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2005

TRADING AWAY OUR LAST ANCIENT FORESTS THE THREATS TO FORESTS FROM TRADE LIBERALIZATION UNDER THE WTO

REPORT

GREENPEACE

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REPORT



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MALAYSIA - 2002 - DAM PROJECT. THE PROPOSED BAKUN DAM WILL FLOOD 70,000 HECTARES OF LAND, DISPLACING INDIGENOUS PEOPLES AND WILDLIFE AND DESTROYING EVEN MORE RAIN FOREST. IN THE IMAGE, PENAN MAN STANDING IN FRONT OF A WOODMAN TIMBER TRUCK LOADED WITH LOGS.

GREENPEACE

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abbreviations

- ACP** - African Caribbean and Pacific countries (see glossary)
- AoA** - Agreement on Agriculture (of the WTO)
- APEC** - Asia-Pacific Economic Cooperation
- ATL** - Accelerated Tariff Liberalization
- CBD** - Convention on Biological Diversity
- CDM** - Clean Development Mechanisms (under UNFCCC)
- CITES** - Convention on International Trade in Endangered Species of Wild Fauna and Flora
- COP** - Conference of the parties (of a MEA)
- CTE** - Committee on Trade and Environment (of the WTO)
- DEG** - German Investment and Development Company [Deutsche Investitions- und Entwicklungsgesellschaft]
- DSU** - Dispute Settlement Understanding (of the WTO)
- FAO** - The Food and Agriculture Organization of the United Nations
- FSC** - Forest Stewardship Council
- GATS** - General Agreement on Trade in Services (of the WTO)
- GATT** - General Agreement on Tariffs and Trade (of the WTO)
- GSP** - Generalized System of Preferences
- IFF** - Intergovernmental Forum on Forests
- ILO** - International Labour Organization
- IPF** - Intergovernmental Panel on Forests
- IPPC** - International Plant Protection Convention
- IPR(s)** - Intellectual property right(s)
- ITTA** - International Tropical Timber Agreement
- ITTO** - International Tropical Timber Organization
- LDC(s)** - Least Developed Country (Countries)
- MAI** - Multilateral Agreement on Investment
- MEA(s)** - Multilateral environmental agreement(s)
- MFN** - Most favored nation (see glossary)
- NAFTA** - North American Free Trade Agreement
- NTM(s)** - Non-tariff measure(s)
- OCP** - Oleoducto de Crudos Pesados (OCP Project in Ecuador)
- OECD** - Organisation for Economic Co-Operation and Development
- PPM(s)** - Process and production method(s)
- SBSTTA** - Subsidiary Body of Scientific Technological and Technical Advice (of the CBD)
- SCM** - Agreement on Subsidies and Countervailing Measures (of the WTO)
- SFM** - Sustainable forest management
- SPS** - Agreement on the Application of Sanitary and Phytosanitary Measures (of the WTO)
- TBT** - Agreement on Technical Barriers to Trade (of the WTO)
- TRIMs** - Agreement on Trade-Related Investment Measures (of the WTO)
- TRIPS** - Agreement on Trade-Related Aspects of Intellectual Property Rights (of the WTO)
- UNCCD** - UN Convention to Combat Desertification
- UNCED** - UN Conference on Environment and Development (Rio 1992)
- UNFCCC** - UN Framework Convention on Climate Change
- UNFF** - UN Forum on Forests
- WIPO** - World Intellectual Property Organization
- WSSD** - World Summit on Sustainable Development (Johannesburg 2002)
- WTO** - World Trade Organization (see glossary)

IVALO, FINLAND - 2005 - STOCK PILE OF CUT LOGS. DEFORESTATION BY STATE OWNED LOGGING COMPANY AND OTHERS THREATENS THE NATURAL HABITAT OF THE REINDEER HERDS AND THE TRADITIONAL LIVELIHOOD OF THE LOCAL SAMI PEOPLE.



INARI, FINLAND - 2004 - THE INDIGENOUS SAMI PEOPLE TRADITIONALLY LET THEIR REINDEER LIVE AND FEED IN A NATURAL ENVIRONMENT. IF THIS ENVIRONMENT WERE TO DISAPPEAR THEN SO WOULD THE SAMI CULTURE AND THE REINDEER'S NATURAL HABITAT.

glossary of terms

ACP countries 78 African, Caribbean and Pacific countries that have preferential trading relation with the EC.

Ancient forests Old growth, natural or primary forests.

Agenda 21 The Agenda for the 21st Century - a declaration from the 1992 Earth Summit (UN Conference on the Environment and Development) held in Rio de Janeiro.

“Chill” effect A situation where an action (such as a regulation) is suppressed or limited by fear of penalization at the hands of an individual or group, in this case the WTO.

Closed canopy Defined as all lands with a forest cover of trees with their crowns interlocking and a canopy density of 40 per cent or above.

Dispute Settlement Understanding Understanding on rules and procedures governing the settlement of disputes in the WTO.

Doha Development Round Comprehensive WTO trade liberalization negotiations initiated at the fourth WTO Ministerial Conference in Doha in 2001 officially aiming at take due account of development issues in the context of trade liberalization.

GATT (1994) The General Agreement on Tariffs and Trade, as revised in 1994, which is part of the WTO Agreements. GATT 1994 includes the original General Agreement, which is known as GATT 1947.

Global Ministerial Environment Forum Meeting of the world's environment ministers under the auspice of UNEP. The first Global Ministerial Environment Forum took place in Malmö, Sweden on 29 - 31 May 2000.

Most-favoured-nation treatment Article I of the GATT 1994 requires countries not to discriminate between goods on the basis of their origin or destination.

Modes of delivery How international trade in services is supplied and consumed. Mode 1: cross border supply; mode 2: consumption abroad; mode 3: foreign commercial presence; and mode 4: movement of natural persons.

NAMA Non-agricultural market access negotiations for all goods not covered by the Agreement on Agriculture.

National treatment Obligation under Article III of the GATT 1994 that requires that imports be treated no less favorably than domestically produced goods once they have passed customs.

Non-tariff measures Non-tariff measures are quotas; import licensing systems, sanitary regulations, prohibitions, etc.

Precautionary principle Provision that where there is a threat of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation

“The South” Term to describe developing countries.

Tariff escalation Higher import duties on semi-processed products than on raw materials, and higher still on finished products. This practice protects domestic processing industries and discourages the development of processing activity in the countries where raw materials originate.

Tariff peaks Relatively high tariffs on “sensitive” products, amidst generally low tariff levels. For industrialized countries, tariffs of 15 per cent and above are generally recognized as “tariff peaks”.

Traditional knowledge The term traditional knowledge refers to the knowledge that people living in a specific ecosystem acquire, about for example, the use of plants in medical treatment or in cosmetic applications.

Uruguay Round Multilateral trade negotiations launched at Punta del Este, Uruguay in September 1986 and concluded in Geneva in December 1993. Signed by Ministers in Marrakesh, Morocco in April 1994.

Waiver Permission granted by WTO members allowing a WTO member not to comply with normal commitments. Waivers have time limits and extensions have to be justified.

World Trade Organization The World Trade Organization was established as the successor to the GATT on 1 January 1995.

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executive summary

Vast tracts of ancient forest around the world stand on the brink of extinction. 10 million hectares are vanishing every year, or a soccer pitch every two seconds. This updated study shows how these last remaining old growth natural forests are threatened by World Trade Organization rules and negotiations, five years after the launch of a comprehensive round of trade negotiations, known as the 'Doha Round' in 2001.

Although the WTO negotiation mandate explicitly included environmental concerns for the first time in 2001, the reality is that the WTO tends to perceive environmental measures designed to protect ancient forests as discriminatory or arbitrary obstacles to free trade. The WTO "chills" action to safeguard the last remaining forests.

Important measures to fight forest destruction include non-tariff measures (NTMs) – such as trade bans on illegal logged timber and wood products, independent timber certification schemes, import/export bans, labeling requirements and sustainable forest management practices. The WTO is often used as an argument against using these measures.

An additional new threat to future sustainable forest management is the non-agricultural market access (NAMA) negotiations. Timber and some non-timber forest products fall into this category. These negotiations aim to reduce tariffs and NTMs, and will have a direct and negative impact on the world's forests.

If tariffs are reduced, or worse, NTMs are abolished, then wood will become cheaper. As a result, demand is likely to increase along with pressure on the remaining forests in the absence of proper management of forest resources. Another worrying consequence of reducing NTMs will be the lowering of potential controls on illegal trade. As an organization concerned with promoting international trade, the WTO should have a strong interest in eliminating illegal trade. But not only does the WTO place the burden of proof of illegality on the importing country, its rules tend to work against forest certification – which is one effective way to combat illegal logging.

If governments do not have effective forest management policies in place, it is highly likely that further liberalization will lead to continued and accelerated depletion of forests and loss of biodiversity. Not only will this have serious ecological consequences, it will have medium and long-term negative economic repercussions – because destroying forest destroys potential future revenue and employment. And it will have social consequences. Environmental degradation and loss of biodiversity is directly linked to poverty and the loss of livelihoods of the millions of peoples that depend on forests for their direct survival. As the World Bank (2004) points out, the resources provided by forests "directly contribute to the livelihoods of 90 percent of the 1.2 billion people living in extreme poverty and indirectly support the natural environment that nourishes agriculture and the food supplies of nearly half the population of the developing world".¹

VASTSKOG, SWEDEN - 2002 - THE COMPANY VASTSKOG LOGGIN THE BRATASKOGEN FOREST IN HARRYDA, OUTSIDE GÖTEBORG (GOTHENBURG). THE AREA WAS ONCE OWNED BY THE SWEDISH STATE CHURCH AND THEIR DESITION TO SELL IT CREATED A LOT OF ATTENTION, SINCE IT WAS CONSIDERED AS A FOREST WORTH PROTECTING.



CANADA - TREES AND FERN IN THE CANADIAN RAINFOREST (SYDNEY RIVER VALLEY).

recommendations

As a first step, a major paradigm shift must take place at the WTO, to permit measures aimed at conservation and sustainable use of forests, even if these measures affect international trade. Moreover, governments need to recognize that the economic, environmental and social value of forests and forest biodiversity is being undermined permanently by unsustainable forest exploitation. The problems associated with the liberalization of forest products clearly show that international trade cannot be an end in itself. The WTO must not be allowed to continue to override key principles and approaches developed in other international bodies and fora.

Coalitions and alliances against those interests that are only concerned with trade liberalization must be built. Developing countries, the European Union and environmental NGOs must work towards effective forest protection. Together, such alliances must ensure that trade supports, rather than contradicts, efforts to maintain forests across the globe without unfairly or arbitrarily discriminating against certain parties.

In order to enhance the conservation and sustainable use of the world's forests, and the sustainable development of forest countries, Greenpeace calls on the WTO members to:

- * Halt the current NAMA negotiations and abandon all plans for the further liberalization of forests and forest products under NAMA.
- * Ensure that Multilateral Environmental Agreements, in particular the CBD, but also CITES, and the UNFCCC, as well as other legitimate trade-related measures aimed at enhancing forest conservation and sustainable use are not undermined by WTO rules.
- * Enhance efforts to make it understood by all that MEAs are fair and effective instruments to integrate environmental, social and economic concerns in the context of sustainable forest management.
- * Ensure that international trade regulations are compatible with conservation and sustainable use of forest biological diversity and promote related economic instruments.
- * Ensure that measures to control international trade and the import of illegally and destructively harvested timber and other forest products are not limited or undermined by WTO rules.
- * Ensure that initiatives like the Forest Stewardship Council (FSC) are not threatened by WTO rules, especially as such independent forest certification initiatives are getting stronger, despite attempts by some interested parties to use the WTO to "chill" their further spread.
- * Ensure that initiatives like the implementation of an environmental procurement policy for sustainable timber and timber products is not undermined or "chilled" by WTO rules.
- * Open up WTO deliberations to civil society stakeholders and ensure full participation of all developing country representatives as members
- * Conduct a full assessment of the environmental and social impacts on forests, especially on the regional and national levels, of all liberalization proposals in the forestry, agriculture, transport and mining sectors. No liberalization in any sector should go ahead until such an assessment is completed and the resulting suggestions implemented in policy
- * Ensure that the WTO does not prevent the application of the precautionary principle and other environmental core principles as established in the Rio Declaration from being applied fully.
- * Ensure that WTO rules do not interfere with full protection of traditional forest-related knowledge and are not used to provide cover for biopiracy.
- * Ensure that national efforts to conserve and sustainably use forests are not undermined by liberalization of the services sector
- * International bodies that specialize in matters relating to forests must become more proactive in addressing the trade-related issues of their mandates. Specifically, Greenpeace calls on governments to put more effort in implementing and strengthening the forest related instruments created in the context of the CBD, CITES, and the UNFCCC. A legally binding instrument for international cooperation regarding the protection of forests and sustainable forest management and timber trade, i.e. a forest protocol, ought to be created under the auspices of the CBD.
- * Greenpeace calls on governments to support and promote regional FLEG(T) processes animated at combating illegal logging and related trade in major timber producing regions.
- * The UNFF process should be terminated due to its ineffectiveness.
- * Urge the EU Commission to prepare a supplementary report to their Sustainable Impact Assessment on forests to inform the development of detailed country-specific measures to assist producer countries to prevent negative social and environmental consequences from the negotiations at the WTO.

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INTRODUCTION

The first edition of this study was commissioned in the run-up to the WTO Ministerial Conference at Doha, which was held in November 2001, anticipating potentially disastrous effects of further liberalization of services and commodities trade on forests. At the time, there were concerns that initiatives such as APECs "Accelerated Tariff Liberalization" (ATL) (before the 1999 Seattle Ministerial Conference that included fast reduction of tariffs on timber products) that triggered NGO concern might be repeated. Although the negotiation mandate of the current WTO Doha Round of trade liberalization is innovative to the extent that it explicitly includes environmental and developmental considerations, some of these concerns continue to be justified.

In fact the WTO members were neither willing to integrate environment and development into the established trade liberalization paradigm nor did they considerably restructure the negotiations in a way that would ensure the effective integration of environmental or developmental concerns into the negotiations. Indeed, members of the Committee on Trade and Environment (CTE) and the Committee for Trade and Development tend to be represented by environment and development ministries, which are often less powerful than trade ministries. Moreover, years of discussion in the CTE have hardly made any progress in forging consensus on its mandate.

Forests cover about 30 percent of the earth's land surface and about half of these forests are located in tropical and sub-tropical regions, about one third of the world's forests are boreal forests. Undeniably, the causes of deforestation are manifold. Direct causes are the conversion of forests into agricultural lands, mining operations, construction of large dams and roads, illegal logging and overexploitation of timber resources. More indirectly, but equally serious, are some of the underlying causes of forest degradation like short-term economic benefits for powerful groups, international debt service, enforced poverty and last but not least civil strife and wars, that are financed by the unsustainable exploitation of timber resources.²

Studies point out that especially the rural poor depend on forests as a source of income. About 20 percent of their annual income is drawn from forests, mostly as meat or

firewood. Moreover, forest resources represent income sources of last resort for the poor in times when for example agricultural yields are below average due to droughts or other disasters. Therefore, sustainable forest management is directly linked to poverty reduction and the achievement of the Millennium Development Goals. In this context it is important to note that sustainable forest management means more than just managing forests with the goal of ensuring long-term commercial exploitation. From a conservationist and environmental perspective sustainable forest management means "socially and ecologically responsible management or use" of forest resources in order to make clear that sustainable forest management encompasses the preservation of the livelihoods of indigenous people and other forest dweller living in and of forests as well as preservation of the functions of forest eco-systems.

After years of negligence, the World Bank's 2004 Forest Strategy also points at the relationship between poverty and forest destruction and the need to shift to sustainable forest management in order to achieve tangible results in poverty reduction. The Bank points out that the resources provided by forests "directly contribute to the livelihoods of 90 percent of the 1.2 billion people living in extreme poverty and indirectly support the natural environment that nourishes agriculture and the food supplies of nearly half the population of the developing world."³ World Bank policies have yet to reflect this finding.

