

Sustainable development and trade liberalisation: the opportunities and threat roused by the WTO

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Abstract: *The entanglement of trade and sustainable development agenda raises two different and obvious concerns we would like to dwell upon. The first one basically deals with the definition of sustainable development and the fear that the concept might become looser and looser the more it pervades trade and corporate arenas. The second concern pertains to the compatibility of international trade laws embodied within the WTO, with international environment and labour agreements hosted by the UN. This paper provides some argument to the debate by focusing on the implications, on these two areas of concerns, of sustainable development pervading the WTO. Our two main arguments are as follows. Firstly, the social component of sustainable development is today the poor relation of sustainable development's inscription among the WTO objectives. Secondly, effective restrictions on trade for either health or natural resource preservation are extremely rare. Article XX of the Gatt, allowing for such a restriction ("exception" is the appropriate word), cannot be referred to as long as WTO members omit to abide to non-discriminatory principles in their trade policies. Whatever the reasons one country requests to escape WTO rules, it has to do so while treating its trading partners on the same foot. These two results may reassure those developing countries that fear a "new" or "green" protectionism (which seems more fantasized than real in so far) from rich countries. Does it all suggest that WTO principle-compatible trade and sustainable trade is the same animal? The case law would rather suggest that WTO and its sustainable development objective seems more an organisation aimed at preventing countries from using sustainable development as a fallacious argument for trade restriction than an organisation dedicated to promoting sustainable trade per se.*

Key words: sustainable development, trade, trade liberalisation, WTO

The sustainable development and trade liberalization debate

The trade and sustainable development debate is not new. One can recall the growing international concern regarding the impact of economic growth on social development and the environment in the early 1970s, leading to the 1972 Stockholm Conference on the Human Environment. One can recall as well the ambitious International Trade Organization (ITO) project debated during the UN Conference on Trade and Employment in Havana in 1947, whose purpose was to deal with trade, investment and social issues in a comprehensive framework. The ITO never came into being – at the exception of a small part of it which became the General Agreement on Tariffs and Trade or GATT.

What may be new instead is the blurring of the frontier between the institutions dedicated to dealing with environmental and social issues from that time on – the UN Conventions body – and those in charge of trade and trade *only*, viz the GATT, now the World Trade Organization or WTO. Among the 200 UN-based Multi-

lateral Environmental Agreements (MEA) currently in force, at least 20 contain trade provisions. The Plan of Implementation adopted at the World Summit on Sustainable Development in Johannesburg in 2001 has reiterated the need to support voluntary, WTO-compatible market-based initiatives for the creation and expansion of domestic and international markets for goods which are environmentally friendly¹. Conversely, the WTO agreements contain explicit references to trade limitations on health, particular labour conditions and the conservation of natural resources' reasons.

The entanglement of trade and sustainable development issues raises two different and obvious concerns we would like to dwell upon. The first one relates to the making of the sustainable development concept a water down concept, it being restricted to a set of accompanying or "flanking measures" to be provided along with trade openness and standard

growth-enhancing macro measures. "Flanking measures" (viz measures flanking trade liberalisation without opposing it) appear as such in the Sustainable Impact Assessment Guidebook to be published within months by the European Commission. This first concern basically deals with the definition of sustainable development, with the fear, expressed by some European and International NGOs², that the concept might become looser and looser the more it pervades trade and corporate arenas.

The second concern pertains to the compatibility of international trade laws embodied within the WTO, with international environment and labour agreements hosted by the UN. This concern is all the more serious so the WTO and the UN various conventions and bodies display a critical asymmetry of power. With its Dispute Settlement Body (DSB), the WTO is capable to enforce sanctions against those countries which would escape from their obligations, while UN conventions are in most cases non

¹ WT/CTE/W/220/Rev.1, "Report of the World Summit on Sustainable Development", Note by the Secretariat.

² See NGOs statement on the draft Handbook for Sustainability Impact Assessments, April 2005 – mimeo.

binding. Because trade and sustainable development are interlinked, the capacity for the WTO to build a case law in sustainable development issues is perceived both as an opportunity and a threat. An opportunity to make trade effectively contribute to sustainable development. A threat to have the budding international environmental and labour rights infringed by the overarching and almighty trade law.

