

## Session One: Special Preferences and special and differential treatment

**Rolf Moehler:** The advantages of special preferences are obvious. Countries with special preferences have better access than other developing and developed countries to a given market. If the market is being supported in the donor country, beneficiary countries also obtain higher prices than they would otherwise.

The disadvantages have become more obvious. The economies, or at least certain production patterns in beneficiary countries, become too linked to the economy of the donor country. This is a distortion not only for world trade in general, but also for the countries involved because they are not exposed to the competitive forces of world markets. They become dependant on the market of the donor country and this results in inflexible market structure, lack of competitiveness, etc. Furthermore, those developing countries who are not beneficiaries of a given preference scheme are disadvantaged in this system.

However, these special preferences for developing countries are in decline. They are progressively being replaced by free trade agreements and are being eroded by tariff reductions agreed in the WTO negotiating rounds. Yet, because tariff protection in agriculture is relatively high around the world, special preferences still play an important role.

Countries are allowed to give special treatment to developing countries under the generalized system of preferences (GSP). The enabling clause for the GSP however, requires that preferences given under the GSP are given to all developing countries. If a member country wishes to extend special preferences to a specific country or group of countries, it needs a waiver. One option would be to commit countries to phase special preferences out and transfer all of them into the GSP. This would eliminate the discriminatory effect on other developing countries. There are enough problems in the agriculture negotiations in general. It might not be necessary to add this to the list of things that need to be in the new agreement.

It is useful to include the GSP in the negotiations to make it more economically beneficial. Special preferences could be required to: 1) cover substantially all trade; 2) not be quota restricted; and 3) give duty free access, not only a reduced tariff. However, negotiators should be cautious of putting additional obligations on the GSP. Proposing additional obligations may cause developing countries to fear giving up their current preferences. The only improvement that *should* be made is to add an amendment to the enabling clause stating that if a country gets special preferences for a certain product or for all products, the preference should be given for a specific period of time. Otherwise the security of investment and the confidence of investors and traders, which is very important for success in this system, will not be present.

**Timothy Josling:** Non-reciprocal preferences are problematic for exporters outside of the special preference system, who are often developing countries. Therefore, preferences basically give some groups of developing countries preferential access to developed country markets at the expense of other developing countries.

Non-reciprocal preferences can be problematic in particular for competitive exporters of the commodities that are highly protected. There is a simple model of trade creation and trade diversion that economists use to explain this situation. Trade creation comes from the fact that there is additional access created. Trade diversion comes from the fact that the access is from a high cost supplier. Trade diversion is greatest when the MFN tariff is the highest. That is when the preferences tend to be most useful. Furthermore, the more useful preferences are in terms of getting access, the more distortions they create in the recipient country. The recipient country is compensated by an implicit rent from the preference but it is by no means clear that those rents have been used in an appropriate way.

Preferences as a variant of the Article 24 problem to the extent that they raise similar problems as customs unions and free trade areas. Article 24 has constraints: the substantially all trade constraint, no increases in tariffs to others without compensation under Art 24.6, and the fact that the preferences under a customs union or a free trade area have to be 100% preferences.

Should we think about creating new groups of countries for preferences for example, least developed countries, small island economies, etc? It is better to grant technical assistance on a country by country basis rather than give preference to groups of countries who might have very little in common other than their development or geographical status. All the potential groups have the same trade diversion problem, and therefore it is better to improve their market access in other markets and other commodities than to hang on to preferences or grant new preferences.

It is best to review preferential programs on a regular basis rather than have countries graduate from preferences based on income level. There are significant, negative incentives and discontinuities at the time of

graduation. It is better to have a more gradual or stepwise graduation rather than create an income threshold past which a country can no longer have preferences. Preferential access should be reduced along with increases in market access in other countries.