The potential outcomes and impacts of the new WTO negotiations programme on the remaining forests could exacerbate forest degradation, be far reaching and negative, particularly as the environmental component in the Doha Round is so weak. Scientific analysis shows that deforestation rates and forest destruction grows with the liberalization of the timber trade, and agricultural trade and investment policies, if there are no adequate forest management policies in place.⁴ This is indeed crucial, because sustainable forest management depends on efficient national governance systems and strong regulatory regimes. They should ensure for example, that there is proper management of logging licenses, conservation measures guaranteeing long-term protection of forest resources, eco-systems and biodiversity. However, WTO rules often impede effective measures that limit the exploitation of forests because they may consider them to constitute WTO-incompatible trade restrictions.

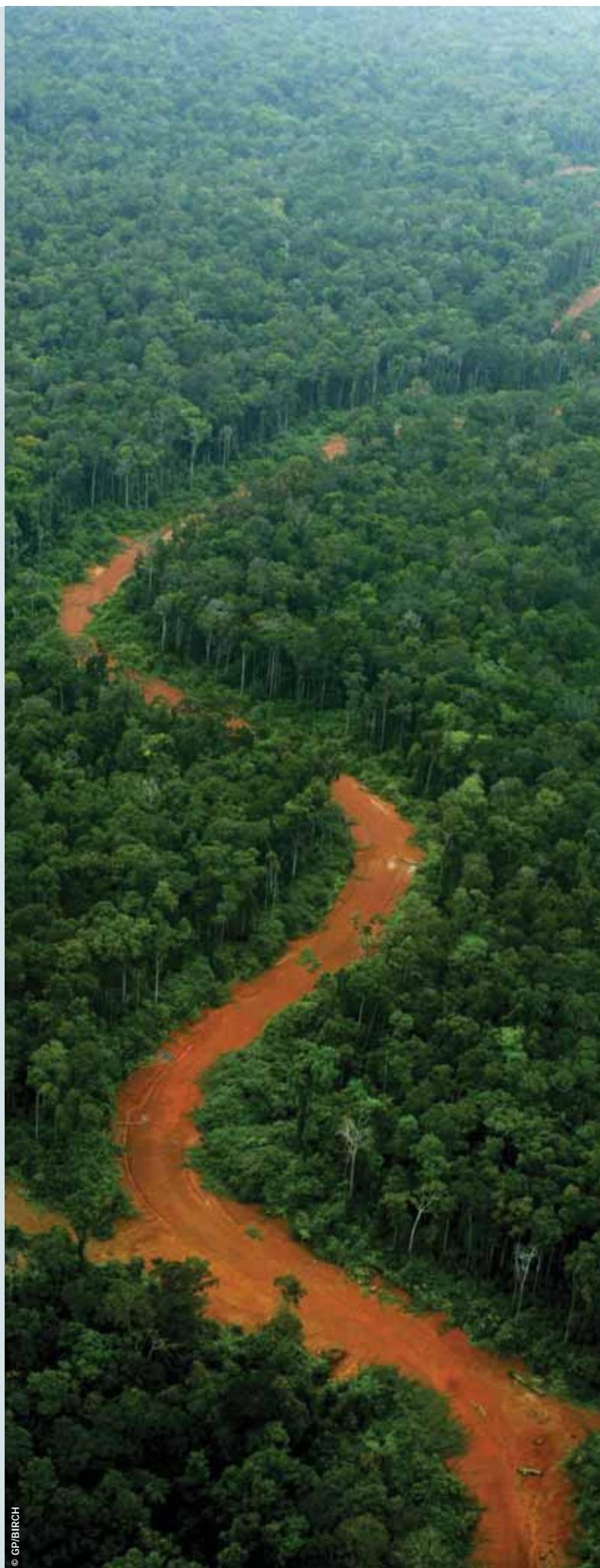
Past negotiations show worrying trends. Certifications schemes for sustainable forest management come under attack as protectionist and thus illegitimate non-tariff barriers and the majority of the WTO members do not adequately take the complex role of forests eco-system and economic and social asset into account. This is partly due to limitations on the negotiating mandate mentioned above, and partly due to the fact that decisions relating to the environment (and forests) may have little to do with achieving sustainability. Rather, they may be the result of the wider bargaining game. They depend on how on-going negotiations in agriculture and service sectors are linked with other issues like industrial tariffs, government procurement, safeguards, market access and the implementation of Uruguay Round agreements. In that dynamic, complex and secretive negotiation environment of the WTO, it is hardly possible to foresee the outcomes of trade-offs between the various negotiation areas, and thus there is reason to be concerned.

The failed Cancun Ministerial Conference demonstrated another notable development that is likely to influence the outcome of negotiations regarding liberalization of timber and non-wood forest products: the rise of rather powerful new alliances of well-prepared developing country groupings that actively present their development concerns.

Thus, for the protection of the last remaining old growth natural forests and the promotion of sustainable forest management it is vital that the development concerns and especially those of the poor will be taken into account. This complex negotiation requires a more integrative and cooperative policy approach. By outlining the negative effects of the current WTO-system and the ongoing negotiations on forest preservation as well as introducing international institutions that actively support the promotion of sustainable forest management the study explores the potential and possible avenues for such an integrative policy approach.

PAPUA NEW GUINEA -
SEPTEMBER 2005 - LOGGING
ROAD, LAKE MURRAY

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2. HOW CURRENT WTO MEASURES AFFECT FORESTS

Trade alone does not cause forest destruction, but in combination with poor management, it can be an important driver of deforestation. Some of the impacts of increased international trade in forest products include:

- * Overexploitation of tree species and irremediable damage to Forest Biodiversity
- * Increase in illegal and highly-destructive industrial logging
- * Pressure to convert natural forests to plantations or agricultural land
- * Increased soil erosion
- * Harm to traditional communities through loss of forest biodiversity
- * Economic costs arising from providing infrastructure and other common subsidization of logging operations.

Under certain circumstances, international trade opportunities can also be an incentive for enhancing sustainable forest management, for example if consumers demand timber from sustainable managed sources or from

sources that ensure that indigenous communities benefit from the timber revenues and enable them to sustainably manage their forest resources. Unfortunately, WTO rules stand in the way of efforts to control trade-induced deforestation because WTO members often appear to see such regulations as illegitimate obstacles to trade.

2.1 WTO impedes efforts to control trade related deforestation and forest degradation

WTO rules are meant to promote trade liberalization. Although other policy areas, such as sustainable development and environmental protection, are mentioned in the preamble to the Agreement establishing the WTO, the WTO members have so far not proven able or willing to create an appropriate balance between these different interests. This is evident from the structure of the WTO rules, as well as the discussions in the organization. The following passage briefly introduces these basic rules for the international exchange of goods and services.

Several cases involving environmental measures have been brought before the GATT and the WTO, resulting in an evolving jurisprudence that helps clarify the meaning of the

Box 1: The threats to forests are increasing

Large tracts of forests, in particular ancient forests, around the world stand on the brink of extinction. 10 million hectares of ancient forest vanish every year. That is a soccer pitch every two seconds. 8000 years ago, large areas of old-growth forest covered almost 50 percent of the earth's land area. Currently only one fifth of the original forest cover exists as large areas of ancient forest. Since 1950, 20 percent of the world's ancient forests have been cut and the remaining tracts of ancient forests in countries like Indonesia or Central Africa could be gone in a few decades if forest destruction continues at the current rate.⁵

According to a recent study by the United Nations Environment Programme (UNEP, 2001: "An Assessment of the Status of the World's Remaining Closed Forests"), the Earth's remaining closed-canopy forests and associated biodiversity are destined to disappear in the coming decades. "Annual losses of natural forests are estimated at 16.1 million hectares per year or 0.42 percent per year. During the 1990s the world lost 4.2 percent of its natural forests, an area considerably bigger than Venezuela"⁶

According to the World Resources Institute commercial logging is a key driver of the destruction of ancient forests, affecting more 70 percent of the remaining old-growth forest areas (Sizer 1999). Although it seems that global logging rates especially in tropical ancient forests slightly decreased in recent years, (FAO 2005) logging is not the only threat to forest. In fact logging "opens" forests to other uses that further destroy remaining forest. Logging infrastructure paves the way for small and large-scale agricultural expansion, shifting agricultural, mining, settlements, and plantations. The consequence is an alarming loss of biodiversity. It is estimated that 24 percent of mammals, 12 percent of birds and 14 percent of plants face extinction due to habitat destruction.⁷



FINLAND - 2004 - SEVERAL HUNDREDS YEARS OLD PINE TREES LOGGED FROM OLD-GROWTH FOREST. MOST OF THE WOOD LOGGED BY FINNISH STATE FORESTRY ENTERPRISES ENDS UP IN PULP AND PAPER PRODUCTION.

treaty provisions. This jurisprudence has developed in several positive ways, but still does not ensure that environmental measures will be effectively safeguarded. In virtually every case, the decisions (nearly always against the environmental provision) have hinged on the interpretation of Article XX. In other words, the challenged environmental measures have been easily found to violate the substantive provisions of the GATT/WTO.

The first cases that analyzed Article XX, focused on whether the environmental measure fell within the scope of paragraphs (b) or (g). The first Tuna-Dolphin case in 1991 concerned US restrictions of imports on Mexican tuna caught with purse seine nets, which exceeded the dolphin mortality rate established by the US⁹. The panel ruled that these provisions were not saved by Article XX(b) because that provision prohibited taking trade measures aimed at protecting the environment beyond national jurisdiction. It also ruled that to meet the test of being “necessary”, the environmental provision had to be the least “trade restrictive” .

Box 2: Key GATT / WTO provisions

The key WTO provisions that can be used to challenge environmental measures:

GATT Article I contains the “most-favored nation” (MFN) obligation: Contracting Parties must unconditionally grant all Contracting Parties advantages which are as favorable as those given in respect of “like” products from any individual Contracting Party. This means that there is to be no discrimination in the way any party to the GATT treats other parties to the GATT in relation to matters covered by the Agreement. Therefore, if a MEA contains trade related measures that distinguish between countries (for example as between developed and developing countries; or that are aimed at non-Parties), which many MEAs do, it may violate GATT Article I.

GATT Article III is known as the “national treatment” obligation: Contracting Parties must treat imported “like” products no less favorably than “like” domestic products. In other words, domestic products and imported products should compete in the marketplace on an equal basis. This provision has been interpreted such that “likeness” is assessed on the basis of the end product, and not on how the product was produced. So, distinguishing between wood products on the basis of the sustainability of the source would risk clashing with GATT Article III.

Article XI prohibits, within certain exceptions, quantitative restrictions on import and export of products. Thus, restrictions on the exports of raw logs (for example a technique applied in some developing countries to strengthen domestic processing industries or by some developed countries to complement conservation measures) likely run counter to Article XI. Once there has been a breach of one of the above provisions, the legal analysis then turns to Article XX.

Article XX contains general exceptions, to see if the offending measure can be saved. Article XX allows Contracting Parties to take certain measures inconsistent with other GATT obligations if: „ they are not applied in a manner, which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade...”

Among the types of measures for which this exception can apply are those that are:

(b) necessary to protect human, animal or plant life or health”

(d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;⁹ or...

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption” .

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As regards Article XX(g), the panel ruled that the measure had to be “primarily aimed” at the conservation of natural resources. As the US measure did not pass these tests, it was found to violate the GATT. The second Tuna Dolphin panel ruled that the treaty does not support either limiting the scope of Article XX(b) to any particular jurisdiction or the “primarily aimed at” test. However, it did leave in place the “necessity” test and added a new element: that Article XX(b) does not permit a country to use trade measures to influence the policies of other countries. The Shrimp-Turtle case affirmed this view, but instead of applying it in the context of Article XX(b), it ruled that the chapeau of Article XX prohibited using trade measures to pressure other countries to change their policies. Indeed, the Appellate Body stated that, “the policy goal of a measure at issue cannot provide its rationale or justification under the standards of the chapeau of Article XX”. The result of this jurisprudence is that Article XX(b) and (g) have now taken on a meaning that conforms with the plain language of the treaty - which makes it easier for an environmental measure to be captured by them - but that the chapeau is where the legitimacy of the measure is decided.

In principle, this is a step forward. However, two problems arise: one is that the hurdle set by the jurisprudence for meeting the terms of the chapeau may be too high to be realistic; secondly, MEAs contain provisions aimed at non-parties precisely because they want to eliminate “free riders” and induce them to join the regime. A recent positive development was the decision in the new Shrimp-Turtle case, where Malaysia challenged the US’s implementation of the 1998 WTO Shrimp-Turtle decision. In this case, the Panel ruled that the US trade restrictions were justified because it had also made good faith efforts to seek a multilateral solution to the environmental problem, even though a multilateral agreement had not yet been reached. In addition, the Panel stated: „The Appellate Body Report [in the Shrimp-Turtle case] found that, while a WTO member may not impose on exporting members to apply the same standards of environmental protection as those it applies itself, this Member may legitimately require, as a condition of access of certain products to its market, that exporting countries commit themselves to a regulatory programme deemed comparable to its own...” (emphasis added).

However, if such a regulatory requirement results in a distortion of an exporting countries environmental priorities the panel stated that, “as Article XX of the GATT 1994 has been interpreted by the Appellate Body, the WTO Agreement does not provide for any recourse” in such a situation¹⁰.

2.2 The Doha Development Round of Trade Negotiations

The most recent trade negotiation mandate of the so-called Doha-Round did not substantially alter the focus on trade liberalization despite its stated commitment to integrate environmental and developmental concerns. Only the negotiations on one environmental subject in which developed countries have a commercial interest – namely environmental goods – progressed since the negotiations started in 2001.

Negotiations also take place on the reduction of fisheries subsidies, but there is no provision for eliminating potentially harmful subsidies in the forestry sector. Lastly, the WTO Committee on Trade and Environment is to give particular attention to the topic of labeling requirements for environmental purposes. No guidance is given here, and it comes as no surprise that the stalemates and uncertainties that characterized previous discussions in that Committee continued and that virtually no progress has been achieved since 2001. Also paragraph 51 of the Doha Ministerial Declaration grants the WTO Committee on Trade and Environment and the Committee on Trade and Development the right to identify and debate developmental and environmental aspects of the negotiations. However this mandate has so far effectively not been used.

2.3 Non-agricultural market access negotiations and the forest sector

Tariff reduction in the forest sector

Despite the many different issues the Doha Development Agenda addresses the reduction of tariffs in the area of agricultural as well as the non-agricultural products is still the central element of this trade round. The negotiating group on market access for non-agricultural products covers forest products (NAMA – non-agricultural market access negotiations). Even though tariffs on timber

Box 3: The Doha Declaration

One clear objective of the 2001 Doha negotiation mandate is to increase market access. Paragraph 16 initiates negotiations on reducing or eliminating tariffs and non-tariff barriers on non-agricultural products, but without any stipulation that such reductions should be examined for their sustainability. Indeed, product coverage for non-agricultural market access (NAMA) is to be "comprehensive and without a priori exclusions". Thus, attempts to exclude forest products from being liberalized were thwarted. As a consequence the liberalization of trade in timber and non-wood forest products is negotiated in the group on market access for non-agricultural products and not in the CTE that is supposed to examine the links between trade liberalization, and environmental protection and sustainable resource management.

With regard to the continued negotiations on liberalizing trade in agricultural products – which are relevant to forests as they may trigger the conversion of forests to agricultural lands - the Declaration contains very weak language. It merely takes note of the proposals that consider "non-trade concerns" (for example environment and sustainable development) and confirms (rhetorically) that non-trade concerns will be taken into account in the negotiations.

Paragraph 19 instructs the TRIPS Council to examine, inter alia, the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD), and the protection of traditional knowledge. However, there is no commitment to creating an equitable relationship between the two treaties or to ensuring the protection of traditional knowledge. In addition, the TRIPS Council has still not accepted the CBD Secretariat's request to become admitted as an observer.

