HOUSE OF COMMONS
CANADA

BUILDING AN EFFECTIVE NEW ROUND OF WTO NEGOTIATIONS: KEY ISSUES FOR CANADA

Standing Committee on Foreign Affairs and International Trade

Jean Augustine, M.P.
Chair

Mac Harb, M.P.
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Sub-Committee on International Trade, Trade Disputes and Investment

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Also available on the Parliamentary Internet Parlementaire: http://www.parl.gc.ca

Available from Public Works and Government Services Canada — Publishing, Ottawa, Canada K1A 0S9

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ACKNOWLEDGEMENTS

The Sub-Committee's work would not have been possible without the excellent cooperation and insight of the witnesses and government officials who appeared before it. We were also extremely well served by our excellent staff, including our clerk, Mike MacPherson and the research team of Peter Berg, Michael Holden and Jay Sinha. To all these we express our appreciation.

Mac Harb, M.P.
Sub-Committee Chair

THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND INTERNATIONAL TRADE

has the honour to present its

NINETEENTH REPORT

In accordance with its mandate under Standing Order 108(2), your Committee established a sub-committee and assigned it the responsibility of an in-depth study for the Assessment of WTO negotiating issues from a Canadian perspective.

TABLE OF CONTENTS

LIST OF RECOMMENDATIONS

INDUSTRIAL TARIFFS

Recommendation 1:

That the Government of Canada work aggressively within the WTO to achieve measurable progress towards the reduction and/or elimination of remaining industrial tariffs.

TRADE AND DEVELOPMENT

Recommendation 2:

That Canada thoroughly assess the existing proposal to include a "development box" in the WTO Agreement on Agriculture, and make its findings public.

Recommendation 3:

That Canada assume a leadership role in promoting access for developing countries to the markets of the developed world. To that end, Canada should make unilateral concessions in improving access to the Canadian market for products originating in these countries. The federal government should also explore the need to provide transitional assistance to the domestic industries and/or workers affected by this measure.

Recommendation 4:

That the federal government energetically support special and differential treatment provisions for developing countries that provide those countries with a more flexible timeframe for implementing WTO agreements. In negotiating this position at the WTO, Canada should also seek clear and equitable rules for how such an entitlement is determined in order that countries not qualify for special treatment in cases where it is not warranted.

Recommendation 5:

That the federal government take a leading-edge role in providing trade-related technical assistance to developing countries. With a view to finding the most effective way to do so, the federal government should also commit to increasing its contribution to capacity-building programs.

Recommendation 6:

That Canada continue to promote its position at the WTO that calls for any modification of the existing compulsory licensing arrangement to not restrict developing countries without access to appropriate manufacturing capacity from importing generic medications in the event of public health emergencies. Canada should also promote the establishment of a dedicated international fund to help developing countries without access to such generic drugs to purchase them.

Recommendation 7:

That the Government of Canada unilaterally eliminate all remaining tariff and quota restrictions on imports from least-developed countries, save those on supply-managed agricultural products. In implementing this initiative, the federal government should do its utmost to discourage the transhipment of goods from countries remaining under quota restraint. The market access undertaking should be completed as soon as possible and certainly not later than December 31, 2002.

Recommendation 8:

That, given the reality that the bulk of the economic costs associated with the Government of Canada's proposal to provide full market access to least-developed countries will be borne disproportionately by a limited number of industries, the federal government establish a transitional assistance program for those industries affected and/or for their workers.

DISPUTE SETTLEMENT

Recommendation 9:

That the Government of Canada actively seek the support of other WTO Members for revising the Dispute Settlement Understanding to make compensation mandatory if compensation is requested by the aggrieved Member in lieu of authorization to suspend equivalent concessions, in

instances of non-compliance with panel decisions. Non-conforming anti-dumping and countervailing duties should have to be completely refunded.

Recommendation 10:

That the federal government seek WTO consensus on clarifying the guidelines governing implementation of WTO rulings. In particular, the Government of Canada should urge Members to support DSU revisions that would expand the scope of arbitration under Article 21.3, and that would clarify the relationship between Articles 21.5 and 22 to resolve the ongoing sequencing problems.

Recommendation 11:

That, to improve the effectiveness of the WTO dispute settlement system, the Government of Canada actively encourage other WTO Members to implement an aggressive internal mediation process within the WTO to resolve disputes at an early stage in the process. Failing this, access to outside mediation should be explored.

Recommendation 12:

That the federal government urge WTO Members to review the composition of panels and the Appellate Body, as well as the need for rules of evidence and dissenting opinions. Furthermore, a remand authority for the Appellate Body should be considered to assist in the correction of errors made by panels.

Recommendation 13:

That, in order to enhance the transparency of the WTO's dispute settlement system, the federal government activate an aggressive campaign to achieve consensus among WTO Members to open WTO dispute settlement proceedings to the public and to require that all Members make their submissions to WTO dispute settlement panels public.

Recommendation 14:

That the Government of Canada push for a formal WTO procedure for the submission of amicus curiae briefs, but that their consideration and acceptance be at the sole discretion of the relevant panel or the Appellate Body.

ANTI-DUMPING, SUBSIDIES AND COUNTERVAIL MEASURES

Recommendation 15:

That the federal government seek a thorough clarification and strengthening of the WTO's trade remedy rules, with the stated objective of curbing the disturbing rise in protectionist abuses. Special focus should be placed on reforming current WTO anti-dumping rules to impose fundamental constraints on trade protectionism.

Recommendation 16:

That the Government of Canada undertake a thorough examination of its own anti-dumping rules, including any required changes stemming from the outcome of the WTO negotiations.

AGRICULTURE

Recommendation 17:

That the federal government seek WTO consensus to have the WTO Agreement on Agriculture stipulate that export subsidies in agriculture be immediately eliminated. The government should encourage the WTO to examine countries' use of export credits, export promotion activity and food aid to ensure that these do not embody any subsidy component.

Recommendation 18:

That the WTO Agreement on Agriculture be altered to dramatically restrict the provision by Members of production- or trade-distorting domestic support. In this reform effort, serious consideration should be given to establishing maximum limits on support that distorts production or trade; eliminating the blue box category of domestic subsidies and clarifying green box support programs to ensure that they have no production- or trade-distorting effects.

Recommendation 19:

That, in an effort to improve market access as part of the WTO's negotiations on agriculture, the Government of Canada advocate the establishment of a product-specific minimum access requirement of 5% using the most recently available consumption period as a base period. Clear and binding rules should govern the administration of the tariff rate quotas. Moreover, all in-quota tariffs should be abolished and those not

protecting a tariff rate quota markedly reduced. A negotiated phase-in of import access level increases should also be implemented in parallel with the implementation and enforcement of new market access rules.

SERVICES

Recommendation 20:

That the federal government undertake, and render public, an examination of the impact of Canada's existing commitments under the GATS on the effective provision by Canadian governments of health, education and social services and on the Canadian regulatory structure affecting them. This study should be updated once the WTO negotiations on services are nearing completion.

CULTURE

Recommendation 21:

That the Government of Canada ensure its ability to preserve and promote cultural diversity by accelerating its efforts to achieve the desired New International Instrument on Cultural Diversity.

INVESTMENT AND COMPETITION POLICY

Recommendation 22:

That the Government of Canada diligently strive to attain WTO consensus on the importance of creating a comprehensive international agreement to protect investment. Investor-state provisions should be excluded from the agreement.

TRADE AND ENVIRONMENT

Recommendation 23:

That the federal government urgently examine recent environment-related decisions at the WTO Appellate Body in an effort to determine the extent to which WTO case law has evolved and whether or not there is a pressing

need for negotiations on the relationship between the trade obligations contained in Multilateral Environmental Agreements and existing WTO rules.

Recommendation 24:

That Canada actively pursue at the WTO, the reduction of barriers to trade in the environmental goods and services industry. In negotiating this position at the WTO, Canada should also be mindful of the potential limitations that barriers to trade in services may have on the ability of Canadian firms to offer product support and after-sales services for their environmental products.

Recommendation 25:

That to eliminate ambiguity on the subject of bulk water exports, the federal government conclusively demonstrate to Canadians its legal understanding of how the Doha negotiating mandate does not compromise its position that no such export from Canada is permitted. Furthermore, Canadian negotiators should ensure that no ambiguity exists on Canada's position on this subject during the forthcoming round of trade negotiations. Finally, upon the conclusion of the negotiations, the federal government should provide to all Canadians its legal interpretation of any negotiated agreement in order to minimize any further misunderstandings.

TRANSPARENCY AND OUTREACH

Recommendation 26:

That the Government of Canada actively and with renewed urgency continue its efforts to achieve WTO consensus on the establishment of a permanent WTO parliamentary mechanism to provide closer association of Members of Parliaments and elected officials with the work of the WTO, and in connecting the WTO with citizens and the global public. Issues to be addressed in designing such a mechanism include: how to structure and finance the organization; how to determine representation; and how to define its institutional links with the WTO.

Recommendation 27:

That the Government of Canada revisit this Sub-Committee's Recommendation 14 contained in its June 2001 report on Canada-Europe Economic Relations (*Crossing The Atlantic: Expanding The Economic Relationship Between Canada And Europe*) and work together with like-

minded countries to encourage the WTO to craft and employ more formal, efficient and effective decision-making procedures within its organization. Separate procedures should be developed to cover both administrative (i.e., process) decisions and those involving trade issues.

Recommendation 28:

That the federal government propose to WTO Members that the International Labour Organization and the United Nations Environment Programme be allowed to contribute their specialized expertise to the negotiating process.

A FINAL WORD

Recommendation 29:

That the Government of Canada promote the injection of clauses within WTO agreements that would tie countries' access to the benefits from WTO membership to proven respect for democratic rights.

BUILDING AN EFFECTIVE NEW ROUND OF WTO NEGOTIATIONS: KEY ISSUES FOR CANADA

INTRODUCTION

On November 9, 2001, ministers of the World Trade Organization (WTO) converged on Doha, Qatar for the Fourth WTO Ministerial Conference. Five days later, they emerged with an approved work program. The centrepiece of this work program is the *Doha Ministerial Declaration*, a fifty-three paragraph document that elaborates on the objectives and timetables for trade negotiations and the ongoing mandate for further study of specific topics relating to trade.

After the failure of the 1999 WTO Ministerial Conference in Seattle,[1] achieving success at Doha was critical to putting the agenda of global trade liberalization back on track. That trade ministers from 142 countries were able to attain consensus on the agenda for a broad and significant new round of trade negotiations speaks volumes about the recognition that the benefits of a more effective rules-based trading system are real and that narrow, domestic interests needed to give way to the requirements of the wider international community.

The Doha Development Agenda, as the new round of trade negotiations has been called, represents a departure from the structure of previous rounds. Apart from a few economic sectors such as agriculture and textile production, the trade liberalization agenda is largely finished. The Sub-Committee heard that, albeit with a few key exceptions, most tariffs in industrialized countries are already relatively low — in the range of 2-5%. The emphasis of this round of WTO negotiations is more heavily focused on market access, procedure and the elimination of non-tariff barriers to trade.

Testifying before the Sub-Committee, Bill Dymond (Executive Director, Centre for Trade Policy and Law, Carleton University) highlighted four key differences between the current round of trade negotiations and previous rounds.

- The current round is a mixture of negotiations and work programs. Previous rounds focused exclusively on negotiations.

[1] In a December 2001 presentation to the House of Commons Standing Committee on Foreign Affairs and International Trade, Don Stephenson (Director General, Trade Policy Bureau II, Department of Foreign Affairs and International Trade) attributed this failure to three underlying factors: the lack of support of developing countries, the lack of consensus among developed countries (largely the United States and the European Union) on the agenda for the negotiations and the absence of U.S. leadership. In the run-up to the Doha Conference, all three of these issues were resolved satisfactorily with the assistance of an effective and transparent preparatory process and U.S. leadership on certain key points (e.g., anti-dumping, TRIPS and health).

- While previous rounds focused on trade liberalization, the current round concentrates on trade regulation (i.e., defining the interface between the private-sector economy and national and global governance). With a few exceptions, this round is not about breaking down barriers to trade.

- Developing countries now have the clout to dictate the shape of negotiations and will demand meaningful results on key issues of concern such as barriers to trade in clothing, textiles and agriculture.

- The Doha Declaration places significant emphasis on technical assistance. Ten of the fifty-three paragraphs of the Declaration focus on this aspect of development concerns.

A number of factors allowed for a successful launch of a new round of trade negotiations at Doha. Witnesses appearing before the Sub-Committee pointed to better organization, a larger role played by developing countries and improved transparency as all providing a greater sense of legitimacy to the discussions. Bill Dymond stressed that given the failure to reach a negotiating consensus at Seattle, there was a fear shared by WTO Member countries that a second successive letdown could undermine the legitimacy of the organization. Other witnesses, such as the Canadian Centre for Policy Alternatives suggested that the changing economic climate since the September 11th terrorist attacks in the United States, and the location of the meetings, also contributed by marginalizing mass demonstrations.

Also instrumental in the success at Doha was a key series of compromises between the U.S. and the European Union (EU). Standoffs on several negotiating topics, including agriculture and the environment, were resolved, allowing for a consensus to be realized. The willingness to compromise in the interests of furthering the trade liberalization agenda was heralded as evidence of the conviction both parties felt in the value of WTO trade discussions. This willingness had not been present at the Seattle Ministerial meeting.

The negotiating process arising out of Doha will assume the form of a “single undertaking.” Individual points of negotiation cannot be ratified by WTO Members until an agreement is reached on every topic. However, agreements reached at an early stage can be implemented on a provisional basis.

The WTO has set an ambitious deadline for completing this round of negotiations. Most negotiations under the work program are to be concluded by January 2005, with the exception of the discussions on the Dispute Settlement Understanding (DSU), which will finish by the end of May 2003. Several witnesses maintained that the 2005 deadline would likely prove to be overly optimistic. Peter Clark (President, Grey, Clark, Shih and Associates Limited), for example, surmised that negotiations were more likely to approach eight years rather than the four or five currently expected.

However, Sergio Marchi (Permanent Representative and Ambassador of Canada to the Office of the United Nations and to the World Trade Organization) was more optimistic that trade negotiations could be completed by the 2005 deadline, pointing to the progress already made to date: Mexico has been chosen as the site for the next Ministerial Conference in 2003; the core elements of a lean and efficient negotiating structure and process have been agreed to by the new Trade Negotiating Committee; and a global trust fund for trade-related technical assistance and capacity building has been established. Improving technical assistance at the outset of negotiations will help quicken the pace of negotiations further down the road.

As outlined in the Doha Declaration, the work program and agenda for negotiations will cover a wide range of issues. Although some negotiating topics deal directly with trade liberalization through tariff reduction, much of the Declaration focuses on non-tariff trade-related concerns. With a view to better understanding the position of Canadians on these issues, and to contribute to the formation of government policy in this area, the Sub-Committee examined a number of the major discussion points outlined in the Declaration.

First, the new round of negotiations has been appropriately tagged as the Doha Development Agenda. With three quarters of the Declaration enshrining principles or directly addressing the interests of developing countries, these nations have, for the first time, been placed at the centre of WTO negotiations. Contained in the Declaration is a package of measures designed to help these countries profit from the global trading system and adapt to WTO rules at a pace that is tailored to their requirements and with the help of technical assistance and capacity-building support. Adoption of this development focus will contribute to international efforts aimed at lowering poverty and aid in the generation of domestic political support for the WTO.

Negotiations to enhance and clarify the WTO's dispute settlement mechanism on an expedited timetable (May 2003) were also launched. Apart from streamlining procedures and boosting the transparency of dispute settlement activity, the new round of talks will tackle the critical issue of non-compliance with WTO decisions and, hopefully, find positive alternatives to the current emphasis on retaliatory solutions.

Third, WTO trade ministers committed to negotiations aimed at clarifying and tightening the rules on anti-dumping, subsidies and countervailing measures. As recent trade developments in softwood lumber, steel and other commodities can certainly attest to, Canada has much to gain from a concerted effort to restrain the overtly protectionist use of trade remedies.

A key element of the WTO Ministerial Declaration was the attainment of an agreement to lower agriculture protection. WTO Members agreed to work towards a phase-out of export subsidies, large declines in trade-distorting domestic support, and improved market access. These elements coincided with those contained in the initial Canadian negotiating position.

Fifth, Doha resulted in an agreement on clear timelines for negotiations on services. Canada's service exporters need to expand their reach in the world marketplace, and improvement in the General Agreement on Trade in Services (GATS) would be helpful.

Obtaining multilateral agreements in the areas of investment and competition policy continues to be an important Canadian priority. Considerable effort, however, will be required between now and the 2003 Ministerial Conference to obtain WTO Member consensus for additional action.

Seventh, the WTO has launched negotiations on certain selected trade and environment issues (linkage between multilateral environmental agreements and WTO rules; environmentally friendly goods and services), while designating others (labelling rules, the use of precaution) for discussion at the Committee on Trade and the Environment.

Finally, a commitment was reached to make the WTO more transparent and open, and to undertake more effective outreach campaigns to the public, non-governmental organizations (NGO) and parliamentarians.

The Sub-Committee invited the participation of witnesses and stakeholders at its meetings in order to better understand Canadians' perspectives on these issues and on the new round of trade negotiations in general. The resulting report, which follows the extensive June 1999 House of Commons Standing Committee on Foreign Affairs and International Trade report on the WTO, begins with a broad history and overview of the WTO. It outlines the benefits that can result from a rules-based, liberalized trade environment worldwide and the importance of WTO agreements to Canada in particular. Following that background discussion, each of the eight major trade-related issues denoted above will be discussed in turn.

THE WTO AND ITS BENEFITS

The World Trade Organization (WTO) is an international body of Member countries working towards the common goal of enhancing international trade. It does this in three ways: by negotiating the reduction/elimination of barriers to trade such as tariffs and customs duties; by establishing a commonly agreed upon set of rules of trade and conduct; and by providing a venue for trade-related grievances and a dispute-resolution mechanism.

All three of these facets of the WTO's mandate are critical to the pursuit of secure, more liberalized trade. Rules and a common set of definitions are necessary in order to negotiate tariff reductions and to ensure clarity on points of negotiation. In turn, these rules and agreements would be of little value without some ability to enforce them.

Members of the WTO pursue their mutual goal of free, rules-based trade in stages, through "rounds" of negotiations. Agreements at these negotiations are reached through a fundamentally democratic, consensus-driven process; no official WTO agreement may be reached without the approval of all parties. As such, while compromise remains the very nature of the negotiating process, member nations can effectively end discussions on certain topics by their refusal to participate on those points.

Membership in the WTO, and the General Agreement on Tariffs and Trade (GATT) before it, has increased significantly since the first Agreement was signed in 1948. From an original base of 23 nations, there are now 144 Member countries in the WTO. These countries span the global economic and political spectrum, in some cases sharing little in common other than the recognition of the benefits to eliminating the barriers to the free exchange of goods and services. The most recent additions to the WTO include China, Chinese Taipei, Lithuania and Moldova. A number of other countries are seeking entrance into the organization. New accession requests in 2001 included Yugoslavia, the Bahamas, Tajikistan, Syria and Libya.

A. Brief History of the WTO

As mentioned above, the WTO and its predecessor organization, GATT, have been in existence since 1948. However, the first attempt to set up an international body to oversee trade was two years earlier. The International Trade Organization (ITO) was envisioned to be a specialized agency of the United Nations, administering not only trade regulations, but rules for investment, employment and business practices as well.

While the ITO was still in the discussion stages, 23 of its 50 initial signatories began to negotiate a deal on reducing trade tariffs. An agreement to eliminate or lower 45,000 tariffs, affecting about one-fifth of world trade, was reached in 1947. Recognizing

that rules were necessary to protect these negotiated concessions, participants adopted a number of trade regulations from the draft ITO charter, anticipating that the charter would eventually be ratified.

This early combination of tariff concessions and trade rules became known as the GATT. It came into being in January 1948 and its 23 original signatories became the founding members.

However, the ITO was never implemented. Although a charter was agreed to at the United Nations, it was not ratified in a number of national legislatures, most notably in the U.S. As a result, without the regulations of the ITO to back it up, GATT became both an international agreement and a provisional organization to support that agreement.

This situation ended in 1994 when the WTO was created at the conclusion of the Uruguay Round of trade negotiations. The WTO became a permanent legally ratified international organization, supplanting that role of the GATT. The GATT still exists, but solely in the form of an evolving agreement on tariffs and trade.

As membership in the organization has grown and the range of issues discussed has increased, negotiations have become increasingly complex. Between 1946 and 1961, there were five rounds of trade negotiations, all focusing exclusively on the reduction or elimination of tariffs. None of these rounds took longer than one year to complete.

Table 1 - GATT Trade Rounds

Year	Place/name	Subjects covered	Countries Participating
1947	Geneva	Tariffs	23
1949	Annecy	Tariffs	13
1951	Torquay	Tariffs	38
1956	Geneva	Tariffs	26
1960-1961	Geneva Dillon Round	Tariffs	26
1964-1967	Geneva Kennedy Round	Tariffs and anti-dumping measures	62
1973-1979	Geneva Tokyo Round	Tariffs, non-tariff measures, "framework" agreements	102
1986-1994	Geneva Uruguay Round	Tariffs, non-tariff measures, rules, services, intellectual property, dispute settlement, textiles, agriculture, creation of WTO, etc	123

Source: WTO

Subsequent rounds, however, became more complex as discussions branched out into other aspects of trade and trade rules. In addition to further tariff reductions, the Kennedy Round, from 1964-67, opened discussions on anti-dumping measures. The 1973-79 Tokyo Round brought even more issues to the table, including emergency import measures (safeguards), the treatment of subsidies, and countervailing measures.

The most recent (Uruguay) round of WTO negotiations began in 1986 with an ambitious agenda, one that covered virtually all outstanding trade policy issues.[2] Fifteen subjects were on the original agenda including tariffs, non-tariff barriers, intellectual property, agriculture, dispute settlement, services and investment. Negotiations took nearly twice as long to complete as originally intended, but an agreement was finally reached in 1994, although not all issues were addressed to the satisfaction of all parties.

B. Benefits of Trade Liberalization

The work of the WTO in establishing a free, secure and fair multilateral trading environment offers numerous benefits worldwide. The most basic of these is improved market access. By working to eliminate the barriers that restrict the free flow of products to market, the WTO benefits producers and consumers alike. Producers gain competitive access not only to new markets for their final products, but to new suppliers of inputs as well. Incomes rise as a result, and employment is created. Consumers also benefit through lower retail prices for imported goods and through the availability of a wider range of products and services.

Enhanced market access is complemented by the creation of a protected and secure trade environment. By providing a rules-based setting for trade and a venue for binding dispute settlement, the WTO works to ensure that Member countries abide by their agreements and not engage in illegal trading activity, such as discriminating against foreign competitors, unfairly subsidizing production or dumping goods in a foreign market.[3] Recent WTO negotiations have also worked to clarify other trade-related concerns, including intellectual property and patent protection, rules of origin, rules for the valuation of goods at customs, and a number of others.

Notwithstanding their pursuit of liberalized trade, WTO Members have retained the right to protect domestic industries they either view as being grievously threatened by outside competition or do not wish to open to free trade. For example, if a surge in imports is found to be causing severe damage to a domestic industry, countries are permitted to restrict imports on a temporary basis. In the case of the General Agreement on Trade in Services (GATS), members agreed that each country would be free to choose which service industries it would open to foreign suppliers. No market access would be allowed unless explicitly permitted. This has allowed countries like Canada to protect their culture, health, education, and other public service industries.

In addition to providing a forum to negotiate freer trade in a rules-based environment, the WTO also functions as an independent arbitrator in the event of a trade dispute between Member countries. This role of the organization is a critical instrument in the implementation of any agreement. An unbiased dispute-resolution mechanism

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2 WTO Web site.

3 Dumping refers to selling a product in an export market for less than the cost of production or less than the price in the domestic market.

ensures that Member countries abide by their commitments and perhaps more importantly, offers protection for small countries against larger ones. Without an objective third-party arbitrator, a trade dispute between two countries of unequal economic power would be unlikely to result in a fair and equitable solution.

In that context, it is important to highlight that the benefits of increased global trade and economic integration have not accrued exclusively to wealthy countries. Lower barriers to trade open the rich markets of the industrialized world to developing countries, allowing them to extract the benefit of their comparative advantages without exposing them to the risks of unequal economic bargaining power.