It is possible for the terms of the preferences be improved. For example, the preferences could be bound in WTO schedules. However, if the degree of preference is bound, it would diminish the incentives for reducing MFN tariffs, which is contrary to the whole purpose of the WTO. The key issue is abrupt removal of special preferences. The concerns of beneficiary countries are not so much whether preferences will be gone in the long run, but the significant disincentive to any sort of investment that the threat of removing preferences holds and the significant disruption of major agricultural enterprises if there is an abrupt removal. For that reason, negotiators should be focusing on schedules for phasing out preferences and setting up compensation for the phase out.

The phasing out of special preferences could be handled the way decoupling of price supports was handled in the MacSharry reform of the European Union's Common Agricultural Policy. If the European Union had removed the price support suddenly and had given no compensation there would have been a serious economic and political problem. Countries that receive preferences could be asked to have a plan for the use of the compensation, which could be distributed either as a capitalized lump sum or as digressive annual payments.

Is it possible to calculate the value of the preferences and put that into a technical assistance fund for development? The problem is that there is no guarantee that countries would contribute. Many potential donors do not have former colonies and therefore may not contribute. The contributors would be the United States and the European Union. The European Union has its own plans in the regional economic partnership agreements and the United States has plans for free trade areas with the Andean Pact and Central America as well as for the Free Trade Area of the Americas. If these agreements materialize, few special preferences will remain. Therefore, the issue may be best handled on a direct compensation by commodity for phase out rather than a by a technical assistance fund which might be difficult.

The value of preferences is being eroded from below by better access for other countries. This increases the general access into the developed countries and therefore makes any existing preferences less significant. Their value is also being eroded from above by reductions of MFN tariffs and price supports. It is best for small countries to get compensation where there is significant potential impact on their economy rather than to try to keep special preferences. The task is to find constructive ways to make sure those countries that are seriously affected by the sudden withdrawal of special preferences do not suffer too badly the effects of their withdrawal.

## **Discussion**

### **Do Special Preferences Benefit Beneficiary Countries?**

One seminar attendee asserted that special preferences are important only for specific products. He questioned whether special preferences have really been instrumental in increasing beneficiaries' exports to certain markets. Even where countries have preferences they have lost markets while countries in the Far East and Latin America have taken over. Particularly in economies that are dependant on only one or two commodities, preferences for raw materials exports do not really matter. Preferences matter when the exports are processed products. Agricultural raw materials, for the most part, enter markets with hardly any tariffs. The problem is the lack of skills in market entry rather than lack of market access. Countries might not know how to sell their products, the quality of their products may not be very good, or they are not successful in getting into international supply chains. The standards and the requirements of supply chains are more important than market access barriers.

Josling agreed that market access now is a lot more than just preferences. For example, certain banana suppliers have agreements with certain supermarkets and they are getting more than they ever would through preferences in competition with the Latin American bananas. However, it is difficult to argue that standards in supermarkets are creating a value chains for other products like sugar. Moehler agreed that preferences are less important now than they were and that the supply chain is now sometimes more important. But, there are still important in cases where the tariffs of the donor country are prohibitive. He agreed with Josling that the economic importance of preferences will be eroded over time in part by the reduction in tariffs in the trade negotiations and in part by the reduction of market price support in the donor countries.

One Latin American delegate asked panelists to address preferences given to products that compete with domestic production in the countries granting preferences versus preferences given for products that are not protected. He said that there is a good political message in developed countries that says 'by giving special preferences, we are assisting developing countries while we are able to keep this unfair system within our own frontiers.' For example, in tropical products where market access barriers are not so high, other developing countries have become more efficient than those that have preferences, and have been able to gain a share of

the market previously taken by the countries benefiting from preferences have. Another delegate agreed and emphasized that some of the developing countries that are negatively affected by the special preferences of others have a lower GNP per capita than some of the beneficiary countries

IPC member, Joe O'Mara said it is to the benefit of all WTO members for all preferences to be phased out. However, it cannot be done quickly, and it cannot be done so that countries that are benefiting from preferences do not have time to make adjustments. He offered a solution that takes into account the political as well as the economic aspects: Phase out preferences during the period when complete liberalization in the WTO is being accomplished. For least developed countries, a form of the 'everything but arms' concept should be accepted by all of the developed countries.

