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# ***Sand in the wheels***

*Weekly newsletter - n°79 – Wednesday 02 May 2001.*

## GOOD HAVENS!

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### **Internal Commission Paper On EU-US Trade Disputes**

By European Commission

Note for the attention of the 133 Committee

General overview of EU-US WTO Dispute Settlement Cases

#### **1. INTRODUCTION**

The Community has presently 15 active WTO disputes underway with the United States (list of cases attached). In 11 of these cases it is the Community which is the complaining party, being the defendant only in 4 cases, all in the agricultural sector.

Commissioner Lamy and the new USTR, Robert Zoellick, had the opportunity to have a first exploratory exchange of views on the disputes at their meeting in Washington on 9 March 2001.

Regarding the substance of our offensive cases, a majority of them (7) concerns the US misuse of trade defence instruments (Anti-dumping, CVD and Safeguards) as well as subsidy related issues. Another important category (3) in our disputes with the US relates to Intellectual Property Rights (trademarks, copyrights and patents). Finally, the carousel case reminds us of the permanent risk of unilateral action from the part of the US.

In terms of economic sectors covered, it should be noted that almost half of our offensive cases (5) relate to the steel sector.

As far as procedural steps in the WTO are concerned, 4 out the 10 cases are at the implementation stage (reasonable periods of time for implementation in the 1916 Anti-dumping Act

case and the Homestyle exemptions in Copyright Act case, end respectively on 26 and 27 July 2001), one case is currently examined by a panel and in the remaining 6 cases (amongst which the CVD orders on privatised EU firms, the Byrd amendment and the safeguard cases in the steel sector) consultations have taken place without unfortunately producing any positive outcome. The requests for the establishment of panels are now under consideration.

Dispute settlement activities against the US continue to represent the vast majority of our overall dispute settlement activities: at present there are only 2 pending panel procedures requested by the EC and concerning countries other than the US (1 case against Argentina and 1 against India).

#### **OFFENSIVE CASES**

##### **1.1. Cases on Trade Defence Instruments and Subsidies**

(1) 1916 Anti-Dumping Act (procedural stage: implementation)

The EC (which acted further to a TBR procedure) and Japan won the case they brought against the US concerning the 1916 Anti-Dumping Act. The US has asked for a reasonable period of time to implement the ruling and a WTO arbitrator has ruled on 28 February 2001 that the reasonable period of time for implementation ends on 26 July 2001. Now that the timeframe for implementation has been clearly set, the US authorities should expeditiously take all necessary steps for initiating the legislative change which is required. So far, however, the US Administration has indicated that the political decision on whether the US should comply, offer compensation to the EU or have to



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face possible retaliation is still under consideration.

Two German companies are at present facing a judicial challenge in a US Court in Iowa on the basis of the 1916 Act. There is a possibility that those firms be condemned and that new cases be brought before the law is repeated which is not acceptable. The only way to avoid such a scenario would be that the judge involved in that case suspends the judicial proceedings until the law is repealed. The Judge has refused to suspend the proceedings now. However he has indicated that he could reconsider his position as soon as a proposal to repeal the 1916 Act is introduced in Congress. The Commission is preparing an amicus curiae brief to support a stay in the proceedings. It has also made representations towards USTR in this sense. The Commission will file this brief once the proposal to repeal the 1916 Act is introduced in Congress. In the meantime, the Commission wrote to the Iowa Court to inform it of the WTO arbitration award.

(2) US safeguard on wheat gluten (procedural stage: implementation)

The US has introduced a safeguard on imports of wheat gluten in the form of quantitative restrictions for three years (starting in June 1998). The WTO panel and the Appellate Body (on 22 December 2000) have concluded that the US measure violates the Safeguard Agreement. At the DSB meeting of 16 February 2001, the US was non-committal on its intentions for compliance. In view of the impossibility to reach an agreement with the US, the EC requested on 22 March an arbitration on the determination of the reasonable period of time for implementation. This prompted the US to seriously discuss the issue and the parties eventually agreed on a reasonable period of time expiring on 2 June 2001.