Indeed, the decline in tariff levels on manufactured goods in the developed world has contributed to a boom in manufacturing exports from developing countries in recent years, particularly in labour-intensive industries. According to a study by the World Bank, in 1980, minerals accounted for over half of all developing-country exports, 25% were manufactured goods and the remainder were agricultural products. By 1998, however, manufactured goods accounted for a full 80% of total exports from developing countries.[4]

However, while trade liberalization has provided some benefits to poorer countries, significant challenges remain. Tariffs between developed countries have fallen much more quickly than between developing countries and more quickly than between the two groupings. The same World Bank study estimated that three-quarters of the gains from further liberalization of manufacturing trade would accrue to developing countries. These issues will be discussed in greater detail further below.

As a final yet critical point, many of the witnesses that appeared before the Sub-Committee implied that one cannot afford to be complacent about the progress that has been made in the area of tariff reduction. As Clifford Sosnow (Member, Canadian Chamber of Commerce) outlined to the Sub-Committee, Canadian businesses continue to face sizeable tariffs in certain economic sectors and countries. For example, Brazil imposes a 34% tariff on Canadian telecommunications equipment and Japan levies tariffs in a range of 23% to 28% on our exports of canola. Mr. Sosnow also advocated the elimination of “nuisance tariffs” (of roughly 1%) that continue to add costs to Canadian firms while being of marginal utility. The Sub-Committee supports the position that tariff reduction should be given urgent attention and recommends:

Recommendation 1:

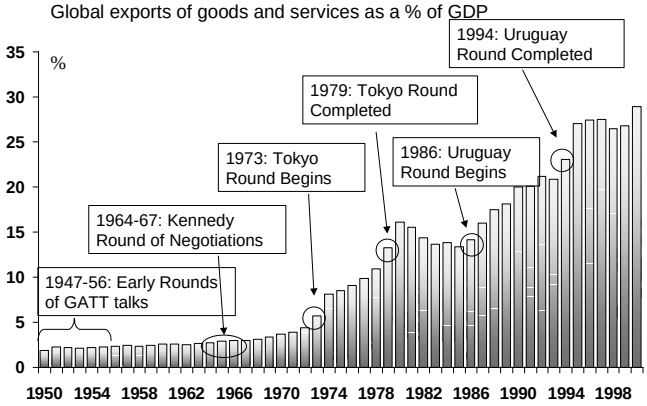
That the Government of Canada work aggressively within the WTO to achieve measurable progress towards the reduction and/or elimination of remaining industrial tariffs.

[4] *Globalization, Growth and Poverty: Building an Inclusive World Economy*, 2002.

C. Growth in World Trade

Reducing barriers to trade and erecting a rules-based mechanism to govern that trade has been a long and gradual process. Although the forthcoming round of negotiations points to the fact that a more liberalized trading environment is still a work in progress, the gains made as a result of previous negotiations are clear. GATT and the WTO have contributed to an explosion in world exports in the past 50 years.

Chart 1 - The Growing Importance of Exports to the Global Economy



Source : WTO

In 1950, exports of goods and services worldwide were valued at approximately $94 billion, equivalent to about 1.9% of global GDP that year. As GATT agreements began to reduce or eliminate tariffs and other barriers to trade, the exchange of goods and services became easier and trade increased. By the conclusion of the Kennedy Round of GATT negotiations, exports represented 3.0% of global GDP.

Aided by high energy prices lifting the value of petroleum exports, international trade exploded in the 1970s. By 1980, exports accounted for 16.1% of world economic production. As energy prices fell in the early 1980s, this proportion dropped off, picking up again in 1986, the year that Uruguay Round negotiations got underway. Since that time, world export growth has been tremendous. From 1986 to 2000, international sales of goods and services have nearly tripled and now represent 29% of total world economic production.

D. Importance of Trade Liberalization to Canada

Canada is the sixth largest exporting country in the world. Canadian businesses sold about $277 billion in goods and services abroad in 2000, only slightly less than France and the U.K., whose economies are each about twice the size of Canada's.

Table 2 - World Leading Exporters and Importers - 2000

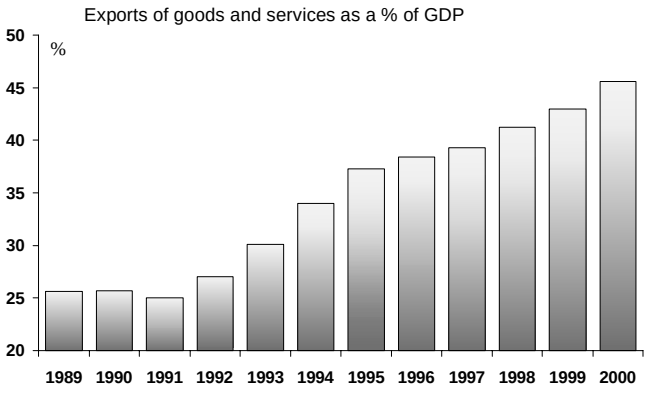
	Exports			Imports	
Country	**Value**	**Share**	**Country**	**Value**	**Share**
	$billions	%		$billions	%
United States	781.1	12.3	United States	1257.6	18.9
Germany	551.5	8.7	Germany	502.8	7.5
Japan	479.2	7.5	Japan	379.5	5.7
France	298.1	4.7	United Kingdom	337	5.1
United Kingdom	284.1	4.5	France	305.4	4.6
Canada	276.6	4.3	Canada	244.8	3.7
China	249.3	3.9	Italy	236.5	3.5
Italy	237.8	3.7	China	225.1	3.4
Netherlands	212.5	3.3	Hong Kong	214.2	3.2
Hong Kong	202.4	3.2	Netherlands	198	3

Source: WTO

Considering its small size relative to the other G-7 countries, a significant proportion of Canada's economic production is geared towards the export market. Exports of goods and services accounted for 46% of national GDP in 2000, making Canada by far the most export-oriented of the leading world economies. By comparison, the next most export-oriented of the G-7 countries is Germany, where exports are equivalent to about 30% of GDP.

Because its economy is so geared towards sales abroad, reliable, secure access to world markets is critical to Canada's economic growth and prosperity. Lower barriers to trade allow domestic producers to penetrate new markets, take advantage of new supply chains and spark employment growth. Indeed, according to the Department of Foreign Affairs and International Trade (DFAIT), one in three jobs in Canada today is supported by trade.

Chart 2 - The Growing Importance of Exports to the Canadian Economy



Source : Statistics Canada

Canada's reliance on exports to fuel economic growth has been increasing with time. From 1991 to 2000, merchandise exports have risen by 183%. Although this increase has not been evenly distributed across the country, all provinces have seen considerable growth in trade over that period. Merchandise exports more than doubled in all ten provinces, while the nation's growth leader, P.E.I, saw exports more than quadruple.

A study by DFAIT shows that recent trade liberalization efforts have played a significant role in Canada's rapid export growth.[5] As such, Canada has been a strong supporter of negotiations at the WTO and continues to push for further trade liberalization in order to further spark exports and economic growth.

In addition to the economic stimulus provided by enhancing Canada's trading relationship, the WTO system of agreements provides Canada with other benefits as well. It forms the foundation of Canada's international trading policy and effectively constitutes Canada's trading relationship with the EU, Japan and numerous emerging markets worldwide.[6]

Most importantly, given Canada's small size relative to the U.S. and the EU, a rules-based system of international trade is critical to ensure that larger economic powers do not abuse their superior negotiating positions to extract preferable agreements in the

[5] Department of Foreign Affairs and International Trade, *Accounting for Canadian Export Growth: 1983-1997*, 1998.

[6] Department of Foreign Affairs and International Trade, *Canada's objectives for the fourth WTO ministerial conference*, October 24, 2001.

event of a dispute. This provides security for Canadian businesses trading and investing abroad. Indeed, Canada owes much of its economic growth and prosperity to the multilateral framework of rules that facilitate access to growing world markets.

KEY WTO NEGOTIATING ISSUES

TRADE AND DEVELOPMENT

A. Background

1. The Relationship Between Trade Liberalization and Development

Reducing barriers to trade and establishing a framework to better integrate domestic industries in the global market has been shown to enhance prosperity in poor countries. Trade liberalization allows goods that can be produced more cheaply in the developing world to be sold abroad at competitive prices. This ability to penetrate world markets increases production in developing countries, which in turn contributes to higher employment and economic growth.

The Sub-Committee heard that trade in general, and the WTO in particular, have been critical for the economic growth of developing countries. Jack Mintz (President and CEO, C.D. Howe Institute) testified that trade policy and access to markets is a vital aid program. He highlighted three specific aspects of the trade liberalization agenda that have contributed to economic growth in the developing world: access to developed-country markets through the various trade liberalization agreements; access to foreign investment, helpful for capacity building/productivity in these countries; and access to vital technology/machinery and management.

Trade liberalization agreements, and the improved economic opportunities that result for developing countries, have been re-enforced by the work of the WTO to date in creating a secure, rules-based trading environment. Requiring all member nations to abide by the same set of rules shelters poorer countries from the risks associated with a trade dispute with a much larger economic power. Furthermore, the WTO's dispute resolution mechanism allows any country to seek redress if it believes it is being treated unfairly by any trading partner.

Established trading rules and enhanced trade security also encourages foreign direct investment. International investment in businesses, plants and equipment abroad is widely acknowledged to be a catalyst for growth in trade, further improving income growth and economic prosperity in the developing world.

Previous rounds of trade negotiations at the GATT and WTO have already had a tremendous effect on trade levels and economic growth in many developing countries. World exports have been growing exponentially since the 1950s and many of the developing countries that have closely embraced trade openness have also realized the largest improvements in their standard of living in recent years.

As well, lower barriers to trade have had a dramatic effect on the type of products exported by developing countries. Lower trade tariffs on manufactured goods have contributed to a boom in value-added exports from developing countries. With the share of agriculture and mineral exports having fallen steadily since the early 1980s, manufacturing now accounts for about 80% of total exports from the developing world.

2. Development Issues at the WTO

While trade liberalization through the WTO offers considerable benefits to the developing world, significant challenges remain. Despite the fact that over 100 of the WTO's members are from the developing world, previous WTO agreements have clearly focused on issues that are of a greater priority to developed countries.

At the Uruguay Round of trade negotiations, for example, the very poorest of countries maintained that they received relatively few trade benefits in exchange for signing to certain agreements (e.g., intellectual property) that may have actually hurt rather than helped them. Many developing countries claimed that the trade liberalization provisions contained in that round did not translate into enhanced market access.

Indeed, the average most-favoured nation tariff on industrial goods worldwide has fallen from about 40% in the post-WWII period to about 4% today. However, much of this tariff drop has been on products typically produced and exported between wealthy countries. The average tariff levied by the Organisation for Economic Co-operation and Development (OECD) countries on manufactured imports from poor countries is estimated to be four times higher than the average tariff on imports from wealthy countries.

Kathleen Macmillan (President, International Trade Policy Consultants Inc.) warned the Sub-Committee that the global trading system was threatened by the discrepancies in trade barriers between developed and developing country members. She testified that countries in the South are losing patience with what they perceive as hypocritical trade policies in the North. Poor countries believe that rich nations are protective of domestic industries in which the former group have a distinct competitive advantage. They point to the fact that tariffs in developed countries remain particularly high on specific labour-intensive industries, including textiles, clothing, food products and footwear. Furthermore, tariff levels often increase with the degree of processing, thus discouraging value-added work on basic commodities.

Ms. Macmillan also noted that developing countries are of the view that even when the North does improve market access, the exercise is selective in that it targets only least-developed countries. According to World Bank estimates, liberalizing global markets and removing subsidies in the sensitive industries mentioned above could add $1.5 trillion to income levels in the developing world. By comparison, Ms. Macmillan reminded the Sub-Committee that about $50 billion is currently provided annually to developing countries through various aid programs.

The need to improve upon the disparity in power and development between North and South was echoed by Gerry Barr (President and CEO, Canadian Council for International Cooperation). He added that this “grotesque” imbalance could only be addressed by enhancing the gains from trade to developing countries. This would require countries like Canada to play a leadership role in making non-reciprocal concessions to address the market access demands of those countries.

The Sub-Committee concurs with the view of the Government of Canada that a new round of negotiations would serve to increase global growth and development through an improvement in market access, a strengthening of the multilateral rules governing international trade and the lowering of trade-distorting support and protection. At the same time, it recognizes that efforts to liberalize trade should be supplemented by other policy measures that ensure a more equitable distribution of the benefits of freeing up trade.

B. The Doha Development Agenda

Despite the fact that developing countries have not benefited from trade liberalization to the same extent as the developed world, they appear convinced of its merits. Developing countries continue to seek accession to the WTO, attracted to the opportunities offered by a rules-based trading system and a doorway to the markets of the West.

Indeed, the collective voice of the developing world is being heard louder than ever. Peter Clark informed the Sub-Committee that since the failure of Seattle, developing countries have been successful in convincing the WTO of the importance of remedying their problems. Since the late 1990s, those countries have been advancing their many interests in a more aggressive manner, aided by growing anti-poverty and anti-globalization protests and the failure of the ministerial meeting in Seattle.

As a result, the forthcoming round of trade negotiations has the issues and concerns of developing countries at its core. The international community agreed through the Doha Declaration on a set of measures designed to ensure that the world’s developing countries would be in a significantly improved position to benefit from the global trading system and could adapt to WTO obligations at a pace more in keeping with their development requirements.

Witnesses appearing before the Sub-Committee were receptive to the focus of the Doha Declaration on development issues. Many felt that Canada had not only a commitment to negotiate on issues of concern to developing countries, but indeed had a moral obligation to do so. Sergio Marchi maintained that the focus on bridging the gap between rich and poor countries was perhaps the most important decision made at Doha. Mr. Marchi believes that the Doha Development Agenda should generate growth and lead to poverty reduction in developing countries.

1. Major Development Issues in the Doha Declaration

The overall package of measures set out in the Ministerial Declaration contains a long list of responses tailored to developing-country requirements in general. Indeed, over three quarters of the Doha Declaration enshrines principles or directly addresses the interests of the developing world. Sergio Marchi outlined to the Sub-Committee what, in his view, were the most significant of these issues. They include: the provision of "special and differential" treatment for meeting WTO obligations — both in the forthcoming round of negotiations as well as outstanding obligations from previous rounds; increased support through technical assistance; improved access to developed-country markets for farm products and labour-intensive manufactured goods; and enhanced access to generic drugs during health emergencies (TRIPS and public health agreement). These will be discussed in further detail below.

The Doha Declaration also benefited developing countries through omission. Negotiations on investment, competition, government procurement and trade facilitation were delayed until 2003. Mr. Marchi informed the Sub-Committee that certain developing countries were opposed to launching negotiations on these so-called "Singapore Issues." As well, the Declaration did not contain any commitments in the area of trade and labour. Jack Mintz reminded the Sub-Committee that developing countries view environmental and labour agreements as forms of trade protectionism employed by the developed world. As such, this omission can be viewed as a victory. Poorer nations generally prefer to address labour and environmental concerns in institutions and agreements separate from the WTO.

(a) Market Access

Developing countries stand to gain considerably from WTO negotiations on tariff reduction and market access. Farm products and labour-intensive manufactured goods such as textiles, comprise a full 70% of the exports of the poorest countries. Yet, as mentioned above, these same industries are those where protectionist policies in the developed world are highest.

Kathleen Macmillan encouraged the Sub-Committee to support a reduction in tariffs against goods produced in developing countries. Other witnesses thought that the developed world may not even have much choice but to offer meaningful concessions. Bill Dymond warned that developing countries have the power to stop progress in WTO

negotiations and that insufficient consensus existed in the developed world to proceed without them. Clifford Sosnow agreed, stating that in order to prevent the current round of negotiations from failing entirely, developing countries require assurances that access to developed country markets will be achieved.

In the case of textiles, clothing and apparel, enhanced market access would come on top of existing commitments resulting from the Uruguay Round of negotiations. These are gradually being phased in with a final deadline of January 2005. In particular, "peak tariffs," applied against importing countries' most sensitive industries will be lowered, and textile import quotas will be eliminated. Developing countries had requested earlier liberalization of textile markets, but these requests were overturned by countries such as Canada and the United States.

Witnesses appearing before the Sub-Committee were divided on this issue. Several agreed with the viewpoint of developing countries — that rich nations were hypocritical in pushing for trade liberalization in industries where they had competitive strengths, but remaining fiercely protectionist elsewhere. Sergio Marchi predicted that Canada and other developed countries will be under considerable pressure to accelerate market access in industries such as clothing and textiles.

However, the Canadian Apparel Federation (CAF) warned the Sub-Committee that an abrupt elimination of tariffs and import quotas from those countries would harm the Canadian industry. Elliot Lifson (President, Canadian Apparel Federation) insisted that unilateral concessions on the part of Canada would have a significant impact on certain sectors of the domestic apparel industry and would undermine its efforts to adjust to the market liberalization process already underway.

While the Canadian Apparel Federation was opposed to accelerating market access provisions for developing countries because of the potential damage to their industry, Jack Mintz cautioned against using Canadian government support as a method of easing the transition. According to Mr. Mintz, offering transitional support to Canadian industries hurt by trade liberalization efforts (geared to help developing countries) could impede the adjustment process in Canada and slow the movement of resources from one industry to another.

Recognizing the need to clarify the debate, Ann Weston (Vice-President, North-South Institute) suggested that clear, objective economic information was critical in resolving this issue. Ms. Weston reminded the Sub-Committee that the federal Finance Minister has the mandate to request from the Canadian International Trade Tribunal a detailed analysis of the economic impact of liberalizing sensitive sectors such as textiles and clothing.

In addition to textiles and other labour-intensive manufacturing, developing countries are also pressing for meaningful reductions in barriers to trade in agriculture and food products. In this instance, however, there was a greater consensus among the

witnesses appearing before the Sub-Committee. Because the food and food products industry in Canada is among the least subsidized across the developed world, most witnesses were in favour of pushing for greater reduction in trade-distorting agricultural support at the WTO.

However, the Dairy Farmers of Canada cautioned against any conclusion that a totally open international trade environment is key in dealing with developing-country concerns in agriculture and rural development. Yves Leduc (Assistant Director, International Trade Department, Dairy Farmers of Canada) suggested that developing countries require market stability in order to be successful, a stability not in evidence in contemporary world markets. As well, he added that farmers in developing countries must be given the necessary tools to counteract the power of large processing and retail interests.

Gerry Barr informed the Sub-Committee that a number of developing countries have been promoting the inclusion of a "development box" in the WTO Agreement on Agriculture. This proposal has already been tabled and is presently under consideration at the agricultural trade committee sessions in Geneva. The proposal suggests that developing countries be allowed to devote more support to their farmers, exempt certain key food security crops from market access commitments, and protect their farm sectors from import surges. Mr. Barr urged Canada to provide greater support for this idea. The Sub-Committee recommends:

Recommendation 2:

That Canada thoroughly assess the existing proposal to include a "development box" in the WTO Agreement on Agriculture, and make its findings public.

The Sub-Committee acknowledges that enhancing market access for developing countries is a critical aspect of promoting economic growth in poorer regions of the world. It further recognizes that trade liberalization in previous rounds of WTO negotiations has favoured industries in the developed world and that Canada must make meaningful concessions to open its markets to trade and competition from all countries. We recommend:

Recommendation 3:

That Canada assume a leadership role in promoting access for developing countries to the markets of the developed world. To that end, Canada should make unilateral concessions in improving access to the Canadian market for products originating in these countries. The federal government should also explore the need to provide transitional assistance to the domestic industries and/or workers affected by this measure.

(b) Special and Differential Treatment

Paragraphs 12 and 44 of the Doha Declaration deal with the issues of special and differential treatment for the developing world, specifically with extending the timeframe allotted those countries for implementing WTO agreements. A decision was reached at Doha on 48 outstanding issues to aid developing countries in their implementation of existing WTO agreements.

In addition, WTO Member countries reaffirmed their commitment to providing developing countries with similar special and differential treatment provisions for implementing subsequent agreements as well, including any which arise out of the Doha Development Agenda. Current provisions for differential treatment will be reviewed in the forthcoming round of negotiations with a view to making them stronger, more precise, effective and operational.

The Sub-Committee was told that developing countries are looking for substantive results to come out of the Doha Declaration on this topic. The GATS is frequently cited by developing countries as an example of a positive approach to accounting for the differing needs of the developing world.

Witnesses appearing before the Sub-Committee, including Ann Weston, stressed that the wider challenge of promoting economic development in poorer countries is, in essence, an issue of special and differential needs. Ms. Weston maintained that many countries, including Canada, have developed a narrow approach to development — one centred on trade-related technical assistance. While Ms. Weston believed such assistance to be of value, she emphasized the need for a broad interpretation of the term "special and differential needs," one which does not impose a uniform "top-down" approach to WTO agreements, but rather, builds a "bottom-up" agreement, one which accounts for differences across countries. Such an agreement would not only establish an enabling environment for domestic enterprises in developing countries, but also include meaningful access to Western markets as well.

Witnesses were favourable to special treatment for poor countries, but Sandra Marsden (President, Canadian Sugar Institute) cautioned that some countries that on the whole might be categorized as developing, have specific domestic industries that are exceptionally strong and well developed. She maintained that it would be inappropriate to provide special treatment for "transitional developing countries" in those cases.

The Sub-Committee believes that special and differential treatment should be a cornerstone of Canada's development policy. It agrees with the view of the Canadian Council for International Cooperation that such provisions should also be used as guiding principles in implementing the Doha agenda. However, it also accepts the cautionary

advice that Canada should be prudent in negotiating the criteria for special treatment so that only countries with legitimate need for such treatment qualify. The Sub-Committee recommends:

Recommendation 4:

That the federal government energetically support special and differential treatment provisions for developing countries that provide those countries with a more flexible timeframe for implementing WTO agreements. In negotiating this position at the WTO, Canada should also seek clear and equitable rules for how such an entitlement is determined in order that countries not qualify for special treatment in cases where it is not warranted.

(c) Trade-Related Technical Assistance

One of the ongoing challenges faced by developing countries is that their relative poverty inhibits their ability to effectively participate in the trade-liberalization process. The costs of the domestic policy and legal reforms required to conform to WTO regulations, as well as the costs of training trade negotiators and ensuring representation at WTO meetings worldwide, can be a formidable obstacle for poor nations.

Numerous witnesses appearing before the Sub-Committee asserted that although WTO obligations are the same for all, countries differ in their ability to implement these agreements or even set up the systems needed to deal with those commitments. Peter Clark testified that this points to the need for enhanced technical assistance and capacity building for developing countries — many of which do not have the necessary resources, institutions, or the experience to participate meaningfully in WTO negotiations.

Robert Keyes (President and Chief Executive Officer, Canadian Council for International Business) maintained that the WTO, World Bank, IMF and other international institutions must cooperate on a “coherence agenda” to help developing countries build the capacity to negotiate and implement trade agreements.

Kathleen Macmillan agreed with this viewpoint, stressing that unless rich countries such as Canada improve the existing balance between developing and developed countries, the WTO may lose its status as an effective multilateral institution.

Canada has already taken a number of steps to help developing countries integrate more effectively into the international trading system. These include:

- the provision of over $300 million in direct trade-related assistance to developing countries, as well as indirect support to the WTO’s Technical Cooperation Division;

- a contribution of $1.7 million towards the Integrated Framework, a program co-ordinating the trade-related technical assistance and capacity building activities of six international organizations (World Bank, International Monetary Fund, WTO, International Trade Centre, U.N. Conference on Trade and Development and United Nations Development Program);

- the provision of almost $2 million in financial support for the Advisory Centre on WTO Law, designed to aid developing countries with dispute settlement;

- assistance given to potential new WTO Member countries attempting to satisfy the detailed WTO accession requirements; and.

- most recently, contributing $1.3 million in trade-related technical assistance for developing countries to the WTO in support of commitments made at Doha.

However, witnesses urged the Sub-Committee that Canada could do more. While applauding Canada's record in contributing financial support for trade policy capacity building, witnesses such as the Canadian Council for International Business urged Canada to offer additional capacity-building and technical assistance to help developing countries develop their own policy analysis. In this manner, developing countries would be better able to represent their own interests on the international stage and thus contribute to a more equitable result at future trade negotiations.

The Sub-Committee believes that adequate representation by all Member countries is key to the ongoing effectiveness and legitimacy of the WTO. Furthermore, providing developing countries with capacity-building assistance will permit a sufficient degree of self-determination to allow those countries to pursue trade-related policies that they believe to be in their own best interests. We recommend:

Recommendation 5:

That the federal government take a leading-edge role in providing trade-related technical assistance to developing countries. With a view to finding the most effective way to do so, the federal government should also commit to increasing its contribution to capacity-building programs.

(d) TRIPS and Public Health

In addition to the main Ministerial Declaration which contains those development issues addressed above, a second agreement was also signed at Doha in November 2001 — the *Declaration on the TRIPS Agreement and Public Health*. This Declaration clarifies the relationship between the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and the accessibility of medicines in developing countries.