A representative of a beneficiary country said that part of the reason developing countries participation was weak during the Uruguay Round was an over-concentration on maintaining preferences regimes, which ignored distortions that occur as a result of trade preferences. He said that it is important for developing countries to promote the productive areas of their economies, especially since most of the countries that are dependant on preferences are also single commodity economies and need to diversify. He maintained that if developing countries continue to rely on the current preference regime, they risk delaying the day when they completely develop the productive bases of their economies and fully integrate into the multilateral trading system. He asked how to maintain the current preferences regime and at the same time achieve the objective of accelerating the integration of these developing countries into the multilateral trading system?

Josling answered that continued integration of the world economy through a lowering of MFN tariffs in to the major markets. As tariffs are reduced, the preference is reduced, but market access in other places is increased. Moehler agreed that improved access to other markets will enable beneficiary countries, along with technical and financial assistance, to open up new markets.

### **Trade Diversion and Trade Creation**

One attendee pointed out that just as trade diversion and trade creation are important when the MFN tariff is much higher, trade diversion is lower when the MFN tariff is lower. In agricultural products that are of export interest to developing countries like coffee and cocoa the MFN tariff is not very high. In products, like fruits and vegetables, which are dynamic in the world market and bring good returns, the problem is not tariffs or trade barriers that are dealt with in the preferential agreements, but seasonal problems. When it is the season that things are grown in Europe, these preferences do not usually work.

### **Graduation from Preferences**

A Latin American delegate encouraged attendees to remember that the idea of graduation of developing countries has come up in other areas of the negotiations and that it would be very difficult if not impossible for many developing countries to accept the concept, fearing that similar graduation standards would be proposed for other areas of the negotiations.

### **Grandfathering of Preferences**

A delegate from a small island developing state acknowledged that his country had benefited from special preferences, but that his country has made good use of the rents obtained from them. He asked the panelists to comment on the notion of grandfathering of preferences.

Moehler granted that the idea of grandfathering is very good, but said that it is a question of whether the other developing countries will accept it. A grandfather clause will prolong the transition while the economic benefits of the preferences diminish.

### **Compensation**

Several delegates from developing countries asked Dr. Josling to elaborate further and maybe provide some examples of compensation as he proposed it in his presentation. Josling gave the example of sugar. He suggested looking at suppliers under the sugar protocol as essentially being EU suppliers. If EU prices change these countries would be eligible in exactly the same way as EU suppliers of sugar for the compensation they would get from the price cut. He conceded that there is a financial cost to that, but contended that is the cost of having a foreign policy that has perpetuated these trading arrangements. Even in cases like bananas, where there is little or no domestic production, Josling said it would be relatively easy to calculate payments to current producers. He suggested calculating payments in the form of a deficiency payment to allow countries to compete at European prices without complexities like quotas. Moehler agreed that compensation is a good idea. He suggested that it should be done in such a way that alternative production will be supported and built up.

One delegate from a small island developing country remarked that all of the discussion had focused on ending special preferences. He pointed out that countries that depend on preferences are small and vulnerable and that they depend on single commodities for exports. They are very limited in terms of diversification. He asked the panelists what the alternatives are for countries that depend on preferences.

Josling pointed out that one problem with relying on rents is that it the difficulty of deciding when to diversify. If you diversify too much you no longer get the rents. He suggested phasing out preferences would help that situation because countries would be able to make use of those rents in a way to diversify the economy. He added that you never know what you can diversify into until you have to.

One delegate from a developing country emphasized the particular importance of technical assistance for small countries. Josling agreed but said technical assistance is not an alternative to compensation, rather they are both needed. He suggested creating specific funds for specific goals rather than a broad fund that would be dissipated in all sorts of other activities.

