

# **Recommendations for ways forward on institutional reform of the World Trade Organisation**

A discussion paper compiled by  
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**"The status quo is not an option."**

**"[We will] lead the campaign for reform of the WTO."**

**Rt. Hon Stephen Byers, MP, Secretary of State, Department of Trade and Industry  
Seattle, 1999**

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## **Introduction**

In light of the slow pace of current discussions on WTO reform, members of the UK NGO Trade Network have drawn together a number of principles and proposals for reforms in six different areas. These proposals are based on experience of working on WTO issues, combined with dialogue with developing country delegations and NGOs and are intended as a contribution to the debate.

While this paper focuses specifically on institutional reform of the WTO, UK NGOs have equally serious concerns about the substance, implementation and objectives of WTO agreements.

We see institutional reform of the WTO as a precondition for any consideration of wider issues, such as a new round of global trade talks. NGOs are sometimes accused of merely trying to slow the pace of reform through delaying tactics. In our view, nothing has slowed down the WTO more than the debacle in Seattle, which was at least partly caused by the chaotic and exclusive structures and procedures of the WTO. For those who believe that multilateral, as opposed to bilateral, trade agreements provide the best option for developing countries, serious reform is not an option, but a necessity. Without reform, the undemocratic procedures and inequalities in representation at the WTO will continue to generate levels of suspicion and antagonism among developing countries and the wider public. That will seriously impede negotiations and undermine progress towards the creation of a fair multilateral trading system.

Any viable reform process must ensure that trade liberalisation is undertaken not for its own sake, but as part of a coherent global effort to pursue sustainable development, poverty reduction and the promotion of basic rights.

We ask governments to use their influence to press for the recommendations below.

## **Internal Democracy**

Although, in theory, all countries are equal at the WTO, the reality is quite different. Developing countries have not been able to defend their interests in the WTO. It is expensive to maintain a permanent representative in Geneva - the United Kingdom government estimates that it costs around \$900,000 per year to keep its mission in Geneva (not including the costs of office buildings)<sup>1</sup>.

Nearly half of the least-developed country members of the WTO have no representation in Geneva. Those developing countries that do have some representation in Geneva often have only one person responsible for all negotiations in the WTO, where there can be more than 40 meetings a week on subjects ranging from air transport to competition policy, environmental agreements to industrial tariffs. This means that the interests of many nations and their populations are not represented at most of the negotiations that go on in the WTO. By contrast, the US has over 250 negotiators in Geneva<sup>2</sup>, and richer countries frequently fly in technical experts to deal with complex issues.

The main areas of concern expressed by developing countries in relation to internal democracy and transparency relate to the number and scheduling of meetings, lack of feedback from meetings, inadequate participation in meetings, the ambiguous status and organisation of informal meetings and insufficient technical assistance.

The priority must be to ensure more effective participation in the WTO by developing countries. There is a real danger that what happened in Seattle will undermine the WTO to the extent that it ceases to function. If this happens, the possibility of increased protectionism in the US and other developed countries, and of developing countries being forced into bilateral trade deals that work against their interests, will be greatly increased.

It is essential that developing and least developed countries are involved in proposing and arguing for reform if the outcomes of the reform process are to have the effect of increasing confidence in the WTO and improving the functioning of the system. We urge developing and least developed countries to participate actively in the consultations being carried out by General Council Chairman, Ambassador Bryn and by Director General Mike Moore to ensure a balance between the interests of high, middle and low-income countries.

## ***Recommendations***

Governments should consider the following ideas for internal reform:

- In order for the original aim of establishing the WTO as a member-driven organisation to become reality, WTO processes should be designed to suit the capacity of the least powerful members. The aim should be that all WTO members are able to participate in

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<sup>1</sup>Department of Trade and Industry, written answers to questions from UK Trade Network, September 1999

<sup>2</sup> World Development Movement, 'Multinationals and the World Trade Organisation', September 1999

negotiations on any subject of interest to them. This aim should override concerns about the speed of decision making.