The TRIPS agreement has been a contentious issue for developing countries since its successful implementation at the Uruguay Round of negotiations. According to Mark Boudreau (Senior Director, Policy and Research, Canadian Manufacturers and Exporters) the issue of how developing nations can access medicines to treat pandemics such as HIV/AIDS, tuberculosis and malaria is at the heart of the debate.

The Doha Declaration on TRIPS and Public Health represents a commitment on the part of all WTO Members to provide developing countries with greater flexibility to override patents on expensive drugs when faced with public health crises. The TRIPS Declaration is meant to affirm and clarify the right of poorer nations to use measures such as compulsory licensing to produce medicines without the consent of the patent holder and thus ensure cheap supplies of essential drugs. In addition, least-developed countries were granted an additional ten years to comply with their obligations under the TRIPS agreement.

The Canadian Drug Manufacturers Association (CDMA) welcomed the inclusion of the TRIPS Declaration in the Doha Development Agenda. The CDMA observed that the international trading system should facilitate rather than impede access to medicines in developing countries. Given the urgent need for medicines in many developing countries, Jim Keon (President, Canadian Drug Manufacturers Association) encouraged the Canadian government to place a high priority on giving the fullest possible interpretation to this Declaration.

While a number of witnesses, such as Mark Boudreau of the Canadian Manufacturers and Exporters, agreed that public health issues in the developing world were of critical importance, the Sub-Committee was also cautioned about the perils of undermining intellectual property protections. Mr. Boudreau testified that effective intellectual property protections are in the self-interest of all nations as the rules are essential for providing incentives to find and develop cures for deadly diseases. Moreover, Mr. Boudreau suggested that intellectual property protections are important to establishing a hospitable climate in a developing world. If businesses cannot be sure their innovations will be protected in certain markets they will avoid them.

Gerry Barr also alerted the Sub-Committee to a major outstanding concern with the TRIPS Declaration. Developing countries were assured that they could override patents and produce generic drugs to address public health emergencies. However, for those countries without the manufacturing capacity to produce generic drugs, there was no assurance that they could import those drugs from countries which did have the appropriate manufacturing capacity. Mr. Barr stressed that this would be most damaging to the world’s least-developed countries. He suggested that Canada champion this cause.

The Sub-Committee believes that countries lacking the appropriate manufacturing capacity should not be prevented from accessing generic medications in the event of public health emergencies. It notes that the Declaration on TRIPS and Public Health instructed the WTO Council for TRIPS to investigate this matter and to report back to the General Council before the end of 2002. The Sub-Committee recommends:

Recommendation 6:

That Canada continue to promote its position at the WTO that calls for any modification of the existing compulsory licensing arrangement to not restrict developing countries without access to appropriate manufacturing capacity from importing generic medications in the event of public health emergencies. Canada should also promote the establishment of a dedicated international fund to help developing countries without access to such generic drugs to purchase them.

C. Special Considerations for Least-Developed Countries (LDCs)

In addition to its overarching emphasis on development issues, the *Doha Ministerial Declaration* also contains specific provisions aimed at the world's least-developed countries. These provisions are intended to aid economic development and poverty alleviation in those countries by facilitating their integration into the world multilateral trading system.

Forty-nine countries are classified as least-developed. Brian Morrisey (Director General, Economic Policy Bureau, Department of Foreign Affairs and International Trade) reminded the Sub-Committee that these are the very poorest countries in the world. In many cases, their citizens live on less than one U.S. dollar per day. These nations account for about 10% of the world's population, but only 0.5% of global international trade — a share which has been declining in recent years.

The designation of a country as least-developed is made by the United Nations Committee on Development Policy. There are three basic criteria used to determine if a country qualifies as an LDC. The most significant of these stipulates that annual economic production from an LDC be less than US$900 per capita. LDCs also fall below certain criteria relating to a quality-of-life index and an index of economic vulnerability. In order to accede from LDC status, countries must graduate from two of these three categories. Only Botswana has ever done so.

Given the current rate of economic growth in LDCs, the United Nations estimates that only four countries, Bhutan, Laos, Lesotho and Sudan, are in a position to graduate from LDC status within the next 25 years. A fifth, Bangladesh, is expected to accede within 25-50 years. The Sub-Committee believes that trade and investment are critical to accelerating this process and thereby reducing poverty in least-developed countries.

The specific provisions addressing LDC issues are contained in paragraphs 42 and 43 of the *Doha Ministerial Declaration*. The Declaration underscores the need to facilitate and accelerate the process of accession to the WTO by least-developed countries in order that they realize the benefits associated with trade liberalization. To assist this process, the Declaration also endorsed the Integrated Framework for Trade-Related Technical Assistance of Least-Developed Countries (IF) and urged its members to increase their financial support of this program.

More importantly, however, the Declaration commits Member countries to providing duty-free, quota-free market access for products originating in least-developed countries. As well, it opens for consideration any further measures designed to enhance market access for those exports.

1. Tariff-Free, Quota-Free Market Access

In light of the WTO commitment to pursue enhanced market access for LDCs, the Government of Canada has recently put forward a proposal to unilaterally eliminate all tariff and quota restrictions on imported goods from LDCs, with the exception of a handful of supply-managed agricultural products. While this proposal would help Canada achieve its commitments under the Doha Declaration, it also represents a facet of the federal government's broader initiative to promote economic growth and poverty reduction in the developing world.

The federal government recognized that alone, the provision of development aid to the poorest countries is insufficient to alleviate poverty and promote long-term sustainable economic development. Those developing countries that have historically been most successful at addressing poverty have also been those that have embraced economic growth through increased trade. As such, by removing its tariff and quota barriers, the federal government hopes to create opportunities for increased investment, trade, economic growth and poverty reduction in LDCs. Brian Morrisey considered this proposal to eliminate trade barriers to LDCs as an extension of Canada's ongoing role in addressing the plight of the world's poor.

There was widespread approval of the federal government position among many of the witnesses appearing before the Sub-Committee. Several, including Rohinton Medhora (Vice-President, Program and Partnership Branch, International Development Research Centre), considered Canada's market access proposal for LDCs as a welcome effort to broaden the scope of the country's development efforts beyond the provision of foreign aid. Sharon Maloney (Vice-President, Retail Council of Canada) also supported the federal effort, stating that the most effective way to help developing countries was through job creation. Ms. Maloney added that not only would LDCs benefit from enhanced market opportunities, but that Canadian consumers would also benefit from lower-priced goods. Peter Clark summarized his view by saying that "it is unconscionable, inequitable and immoral to continue to impose tariffs on these countries."

Eliminating its quotas and tariffs on imports from LDCs would allow Canada to join a number of other developed countries that have already offered similar unilateral concessions. The Sub-Committee heard that New Zealand and Norway have already granted tariff-free and quota-free access to LDCs across all product lines, while the EU has granted similar access to all products save rice, bananas and sugar, for which the elimination of trade barriers will be phased in.

Witnesses testified that while on the surface the European market access provisions appear more generous than the Canadian proposal, non-tariff barriers in the EU are more stringent than those in Canada. Elliot Lifson pointed to Canada's rules of origin for imported goods from least-developed countries, stating that they were significantly more generous than those employed by the EU. In his opinion, this makes Canada's market access proposal more sweeping than that of the EU.

Gerry Shannon (Senior Government Policy Consultant) agreed, stating that contrary to recent international studies on the matter, Canada is not lagging behind other developed countries in opening its markets to LDCs. Mr. Shannon also pointed to EU rules of origin, as well as the U.S. sugar quota as examples of non-tariff barriers to trade that have a greater impact on the ability of LDCs to export than any tariff constraints in Canada.

The Canadian Apparel Federation warned, however, that preferential tariffs for LDCs, when combined with these liberal rules of origin, could encourage the transhipment of goods from countries still under quota restraint through those benefiting from preferential treatment. Mr. Lifson urged that the Canadian government set rules of origin consistent with those of other countries to avoid such a scenario.

The Canadian Textiles Institute (CTI) also expressed concern on the issue of transhipment of goods. In its submission to the Sub-Committee, the CTI presented its position that strict rules of origin, such as those imposed by the EU, are critical to ensure that transhipment from developing countries to LDCs does not take place. The CTI considers the absence of any rules of origin requirements in Canada's proposed market access initiative to be a serious omission.

Of the 49 least-developed countries, Canada has designated 47 as eligible for special treatment under the Least Developed Country Tariff (LDCT). The LDCT already provides those countries with preferential tariff rates over those applied under the most-favoured nation (MFN) rate. The two exceptions are Senegal, which only recently became an LDC, and Burma, which is excluded for political reasons.

Jack Kivenko (Member, Canadian Apparel Federation) expressed his concern to the Sub-Committee over the arbitrariness of the criteria used to determine which countries are least-developed. He warned the Sub-Committee that if the Canadian market access proposal were implemented, it would become difficult for Canada not to offer similar concessions to other poor developing countries.

Through the LDCT, Canada offers those 47 LDCs duty-free access on 90% of import lines. However, a relatively large proportion of exports from LDCs into Canada are in the remaining 10% of products where trade restrictions are still in place. In particular, clothing, textiles and footwear products face significant tariff barriers. Duties also remain in place for certain agricultural goods, including refined sugar, baby carrots and tobacco substitutes. All told, about 54% of imports from LDCs are still subject to tariffs, adding an average of 19% onto the price of those goods.

Canada also levies Tariff Rate Quotas (TRQs) on a number of agricultural goods from LDCs, including beef and veal, wheat, barley and related products, as well as margarine. LDCs are permitted duty-free access to the Canadian market up to a certain threshold, after which the most-favoured nation tariff rate is applied. To date, LDC exports of these products have not been sufficient to exceed the TRQ level in Canada.

Import quotas also exist on certain textile and apparel products from some LDCs. However, through the WTO Agreement on Textiles and Clothing, Canada has already committed to eliminating these quotas by January 2005, in addition to reducing tariff barriers on those products.

Given this commitment, some witnesses questioned the need to accelerate a process that would already eliminate import quotas on textiles and clothing from LDCs within two-and-a-half years. The Canadian Apparel Federation stated that such a move would offer minimal incremental benefit to least-developed countries, and serve only to disrupt the adjustment process underway within the Canadian industry in anticipation of January 2005.

Indeed, even independent of the enhanced market access offered to LDCs under the WTO Agreement on Textiles and Clothing, the Canadian Apparel Federation questioned whether or not the Canadian economy was sufficiently large for market access to provide any tangible benefits to those nations. Jack Kivenko stated that, considering the relative size of the U.S. and European economies, the Canadian market was too small to offer any significant benefit to LDCs. He suggested that the Canadian proposal would succeed not in helping those countries but only in hurting the Canadian industry.

Similarly, Gerry Shannon testified that based on his analysis of the Canadian proposal, eliminating tariffs and import quotas would provide only marginal benefits to LDCs. While some countries, such as Bangladesh, have strong productive capacity and could benefit from improved access to the Canadian market, Mr. Shannon stressed that most LDCs are not in such a position.

Indeed, the Sub-Committee heard that those countries whose textile and apparel exports into Canada are still restricted by import quotas are generally not in a position to fulfil their allotted quota, much less to dramatically increase their exports in a newly liberalized market. However, the Canadian Apparel Federation, reminded the

Sub-Committee that the clothing and textiles industries are among the most mobile in the world and could easily move from developing countries to LDCs in order to temporarily take advantage of the preferential tariff rates and absence of quota restrictions.

Elliot Lifson argued that in many cases, textile and clothing industries in LDCs only exist because quota controls and preferential tariff rates have diverted production from other, more efficient, producers. Mr. Lifson suggested that once quota controls are removed, production will migrate back to the most productive countries. This viewpoint was supported by Gerry Shannon, whose research found that liberalizing trade in clothing and textiles could result in China dominating the market and could drive all but the most efficient textile and apparel producers in the developing world out of business.

John Alleruzzo (Union of Needletrades, Industrial and Textile Employees) agreed, stating that major clothing brands are continually searching for lower-cost production locations. He warned that trade liberalization in clothing and textiles will drive down wages and labour standards in the developing world as countries struggle to attract industry and investment.

Brian Morrisey acknowledged that least-developed countries share the concern that enhanced market access will not result in lasting long-term benefit, but rather in a temporary reallocation of production away from other developing countries. However, Mr. Morrisey also emphasized that the long-term impact of this type of unilateral concession on the part of Canada and other developed countries depends on a wide range of factors, including the response of international investors and whether LDCs implement policies to take advantage of these opportunities.

This position was supported by Rohinton Medhora who suggested that the challenge for individual LDCs lies in their ability to extract the full value out of this type of market access initiative. Mr. Medhora also stressed that production capacity is influenced by a wide range of factors, including government policies and programs, perceived investment risk and infrastructure improvement schemes.

Gerry Shannon also testified that in terms of allowing LDCs unrestricted access to the Canadian market, opening the door wider does not guarantee that more will flow through it. He stressed that Canada needs to enhance its capacity-building support for LDCs, stating that market access in and of itself is of little use when countries have no product to sell or inadequate infrastructure to support production.

While some witnesses appearing before the Sub-Committee felt that Canada's market access proposal would not yield significant benefits, others felt that it did not go far enough. Stephanie Jones (Vice-President, Food Supply, Canadian Restaurant and Food Services Association) suggested that by continuing to protect Canadian supply-managed agricultural products from any market-access concessions, the federal government was sending mixed signals to least-developed countries and calling into question the sincerity of its entire development initiative.

Gerry Shannon shared this opinion, stating that it will be difficult for Canada to press developing countries to make substantial reforms to their domestic structure and allow market forces to operate while at the same time maintaining that supply-managed industries are different. Mr. Shannon suggested that as WTO negotiations continue, it will become increasingly difficult for Canada to maintain this position.

We agree with the position of the federal government that expanding duty-free and quota-free access to its imports from LDCs has the capacity to encourage economic growth in those countries through increased international trade. Improved market access will help LDCs to increase production in industries where they hold a competitive advantage. As a complement to development aid, enhanced market access has the potential to improve economic conditions and alleviate poverty.

The Sub-Committee recognizes that Canada is not a significant trading partner for LDCs. It also acknowledges the testimony received from a number of witnesses that there is a lack of concrete analysis on the costs and benefits of the federal government market access initiative, both in terms of its effect on the domestic textile and apparel industry, as well as on least-developed countries. However, we believe that by eliminating domestic barriers to trade with those countries, Canada can make a contribution towards removing the obstacles facing LDCs on the road to economic growth and prosperity. The Sub-Committee recommends:

Recommendation 7:

That the Government of Canada unilaterally eliminate all remaining tariff and quota restrictions on imports from least-developed countries, save those on supply-managed agricultural products. In implementing this initiative, the federal government should do its utmost to discourage the transhipment of goods from countries remaining under quota restraint. The market access undertaking should be completed as soon as possible and certainly not later than December 31, 2002.

The Sub-Committee heard from several witnesses that the economic cost that Canada would face in eliminating these tariffs and quota restrictions is relatively low. Imports from LDCs represent only a small fraction of Canada's total trade. In 2000, the value of goods entering Canada from LDCs totalled $367 million — equivalent to one-tenth of 1% of total imports that year.

However, Brian Morrisey cautioned that while the aggregate economic impact of the Canadian proposal would be minimal, there would be significant effects on specific sectors of the economy where barriers to trade remain high — particularly in the clothing and textiles industries, as well as in some agricultural sectors.

This testimony was corroborated by the Canadian Textiles Institute. In their submission, the CTI acknowledged that even in the case of textiles, LDCs account for only a small proportion of total imports into Canada — about 0.5%. However, the CTI stressed that this did not preclude the probability that removing duties on those goods would have an adverse impact on the domestic industry.

Other witnesses were less concerned about the impact on these industries. Gerry Shannon testified that, based on his research, the impact on the Canadian textile and apparel industry would not be severe. Recounting the results of a recent study he authored for the Canadian International Development Agency, Mr. Shannon stated that the impact on the apparel sector in Canada of removing tariffs and quotas would be sufficiently small that no adjustment assistance would be required.

Rohinton Medhora pointed to the fact that market penetration by LDCs in textiles and apparel has been relatively modest to date. The Sub-Committee also heard that most LDCs are not affected by the import quotas currently in place, making the prospect of an import surge unlikely. Furthermore, Peter Clark told the Sub-Committee that when Canada introduced its preferential system of tariffs in 1974, an escape clause was included that withdrew the favourable tariff in the event that such a surge in imports took place and was found to cause demonstrable injury to a Canadian industry.

However, Peter Clark also reminded the Sub-Committee that many of the people employed in Canada's textile and apparel industry are new Canadians at their first job. Mr. Clark considered this industry to be an important contributor to the integration of new immigrants into Canadian society and the economy.

The Sub-Committee heard testimony that given the relatively small amount of trade between Canada and LDCs, eliminating barriers to trade for those countries will have little impact on the Canadian economy. However, whatever effect there will be will be concentrated in a few key industries, notably clothing apparel and textiles as well as possibly some agricultural products.

The Sub-Committee acknowledges that the textile and apparel industries will bear a disproportionate share of any cost associated with the federal government's proposed initiative. Furthermore, in the case of new immigrants, those who bear the cost may be those least-equipped to do so. We therefore recommend:

Recommendation 8:

That, given the reality that the bulk of the economic costs associated with the Government of Canada's proposal to provide full market access to least-developed countries will be borne disproportionately by a limited number of industries, the federal government establish a transitional assistance program for those industries affected and/or for their workers.

DISPUTE SETTLEMENT

A. Background

The WTO's rules-based dispute settlement system is set out in the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (Dispute Settlement Understanding or DSU).[7] Born of the 1986-1994 Uruguay Round of multilateral trade negotiations, the DSU has been in force since January 1, 1995 and is a marked improvement over its predecessor: the comparatively ineffective "patchwork" of dispute settlement tools in the 1947 General Agreement on Tariffs and Trade (GATT). For example, it has become much more difficult for members to block the creation of panels and the adoption of reports. The DSU is based on the rule of law, and gives all WTO Members — regardless of their size or power — the ability to challenge unfair trade-related actions of another member. All in all, the WTO appears to have reasonably clear, well-established, and effective procedures for dispute settlement.

The Government of Canada firmly supports the WTO's rules-based dispute settlement mechanism as a key stabilizing and equalizing factor in the international trade realm.[8] It promotes the use of consultation and negotiation as an automatic first step in any dispute, but believes that the WTO dispute settlement provisions are a necessary avenue of last resort providing a measure of predictability in global trade relations. The ongoing development of a body of case law can only help promote further stability.

The government is of the view that the system is working well, but also sees room for some substantive refinements. To streamline the entire dispute settlement process, it also feels it is important to consider how to shorten dispute timeframes, to lessen the workload of panellists and to decrease the financial and administrative costs of WTO Members and institutions in relation to dispute settlement.

The witnesses comprising the Sub-Committee's dispute settlement thematic panel were also generally positively disposed to the DSU.[9] For the most part, they observed that the dispute settlement process was working well in its stated purpose, that the final reports of dispute settlement panels were generally being implemented (with certain high-profile exceptions) and that the system was being employed by both developed and developing countries. Lawrence Herman (Trade Lawyer, Cassels, Brock and Blackwell)

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7 The Dispute Settlement Understanding is available from the WTO Web site at the following address: http://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm

8 Canada's position is described in a August 2001 DFAIT Information Paper on the Dispute Settlement System, available on the DFAIT Web site at the following address: http://www.dfait-maeci.gc.ca/tna-nac/dsu-info-e.asp

As well, further detail is available in a May 1999 Discussion Paper entitled *Canada's Perspective on the Review of the DSU* for WTO and FTAA Sectoral Consultations, available on the DFAIT Web site at the following address: http://www.dfait-maeci.gc.ca/tna-nac/discussion/dsu-e.asp

9 One panellist, Daniel Drache (Director, Robarts Centre for Canadian Studies) differed in his assessment, arguing that the DSU was a rather crude instrument for resolving trade disputes at the international level.

noted that many of the disputes involving developing countries were being resolved through the initial process of WTO consultations (as opposed to litigation), while Jon Johnson (Trade Lawyer, Goodmans) remarked that the WTO timelines were very quick compared to those of domestic court cases or NAFTA Chapter 11 cases and that the quality of WTO jurisprudence was high. Mr. Johnson did suggest, however, that the jurisprudence could be made more compact and easier to understand, and thus less burdensome for the parties, especially developing countries, and interested public observers. Mr. Herman stated that the practice of fully repeating each of the arguments of the parties leads to unnecessarily verbose decisions that typically run to several hundred pages.

Claude Carrière (Director General, Trade Policy I, Department of Foreign Affairs and International Trade) remarked that a tendency had emerged for Canada to use the WTO dispute settlement system over that of NAFTA, given that it was more automatic, could not be blocked by the other party and was easier to use. Finally, a representative of the C.D. Howe Institute observed that Canada was an important beneficiary of a rules-based system.

Nonetheless, over the past seven years of application, the impetus for reform and improvement of the DSU has grown amid calls to clarify rules, alter the composition of panels and the size of the appellate body, decrease backlog, increase compliance with decisions, lower the incentive for parties to unresolved disputes to take retaliatory action, decrease unnecessary litigation, and increase transparency throughout the dispute resolution process.

In 1994, during the Uruguay Round, a decision was issued by the Ministerial Conference to complete a full review of dispute settlement rules and procedures under the WTO by July 31, 1999, and then decide whether to continue, modify or terminate the DSU. The deadline passed without any formal action being taken[10] although draft proposals on reforms have been developed by various groups of countries. DSU reform has become an increasingly heated source of debate. A fundamental sticking point has been the desire of developed countries to shorten timelines, which many developing countries with limited resources already have great difficulty meeting.

At the Fourth WTO Ministerial Conference in Qatar, WTO Members agreed to tackle issues surrounding the DSU, with a view to implementing tangible improvements and clarifications soon after May 2003. Negotiations on the DSU have thus been de-linked from other negotiations. No substantive proposals on DSU reform have yet been adopted. Paragraph 30 of the November 14, 2001 *Doha Ministerial Declaration* reads as follows:

[10] The WTO Secretariat is of the opinion that the DSU should automatically continue as part of the international agreement constituting the WTO, even without a further affirmative decision.

> We agree to negotiations on improvements and clarifications of the Dispute Settlement Understanding. The negotiations should be based on the work done thus far as well as any additional proposals by Members, and aim to agree on improvements and clarifications not later than May 2003, at which time we will take steps to ensure that the results enter into force as soon as possible.

As discussed below, the Government of Canada is very interested in contributing to the controversial reform process, and has already begun to do so.

B. Key Issues Surrounding the Dispute Settlement Mechanism

1. Compensation vs. Retaliation as a Response to Panel Reports

As Jon Johnson pointed out to the Sub-Committee, implementation of WTO panel reports represents the largest single threat to the dispute settlement system. Sometimes, governments that have lost cases and are placed in situations where they must change their domestic policies or measures prefer to face retaliatory action as opposed to complying with their WTO obligations. According to Daniel Drache, this response is likely to occur in situations where it is believed that the public interest is more vital than WTO practices.

While it continues to be the rare instance that panel reports lead to non-compliance and retaliation, a number of high-profile cases have emerged recently (e.g., bananas dispute between the U.S. and the EU, the beef hormones cases between the EU and Canada and the U.S., and the aircraft dispute between Canada and Brazil) in which non-compliance has been a factor. This is a serious development since such open defiance of rulings decreases collective confidence in the dispute settlement system as a whole.

Claude Carrière observed that the DSU provides for two options when non-compliance occurs: either the defending WTO Member voluntarily offers compensation or the complaining party seeks the authority to retaliate. Retaliation usually involves limited trade sanctions such as the raising of tariffs or imposition of surtaxes on imported products of the offending party. Such tactics, by tending to raise trade barriers as opposed to eliminating them, do not move the system in the direction of trade liberalization. On top of this, retaliatory tariff escalation often ends up penalizing firms and consumers within the complaining country who would normally wish to import the products in question. Tensions between trading partners inevitably rise.

Compensation logically seems to be a fairer and more free-trade friendly method of implementing rulings, while offering all the advantages of trade sanctions. Despite being a more positive approach than retaliation, some argue that compensation alone may not address the problem, especially in a situation of non-compliance with a ruling. As noted by Jon Johnson, one of the current problems with compensation is that it cannot be imposed. The offending party must consent to compensation and cannot be forced to

compensate. Mr. Johnson also highlighted that increased availability of compensation as an alternative would encourage offending parties to retain their non-conforming measures, which defeats the primary purpose of dispute resolution.

The key question then is whether retaliation is a proper instrument to use in instances of non-compliance[11] or whether superior trade-creating alternatives to retaliation are available. Mr. Carrière framed the question well: How can one modify the existing system to further encourage governments to discover trade-creating solutions to disputes as opposed to trade destructive solutions?