This paper provides some argument to the debate by focusing on the implications, on these two areas of concerns, of sustainable development pervading the WTO. We start by clarifying key sustainable development components of the WTO, illustrating the compatibilities and possible conflicts between jurisdictions especially with MAEs, before concluding by the two main arguments of our paper. Firstly, the social component of sustainable development is today the poor relation of sustainable development's inscription among the WTO objectives. Secondly, the most prominent impediments to make the WTO a suitable organisation propelling sustainable development do not stem from jurisdictions discrepancy but from the weak legitimacy of the most pro-active actors committed to making it so, viz. the United States and the European Union, because of their being suspected to use sustainable development for disguised protectionism and vested interest preservation. To turn it in another way, freer trade with its wake of human and environmental side damages will remain a more attractive condition for developing countries than an hypothetical sustainable trade as long as Europe and US sticking to their double-standard policies and incoherent positions at UN and the WTO.

Sustainable development and the WTO

The preamble of the Agreement establishing the World Trade Organization (WTO) clearly places priority on raising standards of living and on sustainable development. While raising living standards dates back to the seminal GATT 1947 preamble, the explicit mention of expanding production of and trade in goods and services "while allowing the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with [Members] respective needs and concerns at different levels of economic development" is a novelty of WTO compared to GATT (WTO, 1995 : 9).

The WTO is also substantially altering the body of rules defined by the 1947 GATT to make the Organization into a multilateral authority which has very little in common with its predecessor. The Protocol of Provisional Application, which gave the GATT a legal framework that

was temporary and limited because it made implementation of Part II of the Agreement (chiefly concerning non-tariff barriers) subject to its compatibility with national laws, has been cancelled. What is more, WTO agreements cover fields that go beyond trade in goods, which the GATT was limited to – the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Negotiations are permanent and the commitment of the signatory countries unique for what is called the "single undertaking". The number of member countries has increased more than five-fold in the past fifty years. Dispute settlement, which has been reformed considerably, gives the WTO a restrictive conflict resolution mechanism that the GATT did not have or used very little.

Due to the emergence of the WTO as an international governance player and the singularity of its multilateral sanction mechanism in an environment of UN sustainable development-related Conventions favouring mediation and incentives, the Organization gets contradictory requests from both governments and civil society in its broader sense. The rapid extension and expansion of the GATT/WTO Agenda – the "Trade and" Agenda – since the Uruguay Round was, up until the Cancun meeting in 2003, the preferred response of the Secretariat and member countries³ – against the wishes of those who wanted either to make any extension conditional upon the effective implementation of Article 20 of the integrated Agenda programming new negotiations as of 2000 for the agriculture and services sectors alone or to have the architecture of sustainable development governance clarified before. In the same time, voices rouse to bring WTO back on the tracks formulated in its preamble and make it give up the maximization of trade per se with all possible infringement of national collective preferences and of the policy autonomy needed to exercise institutional innovations the trade per se objective actually implies. The "trade and" debate, with implications on global sustainable development governance, and the policy autonomy – or "policy space" – debate, with implications on national autonomy, overlap. The extent to which sovereignty in environmental and social domestic policies setting is jeopardised by WTO case law can be approximated first by the weigh given to sustainable development concerns in WTO legal texts.

³ See the Doha Ministerial Declaration (14 November 2001), reaffirming « our commitment to the objective of sustainable development » (Paragraph 6 of the Preamble) and the reaffirmed "view to enhancing the mutual supportiveness of trade and environment" (Paragraph 31).

GATT 1994

– Article XX on General Exceptions

Negotiated as early as 1947, Article XX on General Exceptions lays out a number of specific instances in which WTO Members may be exempted from GATT rules. Two exceptions (paragraphs (b) and (g)) are relevant to environmental protection, while paragraph (e) deals with one particular labour standard. The Article XX states that:

"Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

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

(e) relating to the products of prison labour;

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

Article XX(b) and (g) allow WTO Members to justify GATT-inconsistent policy measures if these are either "necessary" to protect human, animal or plant life or health, or if the measures relate to the conservation of exhaustible natural resources. However, the chapeau of Article XX is designed to ensure that such GATT-inconsistent measures do not result in arbitrary or unjustifiable discrimination and do not constitute a disguised restriction on international trade. In case of dispute, the defending party must demonstrate, *first*, that the measure falls under at least one of the exceptions – paragraphs (b) and (g) – listed under Article XX, and second that it satisfies the requirements of the preamble, *i.e.* that it is not applied in a manner which would constitute "a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail", and is not "a disguised restriction on international trade". Measures recognized by panels as dealing with Articles XX(b) and (g) are given in *Box 1*.