An entire chapter on trade and environment is included in the Declaration (paragraphs 31 – 33). However, it contains very little that will enhance forest conservation and sustainable use. Negotiations are to begin on "the relationship between existing WTO rules and specific trade obligations set out in MEAs", but are not to prejudice the WTO rights of any member that is not a party to an MEA. Later on, the Declaration states that the outcome of the negotiations on trade and environment are not to "add to or diminish the rights and obligations of members under existing WTO agreements... nor alter the balance of these rights and obligations..."

This language not only promises that the outcome of these negotiations will not result in any meaningful modification of the WTO, but is a step backwards from the original mandate of the Committee on Trade and Environment agreed at Marrakesh - where actual reform on the trading system was a potential outcome. Furthermore, the negotiations are only to focus on "specific" trade obligations set out in MEAs, leaving "non-specific" measures even more vulnerable to WTO challenge. The declaration goes on to call for "the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services". While the concept of environmental "services" is relatively well known through the negotiations under GATS, it is woefully unclear what environmental "goods" mean. There was no discussion at Doha of what this means. The negotiations focused on compiling lists with specific products that satisfy a number of environmentally relevant criteria like resource efficiency or low environmental impact.

products are already quite low, further tariff reduction in conjunction with other liberalization measures for wood and wood products will most likely contribute to further forest depletion. If wood becomes even cheaper due to tariff reduction, demand is likely to increase and thus also the pressure on remaining forests will increase, if there is no proper management of forest resources in place. This depletion will be even greater if accompanied by proposed reductions of non-tariff measures relating to national forest management (see next section).

This is not to say that the current tariff structure is ideal, because of the phenomenon known as "tariff escalation". Tariff escalation exists when importing countries apply in successive stages of production relatively higher rates of tariffs to a specific product. For example, before the Uruguay Round developed GATT, contracting parties applied a tariff of 4.7 per cent on wood articles and 9.4 per cent on wood panels but only 0.9 per cent on semi-processed wood products. After the Uruguay Round these rates went down to 1.6 per cent for wood articles, 6.5 per

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cent for wood panels, and 0.4 per cent for semi-processed articles¹¹. Tariff escalation places a high burden on developing countries that are mainly exporting primary products because they lack the financial, technical and knowledge capacities to establish competitive processing industries. Subsequently, many developing countries are still affected by tariff escalation for intermediary and manufactured products like panels and veneer¹². However, effective forest conservation laws must be implemented to prevent developments such as that in Indonesia where overcapacities in pulp and panel manufacturing plants were also linked to rapid deforestation¹³.

The relevant section on NAMA of the Ministerial Declaration regarding tariff reduction confirms that environmental safeguards are not being considered:

“We agree to negotiations which shall aim, by modalities to be agreed, to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. Product coverage shall be comprehensive and without a priori exclusions...”

The NAMA negotiations did make some progress until summer 2005. So far, the negotiations have mostly focused on finding a common tariff reduction formula. However, some members like the US and Canada support a sectorized approach towards tariff reduction. Among the nine sectors suggested for specific tariff reduction arrangements are also forest products.¹⁴ Informal negotiations on forests are ongoing and are being hosted by New Zealand.

Tariff liberalization in the forestry sector has already been brought forward by the “Accelerated Tariff Liberalization” (ATL) initiative during the run-up to the 1999 WTO Ministerial conference in Seattle. The ATL was launched by the Asia-Pacific Economic Cooperation (APEC) in 1997 and covered eight sectors, one of them being forest products¹⁵. An assessment about its likely impacts estimated that the global effects of ATL amount to a maximum increase of trade in forest products by 2 per cent, and a 0.5 per cent increase in timber harvest by 2010. The increase would be most significant in value-added manufacture products, up to 6 per cent, and with trade in raw materials and some semi-processed goods

declining. Increases in timber harvests were projected to take place in Australia (9.2 per cent), Chile (0.5 per cent), China (1.4 per cent), Finland (11.0 per cent), Indonesia (4.4 per cent), Malaysia (2.6 per cent), New Zealand (3.8 per cent) and Sweden (7.6 per cent).

According to this assessment the environmental impacts of tariff liberalization in the forestry sector of the APEC region is small. But this assessment can be criticized on several grounds. NGOs noted that it did not consider the local impacts of a logging increase, for example of 4 per cent in Indonesia that will likely take place mainly in old growth natural forests. In addition, there was no assessment of the expansion of plantations into natural forests or the impacts of intensive forest management. And finally the study did not include a review of the impact of the reduction in non-tariff measures (NTMs) that are likely to ensue in combination with reduced tariffs¹⁶.

In 2004 the EU commissioned a sustainability impact assessment (SIA) of the WTO negotiations on the forest sector. Despite the limited empirical base data the study confirmed, “...in all the case study countries trade liberalization magnified existing problems (for example illegal logging in Indonesia and parts of Brazil and Mexico)”. Moreover, the analysis also pointed to the potentially disastrous link between the liberalization in the agricultural sector and deforestation. In three out of five case studies these negative impacts on forest resources are likely to “exceed the negative impacts of trade liberalization in forest products. The situation is likely to be similar in West African countries with export-oriented agriculture”¹⁷.

The most likely impacts of tariff liberalization are increased exploitation and consumption of forest products. Especially in countries with weak environmental or forest protection policies, it is likely that liberalization will lead to intensified exploitation of forests. In addition, if logging companies need to compensate for the loss of subsidies or declining world market prices resulting from more liberalized trade, logging can be expected to increase. Declining prices for wood and wood products may also contribute to increasing consumption¹⁸.

Since it is not feasible to reduce tariff escalation by increasing tariffs on primary products, it is likely that some tariffs will need to be reduced. However, this reduction



should aim at supporting sustainable forest management. This can only be achieved if tariff reduction is preceded by comprehensive sustainability assessments. However, the Doha Declaration contains no such provision. All that appears is an encouragement to members to share expertise and experience on environmental reviews at the national level¹⁹.

Reduction of non-tariff measures (NTMs)

Apart from liberalization in the agricultural sector, the negotiations regarding non-agricultural market access (NAMA) emerged as the second most important negotiation area in the Doha round. These are relevant as forest and timber products fall into this category. Similarly to agriculture, the NAMA negotiations are not only concerned with tariff reduction but also with the reduction of non-tariff measures (NTMs).

Although, no common definition of NTMs exists, environmental regulations and measures necessary to ensure sustainable forest management practices are likely to fall within this category, simply because members perceive such regulations as trade barriers. But in fact, it is not entirely clear which NTMs constitute non-tariff barriers in the WTO context²⁰. Nevertheless, if WTO members perceive policies, regulations and restrictions related to sustainable forest management and forest conservation as illegitimate barriers to trade, and aim to reduce them, this is likely to have disastrous effects on forest protection. Scientific analysis of the impacts of (timber) trade liberalization and the effectiveness of forest protection schemes over the last decade clearly shows that sustainable forest management and reforestation depends on effective NTMs that regulate forest exploitation²¹.

In the course of facilitating the negotiations by analyzing members NTM notifications the WTO secretariat established four categories of NTMs:

1. NTMs related to specific agreements that are not subject to negotiations in the context of the DDA, for example NTMs related to the TBT or SPS Agreements
2. NTMs related to specific agreements that are subject to negotiations in the context of the DDA, for example the Agreement on Anti-Dumping, Subsidies and Countervailing Measures.

3. NTMs that are not related to specific agreements but that are related to aspects of the DDA. This concerns for example customs procedures that are covered by the negotiations on trade facilitation.
4. NTMs neither covered by a specific WTO agreement nor subject of a specific DDA negotiation mandate. This category encompasses tariff classifications, quotas, fiscal incentives or tax and duty exemptions²².

From an environmental perspective, category 1 and 4 are problematic because any environmental regulation, for example energy efficiency standards, that are not directly related to the DDA can be notified and drawn into the WTO negotiations. Moreover, rather than discussion categories of NTMs across the board some members favour a sectorised approach with the aim of reducing NTMs that are opposed by certain industries. The forestry sector has been mentioned as one potential sector to be included. Such negotiations are likely to undermine sustainable forest management considerably. Therefore, it must be made clear that the legitimacy of such regulations as a common policy tool is not called into question²³. Just because governments or companies are required to observe certain national rules that emerge from a specific national policy framework and are subsequently asked to adapt their products or distribution channels to these conditions, does not make these rules per se illegal, discriminatory or arbitrary.

As will be seen below, many NTMs are valuable tools for achieving the conservation and sustainable use of forests. Thus, the reduction of NTMs may be more harmful to forests than tariff reductions²⁴.

Because of the diversity of measures the consequences of NTM reduction on forests are difficult to assess and so far there has been no systematic analysis of current NTMs undertaken. The exact amount of NTMs currently in existence is almost impossible to determine because often they are not only directly related to forest products, but also to the production of timber²⁵.

When WTO members were asked to notify NTMs to the secretariat in order to gain some empirical information of the scope of NTMs considered as being trade barriers, a number of members also listed sustainable forest management schemes and environmental or sustainability certification schemes as trade barriers²⁶. Indeed, most importers and exporters of timber products have various

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measures in place that regulate timber harvesting, processing and trading. A preliminary overview identified more than 200 such measures implemented by the main timber trading countries²⁷.

In general, NTMs can be described as government laws, regulations, policies and or practices that either protect domestically produced products from full weight of foreign competition or artificially stimulate exports of particular domestic products²⁸.

Typical NTMs are:

- * Quantitative restrictions on imports/exports (for example bans on export/import of raw logs)
- * Labeling requirements
- * Tax incentives
- * Government procurement policies and recycling requirements
- * Environmental regulations addressing reforestation
- * Sanitary and phytosanitary standards regarding pest control
- * Health standards related to the use or consumption of timber products
- * Reforestation or afforestation requirements.

A number of specific NTMs were identified in a study produced by APEC, including:

- * Export development grants to small and medium sized firms to assist with the development of new markets in Australia;
- * Reduction in import duty and value-added and income tax reductions for products manufactured for export in Indonesia;
- * Government funded investment programme to develop and protect new forest lands and a loan programme to assist forest related industries in Korea;
- * Tax and duty concessions, along with soft loans for export focused industry development for all manufactured wood products in Malaysia;
- * Export credit guarantee programmes to encourage exports to buyers in countries where credit is necessary to maintain or increase sales of American products.

Indeed, most NTMs in the forestry sector address economic and social concerns of the timber industry. Nonetheless, the APEC study concluded that:

“To date, environmentally motivated NTMs and other environmental measures are not having a significant effect on trade. However, the uncertainty they have created remains a threat to the global trading system because the interface between trade, development and the environment will continue to be contentious”²⁹.

This statement reveals the underlying bias of the APEC study, that the impact of NTMs on the trading system (and in particular more trade) is what matters most, rather than the impacts on forests. In addition, the treatment of the impact of environmentally motivated NTMs is both exaggerated and inconsistent, considering that the large majority of NTMs listed in the APEC study have economic or trade protectionist origins. Thus, even on the basis of this study, the threat to the multilateral trading system originates from vested economic interests, rather than environmental provisions. In addition, this argument does not acknowledge that forest services provide livelihoods (particularly for poor people), and environmental services such as water management, erosion protection and carbon sequestration: these services are seriously undervalued or ignored in economic calculations. But due to the rising economic and social costs of forest destruction it is high time to start integrating or monetizing these factors into the overall equation of the economy of forest protection and exploitation³⁰.

Under these conditions it is remarkable that environmental or sustainability oriented NTMs are gaining in importance and are promoted as effective instruments for forest conservation by organizations like FAO and World Bank. It is crucial that the WTO negotiations discuss and take account of these trends as well as experiences of the application of conservation related NTMs in the forest sector.

Typical environmental NTMs address forest conservation in the form of timber certification and sustainable forest management practices. Despite the fact that environmental NTMs constitute only a fraction of NTMs in the forestry sector - according to the APEC study - their trade impacts have been intensely discussed ever since Austria and the Netherlands started national initiatives in the 1980s to ban



the import of tropical timber unless it was certified as being sustainably harvested³¹. These initiatives were withdrawn after exporters of tropical timber, namely Indonesia, threatened to challenge these measures under the GATT.

The actual environmental impacts of the proposed NTM reduction depend to a great extent on the particular national and international policy framework. One consequence of reducing NTMs may be a lowering of potential controls on illegal trade. Lessons can be drawn from the experiences of Indonesia, where export bans of logs in order to promote domestic processing were later replaced by high export taxes. One consequence was that logging companies without manufacturing facilities logged even more - mostly illegally - to compensate the financial losses³².

Environmental policy measures tackling illegal logging and illegal trade of timber have to be initiated by exporting and importing countries. Fighting illegal logging and illegal trade is vital not just from an environmental point of view but also from an economic perspective. The World Bank points out, that illegal logging results in additional economic losses of "at least US\$ 10 billion to US\$ 15 billion per year of forest resources from public lands"³³. In order to prevent a WTO challenge both parties need to have legal provisions clearly defining illegal logging and illegal trade otherwise export or import restrictions run the risk of violating WTO rules. The FLEGT-process (Forest Law, Enforcement Governance and Trade) builds on this principle (see Chapter 4.5).

Another important concern in the context of the reduction or the abolishment of phytosanitary NTMs is the danger of increasing plant diseases or the invasion alien species. Imported forest products can introduce species that are alien to the import country and destabilize ecosystems and threaten native biological diversity. For example in 1981, the European gypsy moth reached the US through imported European wood products, apparently causing damage of estimated at US\$ 746 m as a result of destroyed American pine trees³⁴.

Hence, if governments do not have effective forest management policies that are actually implemented, it is highly likely that further liberalization will lead to further depletion of forests. In addition to the environmental

consequences, many politicians and industry representatives consistently overlook the medium and long-term negative economic consequences arising out of this forest destruction. Forests, the lives of people who depend on non-timber forest products and biodiversity can only be preserved, if income or growth oriented policies are accompanied by measures that ensure that forest resources are not depleted by over-exploitation or conversion.

2.4 WTO rules may undermine Multilateral Environmental Agreements (MEAs) that protect forests

From an environmental perspective the uncertainty about whether WTO-rules can actually be used to undermine MEA measures once they impede international trade is the nucleus of the trade and environment conflict. Several MEAs contain rules that aim at the conservation of forests, such as the Convention on Biological Diversity (CBD), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the UN Framework Convention on Climate Change (UNFCCC).

Although the WTO dispute settlement body has consistently indicated that it prefers multilateral approaches to addressing global environmental problems, its Committee on Trade and Environment (CTE) has failed to find consensus on the legal relationship between MEAs and WTO rules. Notwithstanding that there has not yet been a WTO dispute involving a direct conflict with an MEA, the risk of such a dispute is not only ever present, but is steadily increasing, as MEA rules continue to develop so as to impact on economic behavior. In addition, the refusal of the United States to become party to the CBD or the UNFCCC's Kyoto Protocol, raises the likelihood of an eventual WTO challenge to an MEA rule, as non-Parties to MEAs use the WTO to protect their economic interests.

The problem of how to handle trade restrictions with non-Parties to MEAs does not lend itself to an easy legal solution. Legally speaking, WTO members who choose not to join MEAs are still entitled to claim their entitlements under the WTO, when those entitlements are impaired as a result of an MEA. This is of course, potentially threatening to the integrity of the MEA. Therefore a political solution will have to be found to eliminate the chances to a non-Party using the WTO to undermine an MEA.