- At the end of any process of internal reform, each member country must be satisfied that it can cope with the information flows, planning and preparation required, and attendance demanded, by WTO activities.
- Changes in internal democracy will have implications for the scope of negotiations that are possible at any one time. In deciding the scope of negotiations, and of the eventual undertaking, WTO members should ensure a balance between the interests of high-, middle- and low-income countries.
- The number of meetings held each week should be limited to the number that the smallest delegations can feasibly attend, or be represented at. Meetings on similar subjects should be scheduled together, and timed to coincide with relevant meetings in other institutions in Geneva to reduce costs of travel and pressure on time for developing and least developed country delegations.
- To enhance the efficient use of limited time, all meetings should be properly structured with agendas published in advance.
- An ‘early warning’ system should be established to provide non-resident delegations of new issues and negotiations that allows them sufficient time to reflect and decide on their positions and participation.
- Information should be provided to non-resident delegations giving them an in-depth report and analysis of discussions at WTO meetings.
- Governments should explore the option of establishing a body in Geneva to assist non-resident and small delegations by attending meetings on their behalf, providing reports of proceedings and, when provided with specific instructions, representing their interests.
- It is important that changes in internal processes apply equally to all, and not just to those with less capacity. If, for example, developing countries were all represented by just a few delegates, but industrialised countries continued to each negotiate separately; this would institutionalise the imbalance that currently exists, rather than tackling it.
- Structures of representation should be flexible to accommodate the different interests of members on different topics. The creation of a permanent body, such as an executive body, should be opposed by the UK Government as it would reduce, rather than increase, internal democracy.
- WTO members should agree the criteria governing the circumstances under which informal consultations should occur, and these criteria should be strictly adhered to. WTO members should agree the procedure and criteria for selecting members to attend such meetings.
- A list of members selected to attend informal meetings should be published in advance, and no member should be excluded from such meetings if they express a wish to attend. All members should be informed in advance of the occurrence of informal meetings, and feedback should be to all members.

- All decisions should be taken in the General Council or other formal bodies.
- All WTO members should be invited to make additional binding commitments to the section of the regular WTO budget that is set aside for technical assistance to support the activities of developing and least developed countries in Geneva. Richer nations should consider additional initiatives. For example, funding offices for least developed countries using the model established by the European Union in funding an office in Geneva for ACP countries.

## Capacity Building

Many developing country and Least Developed Country (LDC) governments are still trying to acquire the analytical and technical skills to deal with the complexities of trade law, and the comprehensive knowledge of WTO agreements that would allow an assessment of the overall costs and benefits of different agreements.

In the course of normal WTO business, the small teams of LDC staff in Geneva find it difficult to engage in debates and negotiations from an informed standpoint that allows them to actively pursue their national interests. When WTO Ministerial conferences occur, this problem is amplified by the fact that a comprehensive understanding of the entire panoply of WTO agreements is required in order to assess the impact of various trade-offs. Developing countries, and LDCs in particular, feel vulnerable and dependent on the good will of more powerful nations in ensuring that outcomes will be of benefit to them. This is not a good basis for a strong democratic institution.

A key problem is the lack of institutional capacity in trade policy and law at national government level. Clearly there is an urgent need to develop the skills and capacity of LDC (and some developing country) governments if members states of the WTO are to negotiate on the basis of equal knowledge. As the UK Secretary of State for International Development pointed out in March 1999:

*“Effective technical assistance is not easy. What the new trade agenda demands is not a few consultancy visits, but a concerted effort to apply our knowledge of development to the process of trade negotiation. This means the active engagement of development institutions – including UNCTAD and the World Bank – in trade policy and capacity building.”*<sup>3</sup>

To enable effective engagement in the multilateral trading system, meaningful capacity building has to go beyond providing technical assistance to implement agreements and the provision of Northern consultants to advise governments.

There is a need for institutional capacity building to develop knowledge and analytical skills across civil service departments and enable inter-departmental assessments of the potential impacts of trade rules. (Training focused on individuals is too vulnerable to staff movements/changes to be a sustainable strategy.) And, clearly, if genuine democratic oversight is sought, then capacity building must encompass parliamentarians and civil groups.

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<sup>3</sup> Rt Hon Clare Short, Secretary of State for International Development, at UNCTAD, Geneva, 2 March 1999

It is important to distinguish here between capacity building in trade policy analysis and development and technical assistance that is provided to assist with the implementation of existing agreements. Clearly both are important, but at this stage priority needs to be given to the former.