An attendee asked what kind of approach to compensation could make sure the benefit the producers receive from preferences is preserved. Moehler said that when designing a compensation program, it is important to set up mechanisms that ensure that farmers get the money. It is not always easy to go through governments due to the lack of administrative capabilities in some countries, but he gave examples of other development funds that have successfully gotten money distributed through the government to appropriate recipients. Josling contended that it is better to compensate farmers by channeling the funds through farmers' organizations rather than through governments. It is important that the money does not end up in the hands of trading companies.

### **Special Preferences and Developed Country Domestic Policies**

Josling suggested looking at resolving the preference issue at the same time as resolution in developed country agricultural policy issues. In the particular the case of sugar in the EU market, the preferences under the protocols are quota restricted because the preference is limited. It is not that the Europeans out of the goodness of their heart give the ACP countries access to their sugar market. They give access to everything else and it would include sugar with no quotas if Europeans sugar producers did not have quotas, then quota free access for the other countries would not be terrible. He suggested thinking of the protocols as being exceptions to free access. It is the removal not just of the marginal preference, but also the quota, which restricts the access of these countries into the EU market that we have to look at.

He asserted that with CAP reform there would be a resolution of the system. The Economic Partnership Agreements with ACP countries could be the downfall for the sugar programs in the European Union. He predicted that dairy will eventually go the same way.

## Session Two: Addressing Non-trade concerns

**Robert L. Thompson:** Food insecurity at the household level and poverty are two of the core issues that come into the so-called non-trade concerns. However, there are trade aspects and implications for most of these points. At the individual level food insecurity is a poverty problem. If we solve the poverty problem, we generally solve the food insecurity problem at the household level. At the global level, there is a long-term downward trend in commodity prices with significant volatility around it. In recent years international prices have been depressed relative to that trend. They have been depressed by the export and production subsidies of the high-income countries and by binding tariff rate quotas, which protect individual economies from price variability.

Over the last one hundred-fifty year technological change has expanded supply faster than demand. Forecasts that the world will run out of food have been wrong because they assume static technology. In fact, because of technological change, supply has grown faster than demand and that is the fundamental reason for the long-term downward trend in the real price of food in the world. Food security has not been a problem at the global level up until now. That is in part due to the fact that we have at least 800 million people who are not demanding as much food as they would if they had adequate purchasing power.

At the national level, a country has to either produce the food supply that its people need and demand, or have adequate foreign exchange earning potential to buy enough food on the international market. Virtually every developing country's agricultural sector is under-performing relative to its potential consistent both with economic efficiency and environmental sustainability.

There is a close relationship between the type of agricultural production system, the effect of public policy on that system, and in turn protection of the soil, water, forests and issues such as the amount of chemical applications per hectare and the intensity of animal agriculture. The World Bank's recent Rural Development strategy predicted that global demand for food would double by 2050 with half of the growth coming from population growth and half from income growth. Yet, according to the FAO there is at most 10% more land available to be brought into production that's not erodable, subject to desertification or presently forested. There will be keen competition between agriculture and forestry for the remaining available land in the future. If we want to protect forested areas, we have to almost double average productivity of agricultural land during the first half of the 21<sup>st</sup> century. Increasing food production by cutting trees would cause loss of biodiversity, wildlife habitat, and carbon sequestration capacity.

Direct payments are more efficient than price distortions in achieving environmental benefits because environmental effects do not have a high correlation with the volume of production of any individual commodity. Moreover, while developing countries accept the importance of protecting the environment, they realize that high-income countries abused and exploited their environments when they were at similar stages of development. Therefore, if protecting the environment in developing countries is essential to the well being of high-income countries, the high-income countries ought to pay for environmental services.

Under-investment in Green Box measures is contributing to problems in each of these areas. Policies that artificially depress the price of food and inflate the price of inputs result in lower food production and artificially cheap food. This benefits those who spend the largest percentage of their income on food, but depresses the income earning potential of the already lowest income members of society, the farmers. A direct food subsidy is more efficient if a government is trying to keep the price of food low to urban consumers. Agricultural policy in the form of price distortions has a very weak effect on rural development. There is a small multiplier within the rural community if benefits are concentrated in the hands of rich farmers. When benefits are distributed in proportion to sales the largest and richest farmers get most of the benefits and the wealthiest farmers often do not keep money in the rural areas, rather they spend it on imports or goods produced in cities.