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The consequences of a WTO panel ruling against an MEA would be disastrous: in the first place, the economic nature of the WTO remedy would be likely to undermine the MEA; and secondly, the WTO would lose considerable political credibility as an institution claiming to support sustainable development. Most at risk to a WTO-challenge are “non-specific trade measures”, which are undertaken individually in pursuit of fulfilling an MEA objective. They arise because most MEAs contain “obligations of result”, that leave Parties with the discretion to choose the most appropriate means in which to achieve their legal obligations. For example, the CBD text does not specifically mention the term “trade”, however several of its provisions call for actions that will impact on trade policy. These measures include the use of incentive measures, access to genetic resources and benefit sharing, protection of traditional knowledge, as well as integrating conservation and sustainable use of biological diversity into all policy areas. All these measures can potentially play a role in preserving forests, once CBD members implement specific forest related programmes or – as currently discussed – a legally-binding instrument on forest conservation (see chapter 4.1).

2.5 The WTO “chills” the full development of rules on forest conservation

The possibility of the use of the WTO dispute settlement body to challenge MEA trade measures has raised concerns about potential conflicts between environmental standards and WTO rules that have “chilled” the development of effective trade-related environmental rules³⁵. This may have been observed for example during the negotiations of the Biosafety Protocol or the Convention to reduce the production and release of persistent organic pollutants³⁶. The WTO and its dispute settlement system has also been used in the context of discussions of more effective international instruments for forest protection to scare and prevent governments from considering measures that affect the international trade of timber products.

The example in Box 5 “SPS [Agreement on Sanitary and Phytosanitary Measures (SPS Agreement)] body mulls pests in wood crate”, taken from the WTO’s own internet site, shows how a WTO member can use the WTO or the threat of a WTO dispute to prevent another WTO member from implementing a trade-related regulatory measure.

The example above also illustrates another significant problem inherent in WTO-rules: the neglect of the precautionary principle. This is evident in the application of the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement). This Agreement regulates measures WTO members can take to protect their biodiversity from alien species, which also pose threats to forests.

Box 4: The WTO dispute settlement

The WTO Dispute Settlement Body is one of the most powerful features of the WTO system. It not only allows for compulsory adjudication once a member lodges a complaint (which is rare in international law) but it also imposes economic sanctions on a member found to be in breach of WTO rules.

In principle, the Dispute Settlement Body is the foundation of the rules-based trading system, and should in theory help prevent smaller countries from being bullied by bigger ones. However, there are serious shortcomings. The adjudicators that hear Panel and Appellate Body cases are trade law specialists, who do not necessarily have expertise in other areas affected by trade rules, such as the environment and sustainable development. This setting in connection with the mandate of the Dispute Settlement Body, leads to cases being decided through a trade policy lens. Even if the perceptions of adjudicators were different, judicial decision-making cannot, and should not, compensate for a lack of political decision-making. The Dispute Settlement Body is in sore need of clearer political guidance on how to address the trade and environment nexus, which has so far been lacking. Furthermore, like virtually all WTO activities, the adjudication process is mostly non-transparent, closed to outside observers such as NGOs and other stakeholders.



SIBERIA, RUSSIA.

Box 5: SPS body mulls pests in wood crates

“ A draft EU emergency measure against pests in pinewood packaging, which would affect a large share of goods trade, generated some concern in the 8-9 November 2000 meeting of the WTO Committee on Sanitary and Phytosanitary Measures... This issue was raised by Canada, which complained that this measure would cover 69 per cent of all Canadian exports of all goods to the EU since it applies to packaging. The draft measure [EU draft temporary emergency measures on wood packaging (G/SPS/N/EEC/93)] covers a wide range of wood packaging that uses coniferous wood originating in Canada, China, Japan and the US. It is designed to protect EU forests against pinewood nematode (*Bursaphelenchus xylophilus*). The products covered would have to be either heat treated to 56°C for at least 30 minutes and have a moisture content below 20 per cent or have been pressure (impregnated) treated.

Canada recognized the EU's legitimate need to protect its forests against pests, but urged the EU to follow its example by waiting until negotiations on multilateral standards are completed in the International Plant Protection Convention (IPPC) even if pests are detected. Canada also urged all participants in the negotiations to work for a swift conclusion. Canada's concern was shared by the US, Rep of Korea, Japan and Chile. They complained about both the “enormous impact” and the “abrupt” timing of the proposed measure, which in its original draft was due to take effect from 1 January 2001.

The EU said the measure was notified to the SPS Committee so that WTO members could comment, and three (including Canada) have commented so far. The draft is being reviewed and the original target date of 1 January will be postponed, the EU said. But it argued that an emergency has arisen since it found numerous occurrences of the pest. The EU added it could not wait for the IPPC negotiations to reach agreement since they appear to be heading for considerable delay. This is a new and serious problem for us the EU said”³⁷.

The SPS Agreement affirms the right of members to take SPS measures, subject to certain disciplines aimed at preventing economic protectionism and minimizing negative effects on trade. Notions of risk assessment, which may not be entirely consistent with the precautionary principle, underlie these disciplines. It is important to note that the SPS does not contain the usual GATT principles of “most favored nation” and “national treatment”, meaning that it does allow countries the right to discriminate against imported products. This is why it seeks to place disciplines on the extent to which countries take such measures, as well as on the process underlying the decisions to impose the measures. However, by being unclear as to whether countries can fully take precautionary action to protect their biodiversity, these disciplines are too restrictive.

The SPS Agreement requires that SPS measures only be applied to the extent necessary and that they ought not to be applied without sufficient scientific evidence³⁸. Article 3 of the Agreement expresses a presumption of consistency for international standards: members are afforded some scope in adopting more stringent standards than those at the international level “if there is a scientific justification, or as a consequence of the level of sanitary or phytosanitary protection a member determines to be appropriate” pursuant to risk assessment procedures³⁹. Article 5 sets out the requirements for the risk assessment procedures and disciplines the way in which members determine the appropriate level of protection. Provisional measures are permitted when scientific evidence is not sufficient, but the member issuing the measures must review them within a reasonable period of time⁴⁰.

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Box 6: The precautionary principle

One of the cornerstones of effective environmental management is the “precautionary principle”. Indeed, the validity of the precautionary principle has been reaffirmed in many international instruments⁴¹. The precautionary principle provides that where there is a threat of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation⁴². Given that in many instances involving the environment, absolute proof will not be present, and responsible decision-makers must be allowed full scope to take precautionary action. The precautionary principle is triggered once the presence of significant risk is determined. It does not prescribe precisely what actions are to be taken in any given situation. Rather, it operates so as to shift the “burden of proof”, so that those who object to the precautionary measures must be the ones to prove that these measures are without scientific foundation. This shifting of the burden of proof is not sufficiently reflected in WTO rules. However, the attempt to include the precautionary principle in the Doha Development Agenda failed and thus no substantial changes in the WTO approach to precaution are to be expected.

2.6 The WTO restricts a country's ability to use trade measures as an incentive to counter massive forest destruction in another country

Trade measures are one of the few ways to pressure countries to improve their environmental policies, especially in cases involving massive forest destruction, for example by refusing to import forest products from that country. However, as mentioned above, WTO rules would be likely to preclude such actions. WTO jurisprudence has made it quite clear that trade measures should not be used to influence the policies of other countries. For example, the first two environment-related trade disputes, the Venezuela Gasoline and the Shrimp-Turtle case, have ruled that Article XX cannot be used to exempt provisions that contravene other parts of the GATT, if their purpose is to influence the policies of other members⁴³. This is notwithstanding the reality that environmental trade policies are often part of a broader package of measures that are a combination of “carrots and sticks” aimed at ensuring a high level of environmental performance.

Admittedly, the WTO is not the only one to blame for this limitation. If the international community wished to significantly combat deforestation, it ought to establish international standards and mechanisms under such instruments as the Convention on Biological Diversity (CBD) to address significant environmental destruction. However, such initiatives have only just been started and still need to be implemented (see chapter 4). In addition, the development of the means to ensure that a country does not massively deforest is politically sensitive if not impossible, because of the not always unfounded distrust of the South regarding the credibility and aim of such measures by industrialized timber-consuming countries. Environmental and other public policy

interests been used too often as fig leaf to cover predominantly commercial and protectionist interests⁴⁴.

The use of trade measures to influence the policies of other countries is a tool that must be used with care, and must be controlled so as to avoid abuse. This is particularly necessary given the economic imbalances that exist between rich and poor countries. Therefore, the WTO would be correct to scrutinize such measures closely. However, by totally eliminating these measures, no matter what the circumstances - even in instances where there is overwhelming credible evidence that unjustified forest destruction is taking place on a grand scale - is to deprive countries of an important tool to deal with rogue States undermining the sustainable development prospects of the world. The WTO jurisprudence reveals a bias against unilateral measures: all the disputes involving the use of trade-related environmental measures have involved individual countries taking such measures on a unilateral basis. Unilateral measures combating illegal logging and subsequent illegal trade of timber could become the next test case for effective national approaches to protect forest in other countries. Despite the chill-effect a number of national and regional initiatives have evolved to combat illegal logging in the absence of an international forest protection scheme (see chapter 4.5 for a description of the EU FLEGT (Forest Law Enforcement, Governance and Trade). The German Draft Act for a “Virgin Forest Act” is a recent example of one such initiative.

As regards initiatives such as the Draft Virgin Forest Act and the EU Civil Society Initiative for an EU regulation, the key issue for the WTO should not be whether an environmental measure is unilateral or multilateral. Rather, the WTO and other relevant international institutions should examine measures that are challenged as being too trade restrictive

FINLAND - 2004 - SEVERAL HUNDREDS YEARS OLD PINE TREES LOGGED FROM OLD-GROWTH FOREST. MOST OF THE WOOD LOGGED BY FINNISH STATE FORESTRY ENTERPRISES ENDS UP IN PULP AND PAPER PRODUCTION.



INDONESIA - 2003 - LOADING LOG ONTO BACK OF TRUCK, CENTRAL KALIMANTAN.

according to their substantive merits. If the WTO members are truly intent on supporting sustainable development, they should support measures that create the right balance of interests so that the determining factor is whether the measure in question is substantively legitimate or not. Given

the massive impacts of illegal logging on communities and the environment, import bans on illegally and unsustainably logged wood should be legitimate.

Box 7: German Draft Act for a Virgin Forest Act⁴⁵ and the EU Civil Society Initiative for an EU Regulation concerning sustainable forest management and the trade in illegally harvested timber and related products

The German Draft Virgin Forest Act prohibits the possession and marketing of timber that was illegally logged in virgin forests, and of products made from such timber. By means of a statutory ordinance, other forests considered particularly important for the preservation of biodiversity may be afforded the same status as virgin forests. Additionally, by means of a statutory ordinance, the legal provisions governing the assessment of legality may be extended. Obviously, it is impossible to tell by looking at timber and timber products whether the timber has been logged illegally. Similarly, it is generally impossible to ascertain without further investigation whether the timber was logged in virgin forests. Nor is it expedient to confine application of the Act to certain species of tree. Species that grow in threatened virgin forests also grow outside these areas. Therefore the measures against illegal logging cannot be confined to tropical forests or tropical species. In addition, it is assumed that a substantial proportion of illegal logging takes place in forests outside the tropics. And lastly, a differentiation between tropical and other virgin forests could trigger accusations of discrimination.

Consequently, the act is based on ensuring the traceability of timber, from the time when it is logged right through to its marketing in Germany, so that it can be determined whether the imported timber has been legally logged.

As it is not reasonable to expect every single owner and marketer of timber or timber products in Germany to participate in a tracking system, the draft Act essentially only requires large-scale marketers, handlers and processors of timber to furnish proof, encompassing the entire supply chain, that the timber was not illegally logged in virgin forests. Private consumers, commercial users with no intention of sale and companies with a turnover of less than € 100,000 per annum are exempt from this requirement.

EU Civil Society Initiative for an EU Regulation concerning sustainable forest management and the trade in illegally harvested timber and related products

The drafters of the EU Civil Society Initiative's proposal for an EU regulation concerning sustainable forest management and the trade in illegally harvested timber and related products have modelled this proposal quite closely on the Commission's own proposal for regulation. They have gone out of their way to design a legislative instrument that would be complementary to the voluntary FLEGT licensing scheme as proposed by the European Commission (see 4.5).

The key provisions of the Civil Society proposal would prohibit the import into and export from the Community of listed timber and timber products " that have been harvested or manufactured in violation of the laws applying in the country of origin" and require " the presentation of valid and verifiable documents manifesting the country of origin as well as the region of origin within that country and demonstrating in a verifiable manner that the timber in question, and the products originating thereof, has not been logged in violation of the laws of the country of origin."

This would be the general rule applying to all timber imports in the EU but, for partner countries having concluded a voluntary FLEGT partnership agreement, these documents would be substituted by a FLEGT license issued in accordance with the requirements of the FLEGT regulation and relevant partnership agreement. Two types of FLEGT licensing schemes are envisaged: a first one similar to the one currently proposed by the Commission, and an upgraded " FLEGT II " licensing scheme which would be based not only on certification of legality but also on " certification of sustainable forest management " and " chain of custody documentation " . Partner countries would be encouraged to move gradually from FLEGT to " FLEGT II " . The proponents have obtained legal advice indicating that such legislation would not be inconsistent with WTO rules.

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2.7 WTO rules restrict export bans on raw logs

Many countries, including Canada, the United States, China and Indonesia have limited exports of their raw logs. The reasons for doing so vary, but on many occasions they are linked to conservation or sustainable development policies. In particular, developing countries, seeking to offset the effects of tariff escalation on processed wood or to generate greater revenue from their forests, have banned export of their raw logs in order to stimulate a domestic processing industry. However, according to GATT Article XI (General Elimination of Quantitative Restrictions), such export restrictions are not permitted. The long-term consequences of these exports on sustainability are unclear. They depend largely on the circumstances in the particular country. For example, the log export ban in Indonesia led to a 40-50 per cent reduction in prices, which reduced the profitability not only of sustainable forest management but also of conventional forest exploitation. Subsequently, this policy seems to have contributed to increased logging in Indonesia as companies had to make up for their reduced returns on raw logs⁴⁶. In addition, such bans carry the risk of increased pressure on the forests of other countries, to compensate for the decreased opportunities in the country imposing the ban. Nevertheless, bans on raw logs may be an effective element in a framework that aims to avoid such negative compensations measures, and instead provides incentive and opportunities to benefit from a value adding process in the country of origin of the logs.

2.8 WTO rules may not permit independent voluntary forest certification

Independent voluntary forest certification, when done properly, is an effective tool for promoting sustainable forest management. However, its status vis-à-vis WTO rules still remains unclear in spite of years of discussions in the WTO on the effects of "eco-labeling" and voluntary non-state certification process. The issue is this: do WTO disciplines apply to certification and labeling so as to prohibit distinctions between products based on their sustainability? The key instrument is the WTO Agreement

on Technical Barriers to Trade (TBT). Despite an introductory statement in favour of protecting the environment in the TBT Agreement, a majority WTO members refuse to allow standards based on non-product related process and production methods (PPMs) as valid criteria for distinguishing amongst products because they fear competition disadvantages. Developing countries in particular are wary of the additional costs involved in changing production patterns, technologies and in obtaining certificates or the right to label their products as particularly sustainable according the requirements of specific labeling and certification schemes.

However, the issue will not be fully resolved until Article III is broadened to permit PPMs, at the very least those derived from MEAs. This can only happen in a political negotiation and not in the context of a particular dispute. The Technical Barriers to Trade (TBT) Agreement provides rules for setting and enforcing technical standards, including those relating to biodiversity, with a view to reducing barriers to international trade. The TBT Agreement favours international standards by requiring members who adopt technical regulations to participate in efforts to set international standards for the product concerned⁴⁹. Members are therefore required to use international standards where they exist, except if doing so would be ineffective or an inappropriate means of fulfilling legitimate objectives, which includes protection of human health or safety, animal or plant life or health, or the environment⁵⁰.