Various options could be considered. One would be for the losing party in a dispute to offer the winner compensation in the form of offsetting trade liberalization in some other area. This was the preferred option of Mark Boudreau of the Canadian Manufacturers and Exporters, who advocated making trade liberalization, rather than sanctions, the chief enforcement mechanism for WTO rulings. As Mr. Carrière observed, however, a key shortcoming of this option is that this compensation would have to be offered on a most-favoured nation (MFN) basis (i.e., once provided to one it has to be given to other countries). A change to the rules would thus have to be agreed to.

Lawrence Herman, Serge Fréchette (Lawyer, Thomas & Davies) and Neil Jahnke (Chairman, Canadian Cattlemen's Association) suggested that another solution would be to devise a system that enabled a country winning a case to approach an arbitration panel and demand the right of financial compensation. However, both the U.S. and the EU, who together continue to dominate WTO decision making, would have to agree to this change to the DSU. In addition, one would have to resolve the issue of whether or not a subsidy would be created if the financial support in question were to be passed on to the industry hurt by the trade action. A third difficulty is that not all offending countries can afford to pay such financial compensation. Mr. Fréchette pointed out that WTO Members will simply have to sit down and work these issues through creatively. In doing so, a system may have to be devised enabling different solutions to be applied to deal with different sets of circumstances.

Jon Johnson suggested examining the decided cases and ultimate outcomes to determine just how large a problem non-compliance is and why there has been non-compliance. He also thought there should be a special compliance rule requiring a complete refund of anti-dumping or countervailing duties when they are imposed contrary to WTO requirements.

After careful deliberation, the Sub-Committee has arrived at the conclusion that a country refusing to bring its offending policies into conformity with WTO obligations should be required to provide some form of compensation to the winning party in a dispute. Such a requirement would help to resolve trade conflicts while, at the same time, not producing the deleterious effects on trade of retaliatory action. We therefore recommend:

[11] For certain countries, use of the retaliation option carries with it disastrous effects.

Recommendation 9:

That the Government of Canada actively seek the support of other WTO Members for revising the Dispute Settlement Understanding to make compensation mandatory if compensation is requested by the aggrieved Member in lieu of authorization to suspend equivalent concessions, in instances of non-compliance with panel decisions. Non-conforming anti-dumping and countervailing duties should have to be completely refunded.

2. Clarifying the Guidelines Governing Implementation of WTO Rulings

There is also the so-called sequencing issue. Under GATT's meagre dispute settlement procedures, it was difficult to arrive at definitive rulings on disputes. Under the DSU, arriving at a ruling has become much more straightforward, but problems have emerged concerning the effective implementation of decisions.

As a preliminary issue, there is the interplay between Article 21.3 and 21.5 of the DSU. When a WTO Member loses a case before a panel or the Appellate Body, a period of time must be decided upon within which the losing party must comply with the ruling. Article 21.3 provides for arbitration of this compliance time, but it may be invoked before the actual compliance and the arbitration does not take into account the means by which the losing party chooses to comply. Article 21.5 addresses the issue of whether the party has in fact complied, and this may be arbitrated after the losing party has implemented the measures purportedly bringing it into compliance. Jon Johnson has noted that it would be useful if the arbitration proceeding in Article 21.3 could also consider the proposed means of compliance and the time for compliance. This could resolve a dispute about compliance at an early stage, rather than fully addressing the issue later under Article 21.5.

Then there is the main sequencing issue. When a WTO Member is found by a panel to be in violation of its obligations, it may adopt a new measure to replace the offending measure. Article 21.5 provides an expedited process for dealing with disagreements about whether the new measure complies with the panel decision, but the Article does not specify detailed timeframes and procedural steps to govern the process. It simply states that a report must be prepared within 90 days, and if possible, the original panel will be called upon to prepare such a report setting out whether the new measure complies. This effectively delays implementation of the initial decision, and, in theory, this sequence of procedures could become an endless loop of litigation that would enable the offending party to evade compliance altogether.

The ambiguous wording of Article 21.5 leaves open the question of whether or not it is possible to appeal the panel decision on the new measure to the Appellate Body. If possible, such an appeal would, of course, further delay implementation of the original ruling. There have already been several appeals of rulings by Article 21.5 compliance panels, but always on an ad hoc basis as there is no clear guideline.

There is also an apparent contradiction arising out of Article 22 — dealing with the suspension of obligations (retaliation) — and its interaction with Article 21.5. The DSU does not authorize unilateral retaliation; thus, under Article 22.2 the complaining party must request authorization to retaliate, but may do so only if the parties have held consultations on compensation in the 20-day period following the time period specified for the implementation of the decision. This seems to conflict with article 21.5, which allows the commencement of new dispute procedures in relation to the new measure. It would thus be possible for a measure to be disputed while compensation or retaliation was simultaneously being sought. The sequence of events is a grey area: it is unclear whether action taken under Article 22 must be preceded by a panel's finding of non-compliance under Article 21.5.

This issue of sequencing has been an ongoing source of conflict between the United States and the EU. The U.S. argues that retaliation can occur without a preceding determination by a panel on whether the country in question complied with a ruling. The EU, on the other hand, holds that non-compliance must be fully established before authorization for retaliation can be sought. Canada shares the opinion of the EU on this issue.

On March 13, 2002, the EU submitted a proposal to the WTO suggesting improvements to the DSU. On the issue of sequencing, the EU notes that the urgency of a solution for the sequencing problem is less pressing than it used to be because Members have worked out ad hoc solutions for dealing with individual disputes. Such solutions generally revolve around an understanding that an Article 21.5 compliance review must be completed before a Member can invoke retaliation under Article 22. The EU argues that any formal resolution of the sequencing issue should take into account this ad hoc practice WTO Members have developed. Despite the EU sentiment that the issue is not so pressing, formally addressing the sequencing issue remains a high priority for many countries.

The Government of Canada is especially interested in clarifying the process WTO Members are to follow in disagreements about the implementation of a ruling and before a request for authorization to retaliate is made to the Dispute Settlement Body (DSB):[12] the interplay between Article 21.5 and Article 22 of the DSU. Currently, ad hoc arrangements are being used by the parties to the dispute but this requires goodwill and

[12] The DSB is responsible for the overall administration of the DSU (See Appendix A).

is not always reliable. Canada is part of a group of 14 WTO Members having made specific proposals to improve the guidelines dealing with the implementation of rulings and the use of retaliation. We recommend:

Recommendation 10:

That the federal government seek WTO consensus on clarifying the guidelines governing implementation of WTO rulings. In particular, the Government of Canada should urge Members to support DSU revisions that would expand the scope of arbitration under Article 21.3, and that would clarify the relationship between Articles 21.5 and 22 to resolve the ongoing sequencing problems.

3. Consultation vs. Litigation

Clearly, it is in the interests of all to avoid litigation when differences arise between WTO Members. Litigation should be a last resort. As a matter of practice, it has been observed that the result achieved in early consultations often mirrors the final panel decision.

The DSU requires the parties to begin with consultations, and the parties may at any time during the dispute settlement process decide on their own to consult together and settle their differences informally. According to Lawrence Herman, approximately one-third of WTO disputes are resolved within the mandated 60-day consultation period.

This is not enough to discourage overly enthusiastic use of litigation, especially by WTO Members with the resources and experience to take advantage of dispute settlement procedures on a regular basis. Some argue that the DSB simply cannot administratively support the number of cases currently in the works; they say the status quo is unsustainable. These commentators argue that strategic litigation and the promotion of compliance through consultations should be promoted as the most straightforward solutions to overload and backlog.

The U.S. and the EU have discussed establishing an alternative framework for multilateral dispute settlement outside the WTO using mediation as a way of accelerating the process and keeping backlogs at a minimum. This, however, could create complicated legal and technical issues in a situation where the U.S. and the EU agree on a mediated solution, but another WTO Member disagrees and pursues the issue using the WTO dispute settlement mechanism. The EU has expressed concern that the result could be an undermining of WTO procedures.

These concerns were also brought directly to the Sub-Committee's attention. Jon Johnson suggested that the DSB introduce a more aggressive process of mediation that would get both the offending and complainant parties to actively resolve the dispute. Lawrence Herman echoed this view, arguing that "enhanced mechanisms for use of the

consultative process, aided by good offices and mediation procedures, should be vigorously pursued in the current round." The Sub-Committee, seized by the eminent sensibility of this proposal, recommends:

Recommendation 11:

That, to improve the effectiveness of the WTO dispute settlement system, the Government of Canada actively encourage other WTO Members to implement an aggressive internal mediation process within the WTO to resolve disputes at an early stage in the process. Failing this, access to outside mediation should be explored.

4. Panel and Appellate Body Composition and Procedures

Several issues require thoughtful reflection regarding the dispute settlement process. For example, should the WTO shift to a permanent roster of professional panellists to speed up the panel selection process? According to Jon Johnson, the current panel process with three panellists is satisfactory, with cases not having been inordinately delayed owing to panel selection. He concludes that there is no need to move to a standing roster of panels. He suggests, however, that the introduction of rules of evidence could be useful. The current presentation of evidence is haphazard and is presented to panels as the proceedings evolve. Similarly, the procedure for seeking evidence from the other party is ad hoc.

The European Union, in a March 2002 formal submission to the WTO, has advocated a shift to a system of permanent panellists to deal with the excess in demand for panellists that seems to have occurred. These panellists should be at least 20 in number, should not be members of government and could be appointed by the DSB for a non-renewable term of six years. The WTO should assume panellists' expenses, according to the EU's proposal.

Criticisms have also been raised about the composition of panels being biased in favour of developed countries. The United Nations Subcommission on the Promotion and Protection of Human Rights stated in its March 2001 report that the current tendency is to appoint government officials, including diplomatic representatives of WTO Members serving in Geneva, as panellists. The Subcommission described this as "a serious flaw that gravely erodes the credibility of the DSB" because such government officials tend to be from developed countries, which are generally the only governments with the resources to pay the appointed officials. Some developing countries are unable to maintain permanent representatives at a WTO mission in Geneva. Commentators have suggested that rather than choosing panels on an ad hoc case-by-case basis under the supervision of the WTO Secretariat, panellists should be appointed in the same way as the Appellate Body and each panellist should serve a term.

There is also the fact that the opinions of individual panellists are anonymous. Panel and Appellate Body decisions do not include dissenting opinions; it appears that in each dispute the decision-makers are in complete agreement on the outcome. Dissenting opinions are a fundamental element in the development of juridical law.

Another issue is the lack of remand authority in the DSU review. The Appellate Body frequently corrects obvious mistakes made by panels, but there have been situations where the Appellate Body has found a mistake in the approach by the panel but has not been able to make a ruling on the issue because the panel did not make any factual findings. For example, Canada encountered this situation in the asbestos case. Jon Johnson suggested a remand process similar to that in Chapter Nineteen of NAFTA, such that panels could be instructed to reconsider the matter at issue within guidelines laid down by the Appellate Body.

For its part, the Appellate Body plays a crucial role in maintaining the integrity of the dispute settlement process. Improvements are being requested, however. Some commentators have remarked that the 60 or 90-day time limit for the Appellate Body to conduct its review is insufficient, and this is evidenced by the Body's recent tendency to miss deadlines. As well, while appellate review is currently restricted to issues of law and legal interpretation, there have been calls to expand its jurisdiction to include serious factual errors.

There has also been the suggestion that, to aid in the implementation of WTO panel decisions, the panels in the Appellate Body should be less vague in their rulings and less reluctant to tell WTO Members how to comply. Jon Johnson informed the Sub-Committee, however, that he does not hold much hope that the panel rulings will move in that direction.

A final issue to consider is the size of the Appellate Body itself, currently consisting of seven very active members. Should more members be added and should the members be made permanent? Claude Carrière seemed to think that increasing the number of Appellate Body members to nine "would not be unreasonable."

Cognizant of the need for the WTO dispute resolution bodies to be effective, efficient and credible, the Sub-Committee recommends:

Recommendation 12:

That the federal government urge WTO Members to review the composition of panels and the Appellate Body, as well as the need for rules of evidence and dissenting opinions. Furthermore, a remand authority for the Appellate Body should be considered to assist in the correction of errors made by panels.

5. Transparency and Accessibility

There continue to be significant criticisms about the openness and transparency of WTO operations. Enhancing the transparency of the dispute settlement system is an important issue. As Claude Carrière explained, however, the majority of WTO Members have not been terribly sympathetic to addressing this controversial issue. That having been said, tangible progress has been made in recent years. A perfect example is the WTO Web site (www.wto.org), which provides direct global access to most official WTO documents; this was not the case with GATT, under which most documentation was "restricted."

Nonetheless, there is no requirement for WTO Members to make their submissions for panel and Appellate Body hearings publicly available. This is something that is regularly called for in assessments of WTO transparency, as is the opening up of hearings for public viewing.

As the impact of WTO decisions becomes more evident to the general public, such calls will only increase in regularity and intensity. Undoubtedly, such changes toward greater openness would require special measures to ensure the protection of privileged trade information. As Claude Carrière and Jon Johnson noted, the absence of rules respecting the confidentiality of business information has posed difficulties. Mr. Johnson was of the opinion that the proceedings of panels and the Appellate Body should be open to the public, with appropriate safeguards for confidential information. Noting that domestic court and many administrative tribunal proceedings in Canada and most other countries are public, he felt such openness would help achieve greater transparency and defuse some of the criticism of the secrecy of the WTO dispute settlement process.

Increasing the transparency of proceedings is also a key DSU reform priority for Canada. More open panel and Appellate Body hearings and document distribution would enhance public confidence in the multilateral trading system in general. Canada has encouraged other countries to follow its lead in making submissions to dispute settlement panels public, and Canada supports adjusting the DSU to require that all WTO Members release public versions of submissions. This would help demystify the trade litigation process and allow interested members of the public to closely follow disputes concerning them directly.

Lawrence Herman echoed this view during his appearance before the Sub-Committee. Mr. Herman stressed the need for other countries to also make such documentation available to the public. A representative of the Dairy Farmers of Canada called for producer or commercial associations to receive access to the proceedings of panel deliberations, a point of view shared by the witness from the Canadian Centre for Policy Alternatives (he was concerned about the fact that decisions made in secret hearings in Geneva could actually result in a change in Canadian policy). Warren Allmand (President, International Centre for Human Rights and Democratic Development) noted that the proceedings of dispute panels are still held in camera. Similarly, Bob Friesen

(Canadian Federation of Agriculture) wanted access to Dispute Settlement Body proceedings and WTO panel and Appellate Body submissions. Impressed by the soundness of these views, the Sub-Committee recommends:

Recommendation 13:

That, in order to enhance the transparency of the WTO's dispute settlement system, the federal government activate an aggressive campaign to achieve consensus among WTO Members to open WTO dispute settlement proceedings to the public and to require that all Members make their submissions to WTO dispute settlement panels public.

On the important issue of accessibility, only Members of the WTO — national governments — currently have standing to commence a dispute proceeding under the DSU. Export industries and civil society must petition their government when there is an issue they feel requires adjudication. There are three basic views on the participation of such non-state actors in the WTO dispute settlement process:

- Only WTO Members should be involved in the dispute settlement system because otherwise the system will be overrun with confrontation and contradiction and serious backlogs will ensue. As well, non-state actor involvement would place extra financial and administrative burdens on WTO Members and institutions.

- WTO Members should be the direct participants as parties to disputes, but non-state actors should be able to formally express their views and be involved in the process, possibly as observers.

- It is necessary to directly involve non-state actors in the process because they are directly affected by the decisions and have valuable expertise and views to contribute.

Panels have the clear right to seek information and technical advice from any individual or body they deem appropriate. Such a right is not so clear for the Appellate Body. The Appellate Body has involved non-state actors in an unofficial and ad hoc manner through the recognition of amicus curiae — "friend of the court" — briefs in certain instances where detailed information is sought on a particular subject or issue. Some argue that by doing so, the Appellate Body is going beyond its mandate of ensuring that panels have correctly applied WTO law. They argue the Appellate Body's mandate should be expanded so it can act more like a court and thus do its job more effectively. There is also the question of whether a standardized procedure for handling amicus curiae submissions should be developed.

In March 2002, the European Union became the first WTO Member to submit a proposal on this point. The EU has proposed that a panel of the Appellate Body could permit unsolicited amicus curiae submissions if they are determined to be directly relevant to the factual and legal issues under consideration. A procedure under which parties would have to apply for the right to file a submission has been presented to the WTO. As with the transparency issue, however, many other WTO Members continue to be opposed to allowing non-governmental groups direct access to the dispute settlement process.

For its part, the Government of Canada feels the intergovernmental nature of WTO dispute settlement should be preserved, but is also open to a greater role for non-state actors in proceedings, possibly as observers. It supports examining the current participation of non-state actors in the dispute settlement process to determine whether such involvement has eroded its intergovernmental character. The government would be hesitant to endorse the participation of non-state actors in dispute settlement procedures in their own right without an in-depth review of the full implications of such a substantive change to the system, including the financial and administrative implications for WTO Members and institutions. It notes that consideration would have to be given to fundamental legal questions — such as how to determine “standing” in a dispute and the weight to be accorded to a particular intervenor’s contribution — and the effect of such non-state actor involvement on timetables and panellists’ workloads.

One witness, Warren Allmand, noted that with respect to dispute settlement panels there was no right of intervention to bring balance and other considerations to the discussions. On this point, the United Nations rules for NGO and civil society participation do not apply, and officials from other international organizations and experts (e.g., experts from the World Health Organization in the asbestos case) should have the right to intervene. Mr. Allmand went on to argue that WTO panel decisions should be appealable to a court (not just to a trade tribunal that only has trade expertise) that would consider the implications of these decisions.

Other witnesses spoke of the hurdles of making progress in this area and the shortcomings of greater accessibility. Claude Carrière noted that there was a fine balancing act between injecting more checks and balances into the DSU and avoiding lengthier timelines. He also stated that few countries are keen to develop formal rules to deal with the accessibility issue, given that dispute settlement remains a state-to-state process. Lawrence Herman informed the Sub-Committee that accessibility had to be examined in a cautious manner. He argued that direct, formal access to the dispute settlement system should not be provided to either individuals or organizations since doing so, even by means of amicus curiae briefs, would paralyse an already strained system. A far better solution, he thought, would be to enhance transparency. Jon Johnson suggested that amicus curiae briefs be allowed, but that their consideration and acceptance be at the sole discretion of the panel or the Appellate Body.

After careful consideration of the need for accessibility to dispute resolution procedures, the Sub-Committee recommends:

Recommendation 14:

That the Government of Canada push for a formal WTO procedure for the submission of amicus curiae briefs, but that their consideration and acceptance be at the sole discretion of the relevant panel or the Appellate Body.

6. Participation by Developing Countries

Should special and differential treatment be accorded to developing countries in this area? Dispute settlement at the WTO has become increasingly complex and resource intensive. Proceedings move quite slowly and each stage generally requires representation and the submission of documentation. Wealthy countries — such as Canada, the EU and the U.S. — are the most active users of dispute settlement, largely because they have the resources and experience to do so. They have ample legal talent, are well briefed by export industry interests, and have global networks of commercial and diplomatic representation to feed them with relevant timely information. Such countries rely on a panoply of experts to bolster their positions and refine their arguments. Other WTO Members find they are unable to fully, or even minimally, advance their trade-related interests through dispute settlement procedures because they lack sufficient resources and expertise. This is especially the case for developing countries unable to afford to hire and train specialized staff for dispute settlement matters, or to pay the high fees charged by international legal firms able to assist in the preparation of cases. They also find it difficult to collect the type of information required to effectively bring and defend a case at the WTO.

The DSU requires the WTO Secretariat to provide, upon request, legal advice and assistance to developing countries in respect of dispute settlement matters. Comments have been made, however, that the advice provided is extremely limited and often overly cautious because of conflict of interest fears. Furthermore, under the DSU, such assistance may only be provided after the country has decided to launch a dispute before the WTO. Thus, assistance in evaluating the potential success of an action cannot be given, and as a result these extra legal services tend to be used when developing countries are respondents in actions brought against them by other countries.

Some have suggested that such dispute settlement assistance should be available at all times and be separate from the routine Secretariat functions. With the recent establishment of the Geneva-based Advisory Centre on WTO Law (ACWL), these suggestions are now reality.[13] The Centre was established on July 17, 2001, and is in its start-up phase, but is fully operational. It is currently staffed by an executive director, an

[13] Detailed information about the ACWL can be obtained from its Web site at: http://www.acwl.ch/

office manager and six staff lawyers, and provides legal counselling on WTO law matters to developing country and economy-in-transition Members of the Centre and all least-developed countries free of charge up to a maximum number of hours determined by the Centre Management Board. As well, legal support is provided throughout WTO dispute settlement proceedings at discounted rates for Members of the Centre and least-developed countries.

The Government of Canada strongly believes that all WTO Members must have fair and equal access to WTO dispute settlement procedures. It supports the employment of special efforts to provide resource and technical assistance to developing and economy-in-transition WTO Members having difficulty participating in the dispute settlement arena on their own because of insufficient funds or expertise; this is especially important for least-developed countries.

ANTI-DUMPING, SUBSIDIES AND COUNTERVAILING MEASURES

A. Background

In any examination of trade remedies that individual countries have at their disposal, one needs to separate out the legitimate use of anti-dumping, subsidies and countervailing measures with those that are exercised improperly. The use of these trade remedies has become a growth industry and now appears to be a great opportunity to clarify the rules.

In particular, anti-dumping abuses have become an increasingly serious problem for the international trading system. Although WTO rules currently enable Member countries to protect themselves against the infusion of goods sold below cost or at prices below that found in the home market, this right can be (and is) misused as a form of trade protectionism. Giving greater clarity and openness to anti-dumping rules and other trade remedies, so as to lessen their abuse, is now being increasingly viewed as an urgent priority for the world trading system.

Until the 1990s, the use of anti-dumping action was largely concentrated in developed countries. More recently, however, many other countries have started to impede imports under new anti-dumping legislation. Regrettably, not all countries have interpreted WTO rules (i.e., the 1995 WTO Anti-Dumping Agreement) in the same manner, with the result that a growing number of disputes has arisen between WTO Members. Developing countries in particular stand to gain from any ultimately successful reform efforts to restrict the use of anti-dumping action.

B. Developments at Doha

Efforts were made during both the Tokyo and Uruguay Rounds to negotiate anti-dumping codes imposing some constraints on the use of anti-dumping remedies, but progress was minimal. One of the obstacles to such progress is the fact that the ability to take trade remedy actions to address “unfair” trade practices has traditionally been a sacred cow in the U.S. At the Seattle WTO Ministerial in 1999, the Americans refused to attempt to clarify anti-dumping rules so that all countries could play by the same rules.

The issue of trade remedies continues to be an extremely sensitive one south of the border (e.g., the Trade Promotion Authority under consideration there contains certain conditions including those affecting the use of trade remedies). Fortunately, the U.S. played a vital leadership role at Doha by placing anti-dumping on the table. At Doha, the decision was made to negotiate on subsidies and on the procedures to deal with them and with anti-dumping.

C. The Canadian Perspective

Don Stephenson (Director General, Trade Policy Bureau II, Services, Investment and Intellectual Property Bureau), informed the Sub-Committee that the Government of Canada’s position on the use of trade remedies is a balanced one: it wishes to maintain the right to use trade remedies in legitimate situations but desires to curb abuses. It intends to press that agenda as well as work together with Europe, the U.S. and other developed countries to obtain greater commitments from developing countries on due process and transparency in the administration of trade remedy rules. For their part, he noted, developing countries would use any concessions made in that area as leverage to obtain more disciplines on the use of those measures in developed countries.

Peter Clark of Grey, Clark, Shih and Associates Ltd. referred to all anti-dumping systems as bad, referring to anti-dumping as “arbitrary and capricious,” with those of Canada and the U.S. labelled as the worst. He noted that Canada has always treated anti-dumping as a tax statute, as opposed to an international trade dispute. According to Mr. Clark, a different approach to anti-dumping is required.

The Canadian Manufacturers and Exporters (CME), in their written submission to the Sub-Committee, called for an overhaul of the WTO anti-dumping code to guard against protectionist abuses. The CME wanted the term “dumping” to be redefined so that duties would be levied only in situations where market-distorting practices were identified. Mark Boudreau of that group went so far as to advocate a convergence of trade remedy processes in WTO Member countries.

Clifford Sosnow of the Canadian Chamber of Commerce was also critical of the existing situation, welcoming any discussion at the WTO that would lead to "a system of clearer, fairer, and more efficient rules" regarding the use of trade remedies. He referred to the use of anti-dumping and countervailing measures as a form of disguised protectionism.