Sustainable development in other WTO Agreements

The Agreements negotiated during the Uruguay Round contains also explicit references to sustainable-development based WTO rules exemptions. We read through the main ones in what follows⁴.

⁴ This sub-section draws extensively on WTO Trade and Environment Background Report, http://www.wto.org/english/tratop_e/envir_e/envir_backgrnd_e/contents_e.htm.

Box 1

Examples of possible exemptions under Gatt Article XX

Article XX(g). Measures recognized by panels as dealing with the conservation of exhaustible natural resources :

- the conservation of tuna stocks;
- the conservation of salmon and herring;
- the conservation of dolfin stocks;
- the conservation of petroleum;
- the conservation of clean air;
- the conservation of sea-turtles.

Article XX(b). Measures recognized by panels as dealing with the protection of human, animal or plant life or health:

- against the consumption of cigarettes;
- to protect dolphin life and health;
- to reduce air pollution resulting from the consumption of gasoline;
- to reduce the risk posed by asbestos fibres.

The General Agreement on Trade in Services (GATS) contains a General Exceptions clause in Article XIV, similar to that of GATT Article XX. In addressing environmental concerns, GATS Article XIV(b) allows WTO Members to maintain GATS-inconsistent policy measures if this is “necessary to protect human, animal or plant life or health” (which is identical to GATT Article XX(b)). However, this must not result in arbitrary or unjustifiable discrimination and must not constitute disguised restriction on international trade. The Article starts with a chapeau that is identical to that of GATT Article XX.

The Agreement on Technical Barriers to Trade (TBT) seeks to ensure that product specifications, whether mandatory or voluntary (known as technical regulations and standards), as well as procedures to assess compliance with those specifications (known as conformity assessment procedures), do not create unnecessary obstacles to trade. In its Preamble, the Agreement recognizes the right of countries to adopt such measures at the level which they consider appropriate, and recognizes in Article 2.2 the protection of human, animal or plant life or health, and the protection of the environment as being legitimate objectives for countries to pursue. Eco-labels, which may be of particular interest for developing countries (as in the case of wood and oil palm products) are debated within such an agreement (Box 2).

The Agreement on Sanitary and Phyto-Sanitary measures (SPS) is very similar to the TBT Agreement, but covers a narrower range of measures. It covers measures that are taken by countries to ensure the safety of foods, beverages and feedstuffs from additives, toxins or contaminants, or for the protection of countries from the spread of pests or diseases. It recognizes the right of Members to adopt SPS measures but stipulates that they must be based on a risk assessment, should be applied only to the extent necessary to protect human,

animal or plant life or health, and should not arbitrarily or unjustifiably discriminate between countries where similar conditions prevail. Article 5.7 of the SPS Agreement allows Members to take SPS measures in cases where the scientific evidence is insufficient, provided that these measures are only provisional, and that a more objective assessment of risk is being conducted.

Designed to enhance the protection of intellectual property rights, the Agreement on Trade-

Related Aspects of Intellectual Property Rights (TRIPS) makes explicit reference to the environment in Section 5 on Patents. Article 27 of Section 5 states that Members may exclude from patentability inventions, the prevention of which within their territory is necessary to protect, amongst other objectives, human, animal or plant life or health or to avoid serious prejudice to the environment. Under the Agreement, Members may also exclude from patentability plants and animals other than micro-organisms, as well as essentially biological processes for the production of plants or animals. However, Members must provide for the protection of plant varieties either by patents or by an effective *sui generis* system or a combination of the two.

Environment-related disputes

Article XX of the GATT for has been invoked on three occasions or “disputes” over conflicts between trade and the environment⁵.

⁵ Readers interested in trade and sustainable development disputes under WTO Agreements – and not only in Article XX effective application, will find substantial material on the WTO website we can only refer to for length reasons <http://www.wto.org>.