Problematic are voluntary independent certification schemes by non-governmental bodies. If the TBT Agreement does apply to them (and members are divided on this), then it may prohibit distinctions caused by measures based on "non-product PPMs", i.e. measures aimed at PPMs that do not refer only to the end product, such as the sustainability of the source. However, distinctions based on non-product PPMs are central to credible certification. A recent report by FERN put it as follows:

Box 8: "Like products" and "PPMs"

The treatment of trade-related environmental measures based on the process and production methods (PPMs) of an internationally traded product goes to the heart of the trade and environment interface. Central to the non-discrimination provisions of the world trading system is the notion that "like products" should be treated alike. The key issue, however, is to define what is meant by "like". Environmental regulation often is concerned not only with the end result of production, i.e. the product itself, but also with the PPMs leading to the end product. This is because many environmental objectives can only be met if a holistic or integrative cradle-to-grave approach is adopted. This approach is already reinforced by measures at national and international levels that apply distinctions between products whose PPMs are environmentally acceptable and those who are not.

For example, the Convention on Biological Diversity (CBD) Article 11 calls for incentives to support conservation and sustainable use – such as measures to promote wood from sustainable sources. In order not to lose any market share for products that are regulated in this manner, countries may seek to offset the competitive advantages of imported products, that are not subject to such stringent rules regarding their PPMs. These offsetting measures would be trade-related environmental measures that potentially conflict with the WTO. The question for the WTO is whether two products, both of which are indistinguishable as end products, can be treated differently if their PPMs are different. The text of the GATT does not define "like", and neither did the GATT contracting parties or the members of the present WTO. In the absence of political direction, dispute panels have had to develop their own tests, on a case-by-case basis. The results have been undesirable. Various criteria have been developed and applied, which affirm that "like" is not "identical"⁴⁷. However, at best it remains ambiguous as to whether PPM distinctions on the basis of MEAs are permissible. Although the most recent WTO decision on GATT Article III⁴⁸, broadened the concept of "likeness", by ruling that it is appropriate to take account of health risks in determining "likeness". The Appellate Body also affirmed that "the extent to which consumers are - or would be - willing to choose one product instead of another to perform" the same end-uses is highly relevant evidence in assessing "likeness".

If certification is to influence a consumers purchasing choice, the certifying process must follow an item through its entire production process, from the forest to the shop. For a product from a certified forest to carry a label claiming that the product comes from well managed forests, it is necessary to certify the "chain of custody", including log transport, processing, shipping and further processing. To allow consumers to make a choice with positive impacts, a reliable chain of custody is essential. Without this, there is nothing to link the product to the certified forest⁵¹.

All these issues, and others, do not relate to the characteristics of the end product, but rather to non-product related PPMs. One of the most well-known certification schemes in the forestry/timber sector is the Forest Steward Council (FSC) standards.

The WTO must eliminate the lingering uncertainty about the WTO-compatibility of schemes such as the FSC. The FSC continues to grow in acceptance in all parts of the world, and even local and national government procurement programs on forest products of some WTO members have embraced its standards. Meanwhile, FSC or similar labels have certified around 200 million hectares. The Ministerial Declaration at Doha called for the WTO Committee on Trade and Environment to give particular attention to the issue of labeling requirements for environmental purposes. However, as in most other environment-related issues no substantial progress has been achieved during the last four years of negotiations.

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Box 9: FSC Principles and Criteria for Forest Stewardship⁵²

The Forest Stewardship Council (FSC) Principles and Criteria set forth a set of requirements for certification that go well beyond the characteristics of the end product. The Principles are as follows:

Principle 1: Compliance with laws and FSC Principles. Forest management shall respect all applicable laws of the country in which they occur, and international treaties and agreements to which the country is a signatory, and comply with all FSC Principles and Criteria.

Principle 2: Tenure and use rights and responsibilities. Long-term tenure and use rights to the land and forest resources shall be clearly defined, documented and legally established.

Principle 3: Indigenous peoples' rights. The legal and customary rights of indigenous peoples to own, use and manage their lands, territories, and resources shall be recognized and respected.

Principle 4: Community relations and workers' rights. Forest management operations shall maintain or enhance the long-term social and economic well-being of forest workers and local communities.

Principle 5: Benefits from the forest. Forest management operations shall encourage the efficient use of the forest's multiple products and services to ensure economic viability and a wide range of environmental and social benefits.

Principle 6: Environmental impact. Forest management shall conserve biological diversity and its associated values, water resources, soils and unique and fragile ecosystems and landscapes, and, by so doing, maintain the ecological functions and integrity of the forest.

Principle 7: Management plan. A management plan – appropriate to the scale and intensity of the operations – shall be written, implemented, and kept up-to-date. The long-term objectives of management, and the means of achieving them, shall be clearly stated.

Principle 8: Monitoring and assessment. Monitoring shall be conducted – appropriate to the scale and intensity of forest management – to assess the condition of the forest, yields of forest products, chain of custody, management activities and their social and environmental impacts.

Principle 9: Maintenance of high conservation value forests. Management activities in high conservation value forests shall maintain or enhance the attributes that defined such forests. Decisions regarding high conservation value forests shall always be considered in the context of a precautionary approach.

Principle 10: Plantations. Plantations shall be planned and managed in accordance with Principles and Criteria 1-9, and Principle 10 and its Criteria. While plantations can provide an array of social and economic benefits, and can contribute to satisfying the world's needs for forest products, they should complement the management of, reduce pressures on, and promote the restoration and conservation of natural forests.



INARI, FINLAND - 2004 - REINDEER FROM THE MUOTKATUNTURI REINDEER CO-OPERATIVE, ARE HERDED INTO A CORRRA. FREE GRAZING IS THE SPECIAL FEATURE OF THE SAMI HERDING CULTURE THE REINDEERS LIVE AND FEED IN THEIR NATURAL ENVIRONMENT IF THIS ENVIRONMENT WERE TO DISAPPEAR THEN SO WOULD THE SAMI CULTURE AND THE REINDEER'S NATURAL HABITAT. MEANWHILE THE FINNISH STATE OWNED LOGGING COMPANY METSÄLITILUS CONTINUES TO DEplete THE TRADITIONAL REINDEER GRAZING AREAS.

2.9 WTO rules restrict full protection of traditional forest-related knowledge

The term traditional knowledge refers to the knowledge that people living in a specific eco-system acquire, about for example, the use of plants in medical treatment or in cosmetic applications. Indigenous and local people are often the custodians of biodiversity, and protecting their knowledge can be a powerful incentive for them to continue to conserve the biodiversity. Several international instruments affirm the value of traditional knowledge, such as the Convention No. 169 on Indigenous Peoples of the International Labour Organization (ILO) and the Draft UN Declaration on Indigenous Peoples. Both the Intergovernmental Panel on Forests (IPF) and Intergovernmental Forum on Forests (IFF) recognize that this knowledge is an important component of sustainable forest management, and therefore must be protected⁵³.

However, not only does the WTO not contain any mechanisms for protecting traditional knowledge, but the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) positively restricts the means available for recognizing and protecting traditional knowledge. The TRIPS Agreement aims to create an internationally agreed minimum but strong, standard set of rules for the protection and enforcement of intellectual property rights (IPRs). The IPRs covered under the TRIPS Agreement include patents, copyright, trade secrets, and geographic indications. Thus it is based on conventional (Western) intellectual property rights, which are not appropriate to protect the collective and often oral nature of traditional knowledge. In addition, it may not prevent biopiracy, which results when scrupulous individuals claim patents for inventions based on traditional knowledge. Indeed, many developed countries are using the TRIPS Agreement to obviate the need for prior informed consent of the country of origin in patent applications based on genetic resources. Despite negotiations on benefit sharing there may be a lack of real economic incentives for countries to protect their forests as hosts of biodiversity because in the short term they can have greater economic gain by letting large transnational corporations develop products based on traditional knowledge. Moreover, many developing countries simply do not have the scientific and technical capacities to develop such products themselves.

Although the Doha Declaration provides that the TRIPS Council is to examine the relationship between the TRIPS Agreement and the CBD⁵⁴ nothing much has happened in this respect since 2001. Given past discussions in the WTO, it is unclear if any consensus on this issue will be reached, especially since there is no recognition of the legal equality of the CBD in relation to the WTO regarding these issues.

2.10 WTO rules may hinder measures aimed at tackling illegal logging

As indicated above, illegal logging, and trade in illegally logged forest products, is a growing international problem. Although it is difficult to present exact figures, some estimate that trade in illegally logged timber is worth around \$150 billion per year⁵⁵. In countries like Brazil or Bolivia more than 80 per cent of logging operations violate government regulations, and in Indonesia and Cameroon about 50 percent of the logging seems to be illegal⁵⁶. As a rules-based organization concerned with promoting international trade, the WTO should have a genuine interest in eliminating illegal trade. But the opposite seems to be the case. While the WTO does not require a country to import illegal products, it does tie their hands when it comes to designing measures to combat illegal trade. For example, even where there is evidence that a majority of wood exports from a country are from illegal logging, a country cannot ban the import of all wood products from that country without violating GATT rules. Although such a measure would be an effective way to help combat illegal logging – i.e. by denying market opportunities to those who log illegally – the importing country would risk being challenged at the WTO by the exporting country for arbitrarily restricting their exports. The result is that an importing country wishing to help combat illegal logging faces the unrealistic burden of proving that a particular shipment is from an illegally logged source before deciding not to allow it in. Furthermore, as discussed above WTO rules also may undermine one of the most effective instruments to combat illegal logging: forest certification.

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Box 10: Illegal logging: criminals busted

Fuelled by a demand for cheap supplies of plywood and tropical timber locally and abroad, illegal timber is estimated to account for 60-80 per cent of all timber produced in the Brazilian Amazon (Greenpeace, 2005a). Large amounts of money can be made from the valuable hardwood tree species found in the Amazon, such as Cedar, Ipe, Jatoba, Cumaru, Massaranduba etc. Due to the lucrative nature of this business, corruption is rife. In June 2005, the Brazilian Federal Police dismantled some gangs responsible for illegal logging activities in the State of Mato Grosso for the past 14 years. 89 arrest warrants were issued – including 46 Brazilian Environmental Agency (IBAMA) agents accused of corruption. The group was responsible for the illegal logging of enough timber to fill 76,000 trucks.

This operation, involving 450 Federal Police and 31 IBAMA agents, was the largest ever carried out by the Federal Police in the Brazilian Amazon. However the uncovering of this illegal operation and the arrests of loggers and IBAMA agents in Mato Grosso are not isolated cases. Similar activities are also occurring in other Amazon States, such as Para and Rondonia, where deforestation and illegal logging are rampant.

2.11 WTO does not support trade policy aimed at achieving sustainable forest management (SFM)

In addition to actually interfering with measures aimed at sustainable forest management, the WTO rules also place limits on market-based incentives such as trade policy opportunities aimed at enhancing sustainable forest management. Some of this is intentional and others are by-products of the WTO's drive towards trade liberalization. An example of the latter is reduced prices that often result from trade liberalization (as are indeed threatened as a result of the current NAMA negotiations, see Chapter 2.3). This benefits the consumer in the short term, but there is no accompanying mechanism to ensure that all forest goods and services are adequately valued in the prices. Thus transactions today are at the expense of tomorrow's consumers. In addition, trade liberalization often results in reduced power and revenue generation for the state, which deprives developing countries in particular of the means to effectively run and develop governance systems that protect their forests.

2.12 WTO rules do not allow for granting preferential trade treatment to products coming from sustainably managed sources

For trade to have a positive impact on the environment, it must be linked to a broader package of incentives for environmentally friendly behaviour. In the forest sector, this implies providing privileged trade opportunities for forest products from sustainably managed sources that generate benefits for local communities and other custodians of forest biodiversity.

However, as indicated in the context of PPMs, the WTO system is not designed with such incentives in mind. Just as GATT Article III prohibits treating an imported product negatively compared to other "like" domestic products, so too does it prohibit the granting of more favourable treatment.

One exception is the Generalized System of Tariff Preferences (GSP), which developed countries can offer to developing countries. For example, the GSP program of the European Union, governed by Council Regulation (EC) No. 980/2005 of 27 June 2005, promotes developing countries' exports by allowing their products preferential access to the EU. The current scheme will expire on 31 December 2005. The old scheme outlined special preferences for countries that adhere to sustainable forest management criteria (although they have been modeled by the International Tropical Timber Organization, which is primarily occupied with promoting timber trade), however it was so complicated that was never applied. The new GSP scheme has already partially come into effect in 2005.

The major changes to the scheme over the present arrangements are:

- * The replacement of existing special incentive schemes by a new special incentive scheme for sustainable development and good governance (see below).
- * Amended arrangements for withdrawing preferences that will see preferences removed from some countries and restored for others.

Furthermore, a new special incentive arrangement has been put into place for sustainable development and good governance, for all countries, known as 'GSP+' countries, that ratify key international treaties on labour standards, human rights, good governance and environmental protection. They will be eligible for duty-free access for most products covered by this scheme. 'GSP+' also covers national forest certification schemes. The countries eligible are: Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Georgia, Guatemala, Honduras, Sri Lanka, Mongolia, Nicaragua, Panama, Peru and Venezuela.

2.13 WTO no longer permits subsidies aimed at adjusting to new environmental regulations

Subsidization of industrial forestry is a major driver of forest exploitation⁵⁷. On the other hand, government support for forestry that is environmentally sensitive and socially responsible, but not necessarily economically competitive, should be welcomed. Unfortunately, the WTO Agreement on Subsidies and Countervailing Measures neither prohibits harmful subsidies, nor allows beneficial ones. Somewhat promising was Article 8.2(c), which allows for assistance to promote adaptation of existing facilities to new environmental requirements imposed by law and/or regulations that result in greater constraints and financial burdens on firms. Unfortunately, this provision was time-bound, and is no longer applicable because there was a lack of consensus in the WTO to extend it. The Doha Decision on Implementation-Related Issues and Concerns takes note of a proposal that measures taken by developing countries aimed at achieving legitimate development goals, such as "development and implementation of environmentally sound methods of production", be treated as non-actionable (meaning that no member can lodge a complaint against them)⁵⁸. This is to be discussed in the WTO Committee on Subsidies and Countervailing Measures. So far the

Committee has not addressed subsidies in the forestry sector in a systematic way. However, some members, such as Japan, comparing the situation to similar negotiations on the reduction of subsidies in the fisheries sectors, referred to the potentially negative and positive impacts of subsidies for sustainable forest management⁵⁹. As the negotiations on the reduction of harmful fisheries subsidies actually did make some progress and began to develop categories of environmentally harmful and beneficial subsidies, there may be scope for WTO-members to take up similar subsidy issues in the forestry sector.

2.14 Agriculture liberalization

A key item on the current agenda of the WTO is liberalizing the agriculture sector. In fact, agriculture is often seen as the make-or-break issue of the Doha round of trade negotiations. The relationship between agriculture policy and deforestation is both important and complex. The ultimate objective should be achieving diverse and plentiful agricultural production in a manner that is supportive of its surrounding biological resources, including forests. However, current trade rules tend to work against this objective, as do other factors, such as land tenure patterns and lack of protection of indigenous and local knowledge. If these factors combine to create a situation that encourages agriculture land expansion in the absence of an overall sustainable land use policy, deforestation follows almost inevitably.

Subsidization of agricultural activities – mainly in developed countries - include practices harmful to agricultural, or other, biodiversity. Article 20 of the WTO Agreement on Agriculture (AoA) requires negotiation on the reform of the Agreement, mainly towards liberalization, i.e. improved market access through tariff reduction, reduction of domestic support and export subsidies. WTO members also called for the consideration (i.e. potential elimination) of "non-trade concerns", including environmental protections.

So far, a proper balance between environmental and agricultural concerns has been elusive. At present, the current trade rules on agriculture do not sufficiently support biological diversity, including that in forests, and moves to increase liberalization may make matters worse. There are two main impacts of the current WTO rules that threaten forests: (a) the presence of subsidies that support agricultural practices harmful to biological diversity and

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increase the value of agricultural land as compared to forest land, and (b) the liberalization of agriculture products that can depress prices and thereby increase pressure to use agricultural land more intensively⁶⁰. In addition, since the AoA does not specifically prohibit dumping of agriculture products this practice continues, causing more intense agriculture in developing countries trying to compete on the global market by increasing yields at all costs.