The reasoning adopted by the Appellate Body in order to find the US measure WTO-incompatible differs on several points from that of the panel. In particular, on the issue of causality, the Appellate Body rejects the "isolation test" adopted by the panel, but without proposing expressly an alternative standard. The WTO jurisprudence needs therefore to be clarified on this point. This could happen in the context of the appeal process concerning another US safeguard measure (US - Lamb where the circulation of the report of the Appellate Body is expected by 1 May 2001).

Further to the adoption of the panel and AB reports, the EC has introduced on 24 January 2001 a re-balancing measure under the Safeguard Agreement under the form of a 5 Euro duty on imports of US corn gluten feed up to 2.730.000 tonnes. This measure, which has nothing to do

with retaliation but simply with the right to rebalance WTO concessions, has been challenged by the United States (US requested consultations on 25 January 2001 -see below).

It should be noted that on 31 May 2000 (i.e. after the release of the interim report), the US modified the management rules of the quantitative restriction, and imposed a quarterly management system instead of a yearly one. This late change has made the quota even more restrictive for EC exports. The US authorities are also considering a two-years extension of the WTO-incompatible safeguard.

(3) "Byrd amendment" (procedural stage: consultations)

The "Byrd amendment" signed into law in October 2000 provides that the proceeds from anti-dumping and countervailing duty cases shall be paid to the US companies responsible for bringing the cases. This provision is clearly incompatible with several WTO provisions.

Last 22nd December, the European Union, together with eight other WTO partners (Australia, Brazil, Chile, India, Indonesia, Japan, Korea, and Thailand), requested formal WTO consultations with the US. This joint action is a clear indication of the important systemic concerns that the legislation raises among WTO. Consultations with the US were held on 6 February 2001 but did not lead to any result since the US representative indicated that the Administration (despite the opposition of the previous Administration to the amendment, as expressed during the legislative discussions) will take no steps to convince the Congress to revoke the law. On the contrary, the granting of the subsidies will start as from the new fiscal year. The nine co-complainants are now considering whether to request the establishment of a single panel.

(4) US countervailing measures on privatised EU firms/follow-up to the British Steel case (procedural stage: consultations)

In May 2000, the WTO Appellate Body confirmed a panel's finding that countervailing duties imposed by the US Department of Commerce (DOC) on British Steel's exports of lead and bismuth steel from the UK were in breach of the WTO Subsidies Agreement.

The US has taken the view that the ruling only applies to the British Steel case, and had no impact on the 14 other DOC measures against privatised EU firms (almost all in the steel sector). The change of ownership methodology has also come under some domestic pressure following the loss of the Delverde case in the US Federal Court of Appeals.



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On 13 November 2000, the Community requested consultations with the US under the WTO Dispute Settlement Understanding on the 14 outstanding cases. The consultations were held on 7 and 8 December but did not lead to any progress. While the US admitted, on the one hand, that the methodology used in the British Steel case violated WTO rules, it replaced it, on the other hand, with a methodology which appears to be equally contrary to WTO rules and produces even worst results. In these circumstances, the EC requested consultations also on the new methodology. These were held on 3 April but, predictably, failed to make any progress.

(5) US application of de-minimis rules in AD/CVD sunset reviews (procedural stage: consultations)  
In two cases, DOC has recommended continuation of AD/CVD measures, in spite of the amounts of dumping and subsidy being below the current de-minimis levels. On 8 December 2000, the Commission held WTO consultations with the US on the case of corrosion resistant steel from Germany without achieving any progress. A similar decision has since been taken in an AD sunset review concerning the Italian steel producer, Dalmine S.p.A ("seamless pipe from Italy"), where the dumping margin is also below de-minimis. WTO consultations were also held in this case on 21 March but did not produce any positive outcome. These consultations covered also the issue of the level of evidence required for initiating a sunset review.