Box 2

The Processes and Production Methods (PPMs) Issue

A particularly thorny issue in the eco-labelling debate has been the use of criteria linked to the Processes and Production Methods (PPMs). WTO Members agree that countries are within their rights under WTO rules to set criteria for the way products are produced, if their production method leaves a trace in the final product (e.g. cotton grown using pesticides, with there being pesticide residue in the cotton itself). However, they disagree over the WTO consistency of measures based on what are known as “unincorporated PPMs” (or “non-product related PPMs”) – i.e. PPMs which leave no trace in the final product (e.g. cotton grown using pesticides, with there being no trace of the pesticides in the cotton). Many developing countries argue that measures which discriminate between products based on unincorporated PPMs, such as some eco-labels, should be considered WTO inconsistent.

The issue of unincorporated PPMs has triggered a legal discussion in the WTO on the extent to which the TBT Agreement covers and allows unincorporated PPM-based measures. Currently, a major challenge to the effectiveness of the TBT Agreement is the increasing use (not only in the area of the environment) of process-based, as opposed to product-based, regulations and standards. This may require added reflection on the rules of the TBT Agreement relating to equivalence and mutual recognition, as a means of addressing the problems posed by differing environmental standards across countries. On equivalence, the TBT Agreement urges countries to recognize the equivalence of the norms set by their trading partners, even when they differ from their own, provided they achieve the same final objective. For developing countries, the recognition of the equivalency of their own certification systems is an area of particular concern. On mutual recognition, the TBT Agreement urges countries to recognize the procedures their trading partners use to assess compliance with norms, if they are convinced of the reliability and competence of their conformity assessment institutions. It has been argued that the TBT principles of equivalence and mutual recognition could have useful applications in the labelling area, where Members could come to recognize the labelling schemes of their trading partners, even where they are based on criteria that differ from their own, provided they succeed in achieving the intended objective.

Extracted from WTO Trade and Environment Background Report, 17-18.

The US Gasoline case

The US Gasoline case, wherein Venezuela and Brazil pursued the US 1990 Amendment on Clean Air Act promulgating the Gasoline Rule on the composition and emissions effects of gasoline, in order to reduce air pollution in the US on the ground that it discriminated in favour of US refiners. The Panel found that the Gasoline Rule was inconsistent with Article III, and could not be justified under paragraphs (b), (d) or (g). On appeal of the Panel's findings on Article XX(g), the Appellate Body found that the baseline establishment rules contained in the Gasoline Rule fell within the terms of Article XX(g), but failed to meet the requirements of the chapeau of Article XX.

The US Shrimp case

In 1997, India, Malaysia, Pakistan and Thailand brought a joint complaint against a ban imposed by the United States on the importation of certain shrimp and shrimp products in virtue of the US Endangered Species Act of 1973 ("ESA") listed as endangered or threatened the five species of sea turtles that occur in US waters and prohibited their take within the United States, in its territorial sea and the high seas. Pursuant to ESA, the United States required that US shrimp trawlers use "turtle excluder devices" (TEDs) in their nets when fishing in areas where there is a significant likelihood of encountering sea turtles. Section 609 of Public Law 101-102, enacted in 1989 by the United States, provided, *inter alia*, that shrimp harvested with technology that may adversely affect certain sea turtles may not be imported into the United States, unless the harvesting nation was certified to have a regulatory programme and an incidental take-rate comparable to that of the United States, or that the particular fishing environment of the harvesting nation did not pose a threat to sea turtles. In practice, countries having any of the five species of sea turtles within their jurisdiction and harvesting shrimp with mechanical means had to impose on their fishermen requirements comparable to those borne by US shrimpers, essentially the use of TEDs at all times, if they wanted to be certified and to export shrimp products to the United States. The Appellate Body found that the measure at stake qualified for provisional justification under Article XX(g), but failed to meet the requirements of the chapeau of Article XX, and, therefore, was not justified under Article XX of GATT 1994.

The European Communities-Asbestos

The EC justified its prohibition on the grounds of human health protection, arguing that asbestos was hazardous not only to the health

of construction workers subject to prolonged exposure, but also to population subject to occasional exposure. Being the second largest producer of asbestos world-wide, Canada contested the prohibition in the WTO. While it did not challenge the hazards associated with asbestos, it argued that a distinction should be made between chrysotile fibres and chrysotile encapsulated in a cement matrix. The latter, it argued, prevented release of fibres and did not endanger human health. It also argued that the substances which France was using as substitutes for asbestos had not been sufficiently studied and could themselves be harmful to human health. The Panel found that the EC ban constituted a violation since asbestos and asbestos substitutes had to be considered "like products". The panel argued that health risks associated with asbestos were not a relevant factor in the consideration of product likeness. However, the Panel found that the French ban could be justified under Article XX(b). In other words, the measure could be regarded as one which was "necessary to protect animal, human, plant life or health." It also met the conditions of the chapeau of Article XX. It therefore ruled in favour of the European Communities. This was the first case where the Article XX exception was effectively triggered.