The lack of action under the Integrated Framework (IF) has been extremely disappointing. By early 2000, twenty-one LDCs had expressed an interest in having roundtables under the IF but only two or three country meetings had taken place. The July 2000 review of the IF concluded that trade policy capacity building “will only prove successful if it constitutes an integral part of the overall development and poverty reduction strategies of the least developed countries”. While this is clearly true, we are extremely concerned that the meeting decided that “this would be ensured principally through such instruments as Poverty Reduction Strategy Papers (PRSPs)” and that “this mainstreaming effort will be led and coordinated by the World Bank”.

While the PRSPs do provide a potential opportunity for public debate around the design and implementation of economic reforms, including trade policy reform, to ensure that they deliver on poverty reduction, practice at this time lags considerably behind the rhetoric. Our key concern is that the extent to which national PRSP processes permit the self-determination of national trade policy is, as present, circumscribed by the World Bank and IMF as adviser and final arbiter on “endorsements” of PRSPs. In practice, the Bank and Fund remain the primary agents for defining the parameters of policies that can be counted as promoting poverty reduction. Some of the preliminary Bank and Fund papers on PRSPs have already been explicit on the presumption in favour of trade liberalisation.

We are concerned that the World Bank as a key player in promoting economic liberalisation, will face insurmountable contradictions and difficulties in providing unbiased trade policy capacity building that considers the developmental, poverty and environmental impacts of multilateral trade agreements. The World Bank has a duty to ensure that the resources available to developing countries are used in the most economically and socially beneficial ways. But it is unclear, for example, how the World Bank will deal with issues such as Trade Related Intellectual Property Rights or Customs Reform where, in its own analysis, the costs of implementation to developing countries far outweigh the economic benefits?<sup>4</sup> Theoretically, if WTO agreements contradict poverty reduction strategies designed through national PRSP consultation processes, then the World Bank should fight the former. But given the fact that the Directors of the Bank are the same as the key member states of the WTO, it is unlikely that Bank staff will feel able to oppose WTO agreements.

### ***Recommendations***

We urge governments to consider the following:

- We welcome the commitments by governments, including the UK, to providing funding to support trade policy capacity building for developing and LDC governments.
- In order for WTO-run capacity building work to go ahead, developed country governments increase their contributions to the section of the WTO budget that is earmarked for technical co-operation to enable a planned programme of capacity building to take place. WTO members should put pressure on those governments blocking this process (primarily USA and Germany). It is important that such funds are provided with

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<sup>4</sup> See Finger and Schuler (1999), *Implementation of Uruguay Round Commitments: the Development Challenge*.

as few specifications as possible beyond directing them towards developing and least developed countries, to enable the Technical Cooperation Division to construct long-term programmes of skills development in response to the needs of the WTO's members.

- Governments should ensure that all capacity building programmes are developed through joint planning between the Technical Cooperation Division and those to be trained.
- Both developing country governments and sympathetic Northern governments have an important role to play in applying pressure to other OECD governments and the World Bank to deliver on the skills building packages already agreed.
- Governments should press for a comprehensive account of who is providing trade related training programmes to developing and least developed countries amongst UN and other national and international institutions. This was one of the objectives of the Integrated Framework discussions but has never materialised. Without it, a planned approach to capacity building is impossible. The EU efforts to compile an account of member states' trade related technical assistance are a welcome step in this direction.
- If the World Bank is to lead and coordinate Integrated Framework trade policy capacity building, through PRSP processes, it is essential that governments, particularly developing and least developing country governments, press for details of how this will be carried out. They should satisfy themselves that capacity building activities will be impartial, addressing the costs and benefits of WTO rules, issues of implementation in the North as well as the South, and involve a broad enough range of stakeholders to ensure that skills development is institutional and not limited to specific ministries or persons.
- In compliment to, or integrated with, PRSP related capacity building, governments should encourage the provision of programme support to those training programmes run by UNCTAD and the South Centre that focus on building institutional support, not least because Southern governments in general have confidence in these institutions.
  - As UNCTAD develops its focal point for training, as outlined in the Plan of Action at UNCTAD X governments should support the development of training programmes that encourage institutional development and are flexible and context orientated, rather than standard, one-size-fits-all courses.
  - A good example of innovative and effective capacity building is provided by the work of the Trade Analysis and Systematic Issues Branch (part of UNCTAD's Division for International Trade in Goods and Services and Commodities). They have been pioneering a variety of skills development programmes to suit varying needs including technical training, the development of analytical; and policy formation skills and practical simulations of negotiations on specific issues. The latter bring together government officials, academics, NGOs, trade unions and other civil groups in a national context and help to develop co-operative relationships as well as ensuring that learning is institutionalised.
- Institutional capacity building at national level could be combined effectively with impact assessments, if the latter were organised to involve a range of different ministries in reviewing the effect of WTO agreements and their implementation on the national economy, environment and poverty. Financial and technical support needs to be provided to assist developing countries that wish to do this.

