. They lack any balance within and across sectors. The outcome results in very clear, and sometimes onerous, rules and disciplines to be undertaken by the countries of the South. These ambiguous disciplines that are full of loopholes place more obstacles for the South's development *vis-à-vis* the North's. In some ways, these new rules seek to negate the few gains of the South in the post-war, post-colonial era and perpetuate an unjust international division of labor.

Even under some of the most optimistic scenarios, there is little doubt that in the medium- and long-term, the major share, whether in the form of market access, trading opportunities, or general welfare, will

accrue to the industrialized countries at the cost of the developing countries and the poor. Africa, ultimately, appears to be a major loser.

The Marrakesh Ministerial meeting must set a WTO mechanism for undertaking a proper and continuous assessment of the outcome at each country level and see how far, whether at all, the promises to the countries of the South made at Punta del Este will be fulfilled. The Ministers must also mandate corrective actions and put in place WTO mechanisms and special measures for compensating these losers.

It has been claimed that the Uruguay Round will pave the way to the establishment of a rule-based system where powerful countries will obey international law, align their domestic laws with it, give up unilateralism, and refrain from using threats of trade sanctions to secure neo-mercantilist trade gains.

Yet, before the negotiations were concluded, and even before its signing and ratification by the participants, the United States had already asserted their determination and sovereign right to continue resorting to such steps. This puts into question not only the US' good faith in negotiations and its acceptance of the treaty, but also the credibility of the new trading system and its future implementation.

The US also made no secret of its intention to use the 'trade-related' negotiating process to preserve and maintain the *status quo* as well as the US military and economic dominance *vis-a-vis* the challenges from the Third World. This agenda is being pursued by negotiation seeking to expand the trading system's mandate; forge new norms and trade instruments; and hit the production systems of the Third World, now, doubly facing unfair competition within their countries and new obstacles in their export markets. Just as the WTO has legitimized in a 'civilized' way trade sanctions through cross-retaliation of the powerful countries against the weak ones, new areas for coverage are sought to be included in the treaty to expand its mandate by such means as pre-fixing of 'trade-related' aspects of trade; setting of new norms and disciplines in the Third World on environment, labor and other social standards; and legitimizing US unilateralism and exercise of power outside of its territories.

Attaining Sustainable Development

The attempts to link trade and environment through the instrumentality of the GATT and the WTO has to be seen against the context of the preceding discussion.

Trade and environment are not ends in themselves, nor are the market and the free trade theology being preached to the developing world (but not practiced in the US and other industrialized countries), and the economic liberalism doctrines embraced by some Third World governments. They are only means, whose efficacy and usefulness have to be constantly tested and weighed, and where needed, modified to achieve the objective of sustainable development.

Sustainable development is not merely a question of generational equity between the present and the future, but also between the past and the present. At present, it is a question of equity between the privileged and underprivileged. There is a need for an ecologically sound development of the undeveloped or underdeveloped South, and the equally important adjustment and transformation of the maldeveloped and overdeveloped North. The consumption of one-fifth of the world's population of four-fifths of the world's resources exert ecological pressures against the South and its poor. The maldeveloped-overdeveloped North's toxic emissions and pollution as a proportion of GDP may be coming down, but is constantly increasing in absolute terms.

Sustainable development also requires democratic governance: not only within societies and countries, but equally so, internationally. It requires an end to control and attempts at the management of the world by few nations for their own benefit. It demands on their part an unreserved acceptance and implementation in good faith of international agreements.

This is also the basic concern in treading the path of international cooperation as pledged by the nations of the world at the Earth Summit in Rio de Janeiro in June 1992. The Rio Declaration and the Agenda 21 program for a better, greener planet of the future is postulated on international cooperation and partnership, not on coercion, unilateralism, or exercise of power.