The actual impact of agriculture liberalization on forests will depend on how the reductions of subsidies and the abolishment of NTMs will affect the world market prices of any agricultural product in question. For example, if the prices are high enough, incentives will be created for a

country to increase exports, thereby possibly converting more forest areas into agricultural production. Another important factor are government subsidies for deforestation either to provide the landless population with land or to promote the cultivation of export crops. Finally, the impacts of agriculture liberalization will depend on substitution effects, i.e. to what extent the market developments will lead to a shift in agricultural export commodities. Adverse impacts on forests are likely to occur in commodities such as beef, soy, and palm and other vegetable oils where tariffs are currently relatively high in developed countries. The increased expansion of palm oil plantations has been "one of the main causes of forest loss, particularly in Indonesia and Malaysia, and increasingly in Latin America and Central Africa"⁶².

Box 11: The expansion of soy production and the destruction of forests

Soya expansion is the latest threat to native forests and jungles in South America, sustained by the increased demand for soy-based animal feed from both the European Union and China. Forests are being converted for soy production in Argentina, Bolivia, Paraguay and southern Brazil. These areas are considered to be some of the most biologically diverse forest ecosystems in the world.

The 'United Soy Republic' as the genetic engineering industry now calls Argentina, Paraguay, Bolivia and Brazil, is growing at the expense of native forests, such as the Yungas and the Great Chaco forests, and at great cost to biodiversity, other traditional crops, as well as to human health, forest homes and livelihoods.

The rapid expansion of soy cultivation in Argentina is a largely uncontrolled phenomenon. In 1971 only 37,700 hectares of Argentina's arable land was used to grow soy, but in the last 10 years, this area has increased by 150 percent to a record 14.2 million hectares.

This model of industrial agriculture began to boom in the 1990s, when the international financial institutions encouraged governments of the poorest countries to open their economies up to foreign investment. This opened the way for the large 'agribusiness' multinationals, such as Monsanto, which created a market for genetically modified soy amongst Argentina's farming sector. Soy cultivation has now moved to environmentally fragile areas such as the northern Argentinean provinces of Chaco, Santiago del Estero, Salta and Formosa. Over one million hectares of Argentina's forests have been destroyed to grow soy since 2000, and the amount is rising.

Initially, biotechnology industry spokespeople and even some Argentinean authorities said that higher yields of genetically engineered soy would help to avoid further deforestation in Argentina. Eight years on, the forests are under threat and it's clear higher yields of soy have only been achieved through cultivating more land and through deforestation. Argentina is now the world's third largest soy producer and it's premier soy exporter. Over 90 percent of its harvest is exported, 98 percent of which is genetically modified!

The appropriation of forests for agriculture often involves the forced eviction of 'campesinos' families and communities of indigenous people, who have lived and worked on the land for generations in areas such as Los Juries, the province of Santiago del Estero, Salta Forestal and Lapacho Mocho. Taking advantage of legally weak title deeds or no title deeds at all, corporations and industrial farmers are buying vast areas of forest at very cheap prices, sometimes as low as US\$ 50 per hectare. The people living on the lands, often called 'usurpers', have no legal rights and are totally at the mercy of the landlords.⁶¹

INDONESIA - 2003 - MACHINE GRABBER LOADING LOG ON TO TRUCK, BARITO PACIFIC CONCESSION, EAST KALIMANTAN.



RUSSIA - 2002 -AERIAL VIEW OVER A LOGGING AREA NEAR KOSTOMIKSHA, NEAR THE VILLAGE OF VOKNAVOLOK

3. WHAT THE WTO AND ITS MEMBERS SHOULD BE FOCUSING ON INSTEAD

The preceding chapters showed that trade liberalization can promote forest destruction if countries do not implement systems for sustainable resource and forest management. We have also seen that the WTO can obstruct sustainable forest management when the implementation of forest management schemes, that protect forest and aim at sustainable forest management, is impeded by rigorous and partly unclear WTO rules. Moreover, WTO members have so far not been willing to address these issues by seriously considering how trade rules can be modernized in order to allow for effective management of natural resources at an international and national level. Thus, the reform of WTO rules is a necessary but not a sufficient condition towards this goal.

But before discussing alternative multilateral activities towards sustainable forest management, the following paragraphs briefly address what the WTO should do in the short term. At the very least, the WTO should stop following an unsustainable and environmentally dangerous approach to trade liberalization. The WTO should instead be striving to make trade supportive of sustainable development, and to eliminate cases where this does not yet happen. This requires co-ordination of initiatives at different levels of decision-making both inside and outside the WTO. And it involves integrating the results of scientific analyses regarding the impacts of trade liberalization on forests. There is already a valuable stock of knowledge available, such as the Sustainability Impact Assessment conducted by the European Union (see above) that can guide negotiations. However, more detailed assessments at regional and national levels are required to develop incentives for forest conservation, and sustainable use of forests and their products. It is clear that this requires extraordinary efforts but there are indications that these efforts will pay off economically and socially by ensuring a foundation of not just a sustainable environmental development, but also of economic and social development too, particularly in developing countries.

WTO members need to broaden their approach to trade liberalization, and take into account the social and environmental impacts, as trade is not an end in itself but a means to improve general welfare. Welfare is more than just economic growth. When, as it is often the case, the benefits from economic growth are not evenly distributed across societies, a gap between economic and social or environmental welfare develops that can lead to an overall reduction of a country's welfare level. A balance between trade and social and environmental goals cannot be found with a perspective that values monetary benefits higher than social or environmental interests. Trade liberalization can no longer be regarded simply as deregulation in the sense that national rules – supposedly constituting barriers to trade - are to be abandoned. In the context of sustainable development, trade liberalization, if sensible at all, is a question of re-regulation to find an equitable balance between economic, social and environmental goals. This means that the most economically feasible or least trade restrictive solutions would not necessarily be the only ones that are WTO compatible, particularly if the potential aggregate social or environmental costs are higher than the economic benefits.

Because of its potentially widespread effects the WTO needs to ensure that trade supports sustainable forest management. This requires the improvement of market access for products from sustainably managed forests and the promotion of sustainably produced non-timber products, particularly from local communities. It also requires that the WTO members accept forest certification and labeling as legitimate instruments. The TBT Agreement should be clarified so as to not apply disciplines on the instruments aimed at non-product related PPMs and/or should recognize FSC or similar schemes as international standards. The WTO needs to make sure that its rules do not exacerbate the underlying causes of deforestation (for example agricultural expansion, reduction of environmental NTMs or investment policies). WTO members need to take the results of sustainability impact assessments seriously and either abandon liberalization efforts, based on the precautionary principle or, where possible, adjust trade liberalization measures to avoid negative social and negative environmental consequences.

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WTO members could consider creating special exemptions or provisions for sensitive sectors such as forests that take into account the non-trade concerns that have been outlined in the chapters above. These special provisions could define WTO compatible measures affecting trade in order to protect forests. It could contain:

- * a list of measures that meet the GATT article XX test,
- * rules allowing product-related governmental measures that support sustainable forest management, and
- * existing governmental measures that support small producers and forest communities following sustainable forest management requirements and producing non-timber products.

In addition, measures that address the prevention of illegal logging, illegal trade and the monitoring of forest management, despite their trade-impeding effects, must be included in order to support the initiatives against illegal trade that have been set up in recent years. Finally, after four years of negotiating without any tangible results, the WTO members must now finally begin to co-ordinate their initiatives within the WTO with initiatives in other international forums addressing forests and sustainability issues, to prevent conflicts between WTO rules and those of MEAs. This should be part of a broader approach to link forest conservation, trade policies, and bilateral and international development aid programs, including those by multilateral financial institutions such as the World Bank and International Monetary Fund.



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4. HOW OTHER INTERNATIONAL INSTITUTIONS CAN SUPPORT SUSTAINABLE FOREST MANAGEMENT

Since its foundation, the WTO has proven unwilling and unable to address sustainable development. While countries must therefore take urgent action to end the negative and “chilling” effects of the WTO (as discussed in chapter 2.5), the international community should also urgently focus on the other global institutions and processes to ensure that trade starts supporting sustainable forest management. This section lists existing proposals and develops additional suggestions regarding the role of other international institutions.

As previously indicated, several multilateral environmental agreements cover trade policy in the context of forest conservation and sustainable use. The most important of these are: the Convention on Biological Diversity (CBD), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the UN Framework Convention on Climate Change (UNFCCC). This section also addresses the UNFF, FLEG and FLEGT.

4.1 Convention on Biological Diversity (CBD)

The Convention on Biological Diversity (CBD) dates from 1992 and is a comprehensive instrument aimed at ensuring (a) the conservation of biological diversity, (b) the sustainable use of its components, and (c) the fair and equitable sharing of benefits arising out of access to genetic resources⁶³. The text of the CBD does not contain the word “trade”, however full implementation of a number of its obligations, and of its Conference of the Parties (COP) decisions, require actions related to trade policy. This is due to the Convention's comprehensive approach to achieving its objectives of conserving biological diversity: sustainably using the components of biological diversity; and equitably sharing the benefits arising out of access to genetic resources. Trade is an important, and sometimes *the most important* aspect of sustainable use of a specific resource. Provisions of the CBD that are relevant to trade are found in articles 7-11 and include regulations on monitoring and identification, on the management of biological resources and on the protection of traditional knowledge.

With regard to international trade, decisions taken at COP meetings 6 and 7 are particularly relevant. In 2002 CBD members at the 6th Conference of the Parties of the CBD

agreed on an Expanded Program of Work on Forest Biological Diversity⁶⁴. The program consists of three elements. The first covers largely biophysical aspects such as the reduction of threats to forest biological diversity – through restoration, agroforestry, watershed management – and the establishment of protected areas. The second element deals with the institutional and socio-economic environment, which in turn enables the conservation and sustainable use of forest biological diversity. The third element covers assessment and monitoring.

COP 6 also decided on a Strategic Plan for the Convention on Biological Diversity, which includes the ‘2010 biodiversity target’ to “significantly reduce the loss of biodiversity until 2010”⁶⁵. This 2010 target was also endorsed by the Heads of State at the World Summit on Sustainable Development in Johannesburg in 2002. In order to achieve this target, all programs of work under the CBD have been established with measurable goals, targets and objectives.

The expanded program showed increasing awareness of the link between Biodiversity and global trade, and of the need to improve controls on the international trade of forest products:

Decision VI/22 on the institutional and socio-economic enabling environment, says the first goal is to “enhance the institutional enabling environment” and specifies that this includes to “promote forest law enforcement and to address related trade”. It names numerous activities to achieve this first aim, *inter alia*:

- * Invite Parties, Governments and relevant organizations to provide information on a voluntary basis to enable a better comprehension of the effects of unsustainable harvesting.
- * Evaluate and reform, as required, legislation to include clear definition of illegal activities and to establish effective deterrents.
- * Develop methods and build capacity for effective law enforcement.

In the same program the second goal is to “address socio-economic failures and distortions that lead to decisions that result in loss of forest biological diversity”.

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Trade related activities are to:

- * provide market and other incentives for the use of sustainable practices, develop alternative sustainable income generation programs and facilitate self-sufficiency programs of indigenous and local communities.
- * seek to promote national laws and policies and international trade regulations that are compatible with conservation and sustainable use of forest biological diversity.

In 2004 at the 7th Conference of the Parties of the CBD continued to work on the Forest Biological Diversity Program. In Decision VII/1, " Forest biological diversity" the Conference of the Parties:

- * urged the Executive Secretary to continue and further strengthen its work " in the field of SFM, a report on the effects on forest biological diversity of insufficient forest law enforcement;
- * requested the Executive Secretary propose outcome-oriented targets to be integrated into the work program for consideration;
- * urged Parties and other Governments, and international and regional groups further to enhance their efforts in implementing the program of work on forest biological diversity as an essential contribution towards advancing the 2010 target.

Decision to fight illegal logging and trade: UNEP/CBD/COP/7/L.32

At the 7th Conference of the Parties of the United Nations Convention on Biological Diversity (CBD), signatories agreed, '*individually and collectively to take further steps in curbing the illegal exploitation and trade of resources, particularly from existing protected areas and from areas of ecological importance for biodiversity conservation*'.

Moreover, COP 7 decided to develop a framework to enhance the evaluation of achievements and progress in the implementation of the Strategic Plan and its 2010 Biodiversity Target (paragraph 1 of decision VII/30). This framework includes the following key areas:

- a) Reducing the rate of loss of the components of biodiversity, including: (i) biomes⁶⁶, habitats and ecosystems; (ii) species and populations; and (iii) genetic diversity;

- b) Promoting sustainable use of biodiversity;
- c) Addressing the major threats to biodiversity, including those arising from invasive alien species, climate change, pollution, and habitat change;
- d) Maintaining ecosystem integrity, and the provision of goods and services provided by biodiversity in ecosystems, in support of human well-being;
- e) Protecting traditional knowledge, innovations and practices;
- f) Ensuring the fair and equitable sharing of benefits arising out of the use of genetic resources; and
- g) Mobilizing financial and technical resources, especially for developing countries: particularly the least developed countries, and small island developing States among them; and countries with economies in transition – for implementing the Convention and the Strategic Plan.

Goals, sub-targets and indicators have been identified for each of these key areas.

The need for a new forest convention

During the last five years, it has become clear that the existing multilateral agreements have not been able to effectively protect Forest Biodiversity⁶⁷. Environmentalists have raised the question of whether a legally-binding instrument in the form of a convention that is specifically focused on forests would be a necessary measure in order to implement existing commitments. The aim of such a convention would be to generate additional funds and political will, as well as to raise the international political profile that is required to address the forest crisis. The legally-binding aspect of an agreement is essential – without this there are little legal and formal incentives for adhering to agreements and commitments made.

However, it is questionable whether a new legally-binding instrument would in effect mobilize the necessary political support. Therefore, it may be preferable to establish a protocol under the Convention on Biological Diversity, rather than establish a new convention. The CBD provides a ready established conceptual and institutional basis for such an instrument, and it's use would ensure coherence and integration of approaches.

SOLOMON ISLANDS - 2004 - TRACTOR CARRYING LOGS AT MAKALEVE CAMP THE OCEAN TRADING LOGGING CAMP MAROVO LAGOON, SOLOMON ISLANDS. MANY LOGS AT THIS CAMP ARE OF THE SPECIES DILLENIA SOLOMONENSIS WHICH ARE ILLEGAL TO LOG ACCORDING TO SOLOMONS LAW.



4.2 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), established in 1973, seeks to ensure that trade does not harm the conservation status of species by a system of import and export permits.

Endangered forest species are listed in one of the three appendices of the convention:

- * Appendix I prohibits any commercial trade in those species that are endangered and for which trade is detrimental to their survival.
- * Appendix II lists species that are not yet endangered, but which may become so if trade in these species is not controlled. Every export of an Appendix II species must be accompanied by an export permit whereby the scientific and management authorities certify that trade will not be detrimental to the survival of the species.
- * Appendix III asks importing countries for their cooperation to allow only the import of species listed in Appendix III with official CITES permits. A party may also individually list their species on Appendix III, with the result that an export permit will accompany all exports of those species from that party.

To date, 20 tree species been placed on CITES appendices I and II⁶⁹. On Appendix III there are at present 23 tree species and two genera (*Gonystylus* and *Guaiacum*) listed. However, an evaluation of 255 tree species carried out as early as 1998 against the CITES listing criteria found that, based on deforestation rates, around 15 new species should be added to Appendix I, and almost 100 to Appendix II. Moreover, despite the listing of species, many high value tree species are being extracted at accelerating rates both legally and illegally. In fact, increased logging is thought to threaten nearly 1300 trees species.