The development box is a valuable concept from the political perspective, since this is the 'Doha Development Round,' but I have not seen anything in the development box proposals that is worth doing that cannot be accomplished in the Green Box.

**Joe O'Mara:** The answer to the question of whether or not non-trade concerns are dealt with in the Uruguay Round text on domestic support is yes. The Uruguay Round domestic support provision defined support to producers of agriculture in terms of trade-distortive or non-trade distortive domestic support. The distinction is defined in terms of how support is delivered, not the rationale for the support. Whether there is an environmental justification or a rural development justification is irrelevant.

There is no need to change any rule that is currently in the Uruguay Round Agreement on Agriculture to accommodate non-trade concerns. If there were to be an attempt to justify the policy, environmental or otherwise, it would erode the basic concept of the domestic support provisions. The WTO is a of general rules, not specific rules. No negotiator can conceive of situations that may develop ten or fifteen years out. If we make the mistake of getting very specific, we run the risk that the rules over time will have no value. What equates all of us as members of the WTO whether developed or developing countries, are the rules. That makes all of us equal. Not only is it not necessary to change the current rules, it would be a mistake.

### **The Green Box**

One attendee pointed out that although developed countries used distorting policies in the past met their commitment to the WTO by reducing their expenditures in Amber Box policies, they have now been able to shift most of them to the Green Box. That is a good thing to the extent that the Green Box is not production and trade distorting. To the extent that it is, there is a problem. Another attendee agreed and said that it does not help producers in the developing world if by shifting support to the so-called non trade-distorting category, the amount of production of that particular commodity has not come down.

A delegate asked why Annex Two was drafted to classify “minimally trade distortive measures” as Green Box measures. O’Mara answered that there is no such a thing as a totally non-trade distortive trade policy. However, paragraph six of the Uruguay Round Agreement on Agriculture defines those policies that are considered so in the WTO. O’Mara contended that Paragraph Six clearly does not need to be changed since there have not been any challenges to any policy that a member has been using under it. To this, a delegate replied that the Peace Clause impedes challenges to Paragraph Six, but that after its expiration there may be challenges.

Thompson agreed that there are instruments in the Green Box that are production distorting and therefore trade distorting. He broke the Green Box into two parts. One part is the income transfer, and the other is investment in provision of public goods by society. He said that it is useful to distinguish between these because it helps keep the public goods investments separate and distinct and these investments should not be capped since developing countries have a history of under-investment in those public goods that are necessary for both agricultural and non-agricultural rural development.

A developing country Ambassador pointed out that developing countries in the WTO have different levels of means to take advantage of tools such as the Green Box. Some countries will benefit from increased market access, but some rely on export earnings that they receive through preferences. He asked what will happen to those who are going to lose resources and how will they address their non-trade concerns. He asked if it is a satisfactory result if, in the name of trade liberalization, we celebrate that developing countries were exporting an average of 4% and now they are exporting an average of 15% if reality is that for some countries it is 100% and for others it is -20%.

### **The Development Box**

One seminar attendee asked Thompson to elaborate on his statement that Green Box measures are sufficient to achieve any of the measures that could be achieved with the proposed Development Box. Another attendee agreed that to a large extent the development box does not contain anything that is not covered by the existing parameters, but said that to some extent, the Development Box as proposed by a number of countries goes beyond domestic support parameters. To the extent that the alternatives can be generated through infrastructure development and growth in services sector, etc, developing country governments will try to do it. The delegate maintained that some countries do not have resources available in other sectors of the economy and the Development Box also deals with those kinds of concerns.

Thompson argued that if developing countries do not have sufficient resources to invest in the Green Box, they do not have sufficient resources to invest in a lot of the price distorting measures suggested in many Development Box proposals. He added that in most developing countries, Green Box investments could come from foreign aid, borrowing from regional development banks, or the World Bank. Public sector investments are made, but because most of the political clout is in the cities most of them go to urban areas even though the majority of the poor live in rural areas.