The Sub-Committee believes that an overhaul of the WTO trade remedy provisions to restrain protectionist abuses is urgently required. We are also of the view that Mr. Clark's concerns regarding the existing Canadian anti-dumping system are of sufficient importance to warrant a full-scale review. The Sub-Committee recommends:

Recommendation 15:

That the federal government seek a thorough clarification and strengthening of the WTO's trade remedy rules, with the stated objective of curbing the disturbing rise in protectionist abuses. Special focus should be placed on reforming current WTO anti-dumping rules to impose fundamental constraints on trade protectionism.

Recommendation 16:

That the Government of Canada undertake a thorough examination of its own anti-dumping rules, including any required changes stemming from the outcome of the WTO negotiations.

AGRICULTURE

A. The Insanity of Agricultural Protection

The list of global irritants in agricultural trade, as William Miner (Senior Associate, Centre for Trade Policy and Law, Carleton University) so aptly revealed to the Sub-Committee, is insanely long. Full resolution of all of the agricultural trade-policy issues will require multilateral rules and commitments.

Export subsidies and domestic price supports in other countries create market distortions that spur demand for import protection. The result of that intervention is production surpluses, artificially depressed and volatile world prices, and unnecessarily high food costs for domestic consumers. Developed countries are the principal culprits when it comes to such intervention.

Sergio Marchi informed the Sub-Committee that, according to OECD calculations, the richest countries spend over $250 billion U.S. per year on subsidies, of which 80% comes from the EU, the U.S. and Japan. This is an absurd number, given that it represents over 35% of the value of agricultural production.

William Miner revealed that large agricultural subsidies provided by the Europeans and Americans (e.g., grains) are problematic in that they get capitalized back into the cost structure of the industry (e.g., land values rise), with negative impacts on competitiveness of the industry receiving the subsidies. In the short run, countries providing this level of support will find it difficult to adjust to the loss of subsidy in the move to world prices. He is less concerned about the long term. On this point, Jack Mintz of the C.D. Howe Institute gave the example of New Zealand, which took unilateral action to remove domestic subsidies — after a difficult transition, there's been a huge increase in agricultural productivity, with much bigger sheep farms in place now.

WTO negotiations will also be required to make progress in restricting domestic support and in enhancing market access.

B. Previous WTO Action on Agriculture

The 1986-94 Uruguay Round of trade negotiations marked the first time that WTO Member countries were able to make significant progress in reducing the level of trade-distorting support in agricultural trade and in establishing a system of rules governing trade in agricultural goods. Prior to that point, GATT rules had been for the most part ineffective in curtailing the increase in agriculture protectionism, particularly in the cases of export and domestic subsidies.

At the Uruguay Round, issues related to agriculture were addressed in the Agreement on Sanitary and Phytosanitary Measures as well as the Ministerial Decision concerning Least-Developed and Net Food-Importing Developing Countries. The former aimed to discourage WTO Members from using health and safety regulations as a form of disguised protectionism by requiring all bans or quarantines to be based on sound science or generally accepted international standards. Most significant, however, was the WTO Agreement on Agriculture in 1993.

The Agreement on Agriculture strengthened the rules governing agricultural trade with the aim of establishing a fair and market-oriented trading system as well as improving predictability and stability for both importing and exporting countries. To that end, the Agreement imposed binding commitments on Member countries to lower protective barriers in three areas: domestic support, export competition and market access.

Domestic support (such as production subsidies) is to be lowered by an average of 20% in the developed world and 13% in developing countries. However, the level of reduction on specific types of support depends on the nature of the assistance measure.

In WTO parlance, subsidies are categorized according to a series of colour-coded "boxes." Initially these were intended to resemble traffic lights. "Red box" measures were forbidden ("stop"), "amber box" instruments were to be reduced ("slow down") and "green box" subsidies were permissible because they had at most a negligible impact on trade.

The Agreement on Agriculture identifies no "red box" subsidies, but Member countries are not able to provide domestic support above the reduction commitment levels of the "amber box" category. The Agreement also produced a fourth colour, the "blue box," created at the insistence of negotiators from the EU and the U.S., who demanded greater flexibility in applying their respective agricultural policies to the new international rules. "Blue box" measures grant an exemption to those "amber box" policies that fall within production-limitation programs.

Tariff and Subsidy Reduction Measures in the WTO Agreement on Agriculture

	Developed countries: 6 years - 1995-2000	Developing countries: 10 years - 1995-2004
Tariffs		
average cut for all agriculture products	36%	24%
minimum cut per product	15%	10%
Domestic Support		
cuts in total support for the sector	20%	13%
Export Subsidies		
value of subsidies	36%	24%
subsidized quantities	21%	14%

Source: WTO

In terms of export subsidies, the agreement is similar to that of market access. Developed countries agreed to reduce their expenditures by 36% from their 1986-1990 base period levels over the six-year implementation period. For developing nations, the reduction is 24% over ten years.

In the area of market access, Member countries agreed to replace their existing non-tariff protective measures (import quotas) with tariffs. This was done in such a way that the new tariffs provided essentially the same level of protection as the previous border-protection measures. These new tariffs were then subject to a process of gradual reduction, taking into account the differing needs of developing countries and the developed world. Developed countries were to lower their tariffs by an average of 36% over a six-year period. By contrast, the developing world committed to an average 24% reduction in tariffs, phased in over ten years. In addition, minimum access tariff quotas were established to protect imports that accounted for only a small percentage of annual domestic consumption.

To oversee the implementation of the Agreement, and to provide Member countries with a forum to discuss matters related to the Agreement, the WTO created the Committee on Agriculture in 1995. The Committee meets officially four times a year and monitors the implementation schedule of the Agreement.

The Agreement on Agriculture represents only the first phase of agricultural reform. Under Article 20 of that Agreement, WTO Member countries pledged to continue discussions on reducing support and protection in that sector. This obligation, commonly referred to as the "built-in agenda," was the basis for a new set of agriculture negotiations that began in March 2000 and is still underway. In the first phase of these negotiations, lasting one calendar year, participating countries submitted proposals outlining the various elements of their respective negotiating positions.

In the second and current phase, discussions are occurring at a greater level of technical detail on all issues and options for policy reform. The *Doha Ministerial Declaration* established clear objectives and a timetable for these negotiations. These are discussed in more detail below.

C. Doha and Agriculture

At the WTO's Fourth Ministerial Conference in Doha (November 2001), Member countries agreed to build on the progress made in the Agreement on Agriculture and, as mentioned above, established objectives and a timetable for the second phase of ongoing negotiations in the "built-in agenda."

> …Building on the work to date, and without prejudging the outcome of negotiations we commit ourselves to comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support. — *Doha Ministerial Declaration*, Article 13.

The Declaration also provides clear timelines for ending the negotiations within a three-year time frame. By the end of March 2003, a draft framework (or modalities) for concluding the negotiations is to be finalized. The objective here is to develop guidelines or rules governing trade. For the elimination of export subsidies, for example, this means identifying what the objective really implies, what kind of rules to apply, how to calculate existing subsidies, and what formula is to be used to reduce the subsidies. Individual countries' draft schedules of additional commitments in agriculture trade liberalization are to be provided by the time of the 2003 Ministerial Conference, the expiry of the "peace clause" that currently shields agricultural subsidies from dispute settlement challenges.

Suzanne Vinet (Chief Agricultural Negotiator for International Trade and Policy Directorate, Market and Industry Services Branch, Department of Agriculture and Agri-Food) informed the Sub-Committee that while this date is critical — by that time countries should be able to have a preview of the relief (from subsidies) that farmers can likely

receive — more than likely the draft modalities or framework will not be found to be satisfactory and progress will be reviewed at the next Ministerial Conference at the end of 2003. Key factors influencing progress in the next year include: the U.S. farm bill; additional reform of the EU's agricultural policy; and how the WTO deals with the concerns of developing countries and ensures that they benefit from this round of trade liberalization. The agriculture negotiations are to be finished by January 1, 2005, in conjunction with the conclusion of the other WTO negotiating elements.

The Declaration reconfirms Article 20 of the WTO Agreement on Agriculture in stressing the need to provide developing countries with "special and differential treatment" so as to allow these countries "to effectively take account of their development needs, including food security and rural development."

There is no question that Doha set ambitious goals in agriculture. The Ministerial Conference was a real milestone in that it was the first time that WTO Members had committed to negotiate a phase-out of export subsidies. They also undertook to make large reductions in trade-distorting domestic support and to enhance market access significantly.

The agreement to explicitly include sections on agriculture in the Ministerial Declaration was the result of a compromise reached at Doha. The EU has traditionally been heavily protectionist in its agricultural policies and agreed to broach the subject in negotiations only in exchange for environmental issues also appearing on the agenda.

However, the EU was also successful in inserting the phrase "without prejudging the outcome of the negotiations we commit ourselves to comprehensive negotiations" into Article 13 of the Declaration. This has raised the question of whether or not any meaningful concessions will come out of Europe on the topic of agricultural subsidies. The EU's own assessment of the Doha results states that "there is no commitment now to negotiate the elimination of export subsidies."

In addition, the EU's agricultural trade policy has long reflected the European view that there is more to agriculture than the efficient production of food. Considerable value is placed on measures to keep alive small farms and to protect food safety and the environment. The WTO Ministerial Declaration reconfirms Article 20 of the WTO Agreement on Agriculture that such non-trade concerns "will be taken into account in the negotiations as provided for in the Agreement on Agriculture."

While Europe has been the most vocal proponent of agricultural protectionism, the position of the U.S. has been mixed in this area. The U.S. is a net exporter of agricultural goods and as such is generally in favour of liberalization. However, it too retains a number of protectionist policies that could threaten the forthcoming round of trade negotiations.

D. Key Issues from a Canadian Perspective

The Doha Ministerial Conference saw Canada meet its primary objective, the securing of a launch of a broader round of multilateral trade negotiations. Only through such a comprehensive round can the necessary trade-offs be made between WTO Members to ensure that progress in agricultural trade liberalization can be achieved. The reverse is also true. As Sergio Marchi reminded the Sub-Committee, countries distancing themselves from the basic Doha commitment of phasing these subsidies out have to realize that this action would exert a dramatic and negative effect of making progress in other negotiating areas.

The three key Doha objectives (i.e., elimination of export subsidies; large reductions in domestic support; improvement in market access) closely match those Canada had developed leading into the 1999 Seattle Ministerial Conference. The Government of Canada is of the view that curtailing the high levels of support and protection provided by a limited number of developed countries will enable unsubsidized producers throughout the world (including developing countries) to realize their agricultural potential. However, as Suzanne Vinet pointed out, the devil is in the details and there will be a lengthy implementation period after the negotiations have wrapped up.

Without a doubt, Canada is pursuing a “level playing field” in agriculture, an objective shared by many developing countries. The objective here is to enable Canadian farmers to compete on a even footing with other farmers, and not with the treasuries of the countries they reside in. Given that Canada is a sizeable agricultural exporter and importer, and that its domestic market is mature, it stands to benefit from greater access to world markets, a strengthening of the international rules that govern agricultural trade and more effective competition in the global marketplace. On tariff reduction alone, the Guelph, Ontario based George Morris Centre concluded in 1999 that tariff elimination over a ten-year period would contribute an extra $2.5 billion to the agricultural industry each year.

All of the witnesses canvassed by the Sub-Committee supported the general thrust of the federal government’s initial negotiating position with respect to the removal of export subsidies and large-scale lowering of domestic support. Where they tended to differ more significantly was on the third element of the government’s position, namely market access.

Mark Boudreau of the Canadian Manufacturers and Exporters called on WTO negotiators to “seek a global agricultural market that is free of production subsidies and trade barriers. There is no reason why agriculture should be treated differently than the manufacturing or service sectors. Negotiators should seek to cut global agriculture tariffs in half and the highest tariffs more sharply with the goal of eventually eliminating all agricultural protection.”

Clifford Sosnow of the Canadian Chamber of Commerce expressed his support for the federal government's negotiating position on agriculture. He felt that eliminating subsidy barriers was a "win-win" situation for both Canada and for developing countries; indeed, liberalizing trade in agriculture was one of the principal means by which the Doha Development Agenda could be advanced.

Jack Mintz would support changes, coordinated at the international level, which would eliminate many of the subsidies available for agriculture. While all countries would be better off, he is not confident that the Americans or the Europeans are ready to give up subsidies so it could take quite a while. Mr. Mintz also observed that major adjustments would have to occur if Canada acted unilaterally to remove all subsidies. However, if there were an internationally coordinated response, the prices of agricultural goods would increase to make up for the loss in subsidy revenues so there would be less of a need for adjustment.

1. Removal of Export Subsidies

Of those witnesses with an interest in agriculture, opinion on the merits of removing export subsidies was unanimous — all appeared to support the federal government's initial position. These subsidies, largely of European origin but also available for use by 24 other countries,[14] blatantly distort international trade patterns.

One witness, Mike Dungate (General Manager, Chicken Farmers of Canada), remarked that while he was in full support of eliminating export subsidies, the chances of eliminating them in this round were slim. His solution was to limit their use, possibly as a percentage of countries' agricultural production.

Another aspect to consider in any discussion of export subsidies is the use of export credits, export promotion programs and food aid programs taking the form of disguised subsidies. Bob Friesen and Larry Hill (Canadian Wheat Board) drew the Sub-Committee's attention to these items,[15] advocating that their use be disallowed.

Mr. Hill also stated categorically that the Canadian Wheat Board (CWB) was not an export subsidy, that government guarantees and the CWB's ability to operate as a commercial organization had to be maintained and that Article 17 of the WTO explicitly allows for the existence of single desk exporting authority. These subjects were also broached by William Miner, who argued that an effective WTO result will likely include disciplines on state trading enterprises and export credits.

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[14] Together, the EU and U.S. account for a full 94% of all export subsidies.

[15] Mr. Friesen called attention to the $110 million in increased funding of market access programs contained in the U.S. Farm Bill.

The Sub-Committee is convinced of the merits of the international community ridding itself of all direct and disguised export subsidies. We recommend:

Recommendation 17:

That the federal government seek WTO consensus to have the WTO Agreement on Agriculture stipulate that export subsidies in agriculture be immediately eliminated. The government should encourage the WTO to examine countries' use of export credits, export promotion activity and food aid to ensure that these do not embody any subsidy component.

2. Large-Scale Reduction in Domestic Support

WTO negotiations will also be required to make progress in restricting domestic support. The biggest challenge in this area will be to constrain U.S. subsidy support to its farmers and bring the U.S. domestic subsidy system under control. As Peter Clark put it, financial support to farmers in the U.S. is driven by politics, not economics, and is a way of life there.

William Miner pointed out that the Americans have dramatically raised their farm support in the past three or four years, to the point where they are likely back to (or even beyond) the level of support provided in the mid-1980s. Furthermore, the U.S. always attempts to structure its financial support as emergency support, income support, and safety nets. These programs are decoupled (not directly linked to commodity production), rendering it difficult to challenge them (even though they really distort production), and they remain below the commitment the U.S. made at the Uruguay Round. According to Mr. Clark, the only way to deal with this is to challenge the Americans (e.g., through anti-dumping law).

According to Mr. Miner, Canadian farmers face a serious problem with the magnitude of U.S. subsidies (these distort production and trade) and the persistent threats and action by the Americans to limit commodity imports. Successful trade reform should provide Canadian producers with a more level international playing field on which to operate and lessen the risks of producing for export.

In particular, the U.S. Senate is currently debating a farm bill (S. 1628, the Agriculture, Conservation and Rural Enhancement Act) that could, it is argued by Senate Republicans and the U.S. Administration, violate its existing WTO commitments. This bill follows another already passed in the House of Representatives in October. It would raise farm policy spending by an estimated $73.5 billion over ten years. Payments to farmers would be structured counter-cyclically — they would increase as commodity prices fall and production rises.

These counter-cyclical payments would be categorized as “amber box” payments and thus be subject to reduction commitments. Furthermore, there is a strong likelihood that regardless of which farm bill, the Senate or the House version, is passed, the additional funds would push U.S. farm support above its Uruguay Round commitment of $19.1 billion.

Suzanne Vinet informed the Sub-Committee that the U.S. needs to show leadership for an agreement to materialize. A farm bill going in the other direction will not help. The federal government is still hopeful that good changes will be made to the bill and that an aggressive WTO outcome could help the Americans go in the right direction.

Several witnesses presented specific recommendations to curb the use of production and trade-distorting domestic support. Larry Hill called for three important changes: imposition of official limits on total farm support expenditures; elimination of the blue box provision and an overall cap on the minimally trade-distorting subsidies captured by the green box provision. Neil Jahnke of the Canadian Cattlemen’s Association also requested a further reduction in the level of permissible spending on domestic support and the elimination of the blue box category of domestic subsidies. Similarly, Bob Friesen advocated a cap on all domestic support, based on a certain percentage of the value of farm-gate production; withdrawal of the exemption of the blue box programs from the spending limits; and a clarification and tightening of green box programs. Liam McCreery (President, Canadian Agri-Food Trade Alliance) stressed the need for meaningful reductions in trade-distorting domestic support programs established on a product by product basis. Mike Dungate of the Chicken Farmers of Canada recommended placing a 10% cap on amber box support. The Sub-Committee finds many of these proposals to be eminently sensible and recommends:

Recommendation 18:

That the WTO Agreement on Agriculture be altered to dramatically restrict the provision by Members of production- or trade-distorting domestic support. In this reform effort, serious consideration should be given to establishing maximum limits on support that distorts production or trade; eliminating the blue box category of domestic subsidies and clarifying green box support programs to ensure that they have no production- or trade-distorting effects.

3. Market Access

WTO negotiations on market access are required to make gains in the key markets in Asia, the Middle East and Europe and in certain sectors (e.g., sugar products). Tariffs on agricultural goods remain high and prohibitive tariff rate quotas continue to be in existence on certain goods.

A number of witnesses called for reductions in market access barriers. Neil Jahnke proposed that all in-quota tariffs be eliminated, that other tariffs be significantly reduced, that clear and binding rules govern the administration of tariff rate quotas, and that the maximum possible increase in minimum access commitments be realized.

Liam McCreery and Sandra Marsden also advocated aggressive action to improve market access. Mr. McCreery has requested sizeable reductions in all tariffs, significant increases in minimum access commitments and zero-for-zero agreements where international commodity sectors support them. Ms. Marsden, while generally supporting the Government of Canada's three-pillar approach to the negotiations, pointed out that the Canadian position on market access was insufficiently aggressive. Dependent as the sugar and sugar-containing product industry is on the protected U.S. market, the Canadian Sugar Institute is advocating that the market access negotiations address all forms of protection.

David Barlow (Canadian Restaurant and Food Services Association) criticized the Canadian initial negotiating position on market access as being insufficiently ambitious. Although it does request improvements in market access, it tries to retain important barriers — in the form of triple-digit tariffs — in a number of sectors under supply management (e.g., dairy, poultry). Stephanie Jones of the same organization laid out the following features of an aggressive ten-year transition plan to open up the Canadian market to dairy and poultry imports: incremental increases in import access levels of ten percentage points per year; a firming up of WTO commitments to make import access obligations clear and binding; an elimination of TRQ country allocations and other restrictions; and an annual reduction of 10% of all tariffs.

Bob Friesen stressed the need for all WTO Members to offer the same level of minimum access and that this access be based on clear and precise rules. Those countries, such as Canada, that have already provided access greater than the common minimum, should not be required to raise their market access. All other countries should respect the agreed to minimum level. The Canadian Federation of Agriculture is also calling for zero tariffs within TRQs; the provision of market access on a product-specific basis; the elimination of tariff escalation based on the degree of value-added; and the maximum reduction of all single stage tariffs (those not protecting a TRQ).

The concern about countries not living up to minimum market access guidelines was shared by Mike Dungate. He called on the WTO Members to agree to an effective 5% minimum access level (i.e., ensure that all Members are providing it)[16] based on a more recent consumption period,[17] while maintaining current over-quota tariffs and setting a zero in-quota tariff. Realizing an effective tariff rate quota in this round of negotiations is, for the Chicken Farmers of Canada, the most vital negotiating element.

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[16] According to Mike Dungate, an average of only 67% of the minimum access is now being provided by WTO Members.

[17] The current base period on which this 5% access rate is applied is 1986-88.

Finally, Yves Leduc of the Dairy Farmers of Canada stated that market access was a critical element of the negotiations and pointed to the credibility of the Canadian position on this (i.e., to place the same minimum access requirement on all countries). In essence, the requirement should be set at 5% as was established at the Uruguay Round.

An assessment of the various positions put forward on the market access question suggests that the opinion of witnesses on the desirable degree of market opening has split between those groups keen to impose a 5% minimum access requirement on WTO Members and those supporting a considerable easing of import restrictions. The Sub-Committee, in an effort to at least partially bridge the gap between the two competing visions of import protection and recognizing the need to establish a "level playing field", recommends:

Recommendation 19:

That, in an effort to improve market access as part of the WTO's negotiations on agriculture, the Government of Canada advocate the establishment of a product-specific minimum access requirement of 5% using the most recently available consumption period as a base period. Clear and binding rules should govern the administration of the tariff rate quotas. Moreover, all in-quota tariffs should be abolished and those not protecting a tariff rate quota markedly reduced. A negotiated phase-in of import access level increases should also be implemented in parallel with the implementation and enforcement of new market access rules.

Turning to the merits of maintaining this country's supply management regimes, the evidence heard by the Sub-Committee on Canada's supply management regimes was somewhat mixed. At Doha and before the November 2001 Ministerial Conference, the Government of Canada had been firm in its view that decisions regarding the production and marketing of Canadian products (e.g., supply management and the Canadian Wheat Board) should continue to be made here at home.

Suzanne Vinet told us that the Canadian position, as outlined in August 1999, is that the current effective supply management system needs to remain intact. Sergio Marchi reinforced this view, pointing out that the Government of Canada is of the view that Canada's capacity and ability to use supply management in agriculture is entirely compatible with our WTO obligations. How we have organized ourselves in agricultural production is similar to how other countries have done it. Moreover, there was no reference in the Doha document to the supply management issue. He noted that if, in the course of negotiations, countries wish to pursue this, that is their prerogative.

The Dairy Farmers of Canada were also keen to preserve the existing system, arguing that supply management is of benefit to both producers and processors, and costs nothing to governments to continue.

Bob Friesen expressed concern that agricultural competitors could be successful in deregulating Canada's orderly marketing structures while also not facing restrictive limits on the use of subsidies. If that scenario were to materialize, then the entire domestic agricultural sector would suffer.

Other witnesses were not so convinced of the merits of supply management. According to Bill Dymond, tariffs in the dairy and poultry sectors in the order of 200-300% represent a massive transfer of income from consumers to producers, and from taxpayers to producers. He said it was a crazy system when the value of the quota to produce exceeds the value of other capital assets necessary to produce. Do we wish to keep supply management from the negotiating table, continue with those transfers of income, and pay the sizeable economic costs of this distorting policy? For example, we miss out on value-added opportunities (e.g., McCain's in New Brunswick not being able to obtain the amount of cheese required at lower prices to sustain pizza production). Eventually, there will be a price to pay at the negotiating table.

William Miner noted that regarding the future of supply management, quota values in the dairy and poultry sectors have gone up dramatically. However, this affects one's competitive position as the country begins to open up to competition (a continental market in the supply-managed sector is beginning to emerge). One will have to anticipate tariffs of these supply-managed products coming down somewhat, so there will be a challenge to lower costs.

Finally, Jack Mintz indicated that he would favour a removal of the supply management that has been undertaken in Canada.

4. Food Safety

Several other agricultural issues were discussed during the Sub-Committee's hearings. For example, a number of groups advocated that the Agreement on Sanitary and Phytosanitary Measures not be revisited in the upcoming round of negotiations, while Mike Dungate suggested that Canada may wish to have it re-opened to restrict the use of non-tariff barriers.

Neil Jahnke expressed the need to have technical standards, approval of genetically modified organisms, product labelling and food safety requirements based on internationally accepted science. The Sub-Committee appreciates these comments, especially since they mirror those contained in our already mentioned report on Canada-Europe economic relations.

SERVICES

A. Background

Services, the largest and most dynamic component of the economies of both developed and developing countries, account for over 20% of total global trade (1999). Important in their own right, they also serve as valuable inputs into the production of most goods. There is every reason to believe that trade in services will remain the fastest growing area of world trade.

Accounting for roughly two-thirds of Canada's GDP and for $43 billion in annual exports, the services sector is also a key and growing component of the Canadian economy. All told, almost three-quarters of domestic employment lies in services. Moreover, the services sector has led the transformation of the Canadian economy into a knowledge-based economy.