All national and international governments and non-government organizations (NGOs) working under

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the banner of environmental protection and sustainable development must unequivocally abandon and repudiate resort to or advocacy of unilateralism or extra-territorial exercise of power by the powerful countries and condemn any such actions or threat. The interlinked issues of trade, money, finance, and environment to promote sustainable development are not mere technical issues of money, finance or trade rules, but are also issues falling within the domain of the political economy of the world and must be addressed in institutions like the United Nations (UN) and the United Nations Conference on Trade and Development (UNCTAD).

The NGO community of the North and the South gathered in a democratic participatory process during the preparatory conference for the Rio Summit and at the Summit itself to force their governments to address these overwhelming ecological concerns, and focus on the issue of poverty that is stalking and expanding in the developing South, and now starting to afflict the North.

Repudiating Rio

The Rio Summit sought to address the issues of trade, environment, and sustainable development. In Chapter 2 of Agenda 21, the three instrumentalities specifically identified and linked to trade and environment *vis-a-vis* the need to attain sustainable development were open markets, finance, and technology.

In the 18 months since Rio, and from what has transpired at the recent meetings of the working groups of the Commission on Sustainable Development, the industrialized nations have already repudiated their commitments to provide 'new and additional resources' and availability of technology to enable the South to achieve sustainable development. The Trade-Related Intellectual Property Rights (TRIPs) accord in the Uruguay Round has, in fact, tightened and restricted the availability of environmentally sound technology and has created global monopoly of transnational corporations (TNCs) in such area.

Trade and Environment Work Program

It is in this overall context that we look at the proposals, ideas, and plans of the United States, the European Union, and other major industrialized nations and NGOs from the North for a GATT/WTO work program on trade and environment and the talk of a 'green round.' The decision at the conclusion of the Uruguay Round to develop a work program on trade and environment is a good start. But any program must

build on and not dilute the solemn commitments undertaken on the level of Heads of State at the Earth Summit.

Any work program should primarily focus on the promotion of sustainable development. This consists of the adoption of international policies, measures, and instruments that will reduce the pressures and burdens on the planet's ecological capacity caused by the over-consumption of the North and the provision for an ecological space to ensure the availability of resources for sustainable development and alleviation of poverty in the South.

Role of the WTO

The nature of the work program should address the issue of the proper role and limitations of the GATT or the WTO in trade and environment and in promoting sustainable development. With its narrow trade focus, the GATT or WTO, lack the jurisdiction, competence, and capacity to be a coordinating agency to handle these interlinked issues. This function cannot, likewise, be delegated to or allowed to be appropriated by the WTO in conjunction with the International Monetary Fund and the World Bank.

As can be observed in closing phase of the Uruguay Round, the GATT's decision-making has been dominated by only two or three major countries, and majority of the parties have to accept the deals arrived at by these few. In all likelihood, the same situation will prevail in the WTO, and the subsequent configuration of the international, political and economic power relations. Any set of rules that would be developed in this asymmetric forum would most likely serve to legitimize the use of trade weapons which the powerful North can use against the weak South.

There is, thus, the danger, if not the likelihood, that through particular and narrow definitions of the trade-environment link, the powerful nations will try to shift the economic burden of ecological adjustment to the weaker parties in order to preserve and expand their own unsustainable consumption patterns.

There is also a danger of extending the practice of bringing in new concepts, activities, and areas under the management and control of the GATT or the WTO simply by attaching the prefix 'trade-related' to the issue. This would bring issues under national jurisdiction into the area of 'international' control. For instance, the issue of 'trade-related' intellectual property rights (IPRs) was brought under the GATT/WTO not to liberalize the 'trade' in IPRs but to create global monopolies for the

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benefit of TNCs at the cost of public interests and public policies of the states and their peoples.

Bringing any issue under ‘international’ jurisdiction, with the GATT/WTO as the international agency, shifts the rights and powers away from the local and national levels to an international agency that skews the treatment of the matter in favor of the powerful parties. As a result, the process by which local communities lose control of their natural resources is accelerated.

The inclusion of new areas such as the environment, labor standards and human rights in the WTO by calling them ‘trade related’ would potentially be used by the powerful

trading entities not to advance the noble cause of protecting the environment or peoples’ rights, but to reduce the competitiveness of the South’s products and services and, thus, enlarge the North’s market space.