- While developing institutional capacity at national level is a key concern, this should be supported by regional level capacity building, to complement the initiatives of existing regional groupings (G77, Africa Group, COMESA, SARC etc.). In the immediate future, capacity building that would enable groups and countries to prepare proposals on the Agreement on Agriculture and to further develop positions on TRIPs and GATS would be extremely valuable.
- We urge governments to press for capacity building in trade policy analysis to take place prior to the next Ministerial conference and before substantive negotiations begin on items in the ‘built-in agenda’:
  - Targeted capacity building to prepare developing and least developed countries for Ministerial conferences should start at least one year before the conference takes place, in advance of, not in parallel with, negotiations during the pre-Ministerial phase.
  - WTO members should promote the adoption of a programme of information delivery and consensus building meetings for regional groupings of developing countries and least developed countries in preparation for Ministerial meetings. This would allow those not present in Geneva to input into the process, enhance confidence building and real co-operation.

## **Dispute Settlement**

Serious questions exist concerning the operation of the WTO’s Dispute Settlement procedures. For example, it is well recognised that trade sanctions can hurt the retaliator as much as the ‘victim’ so they will only really be of any use, if at all, to the economically powerful. This gives the lie to the claim that such a system is fair to, and workable for, the world’s poorest nations because the use of sanctions against a more wealthy nation would be akin to shooting themselves in the foot. Other questions exist concerning:

- how to provide developing countries with technical and financial capacity so that they can use the dispute system;
- how to involve the public in the dispute settlement system;
- how to deal with disputes that involve cross-cutting issues such as the environment, human health and human rights;
- how to address implementation problems through capacity building rather than through litigation;
- how to deal with conflicts between the WTO and other international agreements.

These questions amount to a compelling case for reviewing and reforming the WTO’s dispute settlement mechanism.

### ***Recommendations***

We urge governments to consider the following reforms:

- The establishment of procedures and practices that are more inclusive of the majority of WTO Members, notably developing countries. The Technical Co-operation and Training Division (TCTD) has two full time legal officers and two consultants who provide legal advice. Occasionally, other consultants are hired to provide advice in a specific dispute. However, the Secretariat staff (who are supposed to be impartial) cannot give the kind of specific advice that a paid lawyer would. There should be a new unit for Technical Co-operation and Training. This could be staffed by one permanent and four consultancy

posts, and would supplement the current TCTD of two full time legal officers and two part-time external consultants. However, the new unit should be independent of the TCTD and report directly to the Director-General. The unit should be financed by a separate trust fund to which all WTO members could contribute freely.

