

implemented, the Convention holds great promise for reducing the numerous risks to human health and environmental values currently posed by POPs.

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## **THE ENVIRONMENTAL SIGNIFICANCE OF THE DOHA DECLARATION**

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### **Introduction**

An agreement to launch new trade negotiations is itself significant for the environment. A failure at Doha would have pummeled the World Trade Organization (WTO) and undermined global governance. The WTO has now recovered from the institutional and political failure that occurred at Seattle in 1999. The trade ministers were undoubtedly inspired by the successful climate change talks concluded in Marrakech on the opening day of the Doha conference: the Conference of the Parties to the Climate Change Convention made a recovery from the poor negotiating outcomes at The Hague in 2000 and in Bonn in July 2001.

The Doha Ministerial Declaration contains far more language regarding the environment than was predicted a week before the meeting. This language seems to have emanated from bargaining over other issues, but how it got there is less important than what it says.

There are two key environmental achievements. First, the Declaration designates environment as an agenda item in the new trade round. Second, the ministers are encouraging efforts to promote cooperation between the WTO, the UN Environment Programme (UNEP), and other international environmental and development

organizations. This may set in motion a WTO contribution to the World Summit on Sustainable Development, to be held next August in Johannesburg.

### **Green Negotiations**

The agreement to initiate negotiations on the environment in the new round opens the door in the WTO to better integration of trade and environmental objectives. The movement in this direction began at the trade ministerial conference in 1990 when the late Austrian Ambassador Winfried Lang catalyzed an effort to put environment on the agenda of the Uruguay Round. That this goal took over a decade to accomplish illustrates the challenges of making global governance more coherent.

The approved areas for negotiation are limited, but perhaps may be expandable as the new trade talks get underway. The governments agreed to negotiate the reduction of trade barriers to the sale of environmental goods and services, and to clarify and improve WTO disciplines as they pertain to fishing subsidies. They also agreed to negotiate the relationship of WTO rules to the trade obligations in environmental treaties, but only the narrow issue of same-party membership in the WTO and the environmental treaty. Moreover, this negotiation must not add to or diminish the rights and obligations now in WTO Agreements, so the exercise will be more about clarification than reconciliation.

Another important development is that the governments instructed the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS) to review the implementation of the TRIPS Agreement including examining the relationship between the TRIPS Agreement and the Convention on Biological Diversity.

The ministers also directed the WTO Committee on Trade and Environment (CTE) to make recommendations on other issues that might benefit from negotiation. However, the fact that the CTE has failed to make policy recommendations over the past seven years



does not augur well for its future productivity. The problem, as many analysts have noted, is that the CTE is too narrowly constituted to produce anything that adds value to the debate; it needs the input of environmental officials and civil society. Although the CTE has had the advantage of some very good chairpersons and a high quality staff, it has not been able to overcome its inherent flaw of narrow composition.

This weakness of the current CTE structure will diminish the usefulness of Paragraph 51 of the Doha Declaration which directs the CTE and the Committee on Trade and Development to "act as a forum to identify and debate developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected." The fact that the trade ministers recognize that the new round needs such a forum and that negotiators should be working to reflect an environmentally sustainable outcome is a very important step forward for the WTO. The epistemic community working on trade and environment – which includes government officials, UNEP, many non-governmental organizations in the North and South, a few business groups, and of course the International Centre for Trade and Sustainable Development (ICTSD) – will need to intensify efforts in the next three years to assist the WTO in thinking through the complex interactions.

### **Institutional Cooperation**

The ministers have given a go-ahead for much-needed institutional cooperation between the WTO, UNEP and other international environmental organizations, especially in the lead-up to the World Summit. Numerous beneficial activities could be undertaken. For example, in the Doha Declaration, ministers "recognize the importance of technical assistance and capacity-building in the field of trade and environment to developing countries, in particular the least-developed among them" (para. 33). Some constructive capacity-building has already occurred, most notably by the UN Conference on Trade and Development, the UN

University and ICTSD, but the levels delivered are far below what is being sought. The developing countries need assistance in securing new environmental technologies through trade, improving coordination within their own governments, and assessing the benefits of trade liberalization. The need for such capacity-building will soon grow as governments and the private sector take actions pursuant to the new Marrakech accords. The WTO General Council should start now to develop a package of activities that the WTO can present as its contribution to the Johannesburg Summit.

One possibility in that regard will be the new WTO negotiations on dispute settlement, which are slated to conclude by May 2003. How the dispute settlement system should deal with environmental disputes has bedeviled the institution from the beginning. Almost all of the WTO panels hearing environmental or health disputes have availed themselves of scientific expertise, and the most recent decisions have been environmentally sound. But no progress has been made on providing a better interface between WTO dispute procedures and the dispute and arbitration systems that exist in environmental regimes.

In summary, the Doha Declaration provides a new beginning for the trade and environment debate. The trading system now looks at ecological issues in a more mature, less frightened, way that it did in the past. Environmentalists should support the new round and work hard to secure fair outcomes for developing countries.

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# International Environmental Law Committee Newsletter

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## MESSAGE FROM THE CHAIR

**William L. Thomas**  
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This past February, at its Midyear Meeting in Philadelphia, the ABA House of Delegates approved a set of resolutions urging the prompt ratification and implementation by the United States of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, as well as the Stockholm Convention on Persistent Organic Pollutants. These resolutions were sponsored by the ABA Section of International Law and Practice, the Section of Environment, Energy, and Resources (through the efforts of some of our Committee members, including Barr Weiner of Ropes & Gray), and the Standing Committee on Environmental Law. This issue of the Newsletter examines recent developments in the international regulation of chemicals, and features additional articles by Steve Charnovitz and Luigi La Marca. I would like to thank Committee Vice-Chair Ursula Schliessner for her generous assistance with this issue.

*Look inside for  
further reading and related Websites!  
See p. 35.*

## RECENT AND UPCOMING COMMITTEE EVENTS AND OTHER ANNOUNCEMENTS

### **Committee Co-Sponsors Teleconference on Bush Administration Climate Change Programs**

The International Environmental Law Committee (IELC) and the Climate Change and Sustainable Development Committee (CCSD) joined with the to present a teleconference on "Developments in U.S. Climate Change Policy: Impact of the Bush Administration's Proposal on U.S. Energy, Environmental, and Foreign Policy Initiatives," on April 23. The session, which was extremely well-received, was moderated by IELC and CCSD member David Hodas, and featured presentations by Dr. Harlan L. Watson, senior climate negotiator and special representative, U.S. Department of State; William L. Fang, deputy general counsel and climate issues director, Edison Electric Institute; and Environmental Defense's Joseph Goffman. For related Power Point presentations and other documents, see <http://www.abanet.org/environ/committees/climatechange/hotnews.html>.

### **Committee and Section Co-Sponsor Major Conference on ISO 14001 and Environmental Management Systems**

Along with the Special Committee on Second Generation Issues, the International Environmental Law Committee and the Section collaborated with the Multi-State Working Group