Trade instruments, particularly the coercive ones, when used by the powerful over the weak, harm, rather than promote, the cause of environmental protection, labor rights, and social standards. Multilateral discussion and treatment of these issues are better taken up by agencies of the UN such as the International Labor Organization (ILO), CSD, UNEP, UNCTAD, and the Conference of Parties to the Environment Treaties. With the broadening of the jurisdiction of the WTO to include intellectual property rights, investments, and services, and its integrated dispute settlement system (which enables cross-sectoral retaliation), the WTO will have even more teeth than the GATT, and would enable the North to tow the South in line.

There is the ever present danger of the WTO threatening to use trade-related sanctions to impose environmental sanctions on the South. Meanwhile, the North may not fulfill its United Nations Conference on Environment and Development (UNCED)-related obligations, but may, instead, shift the adjustment problem to the South through the use of the WTO as the lead agency handling ‘trade and environment.’ It is,

therefore, not advisable to give more powers to the WTO as an agency that links trade measures like trade restrictions, penalties and sanctions to environmental protection and standards. The WTO should not also be the forum for the comprehensive study of the overall issue of the relationship between trade, environment, and sustainable development. It does not have the competence, knowledge, or appropriate framework for this task.

Different countries have different natural resource endowments, levels of pollution, waste and absorptive capacities, systems of production, labor and capital intensities, and levels of development. Thus, the idea of a uniform approach to solve environmental problems through an international trade agency is misplaced. Such an agency would become an instrument for inequitable burden sharing as the balance of rights and obligations would not have been properly worked out.

In every country, some choices and balances are involved in the issue of environment and sustainable development. When a question on environment is clearly within the concern of national boundaries, the measures to protect and deal with these issues should be left to the national government. However, the governments of other countries should, likewise, be encouraged to make available the necessary technology and provide for additional funds. Only when there are 'trans-boundary' effects should these be dealt with through regional and/or global multilateral environmental agreements and treaties, with the use of trade instruments as an exception.

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Any trade restriction arising out of a multilateral environment treaty should be based on an agreement negotiated in a universal forum attended by adherents coming from various regions and representing different levels of development. Otherwise, it will only be a coercive instrument capable of being abused. In any such treaty, obligations placed on the developing and poorer countries to use sustainable resource management procedures must

have provisions for the transfer of necessary technology and financial resources as integral part of contractual obligations.

Attempts to preserve and secure access to the natural resources and/or environment services of the South by threatening to shut off existing market access, whether contractual under GATT or autonomous such as Generalized System of Preferences (GSP), rather than by encouraging positive exchanges of technology and new financial resources, is a reprehensible exercise of power by the powerful over the weak. It should be rejected.

Any work program, international policy, or action which deal with the problems of trade, environment, and sustainable development have to be studied and integrated with trade, finance, and technology to create equitable and interlinked rights and obligations.

A more suitable forum for integrating these various facets would be the technical agencies of the United Nations, such as in the Commission on Sustainable Development and the UNCTAD. Afterwards, the GATT/WTO can be given the jurisdiction to handle those matters that have been

determined to require trade rules and/or measures. The process should not, in other words, be turned on its head by first assuming or deciding that trade rules and measures are needed to promote environmental protection and sustainable development.

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The experience of the South with the UNCED process, and with the way various areas were brought into the GATT agenda by pre-fixing ‘trade-related’ to trade issues, thus, placing onerous burdens on the South, is a clear

warning to the governments of the South against accepting any concept, institution or negotiation process without adequate prior analysis and study of these issues outside the GATT and the Bretton Woods institutions.

The Third World Network appeals to the developing country, contracting parties, and ministers assembling at Marrakesh to refuse to countenance such moves, and not yield to these demands. Such arrangement is one more price to be paid by the South to get the US to accept the agreements. The Network calls upon the civic society of the South to refuse the WTO if it comes packaged with these side-agreements.