Trade in services is very important to Canada, with service exports having grown by 7.1% in 1999 to a level of $49 billion. Although the United States is the principal market for Canadian goods, our services exports are more diversified. On the other side of the trade ledger, imports of services increased by 5.6% in 1999, attaining a total of over $55 billion.

It is generally thought that substantial economic gains could be realized through increased liberalization in services trade. As the world's 12th largest services exporter, Canada can gain significantly from improved access to foreign markets. The Government of Canada is committed to broadening trade in services, thereby generating growth and employment for Canadians.

B. The WTO and Services

Only relatively recently have services become the subject of multilateral trade negotiations. The 1995 GATS agreement was the first to provide a comprehensive framework of multilateral, legally-enforceable rules covering global trade in services. This agreement extends the traditional GATT principles of national treatment (no discrimination against foreign producers compared with domestic ones) and most-favoured nation (no discrimination against certain WTO Members compared with other ones) to the global trade in services.

Under the GATS, no country can be forced to open up a particular service or sector, even if it were to decide to request an elimination of barriers in other markets. As Peter Clark informed the Sub-Committee, whereas the GATT (goods) contains "negative" lists (parties include the sectors and activities they want excluded from the agreement), the GATS (services) contains a "positive" list of commitments that parties wish to make (i.e., everything is excluded unless it is specifically included). In other words, WTO

Members are required to apply new GATS rules only to service sectors they have decided to put forward. The downside to this approach is that in a number of service sectors, very few countries have made market-opening commitments. Another important in this regard is that services "supplying the exercise of governmental authority," which includes many of the public services provided in Canada, are not even covered by the GATS.

Negotiations on amending the services agreement, ordered by the Uruguay Round, have been underway since February 2000. The current talks on the General Agreement on Trade in Services (GATS) were part of the WTO's built-in agenda (along with negotiations on agriculture) and were designed to achieve additional liberalization through a broadening of the relatively weak commitments made previously by WTO Members.

At the Doha Ministerial Conference, WTO Member countries agreed to continue the negotiations on services (i.e. expanding market access and further liberalizing trade in services) under clear and firm timelines. Countries are to provide their initial requests for specific commitments by other countries to liberalize certain services sectors by 30 June 2002. Initial offers, outlining the services sectors each member will be willing to liberalize, are expected by 31 March 2003. Canada and other WTO Members have, once again, reaffirmed the right of individual countries to regulate the supply of services.

C. Views on the Canadian Position on Services

The Government of Canada has taken the position that it would like to provide its service exporters (especially small and medium-sized businesses) with greater opportunities in emerging world markets. Targeted sectors include professional, business, financial, telecommunications, computer, environmental and transportation services. Improved access to foreign markets should enable Canadian service companies to take advantage of economies of scale, while enhanced competition at home should lead to lower prices for Canadian consumers, improved selection and a rise in service quality.

However, Canadian authorities must also identify which of the country's own services sectors it would like to liberalize. Officials have stated publicly that the outcome of the GATS negotiations will not jeopardize this country's ability to protect important national interests in areas such as health, education and social services. Don Stephenson of DFAIT informed the Sub-Committee that Canada is already one of the most open service economies in the world but that in its initial position on the GATS it has committed not to negotiate on health, public education systems, and on social services. Canadian provinces will thus continue to be able to introduce measures limiting market access by foreigners.

Mr. Stephenson went on to note that many of the fears that NGOs have in the area of public services have less to do with trade than with creeping privatization of those services and other policy changes. However, this position was not shared by the witness

from the Canadian Centre for Policy Alternatives (CCPA). Bruce Campbell observed that his group's main concern with the GATS is the threat to public services (i.e., education, health, social services, water management, etc.) that the agreement poses as well as its threat to domestic regulation in the public interest.

On the former point, the CCPA is concerned about what Mr. Campbell referred to as GATS' "constant one-way" pressure to privatize and commercialize, in that the agreement introduces major disincentives to any attempt to reverse the process where services have been privatized (i.e., where it turns out to have been a bad decision). He argued that the so-called exemption for public services (i.e., the exemption in the exercise of government authority) had major shortcomings, in that it would not include many public services if it was interpreted narrowly. The concern is heightened by the fact that Canadian public services are a mixture of both private and public finance and delivery, often in competition with private interests, and that no one had yet definitely said what would or would not be included.

The CCPA representative also called on the Government of Canada to undertake a comprehensive review of the Canadian regulatory framework in terms of how it could be affected by the GATS negotiations. Specifically, the government should assess diligently the impact of existing GATS commitments on health care. He noted that there was an inherent contradiction between the government's desire to boost export opportunities for Canadian services (including health services) in more open external markets and the desire to close the domestic health care system to foreign health care providers. He called on the government to not make commitments in the areas of education, health care, social services, water, and a range of important public services.

Jim Knight (Executive Director, Federation of Canadian Municipalities) noted similar concerns, especially the possibility of GATS compromising the ability of municipalities to regulate within their jurisdiction (e.g., to protect the environment, procure services and deliver drinking water) or to deliver public services when commercial elements are involved. Many of the Federation's concerns have been satisfactorily addressed in consultations with DFAIT officials, who have attempted to assure the organization that municipalities' regulatory-making capacity would not be threatened. Even so, Mr. Knight continues to believe that some municipality activities could trigger international trade agreement challenges, and the FCM believes that these concerns need to be addressed prior to the continuation of negotiations.

David Robinson (Associate Executive Director, Canadian Association of University Teachers) observed that existing protections in the GATS for education and other public services were inadequate. He referred to a legal opinion produced by the international legal firm Gottlieb & Pearson, which contradicted the federal government's claim that public education was beyond the scope of the GATS since services "provided in the exercise of government authority" are excluded from the agreement. According to Mr. Robinson, education services provided in this country do not fully benefit from this general exclusion since they involve private funding and are delivered by a blend of

public, non-profit and for-profit providers. The Association that he represents has made four demands: permanent protection in the GATS for public services; no new GATS commitments on education; no commitments on commercial training and education services; and review by the Government of Canada of the impact of commitments made in other service sectors (e.g., telecommunication services, libraries, research and development, professional services) on education.

As a final point, Mr. Campbell expressed his concern about the democracy implications of the GATS. Specifically, he objected to the fact that WTO decisions affecting Canadian policies were being made in secret, far-away hearings.

We understand the concerns that the CCPA, the FCM and other Canadians have regarding the impact of GATS and accompanying services negotiations on the provision of public services in Canada. The interplay between international trade negotiations and one's domestic regulatory framework is also worthy of detailed examination. Given the nature of trade in services, domestic regulations play an important role in increasing or limiting the ability of exporting service firms to provide their services in a foreign market. It is one of the government's vital roles to keep Canadians informed regarding the impact that trade negotiations could have on their day-to-day lives. We therefore recommend:

Recommendation 20:

That the federal government undertake, and render public, an examination of the impact of Canada's existing commitments under the GATS on the effective provision by Canadian governments of health, education and social services and on the Canadian regulatory structure affecting them. This study should be updated once the WTO negotiations on services are nearing completion.

CULTURE

The preservation and promotion of cultural identity continues to be a key objective for many WTO Members. Countries, when entering into trade agreements, often wish to retain the flexibility to pursue cultural policy objectives. Here, Canada is certainly no exception. The federal government continues to adopt the view that culture is more than a commodity, that it helps promote a sense of identity, and that it is thus deserving of protection. Canadian cultural policy has sought to balance the importance of its cultural exports with the desire to nurture Canadian culture domestically.

Holding the opposite view is the United States, the world's cultural superpower. What Canadians may view as a cultural industry, Americans tend to see as an entertainment industry. For this reason, the U.S. Administration has advocated that

cultural goods and services be treated like any other good or service. Indeed, the U.S. submitted proposals to the WTO and FTAA negotiators in the Spring of 2001 that signalled its desire to place culture and cultural policies squarely on the negotiating table.

At the WTO, negotiations on culture largely take place within the ambit of the GATS, which gives Member countries the option of including cultural services in the discussions if they so choose. Not surprisingly, the Uruguay Round saw only a small minority of countries make commitments to open up trade in cultural services to trade. However, the GATS is now up for renegotiation.

According to Sergio Marchi, the issue of culture and trade is relatively new but it is one whose importance will continue to grow. As a result, much effort has been devoted to explaining the federal government's position that initiatives to preserve and promote one's cultural identity should not be interpreted as trade protectionism.

Don Stephenson informed the Sub-Committee that the scope of the Government of Canada to protect Canada's cultural diversity in the WTO negotiations is quite broad. The federal government, along with governments of many other like-minded WTO Members, does not intend to make any commitment that would restrict its ability to achieve its cultural policy objectives until such time as a new international instrument to safeguard the right of countries to promote and preserve their cultural diversity is established.

This New International Instrument on Cultural Diversity (NIICD), which is expected to take several years to establish, aims to establish clear rules on which measures could be used to promote cultural diversity. The overriding objective regarding the NIICD is to preserve the right of countries to promote their culture while also respecting the rules of the international trading system and ensuring markets for cultural exports.

The Government of Canada is currently attempting to build domestic and international support on the importance of cultural diversity and the need for a NIICD. It is working through such forums as the International Network on Cultural Policy, UNESCO, the Organization of American States, La Francophonie, and the WTO.

Apart from Mr. Stephenson, the Sub-Committee also heard from two representatives of cultural industries. Robert Pilon (Executive Vice-President, Coalition for Cultural Diversity) observed that cultural services such as films, books or sound recordings are unlike any commodity or good, in that they embody more than just economic value. They are to be treated, he argued, differently than other goods and services. Mr. Pilon observed that the real threat would materialize if the American position on culture were to hold sway at the GATS negotiations. Existing Canadian cultural policies would have to be dismantled, he argued, if culture were to be subjected to the rules that typically govern international trade agreements.

Mr. Pilon expressed his organization's support for the federal government's position that no new commitments would be undertaken on culture until a NIICD is in place. This NIICD would define the principles associated with cultural diversity and establish the right of individual countries to establish their own cultural policies. He noted Canada's efforts to develop an alliance of like-minded countries around the world on the need to clearly designate cultural goods and services as separate and worthy of an international agreement outside of the WTO that could then somehow be linked back to the GATS.

The Society of Composers, Authors And Music Publishers of Canada (SOCAN) argued that Canadian culture was actually not protected under Canada's trade treaties, referring to the successful U.S. WTO challenge of this country's policy on split-run periodicals. According to SOCAN, the adverse ruling against Canada demonstrated that the WTO had failed to develop a trade-rule regime that would treat cultural industries apart from other industrial goods or commercial services.

The group made three recommendations to the Sub-Committee. First, it advocated that the GATS' "bottom-up" structure be maintained and that no GATS commitments be offered on services. Also, a similar "bottom-up" structure should be adopted within any investment agreement to guarantee that no commitments prohibiting Canada from taking steps to preserve and promote cultural diversity would be undertaken, especially the ability to maintain and develop Canadian content requirements. Finally, SOCAN expressed concern that if progress on the NIICD were not to materialize quickly, decisions reached as part of the WTO negotiations on services could restrict Canada's options. Therefore, it urged the federal government to adopt an international instrument on cultural diversity as soon as possible.

The Sub-Committee recommends:

Recommendation 21:

That the Government of Canada ensure its ability to preserve and promote cultural diversity by accelerating its efforts to achieve the desired New International Instrument on Cultural Diversity.

INVESTMENT AND COMPETITION POLICY

A. Investment

1. The Importance of Investment and Investor Protection

It is now generally accepted that foreign direct investment (FDI) flows are a key component of global economic growth and prosperity. Countries imposing restrictions on FDI risk losing the economic benefits (e.g., faster economic growth, larger capital base,

new technology, higher wages) that foreign investment can provide. Moreover, production is increasingly occurring internationally, and investment and trade are now being viewed as complementary activities in firms' efforts to service foreign markets. Indeed, over one-third of world exports are now being shipped between various entities of multinational companies.

Foreign investment is also a key issue for Canada. For every year between 1996 and 2000, this country was a net exporter of investment capital. In 2000, the stock of Canadian direct investment abroad totalled $301 billion, compared with its stock of FDI of $292 billion. Being a net exporter implies that we have much to gain from rules that facilitate and protect capital exports, particularly in those economies lacking an appropriate legal system and displaying barriers to investment.

The Sub-Committee heard compelling evidence of the importance of investment. Robert Keyes stressed that investment was a critical issue for the business community, in that it frequently preceded trade and that it represented a means by which technology could be transferred and skills developed.

Developing countries also stand to benefit greatly from an international investment deal. FDI inflows can provide important advantages to these countries in the form of growth-inducing capital, technology and expertise. Their participation in such an agreement would provide a strong signal to the world that they welcome FDI and will not discriminate against foreigners in its treatment.

2. The WTO and Investment

Within the WTO, investment-related obligations are concentrated in the Agreement on Trade-Related Investment Measures (TRIMs) and the GATS. The former precludes WTO Members from imposing performance requirements (e.g., domestic sourcing) on incoming FDI flows. A number of developing countries, however, have experienced difficulties in meeting the WTO requirement that TRIMs-inconsistent measures be phased out by 1 January 2000, and have since requested extensions.

The GATS, on the other hand, contains a number of investment-related requirements affecting the delivery of services through investments undertaken in foreign markets. These include the need for transparency as well as most-favoured nation obligations, market access opening and national treatment commitments.

While investment in services sectors is covered by WTO rules, there is currently no equivalent comprehensive multilateral agreement on investment affecting goods. In the mid-1990s, the Organisation for Economic Cooperation and Development (OECD) did attempt, albeit unsuccessfully, to negotiate the Multilateral Agreement on Investment (MAI) for OECD countries. Since then, countries have indicated interest in developing an international accord on investment within the WTO, but no consensus has emerged.

Greater support for this initiative, particularly among developing countries, is still required before the negotiations can be launched.

Investment is one of the new issues that could eventually be included in the multilateral negotiations now underway. At the Doha Ministerial Conference in November 2001, WTO Members recognized the rationale for multilateral frameworks on investment and agreed to establish focused work programs within the Working Group on Trade and Investment on what such frameworks could entail. The decision to launch formal negotiations, based on the usual WTO need to satisfy consensus, would then be made at the Fifth WTO Ministerial Conference in 2003.

Investment proposals currently under discussion within the WTO's Working Group on Trade and Investment are clearly different from those contained in the OECD's unsuccessful MAI and do not include investor-state dispute settlement provisions. Discussion within the WTO has centred on the following rules that might be included in a potential investment deal: non-discrimination, transparency, performance requirements, incentives, transfer of funds, and elements of investment protection. National treatment and market access commitments could be generated in a manner that is similar to the GATS commitment process.

3. Developing a Canadian Position

Given Canada's status as a net investment exporter, it was not surprising to hear testimony supporting the need for investment protection. Don Stephenson of DFAIT observed that the Government of Canada welcomed the inclusion of investment in a WTO negotiating agenda, even if actual negotiations will not be launched until at least 2003. DFAIT would like to see an international agreement include transparency in investment regulation; non-discriminatory treatment accorded to Canadian investors abroad; a right for Canada (and others) to regulate in the public interest; and mechanisms to help ensure that the benefits of FDI can be realized by all WTO Members, including developing countries.

Clifford Sosnow noted the critical need for investments to be treated fairly (to give businesses confidence) and protected through the rule of law. Recourse to international agreement or arbitration is required, he observed.

Jack Mintz of the C.D. Howe Institute argued that investor protection was required to restrain governments from treating investors unfairly once capital has been sunk and strategic investments made. If expropriation action was required, then fair compensation should be provided. He did point out, however, that the current climate made it somewhat difficult to obtain a multilateral investment agreement. Instead, achieving a similar result in regional agreements such as the Free Trade Area of the Americas (FTAA) might be the preferred route to take.

Mark Boudreau of the Canadian Manufacturers and Exporters also expressed pessimism that WTO agreement on investment would be reached any time during this round of negotiation. He attributed this pessimism to the large size of the negotiating forum.

Mr. Sosnow, during his second appearance before the Committee and representing the Canadian Chamber of Commerce, expressed disappointment that negotiations on investment had been deferred until 2003 at the earliest. The Chamber is strongly in favour of strengthening disciplines to govern investment, and Mr. Sosnow encouraged the federal government to aggressively seek to develop a consensus within the WTO to launch the negotiations.

Finally, Sergio Marchi informed the Sub-Committee that consensus had been reached in Geneva to exclude any investor-state provisions. He was not aware of any country pushing to have this concept included, with WTO Members preferring to retain sovereignty.

The investor-state issue, arising as it does out of the NAFTA investment chapter, continues to be of concern to the Federation of Canadian Municipalities (FCM). The FCM is worried that with increasing judicial acceptance of municipal decisions, investors may increasingly resort to trade tribunals for damages.

It is true that the vast majority of Canada's external investments are provided with adequate protection through existing agreements such as NAFTA, Canada-Chile Free Trade Agreement, Canada-Costa Rica Free Trade Agreement, and the bilateral foreign investment protection agreements. Other countries have also entered into regional trade liberalization agreements, and over 1,800 bilateral investment protection arrangements have been entered into throughout the world. These bilateral treaties typically provide the same protections as would a multilateral agreement.

However, the Sub-Committee is of the view that it is in Canada's best interests to support a comprehensive agreement at the multilateral level. Such an agreement could, among other things, set a uniform standard of minimum investment protections, rationalize existing bilateral treaties and expand coverage of the treaty provisions to those countries with which Canada has no bilateral accord. We therefore recommend:

Recommendation 22:

That the Government of Canada diligently strive to attain WTO consensus on the importance of creating a comprehensive international agreement to protect investment. Investor-state provisions should be excluded from the agreement.

B. Competition Policy

At the current time, there is a wide range of private actions that may restrict market access or lead to unfair methods of competition. Competition policy is typically meant to ensure that practices within and among companies (e.g., pricing, mergers, abuse of dominant position) do not undermine competition in the marketplace.

While much progress has been made at the WTO in eliminating government-imposed barriers to trade at the border, less emphasis has been placed on avoiding the negative effects on trade of private business practices within countries. The need for an international agreement on competition policy at the WTO is, therefore, generally based on the desire to ensure that private anti-competitive practices do not serve to limit trade, and that both producers and consumers are able to gain fully from the benefits of competitive markets. Ultimately, it is the wish of the international community to maximize the benefits realized from trade liberalization.

Another rationale for dealing with competition issues at the WTO level is the rising international dimension to competition law enforcement. Competition authorities throughout the world are increasingly devoting more of their time and efforts to international cartels and mergers necessitating multi-jurisdictional review.

The other side to the argument is that the issue of private anti-competitive conduct is greatly exaggerated, and that such conduct would be significantly reduced by a proper application of trade liberalization. Opponents of a multilateral competition policy framework argue that improper imposition of anti-competitive restrictions on firms, through the implementation of WTO competition rules, would not be advisable. What must also be considered is that there is, as of yet, no international consensus on the proper scope and application of competition policy.

It would appear that support for competition rules is beginning to become evident at the WTO, with developing and emerging economies starting to acknowledge that an international competition framework could support both the introduction of such rules and the enforcement of domestic competition laws. The current reality is that many of these countries do not possess effective and enforced competition laws. Even for those countries that have competition laws on their books, there are often significant differences in their actual impact.

Competition policy is one of the new issues that could eventually be included in the multilateral negotiations now underway. At the Doha Ministerial Conference in November 2001, WTO Members recognized the rationale for multilateral frameworks on competition and agreed to establish focused work programs within the Working Group on Trade and Competition Policy, on what such frameworks could entail. The decision to launch formal negotiations, based on the usual WTO need to satisfy consensus, would then be made at the Fifth WTO Ministerial Conference in 2003.

The Government of Canada is of the view that the current dependence on bilateral competition cooperation agreements needs to come to an end, to be replaced (for efficiency and coverage reasons) by a WTO framework agreement on competition policy. At the WTO, Canada has formally proposed a framework policy that would cover the following elements: individual countries' adoption of sound competition legislation; commitments given to the principles of transparency, non-discrimination and procedural fairness; an advocacy role for the competition authority; the adoption of common approaches to international cartels; mechanisms to improve cooperation between competition authorities; and the provision of technical assistance to developing countries. Under this proposal, competition policy would be left outside the WTO's dispute settlement process.

Don Stephenson informed the Sub-Committee that for full benefits to be realized from trade liberalization, there needs to be effective competition laws and regulations in place. However, these preconditions do not exist in many WTO Member states and therefore it is not surprising that there is, as of yet, no consensus on what the minimum standards of competition law should be.

Mark Boudreau of the Canadian Manufacturers and Exporters expressed pessimism regarding the potential for an agreement on competition policy. He could not envisage the suitability, at this point, of the WTO being involved in the affairs of private companies and observed that including the area of competition in its negotiating framework was perhaps placing an excessive burden on the institution.

Clifford Sosnow of the Canadian Chamber of Commerce indicated that the issue of competition policy was a highly contentious one, not only in Canada but also in the U.S. and in Europe. He informed the Sub-Committee that the Canadian business community continues to debate this issue and that it was not even clear that there is support for competition law standards being subject to WTO rules. The Chamber urges the federal government to concentrate more on the other three "new" issues (i.e., investment, procurement, trade facilitation) in which there is a much better chance of success.

TRADE AND ENVIRONMENT

A. Background

Trade liberalization resulting from WTO negotiations can have either a positive or a negative effect on environmental protection. The Sub-Committee was told that trade liberalization and environmental protection can be mutually reinforcing in cases where trade-distorting subsidies and protection encourage environmentally damaging over-production of goods. David Runnalls (President, International Institute for Sustainable Development) testified before the Sub-Committee that it would be very

difficult for developing countries in particular to achieve some measure of sustainable development without the capital that would come out of increased access to the markets of the developed world.

However, trade liberalization can lead to increased rates of environmental degradation. Mr. Runnalls cautioned that merely providing market access does not guarantee specific results. Trade liberalization can lead to increasing rates of environmental degradation, especially in developing countries, if the proper policies are not in place to protect the environment.

The General Agreement on Tariffs and Trade (GATT) first mandated the study of environmental issues in the early 1970s. At that time, its efforts were focused on the implications of environmental protection policies on international trade. This research topic reflects one of the prevailing issues regarding trade and the environment today — that protection policies could, in fact, become obstacles to trade and could serve as a form of trade protectionism.

Recognizing the need for further study of environmental issues, at the final meeting of the Uruguay Round negotiations, ministers approved the creation of a new committee explicitly for that purpose. Established in 1994, the ongoing role of the Committee on Trade and Environment (CTE) is "to identify the relationship between trade measures and environmental measures in order to promote sustainable development" and to make appropriate recommendations on that subject.

The CTE has provided valuable research exploring trade and the environment, and has proved to be a useful forum for sharing information and defining relevant issues. However, prior to the forthcoming round of trade talks, little progress had been made in placing specific environmental concerns onto the negotiating table at the WTO.

Some witnesses appearing before the Sub-Committee were not disappointed with this apparent lack of progress. Several, including Elizabeth May (Executive Director, Sierra Club of Canada), believe that the WTO is not the appropriate place to resolve environmental problems and disputes. They maintain that trade negotiators lack the necessary environmental expertise to effectively address environmental concerns and make important decisions regarding public policies (such as on environmental protection) solely on the basis of their trade-related knowledge. Furthermore, this lack of environmental capacity at the WTO is seen as unduly influencing the outcomes of WTO trade disputes on environmental issues.

Failure to make significant progress on placing environmental issues on the negotiation table has been largely a result of the widely disparate views on environmental protection held by the developed world and by developing countries. While relatively affluent countries, particularly those in the European Union (EU), have made

environmental issues a clear priority, this view is not shared by all countries. Jack Mintz of the C.D. Howe Institute reminded the Sub-Committee that less developed countries are apprehensive about environmental standards because they view such standards as another form of trade protectionism used by developed countries.

Furthermore, environmental technologies and upgrades can be prohibitively expensive for poorer countries. Developing nations seldom have the resources at their disposal to engage in environment-related research and development. Furthermore, few believe that they should sacrifice their growth prospects to help solve global pollution problems caused in large part by the lifestyle of richer countries.

B. Developments at Doha

Although many countries have traditionally been reticent to open WTO negotiations on environmental issues, the new round of trade negotiations launched at Doha includes a handful of topics concerning trade and the environment. The appearance of environmental issues on the negotiating table represents a significant victory for the EU, the most vocal proponent of such issues.

Prior to the November meeting in Qatar, the EU had demanded an explicit negotiating mandate to review and clarify the rules surrounding trade and the environment. This demand was opposed almost unanimously by developing countries. Their opposition was echoed by some developed countries as well, including the United States.

However, a compromise was reached at Doha. In exchange for an agreement on the part of the EU to broach the subject of agricultural subsidies, the new WTO round of negotiations will include two significant environmental issues: trade barriers on environmental goods and services; and negotiations to reconcile the rules of multilateral environmental agreements with the WTO.