(6) US safeguard measures on steel wire rod and welded line pipe (procedural stage: consultations)  
On 1 March 2000 the US introduced two safeguard measures on imports of steel wire rod and imports of welded line pipe, under the form of a tariff increase above a tariff quota. The duration of the measures is three years and one day.

The EC contends that both safeguard measures as well as certain provisions of the US safeguard legislation violate several substantive requirements of the WTO Safeguard Agreement and has requested formal WTO consultations on 1 December. The WTO consultations took place on 26 January 2001 and the Commission is now considering the next steps to be taken. It should be noted that, at the request of Korea, a WTO panel has already been established on these safeguard measures.

(7) Foreign Sales Corporation ("FSC") (procedural stage: 21.5 panel)

The US adopted the FSC replacement legislation on 15 November 2000, failing to comply with the extended deadline granted by the WTO, i.e. 1 November 2000. In spite of this the EC decided to apply the agreement on procedures concluded by

the parties on 29 September. In order not to lose its rights, on 17 November the EC requested authorisation to impose countermeasures for an amount of US \$4 billion. On that same date the EC also requested consultations with the US on the legality of the new legislation. In accordance with the abovementioned agreement, the sanctions procedure will be suspended until the WTO rules on the legality of the new US legislation. This is expected by summer autumn 2001. As regards the definition of the list of products in view of possible sanctions, the Commission services are now considering the best way to manage the industry and Member States consultation process. Our objective will of course be to ensure that any possible negative impact on our industry is minimised.

#### 1.1. Cases on Intellectual Property Rights

(8) Homestyle exemptions in US Copyright Act (procedural stage: implementation)

In the framework of a TBR procedure, the EC has challenged the compatibility with the TRIPS Agreement of the "homestyle exemption" contained in section 110(5) of the Copyright Act (which has been amended in the course of the TBR investigation). This exemption provides that no royalties are due (for example to EC right-holders) when music is played in bars, restaurants or shops via a radio or a TV.

The panel ruled in favour of the EC. The report has been adopted by the DSB on 27 July 2000 as the US did not appeal the ruling. A WTO arbitrator has ruled on 15 January 2001 that the reasonable period of time for implementation ends on 27 July 2001. Since the timeframe for implementation has now been clearly set, the US authorities should expeditiously take all necessary steps for initiating the legislative change which is required. So far, however, the US Administration has indicated that the political decision on whether the US should comply, offer compensation to the EU or have to face possible retaliation is still under consideration.

(9) Section 211 ("Havana Club") (procedural stage: panel)

Section 211 U.S. Omnibus Appropriations Act was adopted by the U.S. Congress in October 1998. It is designed to diminish the rights of owners of U.S. trademarks and trade-names which previously belonged to a Cuban national or company which was expropriated in the course of the Cuban revolution.

Section 211 appears to violate certain provisions of the TRIPs Agreement, notably the provisions on national treatment and most-favoured-nation



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treatment and the provisions on the protection of trademarks and on enforcement.

On 26 September 2000 a WTO panel has been established to rule on the compatibility of Section 211 with the obligations of the US under the TRIPS Agreement.

(10) Section 337 of the 1930 Tariff Act on Copyrights (procedural stage: consultations)

Section 337 of the U.S. Tariff Act declares the importation into the U.S. of articles infringing U.S. intellectual property rights illegal. It authorises the U.S. International Trade Commission (ITC) to investigate allegations of such practices and, if a violation is found, to exclude the articles from entry into the U.S. The procedures and remedies under Section 337 of the US Tariff Act are substantially different from the internal procedures in the case of domestic goods which allegedly infringe US intellectual property rights: notably, the means of defence under the Section 337 procedure are limited. These differences appear to breach the National Treatment clauses of the GATT and the TRIPs agreements, among other provisions.

WTO consultations took place on 28 February 2000. The Commission has reviewed the information provided by the US during the consultations. It seems clear that the US does not want to change its legislation and the Commission is considering the possibility of requesting a WTO panel on this issue.