One delegate encouraged developing countries to use the flexibility available in the Green Box and the exceptions in Article 6.2. He pointed out that the two key restrictions that keep developing countries from making use of the flexibility available in the Agreement on Agriculture, a lack of resources and a lack of infrastructure. Further it is difficult to set up, implement and manage national programs. These are often larger restrictions than the rules of the agreement themselves. He suggested rather than trying to enhance existing provisions the

interest of developing countries could focus on enhancing provisions that would have a greater value added such as seeking more market access.

### **Developed Country Domestic Support**

A delegate asked the panelists their opinion on whether trade distortive domestic support in developed countries, including some Green Box programs, may damage rural development in developing countries by diverting from investment flows. He gave an example that a bank would and should lend money to a farmer who receives a lot of subsidies, but not to a farmer in a developing country who does not.

Another delegate asked O'Mara to address his assertion that the WTO should address non-trade concerns only from the viewpoint of Green Box measures, which are non-trade distorting domestic supports. He pointed out that the current agriculture agreement contains many export restrictions and export taxes. From the viewpoint of economics, export taxes have the same effect as trade distorting support and trade restriction has the same effect as distorting import restriction. O'Mara agreed that export restrictions of any kind are trade distorting. He said that an attempt was made in Article 12 to at least address concept that these policies are trade restricting and there needs to be consultation among WTO members if they are invoked. Unfortunately there's no penalty if they are invoked.

Thompson asserted that the huge income transfers to American and European farmers at the moment are all capitalized into the price of land. He said the policies are counter-productive in transferring income to farmers. Rather they are wealth enhancers for the landowners. He further asserted that the same thing applies to the value of quotas. The only people helped by quotas are those who get the quotas when they are offered free at the beginning. As soon as they have changed hands once the price has internalized the entire benefit of the income transfers and it becomes part of the capital cost of production. These policies force agriculture to have higher capital costs and the investment capital could be used much more productively elsewhere in society.

### **Food Security**

A developing country Ambassador pointed out that there is another dimension to food security other than production. That is the procurement of food. In certain developing countries food production is simply impossible. In these cases, it is the means of food procurement that is important and this is the non-trade concern. Thompson agreed that it is often a procurement question and further noted that one could argue that in today's world, in which there is an excess of cereals, that it is not a shortage of grain, rather it is a shortage of purchasing power.

### Session 3: Addressing Consumer Issues

**Willem Jan Laan:** A predictable rule-based system in the WTO has the support of the food industry and we hope that the WTO members will adhere to the time frame and agenda set.

Geographical indications are a TRIPS issue. The TRIPS text refers to geographic indications in Articles 22-24. In Article 22, the system of notification and registration for wines is called for and the Doha Agreement extended this to spirits. Interested countries should provide sufficient, transparent information concerning geographic indications. Article 22 of the TRIPS agreement already allows members to use geographic indications in general. Do we need a proper registration system for wines and spirits before we talk about an extension?

The basis for using a precautionary approach in the international arena is the Rio Declaration. The Rio Declaration spells out specifically what is meant by the precautionary approach with regard to environment and development. For environmental purposes solutions should be based on the Rio Declaration. With regard to food and food safety, Articles 2.2 and 5.7 of the SPS agreement apply. Article 5.7 says that for food safety, under the current SPS agreement individual countries have the possibility to apply appropriate food safety standards. Currently there is no need to amend or renegotiate the SPS agreement. Nevertheless, the EU wants clarification with regard to the relationship between precaution and the WTO rules in order to reduce trade frictions, promote predictable regulation and assure that precaution is not at use for protectionist purposes.