There have been several steps to use CITES as an instrument for controlling timber trade and save endangered tree species. At COP 9, in 1994, the Parties decided to establish the Timber Working Group (TWG) to address some of the particular controversies surrounding these species. The TWG developed a number of practical

recommendations to apply CITES in a manner that corresponds with the realities in the timber trade. At COP 11, in 2000, the terms of reference of the working group on mahogany were revised so as to include reviewing the effectiveness of Appendix III listing; assessing information management; studying measures to widen the scope of Appendix III listings and matters relating to legal and illegal trade.

The thirteenth Conference of the Parties (COP 13) in Bangkok, Thailand (October 2004), was considered a victory for conservationists. The Convention moved in a positive direction by actively supporting the proposals for the listing of Ramin and Agarwood in Appendix II. (Big Leaf Mahogany *Swietenia macrophylla* had already been listed in Appendix II after COP 12): Ramin, a tropical Asian hardwood, was listed on Appendix II in 2004 after initially being listed on Appendix III⁶⁹. However, the listing alone could not prevent the smuggling of Ramin through Singapore and Malaysia to western industrialized countries. Indonesia, Malaysia and Singapore have therefore established a Tri-National Ramin Task Force. This task force aims at improving control systems in all three countries.⁷⁰

In terms of effectiveness CITES has been successful in saving particular endangered species from extinction. Yet, it also has become clear that forest destruction has many causes and the listing of tree species is only one of several instruments to counter illegal trade and illegal logging. There are several reasons why CITES listings must be accompanied by other policies aiming at sustainable forest management.

Firstly, proposals to list endangered tree species, particularly species which are commercially harvested for their timber, always lead to highly controversial discussions regarding the socio-economic impact of such listings. Listings in appendices I and II need a two-third-majority decision, which proved to be difficult to attain when export interests of some members are at stake. Secondly, a state can take a reservation to an amendment within 90 days of the adoption. This state will then not be considered as a party to CITES with respect to trade in the species concerned. While the listing of a species on Appendix III can be attained easily, it cannot effectively prohibit smuggling of the listed species to other countries.

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Thirdly, the enforcement of CITES is left to the parties. CITES lacks provisions to create control-capacities and an effective monitoring system. CITES listings can only be effective if states have the necessary capacity and will to control imports/exports efficiently. This includes crosschecking the presented documents as well as identifying particular species⁷¹.

In order to enforce Appendices II and III of the CITES agreement it is essential that CITES cooperates and coordinates its own enforcement efforts with those that are occurring in similar and parallel processes, such as the FLEG and FLEGT. Together these initiatives make a much stronger coordinated stance in the effort to identify the legality of forest products and promote responsible forest management.

4.3 UN Framework Convention on Climate Change (UNFCCC)

The UNFCCC seeks the conservation and sustainable use of forests, because of their perceived potential to act as carbon sinks. Indeed, COP 6, which took place in two sessions in 2000 and 2001, affirmed that forests as sinks can be used in the calculation of emission credits under the Kyoto Protocol. The UNFCCC and the Kyoto Protocol indirectly address three important trade issues related to forests. The first concerns investment liberalization. To operate effectively, the "Clean Development Mechanism" (CDM) under the Kyoto Protocol - an instrument that could, if implemented correctly, promote forest conservation, afforestation and reforestation in developing countries - may entail creating distinctions among foreign investors. These distinctions - for example in the amount of emissions credits attributed- will be based on the degree to which the home country of the investor is in compliance with the Protocol. Furthermore, under the Protocol, the host country may legitimately use the CDM to build local capacity, which may involve placing local content requirements on investments.

The CDM also allows developed countries or corporations to set up tree plantations in the South. Industrialized countries can buy CDM carbon sink credits worth up to one per cent of their 1990 emissions. In December 2003 COP 9 of the UNFCCC laid down modalities and procedures for

afforestation and reforestation project activities under the CDM mechanism⁷². COP 10 in Buenos Aires in December 2004 formulated guidance rules for CDM-projects in Decision 12 and defined the modalities for afforestation and deforestation projects in Decision 13⁷³.

Projects are to be approved by an independent body, which will pre-examine project activities and verify emission reductions actually achieved. Each project has to undergo an impact assessment concerning social and environmental consequences.

So far forest based CDM projects have not affected forest policies. However, there is growing concern that the concept of carbon sinks might result in the establishment of fast growing tree plantations, which are responsible for loss of biodiversity, soil erosion and other problems⁷⁴.

4.4 UN Forum on Forests (UNFF)

Between 1995 and 2000 the UN established three institutions concerned with global forest policy: the Intergovernmental Panel on Forests (IPF) (1995 - 1997), the Intergovernmental Forum on Forests (IFF) (1998-2000), and in 2000, the UN Forum on Forests (UNFF).

These bodies have been the frameworks for international forest policy discussions, including on trade issues, but so far, no major progress has occurred. The UNFF was established for a period of five years (2000-2005) as a subsidiary body of the UN Economic and Social Council (ECOSOC). The UNFF worked on the basis of a multi-year program of work and met annually for two weeks. UNFF-meetings have been confronted with growing criticism from NGOs and national governments.⁷⁵

When it was created in 2000, the United Nations Forum on Forests (UNFF) was given a mandate to promote the management, conservation and sustainable development of all types of forests. In order to achieve this, six crucial functions were identified. These included 'facilitating implementation of forest-related agreements and fostering a common understanding on sustainable forest management' and 'enhancing co-operation and strengthening political commitment for sustainable forest management'. Above all the UNFF ought to monitor, assess and report on the progress made in all these areas.

However, the UNFF was not functioning in practice, basically because vested economic interests prevented the drafting of effective policy instruments. The 5th UNFF meeting in 2005 made this more than clear. As this was the last mandated meeting, the UNFF was supposed to review its work – taking into account its six principle functions with a view to establishing a new International Forest Arrangement, such as a global forest convention or another implementation-oriented agreement.

However, it was clear even before the start of the fifth session that a review or evaluation was virtually impossible because of the lack of data. Although an evaluation questionnaire was sent out, only the EU and 14 other countries (including two EU countries) sent their response back to the UNFF secretariat, thereby ruling out any meaningful evaluation. In addition, the UNFF was unable to provide one of its main functions, i.e. monitoring and reporting, because during its five-year period only eight of the 191 countries – four per cent of its membership – had reported to the secretariat about progress made on forest management (or lack thereof). There was a particular lack of response from the highly forested countries in the South. Of the eight countries that responded, six were European⁷⁶.

Negotiations on a new International Forest Arrangement at UNFF 5 ended without any result and it is unlikely that this could be achieved at the next session. Due to the ineffectiveness, many - among them not just NGOs like Greenpeace but also the FAO⁷⁷ - call for the termination of the UNFF process.

INDONESIA - 2004 - HUNDREDS OF LOGS AWAIT SHIPMENT ON THE LAMANDAU RIVER NEAR BORNEO'S TANJUNG PUTING NATIONAL PARK.



BRAZIL - 2003 - DEFORESTATION AREA ON PUBLIC LAND NEAR PORTO DE MOZ. PARA STATE, BRAZIL.

4.5 The FLEG and FLEGT processes

The World Bank FLEG initiative

In 1998 the G8 foreign ministers established the "Action Programme on Forests". It contained five elements:

1. Assessment and monitoring,
2. National Forest Programs,
3. Protected Areas,
4. Private sector,
5. Illegal logging.

The program featured illegal logging as one of the most important areas of action⁷⁸. This program marked the start of the regional partnership initiative "FLEG" (Forest Law Enforcement and Governance)⁷⁹. This covers East Asia, Africa, and Russia. The FLEG process has so far led to a series of meetings, declarations and informal agreements. However, it has not led to any substantial increase in fighting illegal trade. If the FLEG process aims at achieving substantial results, it will have to increase efforts to come to legally-binding proposals for FLEG member states⁸⁰.

European FLEGT Initiative

In May 2003 the European Commission presented an action plan on Forest Law Enforcement, Governance and Trade (FLEGT)⁸¹. The plan focuses on four elements:

1. Support for improved governance and capacity building in timber-producing countries
2. Development of Voluntary Partnership Agreements (VPA) with timber-producing countries to prevent illegally produced timber from entering the EU market
3. Analysis of the options for further measures, including legislation to control imports of illegally logged timber into the EU
4. Efforts to reduce the EU's consumption of illegally harvested timber and discourage investments by EU institutions that may encourage illegal logging

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FLEGT sets out a range of measures as to how these aims should be achieved:

Support for improved governance

The Action plan aims at improving governance in timber producing countries through the following measures: develop a reliable verification system to distinguish legal from illegal timber; help governments build capacities to enforce existing legislation; improve co-ordination between forest regulators, police, customs and judiciary; and assist policy reforms in order to ensure there are appropriate incentives for legal forest management.

Voluntary Partnership Agreements (VPA)

The VPAs proposed in the Action Plan are voluntary, bilateral agreements between producing countries (FLEGT Partner Countries) and the EU. In the long term these VPAs can be followed by regional agreements or even a multilateral framework for international collaboration⁸² The VPAs aim to provide a system to distinguish between illegal and legal timber entering the EU, which customs agencies have not had before. VPAs offer an approach in which FLEGT Partner Countries establish a scheme of licenses to identify legally produced timber exported to the EU. The Action Plan aims to cover roundwood, rough sawnwood and plywood as a first step, because of the difficulties in ascertaining the origin of processed timber products.

Although implementing the VPAs and a new licensing scheme requires additional capacity building and investments to ensure reliability and credibility of the system there are considerable advantages for FLEGT Partner Countries. These include firstly they would have improved access to EU markets (as public procurement policies increasingly specify the use of legal timber). Secondly, partner countries will benefit from increased

revenue from taxes and duties that are likely to exceed the costs associated with running the licensing system.

VPAs and international trade rules

Trade with countries that choose not to enter into VPAs will be unaffected by the framework. However, since purchasers seem increasingly to adopt policies of sustainable procurement, they might find their market share in the EU reduced. The question arises as to whether the EU's proposed scheme is consistent with international trade rules, as perceived restrictions on trade are open to challenge from the WTO. Yet, as the VPA license scheme is a voluntary bilateral agreement that aimed at promoting legal practices and prohibiting timber smuggling, it should not be considered to be in conflict with WTO rules⁸³.

However, the FLEGT process is developing slowly and there is not yet a guarantee that it will be effective⁸⁵. To improve VPAs, Partnership Agreements should be developed through mechanisms of broad engagement with civil society organizations that support community forestry. They should aim to create public accountability and transparency in the management of natural resources – based on a proper assessment of all partnership country's national forest and related laws (on the environment, human rights, land tenure and others). VPAs should aim to tackle corruption and weaknesses in the forest governance of producer countries, and ultimately lead to sustainable forest management practises, such as those specified under the principles and criteria of the Forest Stewardship Council (FSC).

VPAs will only be applicable to timber producing countries that agree to enter into such agreements, and they will only cover direct trade with Europe, not timber products imported via a third country. For example, given that the European Union makes up approximately 14 per cent of China's total export market and that this figure is increasing exponentially, it is very likely that illegal timber will continue to come into Europe via China, even if VPAs with timber producing countries come into effect.

The European Commission acknowledged this shortcoming in its Action Plan and pointed out that in the EU there is currently no Community legislation prohibiting the import and marketing of timber or timber products produced in breach of the laws of the country of origin. They committed to analyse the options for further measures, including legislation to control imports of illegally logged timber into

Box 12: EC-Indonesia FLEGT Support Project

Implementing the FLEGT Action Plan is largely dependent on financing from EC co-operation projects, one of which is the €15 million EC-Indonesia FLEGT Support Project. This project, financed under bilateral co-operation between the EC and Indonesia, was initially established in 2002. Following a number of missions and meetings since mid-2003, the EC-Indonesia FLEGT Support Project was finally agreed on 30 March 2005⁸⁴.

the EU, and to report back to the Council of the EU before mid-2004. However, the revised regulations are still too weak as they allow avoidance of proper compliance with the various procedures that ensure only legally logged timber is imported into the EU⁸⁶.

The VPAs have also been criticized as being too complicated as far as their implementation is concerned⁸⁷. The implementation would require a legal foundation, i.e. a EU Council Regulation and a number of implementing decisions to be taken by the European Commission. Furthermore, a conclusion of a formal agreement between the EU and each partner country would be necessary. In contrast, more effective control of illegal trade might be better achieved under the existing agreements, particularly the mechanism of CITES Appendix III. Export countries that wish to control their timber export more efficiently can do so already by having them listed in appendix III of CITES. Moreover, the use of the CITES mechanism has the advantage of applying automatically to all exports of the listed species from the listed country to all CITES Parties and not exclusively to exports to the EU. The EU Commission admits in its explanatory memorandum that the FLEGT process does not prevent illegal timber exports from FLEGT partner countries being diverted to importers outside the EU⁸⁸.

Promoting the use of legally sourced timber

The EU can only seriously counter the risk of illegally logged timber being diverted to other markets by creating incentives for legal logging and sustainable forest management. The FLEGT action plan foresees several measures towards this end.

EU member states can refer to the 2004 EU public procurement legislation that outlines options for promoting the use of legal and sustainable timber. The private sector should be encouraged to create marketing opportunities for sustainably logged timber and forest products. Moreover, banks and financial institutions ought to recognize that taking into account environmental and social factors while conducting due diligence assessments for forestry investments is a necessary condition for long-term sustainable forest management.

Another problem is that when the Commission has presented its proposal for the voluntary FLEGT licensing scheme in July 2004⁸⁹, it did not put forward proposals for further binding legislation.

Subsequently, on 7 July 2005 the European Parliament adopted a resolution that criticized the European Commission and Member States for their inaction on illegal logging and for the extraordinarily slow progress in implementing the different commitments set out in the FLEGT Action Plan⁹⁰. The Parliament called on the Commission to go beyond the voluntary regime proposed by FLEGT action plan and to put forward legislation that would criminalize the import of illegal wood and promote sustainable forest management worldwide. Otherwise, the FLEGT process is likely to experience a similar fate to the many existing voluntary initiatives, that remain ineffective because their subscribers do not adhere to the voluntary obligations they have entered.

PEURAKAIRA, FINLAND - 2005 - REMAINS OF OLD GROWTH FOREST ON THE EDGE OF A LAKE. DEFORESTATION BY STATE OWNED LOGGING COMPANY AND OTHERS THREATENS THE NATURAL HABITAT OF THE REINDEER HERDS AND THE TRADITIONAL LIVELIHOOD OF THE LOCAL SAMI PEOPLE.



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5. RECOMMENDATIONS

Despite four years of negotiations on the relationship between trade and environment rules and more than a decade of scientific analysis of the environmental impacts of trade liberalization, the ignorance of many WTO members regarding the negative impacts of trade rules on forests has not changed. There is now a clearer picture of the links between trade liberalization and the environmental, social and economic functions of forests, but few trade negotiators are taking account of this fact. We can therefore only repeat warnings about the potentially disastrous effects of further trade liberalization on forests. Current WTO rules and further trade liberalization envisaged as a result of the Doha Round significantly threaten forest biodiversity.

As a first step, a paradigm shift must take place at the WTO, so as to permit measures aimed at conservation and sustainable use of forests, even if such measures “distort” international trade. Moreover, it has to be made clear that the economic, environmental and social value of forests and forest biodiversity is being undermined permanently by unsustainable forest exploitation. The problems associated with liberalization of forest products clearly show that international trade cannot be an end in itself. Thus, trade must not be given higher priority than internationally accepted values such as sustainable development and environmental conservation. The relative strength of the WTO as an institution must not be allowed to continue to ride roughshod over key principles and approaches developed in other international bodies and fora.

Achieving these recommendations will entail building effective coalitions and alliances against those interests that are only concerned with trade liberalization. The joint efforts of developing countries, the European Union and environmental NGOs were successful in overcoming opposition to establishing trade measures under the Basel Convention on the Transboundary Movement of Hazardous Waste and the Biosafety Protocol. Similar efforts start to emerge in the forest sector and must be enhanced quickly. Together, such alliances can ensure that trade supports, rather than contradicts, efforts to maintain forests across the globe without unfairly or arbitrarily discriminating against certain parties.