#### 1.2. Cases dealing with US unilateralism

(11) Carousel (procedural stage: consultations)

WTO consultations have been held in Geneva on 5 July 2000. The 133 Committee has decided in July 2000 that the EC would request the establishment of a panel against the US legislation as soon as sanctions are rotated.

Despite strong rumours that rotation could have taken place by 14 November or 18 November 2000, i.e. within 180 days or 6 months after the entry into force of the law, this did not happen. Very recently, the US authorities indicated again that rotation was imminent. This could be a US bluff aimed at putting pressure on Member States in order to obtain concessions on hormones and bananas.

The two situations where the USTR is not obliged by law to rotate the carousel are (1) when there is a determination of imminent compliance, or (2) when the affected industry agrees not to rotate the sanctions.

#### DEFENSIVE CASES

(12) Bananas (procedural stage: implementation)

After more than one year of discussions with all parties involved, the Commission has concluded that the only way to bring the EC trade banana regime into compliance with WTO was to move to a transitional TRQ system managed under the First-Come, First-Served method, followed by a definitive tariff-only system. FCFS is a non-discriminatory system, because it is based on the product and not on the trader.

The General Affairs Council on 9 October endorsed the Commission's conclusions and the Agricultural Council adopted the formal amendment to Council Regulation (EEC) No 404/93 on 29 January 2001. Discussions are now taking place with respect to the implementing measures necessary to manage the three tariff-rate quotas on the basis of the First-come, First-served method. At his meeting with USTR Zoellick on 9 March, Commissioner Lamy indicated that while the EC would proceed with the implementation work (the transitional regime needs to be implemented by 1 July) some more time was available to look at an agreed solution within the terms of the Council Regulation, before the situation was locked into a replacement system. Further technical discussions were held since then.

The FCFS is transparent, clear, administratively feasible and WTO compatible. Ecuador and US supplier Dole support such an approach. A number of other Latin American suppliers and US supplier Chiquita have objected strongly. They maintain that a share out based on an allocation of licences on a "historical" basis (i.e. reflecting past sales) would be preferred. Ironically, this is one of the principal criticisms by the WTO Panel of the current EC regime which then led the US to imposing sanctions. A WTO vulnerable regime along these lines could only be considered if all parties - especially Ecuador - were to agree.

(13) Hormones (procedural stage: implementation)

On the basis of the studies reviewed by the Scientific Committee on Veterinary Matters relating to Public Health ("SCVPH"), on 5 May 2000 the Commission adopted a proposal to amend the "hormones directive." This proposal provides for a permanent ban of 17B oestradiol, which carcinogenic and genotoxic effects have been clearly demonstrated, and a provisional ban for the other 5 hormones.

This proposal must be approved by the Council and EP under the co-decision procedure, which may take as long as one year. In the meantime, the Community has an interest to convert present US sanctions into compensatory tariff reductions. The US has showed some interest in increased market access for non-hormone treated beef, as



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veterinary measures on US beef were relaxed. However, the drop in the EU market following the BSE crisis and the long lead time needed by US Industry to gear up hormone free production recently damped the prospects for an amicable resolution.

(14) Establishment of customs duties for rice imported into Belgium (procedural stage: panel requested)

The US have requested WTO consultations with Belgium on 12 October 2000 concerning Belgium's application of the cumulative recovery system (CRS), used by the EC to implement the Uruguay Round commitments on imports of cereals and rice, to Master Foods (a Belgian company related to the US company Uncle Ben's and marketing rice under that name). Under the CRS system, the duty paid on imports of husked rice varied according to its declared value, so that rice with a higher value attracted a rebate -- and thus a lower duty.

An investigation by OLAF concluded that the prices invoiced by Master Foods were unjustified. On the basis of the report by OLAF, Belgium was invited by the Commission to consider criminal legal action against Master Foods and not to refund the claims.

Consultations held on 30 November 2000 confirmed that the purpose of the US complaint was essentially to strengthen the position of Master Foods in the litigation presently underway before Belgian courts. The panel requested by the US was established at the DSB meeting of 12 March and is in the process of being constituted.