Compatibilities and conflicts with UN convention and treaties

The 1992 United Nations Conference on Environment and Development also known as the "Earth Summit" drew attention to the role of international trade in poverty alleviation and in combating environmental degradation. Agenda 21, the programme of action adopted at the conference, addressed the importance of promoting sustainable development through, amongst other means, international trade. UNCED has strongly endorsed the negotiation of MEAs to address global environmental problems. Agenda 21 of the Rio Conference states that measures should be taken to "avoid unilateral action to deal with environmental challenges outside the jurisdiction of the importing country. Environmental measures addressing transborder or global environmental problems should, as far as possible, be based on international consensus"⁶.

One possible issue is that several MEAs contain trade provisions. These include trade measures agreed to amongst parties to MEAs, as well as measures adopted by parties to MEAs against non-parties. A possible source of conflict between the trade measures contained in

MEAs and WTO rules could be the violation by MEAs of the WTO's non-discrimination principle. Such a violation could take place when an MEA authorizes trade between its parties in a specific product, but bans trade in that very same product with non-parties (hence, a violation of the WTO's Most Favoured Nation clause, which requires countries to grant equivalent treatment to "like" imported products). Some WTO Members have expressed the fear that MEA-related disputes could be brought to the WTO dispute settlement system. Whereas disputes between two parties to an MEA, who are both WTO Members, would most likely be settled in the MEA, disputes between an MEA party and a non-party (both of whom are WTO Members) would most probably come to the WTO since the non-party would not have access to the dispute settlement provisions of the MEA. They have argued that the WTO should not wait until it is asked to resolve an MEA-related dispute and a panel is asked to opine on the relationship between the WTO and MEAs (WTO, 2005).

No disputes have thus far come to the WTO regarding the trade provisions contained in an MEA. Some WTO Members have argued that the existing principles of public international law suffice in governing the relationship between WTO rules and MEAs. The 1969 Vienna Convention on the Law of Treaties as well as the principles of customary law could themselves define how WTO rules interact with MEAs. The legal principles of "*lex specialis*" (the more specialized agreement prevails over the more general) and of "*lex posterior*" (the agreement signed later in date prevails over the earlier one) emanate from public international law, and some have argued that these principles could help the WTO in defining its relationship with MEAs. Others have argued that there is a need for greater legal clarity (Box 3). Although there has never been a formal dispute between the WTO and an MEA, the *Chile – Swordfish* case, which was suspended before the composition of the Panel, has illustrated the risk of conflicting judgments. In this case, it is likely that both adjudicating bodies would have examined whether Chile's measures were in compliance with the United Nations Convention on the Law of the Sea (UNCLOS). The WTO dispute settlement system and the International Tribunal for the Law of the Sea (ITLOS) could have reached different conclusions on factual aspects or on the interpretation of the provisions of the Convention.

Conclusion

Trade and sustainable development get closely interlinked today, at least in official agendas and legal texts from UN and the WTO. Sustainable is mentioned as an explicit objective of the WTO, while UN Agenda 21, the programme of

⁶ United Nations, Agenda 21: The United Nations Programme of Action from Rio. Chapter 2.

Box 3

Multilateral environmental agreements and the WTO

Ministers from WTO member countries agreed to launch negotiations on the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements. The negotiations will address how WTO rules are to apply to WTO members that are parties to environmental agreements.

There are approximately 200 multilateral environmental agreements in place today. Only 20 of these contain trade provisions. They are discussed in the WTO's Committee on Trade and Environment (CTE).

For example, the Montreal Protocol for the protection of the ozone layer applies restrictions on the production, consumption and export of aerosols containing chlorofluorocarbons (CFCs). The Basel Convention which controls trade or transportation of hazardous waste across international borders and the Convention on International Trade in Endangered Species are other multilateral environmental agreements containing trade provisions.

The objective of the new WTO negotiations will be to clarify the relationship between trade measures taken under the environmental agreements and WTO rules.

So far no measure affecting trade taken under an environmental agreement has been challenged in the GATT-WTO system.