In "Achieving Public Confidence in the Global Food System," the IPC stated that there are no satisfactory alternatives to a science-based system. As soon as you step away from a science-based system, you are undermining the WTO rules-based approach. Efforts should be made to improve the quality and comprehensibility of scientific advice. From a business point of view, it is not acceptable to have a case begin and fifteen years after the event, to still be looking for scientific material. It should be possible to have a system in place where you can agree on modalities in order to unite scientific experts. Experts themselves should work out solutions within the Codex framework.

Labeling is a regulatory issue, but it is not only a regulatory issue. The Committee on Trade and the Environment included in the Doha text a commitment to give attention to labeling for environmental purposes. The European Union believes that there is a need to establish a more systematic work program on labeling by the TBT committee. However, any discussion must not undermine existing TBT rules, nor create scope for protectionism and take full account of the needs of developing countries.

**João Magalhães:** It is important to recall the basic elements of the SPS agreement. It is the only agreement that deals with the notion of precaution. But it is not only Article 5.7 that deals with precaution. Article 2.2 requires scientific evidence for sanitary and phyto-sanitary measures. In the process of scientific risk assessment, there is already incorporated an element of precaution. The preamble of the SPS agreement itself also addresses the issue of precaution. Again, the agreement recognizes the sovereign right of members to establish their own level of protection, then it elaborates on the different provisions that allow members to do so.

Article 5.7 goes a bit further, but when the agreement was negotiated it did not deal with the issue of precaution. It was dealt with situations where a disease or pest could come in and create an emergency in a country where that disease or a particular pest did not exist. The possibility of action in Article 5.7 of the SPS Agreement is a provisional measure. The fact that a government of is faced with an emergency situation or a situation where scientific evidence is not sufficient does not mean that the government can invoke Article 5.7 and do nothing about it. The Article very clearly says the government has to look for further information and upon finding it, the country has to change existing measures to put them in conformity with the new evidence found.

It is clear that today neither the SPS agreement nor the TBT Agreement is on the table for negotiation. In the Uruguay Round, however, many things that were not originally on the table were negotiated. Some countries may want to obtain a clarification of the precautionary approach and other countries have other areas of concern that they would like to be clarified with regard to the SPS agreement. There seems to be no clear alternative to a science-based approach within the context of the WTO. The SPS Agreement is a difficult agreement for developed countries to implement and even more so for developing countries.

**Timothy Josling:** Obviously, one has to take consumer concern seriously. The question is which consumers are being discussed, those who vote with their dollars, those who vote at the polling booth, or those who lobby. Let me contrast the old system of protection addressed in the SPS/TBT agreements and also geographical indications and TRIPS. Here governments, through the Uruguay Round, devised trade rules to make it easier to say no to the producers that were trying to use these systems for protection. Now there are consumers and

consumer groups lobbying governments for their own protection. They are skeptical that the SPS and TBT agreements protect them at all and argue that they really only protect the producers. Governments are now trying to figure out how to react to the fact that we now have some very powerful and effective consumer groups.

Governments are reacting in two ways. One is the safe approach or the substantial equivalency approach. These governments let the private sector chase the consumer dollar and merely act as a referee and hope that the credibility of the health authorities themselves reassure the public. Another approach is to join the fray, to react to consumer pressures, to mandate labeling, to scrutinize new technologies if there is any concern at all, and shift the burden of proof using the precautionary principle. The phrase 'precautionary principle' needs to be used carefully because it can become a shield for scientifically dubious regulatory decisions. Can the two approaches coexist? Can there be both voluntary and mandatory labeling systems in the WTO in the world trade system?

The answer is yes but at a cost, and that cost might be worthwhile bearing. The cost of forcing the voluntary countries into mandatory labels may not be worth the effort. In fact, they may create expensive control systems that hurt poor consumers and poor countries and delay the new technology that could create great benefit. Forcing the mandatory countries to move to voluntary labels through the WTO risks undermining its credibility because it appears to put trade ahead of food safety. Therefore, the best notion is to muddle through with segregated markets, hope the irrelevant information is ignored, and eventually can be dropped from the labels. Some people have argued that these two systems cannot coexist because the mandatory labeling system will drive out the other, that everyone will have to follow the EU system of mandatory labeling because the European Union is such a large market. However, the United States is a very large market as well and it is possible at some cost for both these systems to coexist.