Although the inclusion of environmental issues in the new round of negotiations was a last-minute decision, the Sub-Committee heard that the likelihood of an agreement on the environment is relatively high. David Runnalls told the Committee that the politics of the environment are such that the EU and perhaps event the U.S. cannot come away from the table without an agreement that has some significant environmental concessions. This is particularly the case in Europe where public sentiment is increasingly pro-green. EU negotiators will be pressured from home to reach a deal.

As part of the compromise between the EU and the U.S., trade negotiations specifically pertaining to the environment will be restricted to the two issues mentioned above. However, the Doha Declaration also calls for the Committee on Trade and the

Environment to focus its ongoing research agenda on specific issues of concern, including environmental labelling requirements and the effect of environmental measures on market access.

Witnesses appearing before the Sub-Committee were generally supportive of the notion of further exploring the relationship between WTO trade agreements and the environment. However, a number voiced concerns over the way in which these discussions take place. Elizabeth May testified that CTE discussions are inherently biased in favour of trade issues because they focus on whether or not environmental agreements are disruptive to trade and not vice versa. She maintained that research of this sort casts doubt on the legitimacy of agreements such as the Montreal Protocol, for example, simply by asking the question of whether or not they are WTO-illegal.

As well, Howard Mann (Consultant and Trade Lawyer) pointed to a disparity between the negotiating points outlined in the Doha Declaration and the work of the CTE. As laid out in paragraph 32 of the Declaration, CTE discussions can produce recommendations to the WTO, but the WTO is under no obligation to open binding negotiations on those points. By contrast, Mr. Mann pointed out that binding negotiations will take place on a number of issues, such as non-tariff barriers, which do not have a direct effect on the environment.

1. New Negotiations

(a) Multilateral Environmental Agreements

How WTO rules relate to trade obligations included in multilateral environmental agreements (MEAs) has been an issue of long-standing concern in a number of countries. Under the current system, a country imposing trade restrictions under an MEA has to prove that it is not violating the WTO by demonstrating that its measures qualify for an exemption under Article 20 of the GATT. Forthcoming negotiations aim to clarify this relationship.

An MEA is any agreement between two or more signatory countries concerning some aspect of environmental protection. There are approximately 200 MEAs in place today, including the Kyoto Accord and the Montreal Protocol. However, only a small proportion of these agreements, 20 in total, contain trade-related provisions. No trade dispute has ever arisen in the WTO concerning environmental agreements. Nevertheless, uncertainty over the relationship between the two sets of rules has been an issue of growing concern in MEA negotiations, thus resulting in the call for clarification.

The scope of negotiations will be restricted to the relationship between actual trade obligations in MEAs and existing WTO rules. It does not include measures that a government may take independent of the MEA. According to the text of the Declaration, any results from these negotiations would be binding only on those countries that are

signatories both to a given MEA and to the WTO. In other words, a country that has not participated in a specific environmental agreement would not be affected by the results of the negotiations.

It is generally believed that these negotiations could have two possible outcomes. The first is that the clarification could grant MEAs that contain trade enforcement obligations some measure of protection against WTO trade dispute challenges. On the other hand, negotiations could lead to WTO regulations asserting some degree of control over environmental agreements.

Don Stephenson of DFAIT welcomed the inclusion of this item on the negotiating agenda. He stated that negotiations on the relationship between WTO rules and specific trade obligations in MEAs will offer an important contribution to promoting coherence in the governance of environmental and trade issues.

However, many other witnesses appearing before the Sub-Committee were sceptical that an attempt to reconcile MEAs with WTO regulations could yield any positive benefit given the considerable mismatch in power between the two. In fact, witnesses stressed that negotiations on this point would only serve as a strong legal disincentive for countries to ever negotiate future environmental agreements. Since WTO negotiations on this topic would only be binding on countries that were signatories of both the WTO and any specific MEA, participating in environmental agreements would penalize those countries because they would in essence be granting greater trade rights to countries that did not participate.

Elizabeth May suggested that merely posing the question of whether or not MEAs are GATT/WTO illegal has been sufficient to deter the signing of MEAs with trade enforcement mechanisms. She pointed to the fact that no new environmental agreement with enforcement mechanisms has been signed since the WTO first broached the question of the legality of those mechanisms. She also remarked that Canada's own position in this area appears to have changed considerably, stating that its leadership role in ensuring that trade sanctions were a part of the Montreal Protocol on the ozone layer stands in sharp contrast to its Kyoto position that no trade sanctions be part of the agreement.

In general, there appeared to be some consensus among the witnesses appearing before the Sub-Committee that there was no need for the relationship between the WTO and MEAs to be included in any forthcoming trade negotiations. Howard Mann stated that recent decisions at the WTO Appellate Body had produced decisions generally favourable to environmental concerns. He asserted that WTO law had evolved considerably in recent years and that the Appellate Body had already addressed the issue of the relationship of environmental agreements to trade law in a fairly constructive way. According to Mr. Mann, as an issue in the public mind, this debate is a hangover of debates in the late 1980s and early 1990s during which WTO/GATT case law was much different than it is today.

Howard Mann's call for Canada to take the issue of MEAs and the WTO off the Doha agenda was echoed by other witnesses. David Runnalls agreed that the WTO had already dealt with this issue through the Appellate Body and that resurrecting an issue such as this was "dangerous and useless." Mr. Runnalls reminded the Sub-Committee that the issue of MEAs and the WTO got onto the Doha agenda as a result of a series of compromises he likened to "big poker games." Mr. Runnalls warned that when discussions begin this way and are undertaken by negotiators with little or no experience in environmental concerns, the outcome is often undesirable as issues are invariably traded off against one another.

The Sub-Committee recognizes that while there may be some concerns over opening this topic up for negotiations, the inclusion of environmental issues on the negotiating agenda represents, in the words of Don Stephenson, a "breakthrough for the environment." As such, the Sub-Committee believes that it would be premature to dismiss this progress through a refusal to negotiate. However, in light of the testimony received, the Sub-Committee recommends that:

Recommendation 23:

That the federal government urgently examine recent environment-related decisions at the WTO Appellate Body in an effort to determine the extent to which WTO case law has evolved and whether or not there is a pressing need for negotiations on the relationship between the trade obligations contained in Multilateral Environmental Agreements and existing WTO rules.

(b) Trade in Environmental Goods and Services

WTO ministers at Doha also agreed to open negotiations on reducing tariff and non-tariff barriers to trade in environmental goods and services. This agreement deals specifically with products used in an environmental capacity, ranging from waste disposal to preventative and cleanup technologies such as scrubbers for industrial plants, water treatment equipment and catalytic converters for cars.

For the most part, this was viewed as a positive development by witnesses appearing before the Sub-Committee. Don Stephenson applauded the inclusion of this negotiating topic, stating that such negotiations could help protect the environment by making appropriate technologies more readily available. As well, the Canadian Manufacturers and Exporters, in their brief to the Sub-Committee, indicated their support of the WTO pursuing a modest agenda of eliminating tariffs on goods and services used for pollution control devices.

The Sub-Committee was told that reducing tariffs on environmental goods and services provides a good opportunity for the Canadian environment industry. Christopher Henderson (Executive Member, Canadian Environment Industry Association) informed the Sub-Committee that the environment industry in Canada comprised about 220,000 people in 1998 according to Statistic Canada measurements. That year, the industry earned $22 billion in revenues, about 90% of which was from domestic sales.

Mr. Henderson stated that the domestic market for environmental products had plateaued, and that producers need to look to export markets in order to continue to expand. Canada's current share of international trade in environmental goods and services stands at a mere 2.5% of the world market. Considerable opportunities exist in Latin America in the areas of air markets and waste and infrastructure markets, as well as in the improvement of municipal infrastructure through means such as water treatment plants in countries with water shortages.

The Sub-Committee believes that liberalizing trade in environmental goods has the capacity to improve the level of environmental protection and cleanup worldwide by lowering the cost and increasing the availability of the products and services required to do so. Not only will this enhance the potential benefit of liberalizing trade in environmental products and services, but it will also provide growth opportunities for Canadian businesses as well. However, the Sub-Committee also heard evidence that the ability of Canadian firms to provide product support and other follow-up services is limited by barriers to trade in services, including on the movement of people. We recommend:

Recommendation 24:

That Canada actively pursue at the WTO, the reduction of barriers to trade in the environmental goods and services industry. In negotiating this position at the WTO, Canada should also be mindful of the potential limitations that barriers to trade in services may have on the ability of Canadian firms to offer product support and after-sales services for their environmental products.

Although witnesses before the Sub-Committee were generally receptive to trade negotiations on environmental products, some expressed concerns about the wider implications of these discussions. For example, the Canadian Federation of Municipalities suggested that the implications of WTO environmental negotiations, and the negotiations on trade in services, could limit the ability of municipal governments to regulate and deliver public services, particularly when public-private partnerships or other commercial elements are involved.

Another major issue arising out of the new negotiations on environmental goods and services has been whether or not these negotiations open the door for the private sale of bulk water.[18] The Sub-Committee sought clarification of this issue from witnesses. Unfortunately, the evidence it received was inconclusive.

Environment and trade lawyer Howard Mann acknowledged that he was unsure about the ramifications of negotiations on environmental goods and services on the sale of water. Mr. Mann pointed to the forthcoming negotiations on trade in services as an area which had the potential to force the multinationalization or bilateralization of water services where water flows across borders. However, he stressed that all will depend on the outcome of the current round of negotiations.

The Federation of Canadian Municipalities (FCM) also expressed concern about the sale of water as it relates to the GATS. The FCM acknowledged that bulk water sales and water services are not currently a Canadian commitment under the GATS, but it is concerned that provisions of the new round of trade negotiations may allow for the bulk sale of water. In its briefing document submitted to the Sub-Committee, the FCM has asked for assurances that water supply services will always be excluded from service commitments under GATS.

Interpretations of the language of the Doha Declaration have led to widely different conclusions on the status of bulk water sales and water supply services at the forthcoming round of negotiations. The Sub-Committee remains unconvinced that trade negotiations will force open Canada's water supply to competitive markets. At the same time, however, it recognizes the strong desire of many Canadians that there be no room for ambiguity on the subject. We recommend:

Recommendation 25:

That to eliminate ambiguity on the subject of bulk water exports, the federal government conclusively demonstrate to Canadians its legal understanding of how the Doha negotiating mandate does not compromise its position that no such export from Canada is permitted. Furthermore, Canadian negotiators should ensure that no ambiguity exists on Canada's position on this subject during the forthcoming round of trade negotiations. Finally, upon the conclusion

[18] The suggestion that paragraph 2 of Article 31 of the Doha Declaration has the potential to allow for the sale of bulk water has been put forward publicly by, among others, Maude Barlow, chair of the Council of Canadians. Ms. Barlow maintains that reducing barriers to trade in environmental goods and services will render illegal restrictions on the export of bulk water for commercial purposes. This position stands in sharp contrast with that of Bill Dymond, executive director of the Centre for Trade Policy and Law at Carleton University and the University of Ottawa. Mr. Dymond insists that allowing the sale of water in Canada requires a government licence, without which, no such export could possibly take place.

of the negotiations, the federal government should provide to all Canadians its legal interpretation of any negotiated agreement in order to minimize any further misunderstandings.

2. Ongoing Environmental Discussions

The Doha Declaration placed MEAs and environmental goods and services on the agenda in the forthcoming round of trade negotiations. Several other issues related to the environment will be studied in ongoing discussions at the WTO's Committee on Trade and Environment (CTE).

(a) Environmental Labelling Requirements

Among them is the topic of environmental labelling requirements — labels indicating that products meet certain environmental standards. The debate over "eco-labelling" has broadened in the WTO to labels relating not to the product itself, but to the production process as well. Examples include animal welfare labelling and social/ethical labelling. The WTO Committee was instructed to study the impact of eco-labelling on trade and to examine whether or not existing WTO rules impede countries' eco-labelling policies. This topic is also being addressed in parallel discussions at the WTO's Technical Barriers to Trade (TBT) Committee.

The Sub-Committee heard little evidence on this point. This is possibly due to the fact that the consequences of CTE discussions are few. As mentioned above, the CTE has the power to make recommendations to the WTO, but it cannot directly influence actual trade negotiations.

The evidence that was presented to the Sub-Committee was guarded. Elizabeth May of the Sierra Club believes that on this point, the WTO is "in search of solutions where there isn't a problem." Ms. May testified to the Sub-Committee that the solution to this and other environmental debates is to improve the relative strength of environmental global governance mechanisms to increase confidence in those organizations.

(b) Identification of "Win-Win" Scenarios

Other topics of mandated study for the CTE include the effect of environmental regulations on market access and the identification of "win-win scenarios." In the former case, the research of the CTE will focus on striking a balance between trade and environmental objectives, while concentrating on the concerns of least-developed countries. The latter topic refers to finding situations where eliminating trade restrictions or distortions could benefit trade, development and the environment.

The Sub-Committee heard of two specific areas where the potential for "win-win scenarios" exists. The first of these is in the area of environmentally damaging subsidies. David Runnalls told the Sub-Committee that there were "countless" such subsidies built

into the policies of most governments. He suggested that not only are these subsidies environmentally damaging, but they are also both trade-distorting and WTO illegal. A concerted attempt to identify and eliminate these subsidies would be viewed as positive by both trade economists and environmentalists.

Mr. Runnalls also suggested that any new agreement on agriculture could have a significant impact on the environment and that the link between agricultural production and environmental stewardship would be a likely negotiating position of the EU. Mr. Runnalls agreed that there is an argument in favour of agricultural subsidies that are environmentally sensible, but cautioned that it would be very difficult to determine which are environmentally sensible and which are not. He warned the Sub-Committee that this might be one of the major challenges facing Canada in this round of trade negotiations.

3. Environmental Concerns in Other Aspects of the Doha Declaration

The Sub-Committee heard that while environmental issues were only specifically addressed in paragraphs 31 and 32 of the Doha Declaration, those two paragraphs represent but a small fraction of the Doha statement's links to the environment. Indeed, witnesses told the Committee that a number of other paragraphs implicitly bring environmental issues onto the table.

Among them is paragraph 6 of the Doha Declaration, which, in the words of Howard Mann, "…reasserts the legal supremacy of trade law over domestic environmental law. To put it another way, an environmental measure that has any impact on trade…must in all ways comply with trade law, whatever it looks like in the post-Doha negotiating results. So that's a supremacy clause written right at the very beginning of the Doha Ministerial."[19]

Many other Articles of the declaration also bring environmental issues to the table. Among those mentioned to the Committee were: paragraphs 13 and 14 on agriculture, 15 and 16 on services and market access, paragraph 17 on intellectual property rights, 20-22 on investment and paragraph 28 on fisheries.

The Sub-Committee was cautioned that all environmental protection laws were also implicitly subject to negotiation because they fall under the category of non-tariff barriers to trade. Howard Mann warned the Sub-Committee that although recent decisions at the Appellate Body of the WTO have been greeted positively by environmentalists for their relatively broad interpretation of environmental concern, a number of countries would like to roll back these advances through negotiations on non-tariff barriers in this round.

[19] H. Mann, Environment testimony.

TRANSPARENCY AND OUTREACH

A. Background

As the federal government's Information Paper on the Doha Ministerial Meeting points out, transparency "refers to the visibility and clarity of laws, regulations and procedures."[20] Transparency issues come into play both at the national trade policy-making and institutional (e.g., WTO) levels. At the national level, the Government of Canada had, prior to Doha, consulted with civil society for input. According to Warren Allmand, more documents had been provided than in the past. The government is also working on a consultations strategy that would engage businesses, public interest groups and the Canadian public. The work of this Sub-Committee is seen as the first step in that consultation process.

One issue that did surface with respect to federal consultations on WTO matters was the role of the provinces in decision making. That role is expanding as WTO negotiations move into areas (e.g., services, procurement, investment) for which the provinces hold the constitutional responsibility. Peter Clark lauded the process that currently exists within the federal bureaucracy for consultations with the provinces, and the one occurring at the ministerial level. However, he was critical of the lack of interaction between the Parliament of Canada and the provinces on WTO issues, and of the insufficient Parliamentary input in federal WTO decision making generally.

The Sub-Committee believes that it is fundamental that the Government of Canada actively and thoroughly seek out the views of the provinces, especially since federal states have a duty (under GATT Article 24, Paragraph 12) to ensure that decisions worked out at the negotiating table and involving provinces are implemented domestically. Once the negotiations have been successfully completed, the provinces must pass the appropriate legislation in areas they are responsible for under Canada's constitution.

For the purposes of this report, however, the key issue is the relationship between the WTO and the global public, which includes individuals, NGOs and parliamentarians.

Prior to the November 2001 Doha Ministerial Conference the WTO had taken certain steps to render its operations more transparent by:

- webcasting most official documents after six months;
- webcasting the agriculture and services negotiating proposals of Member countries; and

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[20] *Transparency — Information Paper*, DFAIT document prepared for the November 2001 Doha Ministerial Meeting, p. 1. (www.dfait-maeci.gc.ca/tna-nac/Transp-Info-e.asp)

- organizing symposia to exchange views and information with non-governmental organizations (NGO).

Responding to criticism that these measures were insufficient, Member countries agreed to Paragraph 10 of the Ministerial Declaration, which commits the WTO to making its operations more transparent. This objective is to be attained through more effective and quicker dissemination of information and through a broader outreach program.

On the latter point, the WTO undertook at Doha to improve the dialogue it conducts with the public (outreach). Efforts to seek input (e.g., the two-day symposium on Issues Confronting the World Trading System held in Geneva in July 2001), to promote an improved public understanding of the WTO and to explain the benefits of a rules-based, multilateral trading system will be continued and improved.

B. Conflicting Views on the External Transparency Issue

While progress on external transparency is being made, it is a struggle in that there is no consensus for additional steps. A number of countries remain concerned about the threats to the intergovernmental nature of the WTO of greater openness.

Opinion is clearly divided on the issue of WTO transparency. On the one hand are those holding the view that greater openness could infringe upon the confidentiality often required in international negotiations, potentially jeopardizing discussions in the process. They also claim that more openness could provide certain groups in society (especially in developed countries) with too much influence and erode the intergovernmental nature of the WTO. According to Warren Allmand of Rights and Democracy, many of the WTO Members opposed to augmenting transparency are not democratic to begin with.

On the other side are those who believe that the institution should open up even more, so as to be more accountable to the public and to become more aware of public concerns associated with trade and trade liberalization. This view holds that, given these concerns, direct input into trade policy-making from groups representing broad segments of society would be helpful.

The Government of Canada continues to remain a strong supporter of greater WTO transparency, noting that the organization itself would benefit from greater openness and that "a greater window onto the WTO will better enable the public to appreciate the benefits of liberalized trade and better understand the clear and equitable rules that serve as the foundation of the international trading system".[21] Sergio Marchi went so far as to tell the Sub-Committee that improving transparency was key to the future of the WTO.

[21] *Transparency — Information Paper*, p. 3 (www.dfait-maeci.gc.ca/tna-nac/Transp-Info-e.asp).

To enhance transparency even further, Canada has proposed: the "de-restriction" of WTO documents after a period of three months and public dissemination of WTO Secretariat working papers, formal contributions from Members, draft meeting agendas, minutes of meetings and notes of discussions; the webcasting of individual WTO Member country Trade Policy Reviews; the public release of submissions in dispute settlement cases; and the creation of a non-binding consultative body that would provide WTO Members with expert advice.

Canada has also been a strong supporter of an expanded outreach program, with emphasis placed on meetings, symposia and workshops with NGOs. It has advocated that a part of the WTO Secretariat budget be allocated to fund regular outreach initiatives.

Mr. Allmand complained that the WTO continues to face serious problems regarding transparency and outreach. He noted that one needed to distinguish between the various types of WTO meetings when examining the transparency issue: the high-profile ministerial conferences where there is more transparency;[22] the post-Doha negotiations themselves, for which not much information is released; and the dispute settlement panels, whose decisions can have great impact on countries' economies, health and environment and on which very little information about the process and content of the deliberations is available.

C. Parliamentary Involvement

To further enhance WTO outreach activity, Canada has argued in favour of regular (perhaps once a year) informal meetings of WTO Member parliamentarians with WTO personnel.[23] Such encounters would allow for parliamentary input into international trade policy debates, deemed by the Government of Canada to be vital at a time when trade policy is increasingly intersecting with areas of domestic economic and social policies.

The WTO has been supportive of such interaction, with its Director General (Mike Moore) consistently welcoming increased involvement by elected parliamentarians on the grounds that they are the representatives of the society at large.

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[22] At Doha, according to Mr. Allmand, there was a daily briefing and exchange of information by teleconference with those groups unable to go, for an hour or two. On the down side, very few NGOs could attend the conference and civil society participation there was stifled from the outset. Moreover, many developing-country members found the consensus-making process (consultation on draft text, nomination of the friends of the chair, "green men," as facilitators) not to be transparent, with the views of these countries not always reflected in the text of the Declaration.

[23] Not all countries, of course, possess working democracies with parliaments. For these, Mr. Allmand envisages direct civil society input into a future assembly of the WTO. The consultation and oversight would, therefore, need to follow a two-track process.

Fergus Watt (Executive Director, World Federalists of Canada) pointed out that Canadian parliamentarians have been at the forefront of attempts to improve WTO transparency through the inclusion of some kind of parliamentary dimension to the organization. Indeed, interest in the work of the WTO on the part of parliamentarians has been growing. At Seattle, 120 parliamentarians called for the creation of a standing body along the WTO. This was followed up by two parliamentary meetings in 2001: an April session organized by the European Parliament and the June 2001 conference in Geneva on the role of parliaments in the shaping of the world trade agenda (organized by the IPU).

At Doha, over 90 parliamentarians (including seven Canadians) met and issued a declaration advocating stronger parliamentary involvement.[24] They were not, however, successful in inserting a reference to this involvement in the Doha Declaration.

Additional seminars are planned. Upcoming events include a joint IPU/European parliament conference on trade issues in 2002 and a three-day symposium of both parliamentarians and civil society representatives (the first ever such meeting) hosted by the WTO in April 2002, in which development issues as well as the functioning and financing of the WTO will be discussed.

It is not yet clear what the optimal structure or mandate of any regular meetings with parliamentarians would be. Mr. Watt pointed out that there are two competing visions of how a parliamentary body ought to look like and what it ought to do. The first is the Geneva-based Inter-Parliamentary Union (IPU) model, under which that organization hosts the meetings (the IPU has already been given observer status at the WTO). This is the structure preferred by the WTO. Alternatively, a more permanent WTO Parliamentary Assembly, similar in nature to that of the NATO Parliamentary Assembly or the Council of Europe Parliamentary Assembly, has been envisaged by many European and Canadian parliamentarians.

Mr. Watt is convinced that, given the powerful nature of the WTO and its wide-ranging impacts on individual countries, it is critically important that there be a robust parliamentary body to provide political oversight and to serve as a forum for public policy debate on WTO issues. Such an organization, while remaining a consultative, deliberative body only, would follow the negotiations, take positions on issues and either provide advice as an entire body or report back individually to their own countries. It is our view that only a permanent parliamentary assembly would be in position to undertake this mandate effectively. The Sub-Committee recommends:

[24] This meeting was organized by both the IPU and a European Parliament Committee.

Recommendation 26:

That the Government of Canada actively and with renewed urgency continue its efforts to achieve WTO consensus on the establishment of a permanent WTO parliamentary mechanism to provide closer association of Members of Parliaments and elected officials with the work of the WTO, and in connecting the WTO with citizens and the global public. Issues to be addressed in designing such a mechanism include: how to structure and finance the organization; how to determine representation; and how to define its institutional links with the WTO.

D. Internal Transparency and Effective WTO Decision Making

During the Sub-Committee's panel session on WTO transparency and outreach, the observation was made (by Warren Allmand) that the negotiation process at Doha had been detrimental to developing countries in that "Green Men" (friends of the WTO Chair Stuart Harbinson acting as facilitators) had replaced the "Green Room", in which only a select few of the world's developing nations were consulted. According to the witness, these "Friends of the Chair" did not reflect the views of the poorest of the developing countries in the WTO's final negotiation text.