- The development of measures to deal with situations where developing country WTO Members are unable to use trade sanctions to enforce rulings against more powerful Members because such sanctions would most likely be ineffective and secondly would economically damage the developing country. As Prof. Petersmann (Legal Advisor to WTO) has said, “*implementation of dispute settlement rulings will continue to be influenced by the relative economic and political weight of the parties to the dispute*” (See Petersmann, *The GATT/WTO System*). This being the case, alternative options to sanctions need to be seriously explored. Such options include: **(1)** A Member that has not complied within a reasonable time with a dispute settlement ruling, could have its access to the dispute settlement process restricted or suspended altogether. This option would strengthen the shift towards a legalistic approach in the dispute settlement system, and draw emphasis away from economic remedies. **(2)** The economic remedy of suspension of concessions could be turned around to become an obligation by the member in non-compliance to allow market access on concessionary terms in a sector of the complainant’s choosing to its products. Using the example of the *Bananas Case*: until it complied with the ruling the EU would be obliged to open its markets to specific products from Ecuador, in a sector of Ecuador’s own choosing. **(3)** The DSB could set levels of financial compensation to be paid by the non-complying party (instead of permitting sanctions). Compensation is already recognised in the DSU as a legitimate measure. More broadly, the use of financial compensation would spread the cost of non-compliance across all taxpayers instead of, with the use of sanctions, the costs being borne by just a few sectors unrelated to the dispute.
- The establishment of joint panels involving the WTO and other specialised UN bodies to adjudicate in trade disputes relating to concerns about human rights, development and the environment, in order to achieve an appropriate balance between the different interests in any dispute.
- The establishment of a superior referral body to resolve disputes between trade law, multilateral agreements and international customary law such as Human Rights Conventions. (This point also relates to the section on coherence.)
- Operating procedures for Panels and the Appellate Body should be developed to encourage the submission and consideration of legal and factual arguments from members of the public. The negotiation of an Interpretative Declaration or Amendment to Article 13 DSU, could enable panels to accept information received by them from sources other than the disputing parties. The Appellate Body ruling in the Shrimp Turtle case suggests that panels have discretion as to whether or not to accept and consider such information - they should not automatically reject such information. An Interpretative Declaration or Amendment could specify precisely the treatment of such information by the panels and Appellate Body.
- Providing the public with greater access to information submitted to Dispute Settlement Panels. Although the issue of confidentiality is important, there are ways in which confidentiality can be preserved while ensuring that the public has access to information concerning disputes in the WTO.

- Adoption of “peace clauses” for developing country implementation of current agreements. This will formalise the commitments made by major trading powers to allowing “grace periods” and to exercising “due restraint”. Such peace clauses should shield developing country members from disputes until further negotiations can establish more reasonable timelines for the implementation of these commitments.
- The new Implementation Review Mechanism should become a permanent institution within the WTO that provides regular assessments of the implementation record of developing and least-developed countries. It is also important that this body works closely with the Trade Policy Review Mechanism to ensure effective follow-up of trade policy reviews so that, instead of using dispute settlement as a blunt instrument, the economic, legal and political problems with implementation can be regularly identified and solutions found.
- A review of the operation of dispute panels to remove the recurring disparity between panel and Appellate body rulings. While the Appellate Body rulings in recent trade disputes have not changed the overall result of cases, there are some cases where the difference in reasoning and interpretation between the panel and Appellate Body has effectively changed the substance of the ruling. This is arguably the case in the Reformulated Gasoline and Shrimp Turtle cases where the Appellate Body ruling has provided further insight into the position regarding unilateral use of trade related environmental measure and the discriminatory treatment of products on the basis of PPMs.

## **External Accountability**

Seattle put the WTO in the media spotlight and raised its profile as a focus for public concern. It is clear that without improved external accountability, public concern about the WTO will only grow. In order to re-build confidence democratic accountability must be greatly improved. It is essential that the general public have access, at the national level, to information about the WTO, including about who is accountable to them for decisions taken at the WTO; and how they can influence these decisions.

This transparency should be mirrored at the international level. The public should be able to find out which member states spoke on an issue, who was present at formal or Green Room meetings, who supported which positions and how decisions were arrived at. That is, there should be a record of the proceedings of the institution that enables democratic accountability.

In relation to civil society, there should be consultation by the WTO secretariat on a formal but ad hoc basis with different interest groups as appropriate given different issues.

Concern about the WTO also includes a growing public perception that, within those countries that dominate the agenda in the WTO, trade policy making is dominated by the need to meet the interests of a few major corporations, rather than those of the general population.

For example, according to the Corporate European Observer, intellectual property rights were put on the agenda by a committee of 13 major companies, including General Motors and Monsanto, which lobbied governments to include their proposals in the trade talks for the Uruguay Round. In the negotiations that followed, 96 out of the 111 members of the US delegation working on intellectual property rights were from the private sector. Again, more

recently, in the run-up to the Seattle Ministerial, Leon Brittan publicly criticised the organisers for offering businesses special opportunities to meet with key negotiators in return for donations to cover the costs of the Conference.