Geographic indications and country of origin labels are a different problem. Consumers are not arguing for geographic indications. These are producer concerns in the name of consumer information. Geographic indications are pitting new producers against old producers, in other words pitting those who have the rents against those who do not. Geographic indications are not trade expanding for agricultural goods. Trademarks are a better way to go.

Country of origin labeling is a dangerous mixture of motives. It is a proxy for a process label. The best solution is: leave information on quality attributes to the private sector where health is not an issue; to police claims vigorously; search for negative side effects; be cautious in risk analysis where risks are high and irreversible; develop consumer confidence; and avoid mandatory labeling of quality attributes where quality is subjective, political and cultural.

### **Precaution**

One negotiator pointed out that it is very difficult to discuss precaution in the WTO. She suggested that it may be best to 'face the monster head on' and really discuss it. Emphasizing that she was not speaking on her own behalf, she further suggested that it may be worthwhile to at least clarify Article 5.7 and asked panelists to comment on this. Other seminar attendees agreed.

She specifically asked panelists to comment on the notion of a 'reasonable period of time' and how to deal with a minority opinion. The negotiator reminded attendees that one of the main arguments of the demandeurs of precaution was that this is such an important issue we cannot leave it to the dispute settlement system. They felt that if it was left to the dispute settlement system it would have to be decided on a case by case, which could work to the detriment of developing countries or countries that defend more market access.

Laan pointed out that both parties subject to the beef hormones dispute have welcomed the final outcome as far as the interpretation of the agreements were concerned by the appellate body. He believes that this stance can provide some clarification on the SPS agreement in itself. The dispute, however, has not been settled. The European Union still bans the import of the products and the United States still has counter measures in place. However, food companies are still involved in the dispute because they have to face the measures of the United States when exporting a number of their products there. He suggested that compensation by the European Union would be appropriate in this situation.

Laan asserted that the issues of what is a reasonable amount of time and how to deal with scientific evidence when there is a minority point of view is not an issue to be dealt with by trade negotiators. He suggested that it is an issues that an appropriate number of people in codex framework should deal with.

Magalhães agreed that a precautionary principle might be reflected in a number of different articles in the GATT. With regard to the minority opinion, he thinks that the hormones appellate body came out with a conclusion. He

admitted that the conclusion was not welcomed in the same manner by all of the parties, but agreed that it was welcome and probably explains why the European Union is somehow a bit more confident with the application of the SPS agreement.

### **Consumers**

One delegate asked who has decided what truly are consumers' concerns. Is it governments or is it the pressure groups that are lobbying governments? The delegate brought up a survey that was carried out two years ago regarding concern about GMOs. In this survey, 50% of respondents had never heard of GMOs. The delegate felt that more transparency in fundraising for NGO's may help to clarify the issue.

Magalhães said that the question of what type of consumers you are talking about is beside the point. The negotiators and the policymakers have to take it into account as a new development. He said that there is consumer representation, and we could speculate about their legality their representativity, but they have this fantastic capacity to wake up the media, which the politicians do not have today. He asserted that it is important that negotiators take this into account and discuss the issues and not let solutions come out of panels or appellate body reports.

### **Implementation of TBT and SPS Agreements**

A delegate from a developing country mentioned a proposal on special and differential treatment that was tabled by the African group that every time there is a TBT technical measure or standard, and perhaps also for SPS measures, the country that makes the regulation or measure should be bound to contribute to a fund that would be used to help developing countries abide by these measures.

### **Labeling**

Laan agreed that labeling would add quite a bit of cost. It could be very difficult for certain producing countries, in particular developing countries, to fulfill all of the obligations, which are set by importing countries, usually developed countries. He asserted that if you take the precautionary approach together with labeling provisions and topped by geographic indications and so on, and endorse it with a WTO agreement, it might lead to trade restricting practices, not only for developed, but also for developing countries.