In order to enhance the conservation and sustainable use of the world's forests and the sustainable development of forest countries, Greenpeace calls on the WTO members to:

- * Halt the current NAMA negotiations and abandon all plans for the further liberalization of forests and forest products under NAMA.
- * Ensure that Multilateral Environmental Agreements, in particular the CBD, but also CITES, and the UNFCCC, as well as other legitimate trade-related measures aimed at enhancing forest conservation and sustainable use are not undermined by WTO rules.
- * Enhance efforts to make it understood by all that MEAs are fair and effective instruments to integrate environmental, social and economic concerns in the context of sustainable forest management.
- * Ensure that international trade regulations are compatible with conservation and sustainable use of forest biological diversity and promote related economic instruments.
- * Ensure that measures to control international trade and the import of illegally and destructively harvested timber and other forest products are not limited or undermined by WTO rules.
- * Ensure that initiatives like the Forest Stewardship Council (FSC) are not threatened by WTO rules, especially as such independent forest certification initiatives are getting stronger, despite attempts by some interested parties to use the WTO to “chill” their further spread.
- * Ensure that initiatives like the implementation of an environmental procurement policy for sustainable timber and timber products is not undermined or “chilled” by WTO rules.
- * Open up WTO deliberations to civil society stakeholders and ensure full participation of all developing country representatives as members
- * Conduct a full assessment of the environmental and social impacts on forests, especially on the regional and national levels, of all liberalization proposals in the forestry, agriculture, transport and mining sectors. No liberalization in any sector should go ahead until such an assessment is completed and the resulting suggestions implemented in policy

- * Ensure that the WTO does not prevent the application of the precautionary principle and other environmental core principles as established in the Rio Declaration from being applied fully.
- * Ensure that WTO rules do not interfere with full protection of traditional forest-related knowledge and are not used to provide cover for biopiracy.
- * Ensure that national efforts to conserve and sustainably use forests are not undermined by liberalization of the services sector.
- * International bodies that specialize in matters relating to forests must become more proactive in addressing the trade-related issues of their mandates. Specifically, Greenpeace calls on governments to put more effort in implementing and strengthening the forest related instruments created in the context of the CBD, CITES, and the UNFCCC. A legally binding instrument for international cooperation regarding the protection of forests and sustainable forest management and timber trade, i.e. a forest protocol, ought to be created under the auspices of the CBD.
- * Greenpeace calls on governments to support and promote regional FLEG(T) processes animated at combating illegal logging and related trade in major timber producing regions.
- * The UNFF process should be terminated due to its ineffectiveness.
- * Urge the EU Commission to prepare a supplementary report to their Sustainable Impact Assessment on forests to inform the development of detailed country-specific measures to assist producer countries to prevent negative social and environmental consequences from the negotiations at the WTO.



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TRADING AWAY OUR LAST ANCIENT FORESTS THE THREATS TO FORESTS FROM TRADE LIBERALIZATION UNDER THE WTO

REPORT

annex: selected links

American Forest & Paper Association (AF&PA):

<http://www.afandpa.org>

Asia-Pacific Economic Cooperation (APEC):

<http://www.apecsec.org.sg>

Center for International Environmental Law (CIEL):

<http://www.ciel.org>

Center for International Forestry Research (CIFOR):

<http://www.cifor.cgiar.org/>

Commission on Sustainable Development (CSD):

<http://www.un.org/esa/sustdev/csd.htm>

Convention on Biological Diversity (CBD):

<http://www.biodiv.org>

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES):

<http://www.cites.org>

Earthjustice Legal Defense Fund:

<http://www.earthjustice.org>

Ecologic:

<http://www.ecologic.de/>

European Commission, Directorate-General for Trade:

http://europa.eu.int/comm/trade/index_en.htm

Fern:

<http://www.fern.org>

Focus on the Global South:

<http://www.focusweb.org>

Food and Agriculture Organization of the United Nations (FAO):

<http://www.fao.org>

Forest Stewardship Council (FSC):

<http://www.fscoax.org>

Foundation for International Environmental Law and Development (FIELD):

<http://www.field.org.uk>

Friends of the Earth Europe (FoEE):

<http://www.foeeurope.org>

German Investment and Development Company (DEG) [Deutsche Investitions- und Entwicklungsgesellschaft]:

<http://www.deginvest.org>

Greenpeace:

<http://www.greenpeace.org>

Intergovernmental Forum on Forests (IFF):

<http://www.un.org/esa/sustdev/forests.htm>

Intergovernmental Panel on Forests (IPF):

<http://www.un.org/esa/sustdev/forests.htm>

International Forum on Globalization (IFG):

<http://www.ifg.org>

International Labour Organization (ILO):

<http://www.ilo.org>

International Network of Forests and Communities (INFC):

<http://www.forestsandcommunities.org>

International Tropical Timber Organization (ITTO):

<http://www.itto.or.jp>

IUCN International Law Programme:

<http://iucn.org/themes/law/index.html>

North American Free Trade Agreement (NAFTA):

<http://www.nafta-sec-alena.org/>

Organisation for Economic Co-Operation and Development (OECD):

<http://www.oecd.org>

Taiga Rescue Network (TRN): <http://www.snf.se/TRN>

The World Conservation Union (IUCN):

<http://www.iucn.org/>

UN Convention to Combat Desertification (UNCCD):

<http://www.unccd.int>

UN Forum on Forests (UNFF):

<http://www.un.org/esa/sustdev/forests.htm>

UN Framework Convention on Climate Change (UNFCCC):

<http://www.unfccc.org>

UNEP Economics and Trade Programme (ETP):

<http://www.unep.ch/etu/etp/index.htm>

UNEP Economics and Trade Unit (ETU):

<http://www.unep.ch/etu/etugen/about.htm>

United Nation Environment Programme (UNEP):

<http://www.unep.org>

United States Trade Representative (USTR):

<http://www.ustr.gov/>

World Intellectual Property Organization (WIPO):

<http://www.wipo.org>

World Rainforest Movement (WRM):

<http://www.wrm.org.uy>

World Resources Institute (WRI):

<http://www.wri.org/wri>

World Summit on Sustainable Development (WSSD):

<http://www.johannesburgsummit.org/index.html>

World Trade Organization (WTO):

<http://www.wto.org>

World Wide Fund for Nature (WWF):

<http://www.panda.org>

footnotes

- 1 | World Bank 2004.
- 2 | See IPF 1997
- 3 | World Bank 2004.
- 4 | See Shimamoto et al. 2004. The authors point out that quantitative studies looking at macroeconomic growth rates usually paint a positive picture of timber related liberalization whereas empirical studies examining the state of forests clearly show negative results.
- 5 | See www.greenpeace.org/international/campaigns/forests/our-disappearing-forests.
- 6 | The FAO will publish the new full report State of the World's Forest later in 2005, the information cited here is drawn from the report published in summer 2005.
- 7 | See www.greenpeace.org/international/campaigns/forests/our-disappearing-forests.
- 8 | Para. XX (d) has so far not played a central role in the discussion of WTO rules with environmental relevance, however it may gain in importance as countries enact and enforce more effective laws against illegal logging and illegal trade of timber products.
- 9 | This case was decided under the old GATT regime. See: United States - Restrictions on Imports of Tuna, the Tuna-Dolphin case. The case was brought by Mexico and others against the US under GATT. The panel report was circulated on 3 September 1991, but not adopted, so it does not have the status of a legal interpretation of GATT law. The US and Mexico settled "out of court".
- 10 | This case was appealed by Malaysia, however, the Appellate Body has affirmed the Panel decision. See: WORLD TRADE ORGANIZATION, WT/DS58/RW, 15 June 2001, UNITED STATES - IMPORT PROHIBITION OF CERTAIN SHRIMP AND SHRIMP PRODUCTS, Recourse to Article 21.5 by Malaysia, Report of the Panel.
- 11 | CUTS 1998.
- 12 | See Sizer et al. 1999
- 13 | See Sizer et al. 1999
- 14 | The other environmentally sensitive sectors included in the proposal are fisheries, chemicals and raw materials.
- 15 | APEC in summer 1999 decided to take to the WTO its plan for reducing tariffs in several of its sectors including the forestry industry. The APEC countries called for tariffs to be reduced in forestry and other sectors in what it called "Accelerated Tariff Liberalisation (ATL)". The ATL initiative is a reduced version of "Early Voluntary Sectoral Liberalisation (EVSL)", the more extensive move to liberalisation which was started by APEC in 1997 and included reducing NTMs. The APEC countries have however had problems in implementing their voluntary EVSL initiative in the APEC region, partly as a result of resistance by Japan.
- 16 | FERN 2000.
- 17 | See Katila/Simula 2005, p. 22 and 23. For a critical account of the EU Forest SIA see WWF/Greenpeace response 2005.
- 18 | Sizer et al. 1999
- 19 | Paragraph 33 of the Doha Declaration. See: WTO 2001a.
- 20 | See also one of the most recent accounts of NTMs in the forestry sector by Rykonen 2003.
- 21 | See Shimamoto et al. 2005. The authors analyzed forest conservation policies in Indonesia, the Philippines, and Thailand which confirmed that NTMs are necessary not only to limit deforestation but also to create incentives for reforestation and sustainable forest management schemes.
- 22 | For more detailed description see Bernasconi-Osterwalder/Shermen 2005.
- 23 | See Bernasconi-Osterwalder/Shermen 2005, p. 8.
- 24 | See also Sizer et al 1999, APEC 1999, Friends of the Earth International 2004, CIEL 1999.
- 25 | See APEC, 1999: 21-41. Despite the notification procedure of WTO does not draw a clear picture of the amount or scope of existing NTMs as WTO members described NTMs in a rather general manner, i.e. like "national building codes" or "certification" and "licensing" systems, see WTO TN/MA/W/46.
- 26 | See the various addendums to WTO document TN/MA/W/46. Remarkably, these notifications came mostly from developed countries.
- 27 | APEC, 1999. The APEC study has not yet been updated, nor do there seem to be more recent empirical studies of existing NTMs in the forestry sector. A recent FAO report preceding the FAO 2005 state of the world's forest report (to be published at the end of 2005) does not include any new empirical information (see FAO 2005).
- 28 | APEC 1999: i., see also Rykonen 2003
- 29 | APEC 1999: 92.
- 30 | See World Bank 2004
- 31 | GATT 1992
- 32 | Brack et al. 2003, Schroeder-Wildberg/Carius 2003
- 33 | World Bank 2004
- 34 | Downes 1999, p. 2.
- 35 | See Stilwell 1999
- 36 | For a detailed discussion of the WTO "chill effect" see Eckersly 2004.
- 37 | WTO 2000.
- 38 | SPS Agreement, Article 2.
- 39 | SPS Agreement, Article 3.3.
- 40 | SPS Agreement, Article 5.7.
- 41 | See, e.g., the 1987 Ministerial Conference for the Protection of the North Sea, the London Dumping Convention, the Convention for the Protection of the Marine Environment in the North East Atlantic, the Convention on Biological Diversity, the Framework Convention on Climate Change, the Agreement on Straddling and Highly Migratory Fish Stocks, and the Cartagena Protocol on Biosafety.
- 42 | See Principle 15 of the 1992 Rio Declaration on Environment and Development.
- 43 | See "United States - Standards for Reformulated and Conventional Gasoline", WTO case Nos. 2 and 4. Ruling adopted on 20 May 1996. Case brought by Venezuela and Brazil: The case affirmed that the US had every right to adopt the highest possible standard to protect its air quality so long as it did not discriminate against foreign imports. The US lost the case because it discriminated – its requirement on domestic producers was less stringent than that imposed on imported gasoline (in this case from Venezuela and Brazil). And "United States - Import Prohibition of Certain Shrimp and Shrimp Products", the "shrimp-turtle" case. WTO case Nos. 58 and 61. Ruling adopted on 6 November 1998. Case brought by India, Malaysia, Pakistan and Thailand.
- 44 | Yassin, Suboh M, 2003: Forest and Forest Product Certification and its Impact on Trade and Trade Policies. In: UNECE/FAO: Joint Roundtable Trade, Environment and Forests – Working together for sustainable development. Geneva, Rome
- 45 | A copy of the draft act and background information can be downloaded from the website of the German Federal Environment Ministry at <http://www.bmu.de/english/nature/doc/35279.php>
- 46 | FERN 2000
- 47 | See, e.g., Japan -- Taxes on Alcoholic Beverages, Spain – Tariff Treatment of Unroasted Coffee, 28th Supp. BISD 102 (1982, Japan - Customs Duties, Taxes and Labelling Practices on Imported Wines and Alcoholic Beverages, 34th Supp. BISD 83 (1988), Belgian Family Allowances (Allocations Familiales), GATT, 1st Supp. BISD 59-62, 1953.
- 48 | See: WORLD TRADE ORGANIZATION, WT/DS135/AB/R, 12 March 2001, European Communities - Measures Affecting Asbestos and Asbestos-containing Products, AB-2000-11, Report of the Appellate Body.
- 49 | Article 2.6 of the TBT Agreement.
- 50 | Article 2.2 and 2.4 of the TBT Agreement.
- 51 | FERN 2001: 25.
- 52 | See: FSC Principles and Criteria for Forest Stewardship, Revised February 2000. Available at: <http://www.fscoax.org/principal.htm>.
- 53 | More generally, Article 8(j) of the CBD recognizes the importance of traditional knowledge in the conservation of biological diversity.
- 54 | Paragraph 19 of the Doha Declaration. See: WTO 2001a.
- 55 | OECD 2001, OECD Environmental Outlook (p.122).
- 56 | See e.g. FERN, Greenpeace, WWF 2004
- 57 | See Meyers et al 2001
- 58 | Paragraph 10.2 of the WTO Decision on Implementation-Related issues and concerns. See WTO 2001b.
- 59 | WTO 2003, Submission by Japan: Sustainable Development and the trade of forest and fishery products. WT/CTE/W/222, 6 February 2003.
- 60 | See Macqueen et al. 2003
- 61 | <http://www.greenpeace.org/international/campaigns/forests/south-america/under-threat> (as of September 18, 2005)
- 62 | FERN 2001: 22.
- 63 | Article 1 of the CBD.
- 64 | Annex to Decision VI/22, COP 6, The Hague, Netherlands 7-19 April 2002
- 65 | Decision VI/26, as above.
- 66 | <http://www.ucmp.berkeley.edu/glossary/gloss5/biome/>
- 67 | Greenpeace 2005, p. 1
- 68 | Brack et al. 2003, 34
- 69 | Brack et al. 2003, 34
- 70 | Bodard/Pallemaerts, 2005, p.20
- 71 | Brack et al. 2003, 35
- 72 | UNFCCC 2003
- 73 | See Decision 12 (FCCC/CP/2004/12) and Decision 13. (FCCC/CP/2004/13). The distinction between afforestation and reforestation is defined as follows: reforestation projects can only be implemented on land that was not covered by forests at the 31.12 1989. Afforestation projects are only eligible for CDM projects if the land has not been covered by forests for the last 50 years.
- 74 | Fern Newsletter No. 93, June 2005.
- 75 | FERN 2004
- 76 | FERN 2005
- 77 | See FAO 2005
- 78 | See World Bank 2005
- 79 | See World Bank 2003b
- 80 | Tayne, 2003, p.8
- 81 | See European Commission 2003
- 82 | FLEGT briefing notes no. 5, April 2004
- 83 | Bodard/Pallemaerts, 2005, p.66
- 84 | FERN newsletter, July 2005
- 85 | Greenpeace 2004
- 86 | Joint NGO Statement, 2005: How to ensure the EU FLEGT licensing scheme will contribute to controlling illegal timber and sustainable forest management. 25 September 2005, Brussels
- 87 | Bodard, Pallemaerts, 2005, p.63 ff
- 88 | Bodard, Pallemaerts, 2005, p.65
- 89 | See European Commission 2003
- 90 | See European Parliament 2005.



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