### *Recommendations*

Governments should consider the following reforms at the WTO:

- The WTO should actively encourage parliamentary scrutiny of trade policy at the national and regional level.
- The WTO should develop and disseminate best practice guidelines for national consultation with civil society, and the establishment of national contact points for dissemination of WTO papers and records of decisions taken at the national level regarding trade policy.
- The Trade Policy Review Mechanism should include an evaluation of how trade policy is formulated at national/regional level, including an evaluation of consultations with civil society and parliaments
- WTO members should address the General Council decision revoking/extending the decision of 16 July 1996 on interpreting Article V of the agreement establishing the WTO, to allow automatic de-restriction of all documents including draft agendas, papers and minutes of WTO council and committee meetings unless there are good reasons for maintaining confidentiality. Criteria should be established to determine when confidentiality is justified.
- The WTO should develop a system of accreditation of NGOs and other civil groups, that ensures balanced representation from all interests and regions (thereby avoiding domination by northern groups or corporate business interests), to be observers to Committee and Council meetings.

As trade policy making becomes more international, the same standards that apply to domestic policymaking need to be applied to international negotiations. As an example of “best practice”, the EC should promote the following recommendations adapted from the UK Government Nolan Committee’s report on Standards in Public Life<sup>5</sup>:

- Governments should disclose all written advice they receive relating to trade negotiations.
- Delegation members should disclose all agreements with and payments from private sector bodies, trade unions, NGOs and other groups.
- For an agreed period after participating in a delegation, or holding a post within the WTO secretariat, individuals should have to seek clearance from a specially constituted body before entering employment with private companies that might entail a significant conflict of interest.

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<sup>5</sup> HMSO, First Report of the Nolan Committee on Standards in Public Life, 1996

- Governments should examine which other recommendations of the Nolan Committee's report on Standards in Public Life could usefully be introduced at the WTO.

## **Impact Assessments**

There are substantial gaps in the understanding of the linkages between trade liberalisation (whether implementation of WTO commitments or trade liberalisation undertaken unilaterally or under structural adjustment programmes) and poverty reduction, environmental sustainability and basic rights. What evidence exists is inconclusive, but suggests that there is no clear relationship between across-the-board trade liberalisation and higher growth rates, let alone poverty reduction or environmental sustainability.

A recent UK government report on trade and social, health and environmental objectives concluded that “ *[t]he Government should...carry out more research on the interactions between trade and [social, health and environmental] policies including impact assessments of trade rounds, clearly identifying, and publicly explaining, where the main gaps are in our knowledge. This should accept that there will rarely be full certainty.*”<sup>6</sup>

Further WTO negotiations and trade policy reforms proposed by donors (for example, under the WB/IMF Poverty Reduction Strategy Paper processes) must be informed by evidence of the impact of implementing trade policy reforms in the past. All new agreements and reforms should demonstrate how, in the future, they will benefit the poor and environmental sustainability, making explicit the policy trade-offs of different reform options.

The WTO's performance should be judged on the basis of its contribution to the achievement of internationally-agreed basic rights, poverty reduction and environmental sustainability targets, not just on the basis of reductions in trade barriers and growth in international trade flows.

It is essential that trade policy reforms are complemented by, and carefully sequenced with, national and international policies to enhance the potential benefits and offset the costs for poor people, as well as to enhance potential environmental gains and offset negative environmental impacts. Essential complementary policies to promote poverty reduction include state support for credit and extension, trade-related physical and institutional infrastructure, market information, quality social services and safety nets. And for environmental sustainability measures to promote more sustainable natural resource use and to correct market failures, such as effectively targeted regulations, taxes and subsidies.

## ***Recommendations***

All governments should acknowledge that there are substantial gaps in understanding of the linkages between trade liberalisation, poverty reduction, basic rights and environmental sustainability. Also, that the empirical evidence that does exist demonstrates that liberalisation and global integration need to be carefully managed, and accompanied by a number of essential complementary policies/measures if they are to contribute towards sustainable and equitable growth.

We urge governments to:

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<sup>6</sup> *Rights of Exchange: Social, Health and Environmental Objectives on the Global Stage*, Cabinet Performance and Innovation Unit Report, September 2000.