Source: WTO (2005)

http://www.wto.org/english/tratop_e/dda_e/dohaexplained_e.htm#environment

action adopted at the Earth Summit Conference in 1992, addressed the importance of promoting sustainable development through, amongst other means, international trade. The Plan of Implementation adopted at the World Summit on Sustainable Development in Johannesburg in 2001 has reiterated the need to support voluntary, WTO-compatible market-based initiatives for the creation and expansion of domestic and international markets for goods which are environmentally friendly.

The examination of WTO texts and case law provide two broad results on the balance of threat and opportunities the WTO rouse for its members in the perspective of sustainable development goals attainment.

The first result is that while environment is increasingly incorporated into the WTO rights and obligations' legal framework, the social dimension of sustainable development is merely absent. The only mention made regards prison labour. In spite of US protracted efforts since WWII to include the International Labour Organization (ILO) core labour standards into WTO so as to protect US market against "unduly" cheap labour imports, ILO and the WTO remain disconnected. This is true as well for poverty reduction concerns that developing countries might rouse, requesting a temporarily escape from WTO disciplines. Stringent conditions imposed by the International Financial Organization on recipient developing countries' trade policies – and especially least-developed countries' trade policies – still over-restrict trade disciplines embodied by the WTO.

The second result is that effective restrictions on trade for either health or natural resource preservation are extremely rare. Article XX of the Gatt, allowing for such a restriction ("exception" is the appropriate word), cannot be referred to as long as WTO members omit to abide to non-discriminatory principles in their trade policies. Whatever the reasons one country requests to escape WTO rules, it has to do so while treating its trading partners on the same foot.

These two results may reassure those developing countries that fear a "new" or "green" protectionism (which seems more fantasized than real in so far) from rich countries. Does it all suggest that WTO principle-compatible trade and sustainable trade is the same animal? The case law would rather suggest that WTO and its sustainable development objective seems more an organisation aimed at preventing countries from using sustainable development as a fallacious argument for trade restriction than an organisation dedicated to promoting sustainable trade per se. ■

The Chile - Swordfish Case

Facts

Swordfish migrate through the waters of the Pacific Ocean. Along their extensive journeys, swordfish cross jurisdictional boundaries. For ten years, the European Communities and Chile have been engaged in a controversy over swordfish fisheries in the South Pacific, resorting to different international law regimes to support their positions. However, the European Communities decided in April 2000 to bring the case before the WTO, and Chile before the ITLOS in December 2000.

Proceedings at the WTO

On 19 April 2000, the European Communities requested consultations with Chile regarding the prohibition on unloading of swordfish in Chilean ports established on the basis of the Chilean Fishery Law.

The European Communities asserted that its fishing vessels operating in the South East Pacific were not allowed, under Chilean legislation, to unload their swordfish in Chilean ports. The European Communities considered that, as a result, Chile made transit through its ports impossible for swordfish. The European Communities claimed that the above-mentioned measures were inconsistent with GATT 1994, and in particular Articles V and XI. On 12 December 2000, the Dispute Settlement Body (DSB) established a panel further to the request of the European Communities. In March 2001, the European Communities and Chile agreed to suspend the process for the constitution of the panel (this agreement was further reiterated in November 2003).

Proceedings at the ITLOS

Proceedings in the *Case Concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean* were instituted on 19 December 2000 at the ITLOS by Chile and the European Communities. Chile requested, *inter alia*, the ITLOS to declare whether the European Communities had fulfilled its obligations under UNCLOS Articles 64 (calling for cooperation in ensuring conservation of highly migratory species), 116-119 (relating to conservation of the living resources of the high seas), 297 (concerning dispute settlement) and 300 (calling for good faith and no abuse of right). The European Communities requested, *inter alia*, the Tribunal to declare whether Chile had violated Articles 64, 116-119 and 300 of UNCLOS, mentioned above, as well as Articles 87 (on freedom of the high seas including freedom of fishing, subject to conservation obligations) and 89 (prohibiting any State from subjecting any part of the high seas to its sovereignty).

On 9 March 2001, the parties informed the ITLOS that they had reached a *provisional arrangement* concerning the dispute and requested that the proceedings before the ITLOS be suspended. This suspension was recently confirmed for a further period of two years in January 2004. Therefore, the case remains on the docket of the Tribunal.

Source: WTO Trade and Environment Background Report.