This view lies in contrast to that of the Government of Canada. In a December 2001 speech to the Quebec Manufacturers and Exporters, the Minister for International Trade credited much of the success of Doha to a more effective internal WTO preparatory process that "was an inclusive process in which every participant had a voice, and every participant had a chance to bring its issues to the table. There were literally dozens of meetings between ambassadors in Geneva, covering the list of grievances over the Uruguay Round — the 'implementation issues' — and every other topic members wished to pursue at Doha."[25]

This confirms the position taken by the federal government in its response to the recommendation contained in this Sub-Committee's report on economic relations between Canada and Europe. In that report, we called for a more efficient decision-making procedure within the WTO. In its response, DFAIT noted that the WTO Secretariat was "making a concerted effort to ensure that the internal consultations that precede most decisions by the Membership are as transparent and inclusive as possible. Since the third WTO Ministerial Conference in Seattle, these efforts have been very successful in addressing the concerns addressed by some Members about the WTO's

[25] Notes for an Address by the Honourable Pierre Pettigrew, Minister for International Trade, to the Quebec Manufacturers and Exporters on After Doha: Benefits For The World, December 3, 2001 (http://webapps.dfait-maeci.gc.ca/minpub/Publication.asp?FileSpec=/Min_Pub_Docs/104749.htm).

decision-making procedures."[26] To obtain a broader perspective and to build linkages with other international institutions, consideration should also be given to the participation of other key international organizations, such as the International Labour Organization and the United Nations Environment Programme, in WTO negotiations.

Notwithstanding the above positive interpretation of events at Doha, and taking into account the testimony received, the Sub-Committee continues to have concerns over the lack of a formal efficient and effective decision-making process at the WTO. While other options may ultimately be preferable, one worth exploring is the establishment of a small, informal steering committee, made up of perhaps 20 WTO Members representative of the broader membership.[27] This group would be charged with the responsibility of developing consensus on trade issues during critical moments when important decisions had to be made.

In our view, the WTO also needs to revisit the manner in which it makes internal administrative decisions. For example, the long and difficult voting process to choose the current WTO Director General created a certain degree of friction within the organization. Some order should be brought to bear on the current situation. To deal with both content and process decision making, the Sub-Committee recommends:

Recommendation 27:

That the Government of Canada revisit this Sub-Committee's Recommendation 14 contained in its June 2001 report on Canada-Europe Economic Relations (*Crossing The Atlantic: Expanding The Economic Relationship Between Canada And Europe*) and work together with like-minded countries to encourage the WTO to craft and employ more formal, efficient and effective decision-making procedures within its organization. Separate procedures should be developed to cover both administrative (i.e., process) decisions and those involving trade issues.

Recommendation 28:

That the federal government propose to WTO Members that the International Labour Organization and the United Nations Environment Programme be allowed to contribute their specialized expertise to the negotiating process.

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[26] Government Response To The Fifth Report Of The Standing Committee On Foreign Affairs And International Trade *(Crossing The Atlantic: Expanding The Economic Relationship Between Canada And Europe)*, Department of Foreign Affairs and International Trade, 2001, p. 14.

[27] For further elaboration on this model, see Jeffrey J. Schott and Jayashree Watal, "Decision-making in the WTO", *International Economics Policy Briefs*, Institute for International Economics, March 2000.

A FINAL WORD

During his appearance before the Sub-Committee, Pierre Laliberte (Chief Economist, Canadian Labour Congress) remarked that non-democratic countries were those that did not respect the fundamental rights of their citizens. He suggested that these countries "not be able to count on the same trade and economic privileges as those who respect those principles." Essentially, he advocated the introduction of conditionality at the WTO so that countries would not be entitled to the benefits of liberalized trade if they violated democratic and labour rights. The Sub-Committee would like to see this proposal explored further and recommends:

Recommendation 29:

That the Government of Canada promote the injection of clauses within WTO agreements that would tie countries' access to the benefits from WTO membership to proven respect for democratic rights.

APPENDIX A
DESCRIPTION OF THE DISPUTE SETTLEMENT PROCESS

A dispute generally begins when a Member alleges that another Member is not complying with its obligations under a WTO agreement. The dispute settlement process may be divided into four distinct stages: consultations, panel procedures, appeal, and implementation of the decision. The process is overseen by the Dispute Settlement Body (DSB) — essentially the WTO General Council in a different form — which is composed of all Member countries and is responsible for administration of the DSU. Table 1 sets out the approximate time frames for the settlement of a typical dispute.

Table 1: Approximate Time frames for the Settlement of a Typical Dispute

Stage of Dispute Settlement	Time Period
Consultations, mediation, etc.	60 days
Panel set up and appointment of panellists	45 days
Final panel report to parties	6 months
Final panel report to WTO Members	3 weeks
Dispute Settlement Body adopts report (if no appeal)	60 days
TOTAL (without appeal)	**1 year**
Appellate Body report	60-90 days
Dispute Settlement Body adopts appeals report	30 days
TOTAL (with appeal)	**1 year and 3 months**

Source: *Settling Disputes: The WTO's 'most individual contribution*,' available on the WTO Web site at the following address: http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm

1. Consultations

The DSU requires parties to a dispute to first attempt to settle the dispute through consultations with each other. Most disagreements are solved in this manner within the 60-day time frame. If the parties are unable to solve their differences through informal consultations, they may resort to mediation or conciliation, and may ask the WTO Director General to assist them in any way.

2. Panel Procedures

If consultations are unsuccessful, the complaining party may ask the DSB to establish a dispute settlement panel, a process that can take up to 45 days. The process of setting up a panel cannot be blocked unless the DSB decides by consensus against appointing a panel. Member countries with a substantial interest in the dispute may join the process as "third parties" — a status that enables them to make representations before the panel.

Once a panel is established, the parties must agree on its composition. There are generally three panellists, and they may be governmental or non-governmental, but must have significant expertise in the international trade field and are also to be chosen for their independence from the disputing parties. The WTO Secretariat assists in composing the panel, but if the parties are unable to agree on suggested names, either party may request that the Director General make the final decision. Canada has recently asked the Director General to compose the panel for its WTO softwood lumber dispute because agreement on panelists could not be reached with the United States.

The task of the panel is to hear the claims of both parties and issue a ruling stating whether or not a party has violated its WTO obligations. The exact procedures followed by a particular panel may vary from case to case, and are determined by the DSU. For example, the panel may consult scientific or technical experts when dealing with complex issues. The panel hearings are held in private — only the disputing and third parties may attend — and all documentation is confidential. Canada, however, makes its submissions to panels publicly available.

The final report of the panel should normally be completed and presented to the parties within six months. The time frames applicable to the detailed stages of the panel process are set out in Table 2. If the report is not appealed, it is generally adopted by the DSB within 60 days of its distribution, at which point it becomes an official WTO ruling. Only a consensus decision of the DSB can prevent the adoption of a report.

Table 2: Approximate Timetable for Panel Work

Note: This timetable may be changed if there are unforeseen developments. Additional meetings with the parties can be scheduled if required.

Stage of Panel Process	Time Period
Receipt of first written submissions of the parties: 1) Complaining party 2) Party complained against	3-6 weeks 2-3 weeks
Date, time and place of first substantive meeting with the parties; third party session	1-2 weeks
Receipt of written rebuttals of the parties	2-3 weeks
Date, time and place of second substantive meeting with the parties	1-2 weeks
Issuance of descriptive part of the report to the parties	2-4 weeks
Receipt of comments by the parties on the descriptive part of the report	2 weeks
Issuance of the interim report, including the findings and conclusions, to the parties	2-4 weeks
Deadline for party to request review of part(s) of the report	1 week
Period of review by the panel, including possible additional meeting with the parties	2 weeks
Issuance of the final report to the parties to the dispute	2 weeks
Circulation of the final report to all WTO members	3 weeks

Source: WTO Dispute Settlement Understanding, Appendix 3.

3. Appeal

A panel decision may be appealed to the WTO Appellate Body by either or both parties in the 60 days following its release. The Appellate Body is composed of seven independent individuals, each of whom serves a four-year term and is appointed by the DSB based upon the individual's demonstrated expertise in law, international trade and the WTO agreements. The Appellate Body membership must be broadly representative of the WTO membership.

The appeal is heard by three members and may address only issues of law and legal interpretation, not new evidence or reconsiderations of existing evidence. Appeals are normally completed within 60 days and the DSB will then adopt the Appellate Body

report — and the related panel report (with amendments if necessary) — within 30 days of its distribution to DSB members. The disputing parties must unconditionally accept Appellate Body reports, unless the DSB decides by consensus not to adopt the report.

4. Implementation of the Decision

The DSB is responsible for surveillance of implementation of the final recommendations and rulings from panels and the Appellate Body. The process of implementation can take a considerable amount of time.

The party found to be in violation of its WTO obligations must within 30 days of the report's adoption state its intention to comply with the ruling. The party is ordinarily given a "reasonable period of time" to do so. If nothing is done in this time period, the country must enter into negotiations with the complaining party to agree upon "mutually acceptable compensation." If no agreement is reached within 20 days of the expiry of the reasonable time period, the complaining party may ask the DSB for permission to retaliate by suspending concessions or other WTO obligations to the non-complying party. Such retaliation could take the form of limited trade sanctions, such as raising tariffs or imposing a surtax on imports from the offending state. The imposition of such sanctions is closely monitored by the DSB and must be equivalent to the damage caused by the initial non-compliance.

APPENDIX B
LIST OF WITNESSES

Associations and Individuals	Date	Meeting
Canadian International Development Agency	30/01/2002	17
Bill Singleton, A/Director, Economic Policies		
Department of Agriculture and Agri-Food		
Suzanne Vinet, Chief Agricultural Negotiator		
Department of Foreign Affairs and International Trade		
Steve Brereton, Director, Investment Trade Policy Division		
Johanne Forest, Consultant, Trade and Environment, Environmental Relations Division		
Frédéric Seppey, Deputy Director, Regional Agreements		
Don Stephenson, Director General, Trade Policy Bureau II; Services, Investment and Intellectual Property Bureau		
Randle Wilson, Director, Trade Policy and Planning Division		
Canadian Centre for Policy Alternative	31/01/2002	18
Bruce Campbell, Executive Director		
Centre for Trade Policy and Law of Carleton University		
Bill Dymond, Executive Director		
William Miner, Senior Associate		
Grey, Clark, Shih and Associates Limited		
Peter Clark, President		

Associations and Individuals	Date	Meeting
Department of Foreign Affairs and International Trade	07/02/2002	20
Sergio Marchi, Permanent Representative and Ambassador of Canada to the Office of the United Nations and to the World Trade Organization		
Don Stephenson, Director General, Trade Policy Bureau II; Services, Investment and Intellectual Property Bureau		
Randle Wilson, Director		
Cassels, Brock and Blackwell	20/02/2002	21
Lawrence Herman, Trade Lawyer		
Department of Foreign Affairs and International Trade		
Claude Carrière, Director General, Trade Policy I		
Robarts Centre for Canadian Studies		
Daniel Drache, Director		
Thomas & Davies		
Serge Fréchette, Lawyer		
As an Individual		
Jon Johnson, Partner, Goodmans LL.P., Toronto		
Canadian Apparel Federation	21/02/2002	22
Bob Kirke, Executive Director		
Jack Kivenko, Member		
Elliot Lifson, President		
Canadian Council for International Business		
Robert Keyes, President and Chief Executive Officer		
Canadian Council for International Cooperation		
Gerry Barr, President		
Gauri Sreenivasan, Policy Coordinator		

Associations and Individuals	Date	Meeting
Dairy Farmers of Canada	21/02/2002	22
Yves Leduc, Assistant Director, International Trade Department		
International Trade Policy Consultants Inc.		
Kathleen Macmillan, President		
North-South Institute		
Ann Weston, Vice-President		
Rights and Democracy	27/02/2002	23
Warren Allmand, President		
World Federalists of Canada		
Fergus Watt, Executive Director		
Canadian Environment Industry Association	28/02/2002	24
Christopher Henderson, Past Chair and Chief Executive Officer, The Delphi Group		
Rebecca Last, Director, Programs and Policy		
International Institute for Sustainable Development		
David Runnalls, President		
Sierra Club of Canada		
Elizabeth May, Executive Director		
As an Individual		
Howard Mann, Consultant and Trade Lawyer		
Canadian Manufacturers & Exporters	13/03/2002	25
Mark Boudreau, Senior Director, Policy and Research		
Jason Myers, Chief Economist		
Federation of Canadian Municipalities		
John Burrett, Senior Analyst		
Jim W. Knight, Executive Director		

Associations and Individuals	Date	Meeting
Canadian Agri-Food Trade Alliance	20/03/2002	26
Liam McCreery, President		
Canadian Cattlemen's Association		
Jim Caldwell, Director, Government Affairs		
Neil Jahnke, Chairman		
Canadian Federation of Agriculture		
Dietwald Claus, Policy Analyst		
Bob Friesen, President		
Brigid Rivoire, Executive Director		
Canadian Sugar Institute		
Sandra Marsden, President		
Canadian Wheat Board		
Larry Hill, Director, Board of Directors		
Victor Jarjour, Vice-President, Strategic Planning and Policy		
Carl Potts, Strategic Planning and Policy		
"Union des producteurs agricoles du Québec"		
Serge Lebeau, Deputy Director, Research and Agriculture		
Canadian Chamber of Commerce (The)	21/03/2002	27
Alexander Lofthouse, Policy Analyst		
Clifford Sosnow, Member		
Canadian Drug Manufacturers Association		
Jim Keon, President		
Canadian Steel Producers' Association		
Barry Lacombe, President		
"Coalition pour la diversité culturelle"		
Robert Pilon, Executive Vice-President		

Associations and Individuals	Date	Meeting
Canadian Association of University Teachers	10/04/2002	28
David Robinson, Associate Executive Director		
Canadian Bar Association		
Simon Potter, First Vice-President		
Tamra Thomson, Director, Legislation and Law Reform		
Canadian Labour Congress		
Pierre Laliberté, Senior Economist		
Canadian Restaurant and Food Services Association		
David Barlow, Vice-President		
Stephanie Jones, Vice-President		
Chicken Farmers of Canada		
Mike Dungate, General Manager		
Society of Composers, Authors and Music Publishers of Canada		
Paul Spurgeon, General Counsel		
Gilles Valiquette, President		
Canadian Apparel Federation	11/04/2002	29
Bob Kirke, Executive Director		
Jack Kivenko, Member		
Elliot Lifson, President		
Canadian International Development Agency		
Tim Miller, Sr Analyst, Trade and Development		
Department of Agriculture and Agri-Food		
Rory McAlpine, Director General, International Trade Policy Directorate		
Department of Finance		
Darwin Satherstrom, Chief, Trade in Goods, International Trade Policy Division		

Associations and Individuals	Date	Meeting
Department of Foreign Affairs and International Trade	11/04/2002	29
Ian Burney, Director, Trade Controls Policy Division		
Louis Gionet, Deputy Director, Trade Controls Policy Division		
Brian Morrisey, Director General, Economic Policy Bureau		
Department of Industry		
(Rick) FS Thomas, Director General, Manufacturing Industries Branch		
Union of Needletrades, Industrial and Textile Employees		
John Alleruzzo, President		
Government Policy Consultants	15/04/2002	30
Gerry Shannon, Senior Consultant		
Grey, Clark, Shih and Associates Limited		
Peter Clark, President		
International Development Research Centre		
Susan Joekes, Team Leader		
Rohinton Medhora, Vice-President		
"Option Consommateurs"		
Delphine Nakache		
Patrick Vanasse, Director of Research, Representation Services		
Retail Council of Canada		
Sharon Maloney, Vice-President		

APPENDIX C
LIST OF BRIEFS

Canadian Agri-Food Trade Alliance

Canadian Bar Association

Canadian Cattlemen's Association

Canadian Council for International Cooperation

Canadian Drug Manufacturers Association

Canadian Federation of Agriculture

Canadian Labour Congress

Canadian Manufacturers and Exporters

Canadian Restaurant and Food Services Association

Canadian Steel Producers' Association

Canadian Sugar Institute

Canadian Textiles Institute

Canadian Wheat Board

Cassels, Brock and Blackwell

Chicken Farmers of Canada

“Coalition pour la diversité culturelle”

Department of Foreign Affairs and International Trade

Federation of Canadian Municipalities

International Development Research Centre

International Trade Policy Consultants Inc.

Jon Johnson

Howard Mann

Retail Council of Canada

Society of Composers, Authors and Music Publishers of Canada

“Union des producteurs agricoles du Québec”

Union of Needletrades, Industrial and Textile Employees

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this report.

A copy of the relevant Minutes of Proceedings (*Meeting No. 73)* is tabled.

Respectfully submitted,

Jean Augustine, M.P.
Chair

BLOC QUÉBÉCOIS DISSENTING OPINION

TO THE REPORT BY THE SUB-COMMITTEE ON INTERNATIONAL TRADE, TRADE DISPUTES AND INVESTMENT: *BUILDING AN EFFECTIVE NEW ROUND OF WTO NEGOTIATIONS: KEY ISSUES FOR CANADA*

TABLED TO THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND INTERNATIONAL TRADE

It was in a spirit of cooperation, openness and keen interest that the Bloc Québécois took part in the proceedings of the Sub-Committee on International Trade, Trade Disputes and Investment, designed to assess the WTO negotiating issues from a Canadian standpoint.

Overall, the Bloc Québécois supports the recommendations in the Report.

However, the Bloc considers that a recommendation calling for transparency should be added. When international trade agreements are signed, Quebec and the other provinces lose a significant portion of their freedom to formulate public policy, without being compensated for this loss by any direct participation in international forums.

The Bloc Québécois would like to see the following recommendation added to the section *Transparency and Outreach*.

> **That the government of Canada create an agreed-upon mechanism for consultation with the provinces in all areas of federal jurisdiction. In all areas of exclusive or shared jurisdiction, decision-making and negotiating powers must be granted to Québec and to any province that wishes them. In addition, with a view to complying with Recommendation 20 in the Report, on services, it is essential that Quebec's ability to intervene in the area of such public services as education, health care, early childhood services and social services, be preserved. Lastly, cultural diversity must be respected. No agreement must prejudice Quebec's ability to introduce such measures as it deems appropriate for the formulation of cultural policies or the introduction of means of intervention in the cultural sector.**

The Bloc Québécois considers that one of the recommendations should be worded differently: Recommendation 29, dealing with the fundamental rights of citizens, is not strong enough, in the Bloc's opinion. While the members of the Sub-Committee agreed that democratic rights include labour and environmental rights, the Bloc Québécois considers that these should have been spelled out in the recommendation. The Bloc would have preferred the federal government to promote clauses tying benefits from future WTO trade agreement to respect for fundamental rights, not only as regards democracy but also as regards labour and the environment. The benefits tied to trade agreements should apply only to countries that respect labour rights based on fundamental International Labour Organization (ILO) conventions and important international conventions such as the Kyoto Accord.

DISSENTING OPINION

SCFAIT Sub-Committee on International Trade, Trade Disputes, and Investment

Report on the World Trade Organization

Svend J. Robinson, M.P.

While my New Democrat colleagues and I acknowledge and value the dedication and hard work of my fellow Sub-Committee members in holding extensive hearings from a wide variety of important witnesses on the subject of the WTO, in a number of important respects we cannot concur with the final report of the Sub-Committee. In some cases we dissent from the conclusions drawn by my colleagues, in others we find that the conclusions of the report do not accurately reflect the evidence heard by the Sub-Committee. Like my colleagues, I want to thank all of the witnesses who appeared before us. Their evidence was of great value for its depth and insight.

Unlike the other members of the Sub-Committee, my New Democrat colleagues and I disagree in principle with the mandate of the World Trade Organization, and therefore we cannot recommend that Canada seek increased involvement with it. The WTO is undemocratic in the sense that there is no parliamentary oversight of its operations, there is no opportunity for the views of concerned citizens to be heard, and its rulings are made by secret tribunals. While this may be acceptable to corporations which seek unimpeded access to global markets, it is unacceptable to those who would retain the primacy of national sovereignty as protection against unscrupulous corporate greed.

In its report, the Sub-Committee has taken some small steps towards addressing some of these concerns. However, it does not go nearly far enough. The following are the key areas in which we believe that the majority report must be changed or strengthened:

- The report should call on the government of Canada to issue a clear statement that it will refuse to negotiate the provision of social services, including health and education, under the GATS. Canada must not allow the welfare of Canadians to be jeopardized by unrestricted international trade. The Sub-Committee heard compelling arguments by Bruce Campbell of the Canadian Centre for Policy Alternatives and David Robinson of the Canadian Association of University Teachers that publicly funded social services may be exposed under GATS to foreign competition.

- The report should call on the government of Canada to promote modification of the compulsory licensing agreement under TRIPS to allow developing countries without access to appropriate manufacturing capacity to freely import generic medications. It is unacceptable that lives should ever be put at risk in order to protect the profits of multinational pharmaceutical corporations.

- The report should call on the government of Canada to promote the primacy of Multilateral Environmental Agreements over WTO rules where the requirements of the two are in conflict. Furthermore, it should demand that the government of Canada state clearly that it will never negotiate the export of Canada's water and will steadfastly protect this fundamental natural resource from foreign corporate interests.

- The report should call on the government of Canada to promote greater transparency of the WTO through the creation of a permanent WTO parliamentary mechanism that would ensure elected officials, citizens, and the global public have meaningful representation.

- The report should call on the government of Canada to promote respect for human rights, including international labour standards, at the WTO, and their inclusion in WTO agreements.

These are the key areas in which we believe the report should be strengthened. Our fundamental concern is with the erosion of democracy, as power is transferred pursuant to so-called "trade deals" such as the WTO and NAFTA, from elected representatives accountable to the public to corporate boardrooms accountable only to shareholders.

MINUTES OF PROCEEDINGS

Tuesday, April 30, 2002
(*Meeting No. 73*)

The Standing Committee on Foreign Affairs and International Trade met in a televised session at 9:07 a.m. this day, in Room 253-D, Centre Block, the Chair, Jean Augustine, presiding.

Members of the Committee present: Sarkis Assadourian, Jean Augustine, Aileen Carroll, Stockwell Day, Marlene Jennings, Hon. Diane Marleau, Keith Martin, Pierre Paquette, Svend Robinson.

Acting Members present: Yves Rocheleau for Francine Lalonde, Mac Harb for Hon. George Baker.

Associate Members present: Irwin Cotler, Beth Phinney

Other Member Present: Louis Plamondon.

In attendance: *From the Parliamentary Research Branch of the Library of Parliament*: Gerald Schmitz, Research Officer.

Witnesses: *From the Canadian Labour Congress*: Ken Georgetti, President; Pierre Laliberté, Senior Economist; Steven Benedict, Director of International Department; Anna Nitoslawska, International Programme Administrator, International Department; Patricia Blackstaffe, Executive Assistant to the President.

Appearing: His Excellency Pierre Diouf, Ambassador of the Republic of Senegal; Her Excellency Sallama Mahmoud Shaker, Ambassador of the Arab Republic of Egypt; His Excellency Philémon Yunji Yang, High Commissioner for the Republic of Cameroon; His Excellency André Jaquet, High Commissioner for the Republic of South Africa; His Excellency Youcef Yousfi, Ambassador of the People's Democratic Republic of Algeria; His Excellency Berhanu Dibaba, Ambassador of the Federal Democratic Republic of Ethiopia in Canada; Nuradeen Aliyu, Deputy High Commissioner for the Federal Republic of Nigeria.

Pursuant to Standing Order 108(2), the Committee resumed consideration of the Agenda of the 2002 G-8 Summit (See *Minutes of Proceedings of Tuesday, October 16, 2001*).

Ken Georgetti made an opening statement and with the other witnesses answered questions.

At 10:03 a.m., the Committee proceeded to consider reports of sub-committees.

Mac Harb presented the Eleventh Report (World Trade Organization) of the Sub-committee on International Trade, Trade Disputes and Investment.

Mac Harb moved, — That the Eleventh Report of the Sub-committee on International Trade, Trade Disputes and Investment be adopted as a report of the Committee.

After debate, the question was put on the motion and it was agreed to.

By unanimous consent, it was agreed, — That the Chair be authorized to make such typographical changes as necessary without changing the substance of the report;

By unanimous consent, it was agreed, — That pursuant to Standing Order 108(1)(*a*), the Committee authorize the printing of brief dissenting opinions, to be submitted in the two official languages to the Clerk;

By unanimous consent, it was agreed, — That the Chair or her designate be authorized to present the report to the House;

By unanimous consent, it was agreed, — That pursuant to Standing Order 109, the Committee request that the government table a comprehensive response.

Beth Phinney presented the Second Report (Zimbabwe) of the Sub-committee on Human Rights and International Development.

On a motion by Beth Phinney, it was agreed, — That the Second Report of the Sub-committee on Human Rights and International Development be adopted as a report of the Committee.

By unanimous consent, it was agreed, — That the Chair or her designate be authorized to present the report to the House;

At 10:15 a.m., the Committee resumed consideration of the Agenda of the 2002 G-8 Summit.

The ambassadors and high commissioners made statements and answered questions.

At 12:01 p.m., the Committee adjourned to the call of the Chair.

Stephen Knowles
Clerk of the Committee