- Provide more funding for independent research, drawing on the expertise of specialised UN agencies and civil society groups, on the socio-economic, environmental, basic rights and gender impacts of trade liberalisation agreements.
- Undertake sustainability impact assessments (which cover environmental sustainability, basic rights and poverty impacts) prior to negotiating bilateral, regional and multilateral trade agreements. Financial and technical support needs to be provided to assist developing countries that wish to do this. (See also Capacity Building section.)
- Ensure that where impact assessments show that WTO trade liberalisation is exacerbating poverty or environmental degradation, or undermining basic rights, policies are reviewed and changed.
- Consider whether WTO mechanisms, such as the Trade Policy Review Mechanism, could be expanded to ensure the systematic assessment of the impact of trade agreements on poverty reduction, basic rights and environmental sustainability, in co-ordination with UN specialised agencies and civil society organisations.

## **Coherence between WTO and Other Multilateral Institutions and Agreements**

International trade rules are vital tools that can set a framework for a fairer system of international trade, help to correct market failures and imbalances, and allow countries to fully engage in trade as part of their national development strategies. Our concern is that most existing trade rules focus exclusively on the promotion of trade liberalisation while subordinating, and potentially overriding, other equally important goals. Measures to promote trade should instead operate within the globally agreed objectives of poverty eradication and sustainable development.

The OECD 2015 targets, Agenda 21 and many other international social and environmental agreements have led to a change in the way governance of the international economic system is viewed. For example, the IMF has now adopted a poverty reduction objective for its work in the poorest countries and sustainable development is becoming a more integral part of national and international policy-making.

Yet the central focus of the WTO remains the achievement of trade liberalisation and, because of the WTO's stronger enforcement mechanism, WTO rules de facto take precedence over almost all other international agreements.

For example, just the threat of WTO action (brandished by an infant formula company) persuaded the Guatemalan government to backtrack on its compliance with the World Health Organisation ruling on breast milk substitutes in 1995. More recently the US attempted to promote biotechnology companies' interests by trying to ensure that the Biosafety Protocol is subordinate to WTO rules. If the US had been successful, it would have rendered the Protocol virtually meaningless and government action to restrict GMO imports could have been successfully challenged in the WTO. The compromise reached in Montreal (i.e. use of the phrase 'mutually supportive' in the preamble) still leaves a great deal of uncertainty surrounding the potential for a successful challenge to the Biosafety Protocol. This is neither

good for the Protocol, nor the WTO. The relationship between the WTO and other international agreements must therefore be addressed.

The following examples of international agreements find little or no reflection in WTO rules and need to be given equal weight in international law:

- Universal Declaration of Human Rights
- Rio Declaration of Environment and Development
- MEAs such as the Convention on Biological Diversity
- Agenda 21
- UN Guidelines for Consumer Protection
- ILO core labour standards
- WHO Provisions on Essential Drugs

In addition to improved coherence with international agreements, there is a need for a better balance between international trade rules and the legitimate right of democratic governments, and people, to develop their own national policies in pursuit of, for example, sustainable development or food security objectives or protecting their citizens' health or environment.

While the importance of such national 'ownership' of economic strategies is increasingly acknowledged by the Bretton Woods Institutions, the WTO rules have lagged behind, failing to adequately recognise the specific needs of, and flexibility required by, developing countries in the trade policy sphere.

### ***Recommendations***

We urge governments to consider reforms to ensure that:

- The WTO works within the framework of global agreements on poverty reduction and sustainable development. A key international policy principle should be that trade agreements do not take precedence over multilateral agreements promoting poverty reduction, basic rights, and sustainable development. Proposals in this regard include:
  - As part of the review of institutional reform the UK Government should promote the development of an arbitration mechanism for where WTO rules conflict with other international agreements. Such a mechanism should lie outside and above the WTO, rather than within it (See previous section Dispute Settlement)<sup>7</sup>
  - A more formal link between the WTO and the UN should be made. In particular, an institutional link should be made between the WTO and UN organisations that have a complementary role in order to formalise interactions between them. Also, the arbitration mechanism mentioned above could be developed within the UN.

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<sup>7</sup> See also the draft recommendations of the "Social, Environmental and Health Objectives on the Global Stage" project of the Performance and Innovation Unit at the Cabinet Office