Dangers of Including Trade-Related Environment Measures

The decision of the Trade Negotiations Committee of the GATT last December 15, 1993 proposing a Trade and Environment Work Program states that while desiring that there be coordination of trade and environmental policies, this should be done "without exceeding the competence of the multilateral trading system, which is limited to trade policies and those trade-related aspects of environment policies which may result in significant trade effects for its members." Thus, the GATT Contracting Parties have recognized that it is important to ensure that GATT/WTO does not exceed its competence in trade and environmental matters.

Issues relating to the use of trade measures, such as sanctions and penalties, should be discussed in fora beyond GATT/WTO in order to determine its area of competence. Therefore, the work program should not rush into creating instruments like Trade-Related Environment Measures (TREMs) under the WTO's ambit.

A number of concepts and ideas which have been put forward are well-intentioned and reflective of the concerns of environmental and development NGOs. But some of these proposals could result in shifting the burdens of environmental protection, which for political and economic reasons, must necessarily involve burdens on the North, to the South via trade and trade sanctions. This will add another burden of adjustment to the already over-burdened South suffering from the structural adjustment policies of the Bretton Woods institutions and the closing by the Uruguay Round of some development options.

They could also change the basic principle of non-discrimination and the character of the multilateral trading system, including the basic

rules of the game and the conditions of competition, under the guise of protecting the environment and promoting sustainable development. In effect, additional burdens are imposed on the South. Concepts like process production methods (PPMs), eco-dumping, and internalization of costs are yet to be adequately studied and analyzed in all their economic and social ramifications, particularly in the context of international trade.

PPMs refer to the process or method by which a product is produced. 'Eco-dumping' implies that a country which provides lower environmental standards has an unfair competitive advantage in exporting its goods, because such goods are produced by environmentally inferior methods or technologies. 'Internalizing external environment costs' refers to the inclusion in the price of a product of the estimated adverse ecological effects of producing or distributing it.

The three concepts are thus interrelated. When discussed in the GATT/WTO context, the implication is that if a country has lower environmental standards in an industry, the costs of that country's product is not internalized and the prices are thus too low, and the country is practicing 'eco-dumping.' As a result, a second country that is importing from the first would have the right to impose trade penalties, such as levying countervailing duties on goods exported by the first country. This set of ideas poses complex questions relating to concepts, estimates, and practical applications, particularly as they relate to the international setting.

The concept of 'internalization of external costs' has been usefully applied at the micro-level, for instance, in environmental and social assessment projects that may adversely affect the communities and the ecosystem. However, the application and operationalization of this concept at the international level is fraught with many problems involved in deriving correct estimates of the 'internalization of external costs.'

When this is all sought to be fashioned into an international trade policy instrument within the inherently asymmetric GATT/WTO trading system, the setting of standards and norms, trade-restrictions, and retaliations to secure compliance becomes part of the manipulative protectionist process for maintaining and extending the asymmetry of the system.

There are also other problems about internalization of costs, and these need detailed study and analysis. There have been some studies,

many superficial, about internalization of costs of tropical timber, the commodity exports of the Third World, and labor-intensive manufactures like textiles and leather products. But there is very little research on internationalization of costs of final Northern exports which pass through several production and processing stages.

For example, in terms of internalization of costs in the international context, what would be the real costs of nuclear power generation and the storage of radioactive wastes (with some having half-life of thousands of years) and how would they be reflected in the agricultural and industrial production processes and the prices of the end products, and in subsidies to maintain such production or employment?

Security policies and actions on grounds of national security are not challengeable in GATT. However, there are many defense and other activities falling under the national security rubric which do not have negative environmental effects. Many industries and production units, including some high technology ones, have both defense/security and civilian uses. Internalization of these costs poses problems. Not internalizing them would give an unfair advantage to the major powers.

Or would the 'difficulties' of internalizing the costs of what is now being externalized' by the industrial countries lead to indefinite postponement of their internalization, while the exports of the South, capable of much easier 'internalization' of costs by the Fund/Bank economists be immediately forced to be reflected in their export prices?

Would the WTO be able to challenge the measures undertaken by powerful countries for national security reasons, or would it ignore them just as the GATT ignored the Nicaragua sugar dispute in the early 1980s, when the US cited national security reasons to block GATT actions or the EC actions in the Argentine-UK Malvinas/Falklands war?

How would the Third World countries be able to enforce full internalization of costs in the prices of imported products within the parameters of an asymmetric system when, after seven long years of

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negotiations, they had to settle for continued subsidies to industrialized countries in the production and export of agricultural commodities with only a 20-30 percent cut at the end of the six-year reform period? They also had to acquiesce in placing much of the North's subsidies beyond challenge through the subterfuge of a 'green box,' thus enabling these countries to provide environmentally unsound support to industrial agricultural production.

These examples merely demonstrate part of the problem of assessing the environmental costs of processes and production methods in view of the need for deeper analysis and study.

Would the North accept, or at least, share with the internalization costs of the burden of environmental protection, or would it rather use trade instruments to shift the burden to the South, like when it shifted the burden of fighting inflation in the 1970s and 1980s by forcing down the prices in real terms of energy and raw material produced and exported by the South?

Since the ultimate enforcement weapon of the WTO is 'authorized and civilized cross-retaliation,' how would the global objectives of environmental protection and sustainable development be advanced? How do we determine the production process of transnational corporations, and how can its real costs be assessed when even countries like the US and its state of California, which are supposedly more capable of demanding or acquiring such informations, cannot accurately assess the income of and levy taxes on transnational corporations that evade or avoid taxes through transfer pricing?

Before the policy prescriptions based on these are adopted, or before trade policy instruments instead of national market-related instruments are used to enforce compliance, concepts like PPMs, internalization of external costs, and eco-dumping as applied in international trade relations need to be analyzed in much greater depth in an inter-disciplinary way, and without *a priori* assumptions. They have to be scrutinized far more closely for their technical adequacy and their impacts on sustainable development options open to the South.

Suggested Areas for Inclusion in the Program

These are some of the areas already covered by the GATT or WTO rules which are suggested to be included in the agenda of the program:

1. *The implications of the TRIPs agreement on environment and sustainable development.* The TNC decision on Trade and Environment has already identified the relevant provisions of the TRIPs agreement to be noted. These should be in the agenda. Environment and development NGOs in the South have identified TRIPs as a major threat to Southern communities' and governments' capacity to protect the environment and promote sustainable development. These concerns need to be seriously addressed.

Articles 7 and 8 of the TRIPs Agreement states that there should be a balance between public and private interests, and between private returns of the IPR holder and environmental obligations. In the context above, several aspects of TRIPs should be re-viewed. Among these are: (a.) rights of patent or other IPR-holders against the public interest and public policy of a state and its people; (b.) patenting of lifeforms; (c.) the effects of IPRs and the global monopoly created by TRIPs on the transfer of environmentally sound technologies; (d.) the danger of the growth of monopolies, protectionism, and higher prices in such key areas as agriculture and health care.

2. *Trade in Domestically Prohibited Goods.* There was a work program in 1982 which was revived in 1989 and a working group which dealt with this issue that provide GATT notification and transparency to enable importing governments to act and to include additional suggestions in the Uruguay Round package. But they appear to have been ignored in favor of the position of the US to except pharmaceuticals, pesticides and other chemicals, and automobile spare parts.

This issue is of central importance to environmental movements and policy makers in the South as the export of hazardous substances, technologies, and wastes to the South is a major cause of environmental damage in the area.

3. *Export restrictions by developing countries on products based on the natural resources to gain value added and earnings.* These are effective means of protecting the environment and promoting sustainable development.

4. *A definition of the relationship between the various multilateral environmental agreements, such as the Biodiversity and Climate Change Conventions, and the rules of the GATT/WTO.* The objectives of sustainable development should be paramount in such an exercise.