(15) Tariff-rate quota on corn gluten feed imported from the US (procedural stage: consultations)

The tariff-rate quota adopted by the Community in accordance with the specific provisions of the WTO Safeguard Agreement entered into force on 24 January 2001 further to the adoption of the panel and Appellate Body reports which found the US Wheat Gluten safeguard measures incompatible with WTO rules. The quota aims at re-balancing WTO concessions and has nothing to do with retaliation. It will obviously stop to be applied as soon as the US safeguard measure on wheat gluten is withdrawn, because in that situation there would be no need anymore for a re-balancing.

The US requested on 25 January WTO consultations which it justified mainly on alleged procedural violations by the EC.

#### LIST OF ACTIVE EU - US WTO DISPUTE SETTLEMENT CASES

##### 1. Offensive cases

- 1) 1916 Anti-dumping Act
- 2) US Safeguard on wheat gluten
- 3) "Byrd amendment"
- 4) US countervailing measures on privatised EU firms (follow-up to the British Steel case)
- 5) US application of de-minimis rules in AD/CVD sunset reviews
- 6) US Safeguard measures on steel wire rod and welded line pipe
- 7) Foreign Sales Corporation (FSC)
- 8) Homestyle exemptions in US Copyright Act
- 9) Section 211 (Havana Club)
- 10) Section 337 of the 1930 Tariff Act on Copyrights
- 11) Carousel

##### 2. Defensive cases

- 12) Bananas
- 13) Hormones
- 14) Establishment of customs duties for rice imported into Belgium
- 15) Tariff-rate quota on corn gluten feed imported from the US (re-balancing measures to US safeguards on wheat gluten).

#### WTO Tidbits

By the Attac work group on International Treaties, Marseilles

- 1) The US lists measures disapproved of in its trading partners

On March 30th, 2001, the Office of the US Trade Representative published its Annual Report for 2001 on Obstacles to Foreign Trade.

Follows a region-by-region summary :

**Africa :** 8 sub-Saharan countries are reviewed. The US is pleased about their reduction of customs dues but considers that these "are still too high in certain countries and certain sectors". Particularly criticized are "the ineffective implementation of intellectual property rights, costly customs delays" and general "corruption".

**Canada :** Although this country is the main trading partner of the US, the report points out that a certain number of problems "jeopardize that cooperation". The US "is still concerned by the non-application of market principles in the Canadian system of forest management" contained in the 1996 US-Canada agreement on logging which runs out on 31st March 2001. Elsewhere, the Canadian Wheat Office "continues to enjoy monopoly status, with the government's





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approval, as well as other privileges which limit competition." Although Canada "was committed to bringing its export subsidies on dairy products into line" with WTO rulings on January 31st this year, "it has adopted programmes which have quite the opposite effect, essentially reproducing the previous system". This has led the US to "request WTO authorisation to suspend trade concessions with this country if the complaint is judged valid."

China : The US considers that "sanitary and phytosanitary norms are employed to create barriers for the import of products which will benefit from lower customs duties once China enters the WTO". Certain "products, from cosmetics to medical material, are subject when imported to safety and quality inspections which are redundant" [since they have already passed these tests in America] "and which come very expensive". Import of agricultural products (wheat, fowl and citrus fruit) "has been arbitrarily blocked" according to the American report. The lack of transparency concerning "the notification and application of existing Chinese rules and regulations is a problem for the business world." The system of protection for intellectual property rights has been improved; but "copyrights are still pirated and products still imitated on a large scale".

European Union : Several EU policies "are still putting obstacles in the way of US economic interests" : "rulings on bananas; prohibition of US hormone beef and GMOs; state financial aids for the aeronautical industry; European norms and certification procedures substantially different" from those in the US.

India : "continues in a big way to raise barriers to import of US products" : "high customs duties, plus a number of non-tariff measures, in particular a costly system of attribution of import licences". The protection of intellectual property rights has been shown to be ineffective" [India is one of the countries targetted by US pharmaceutical labs for the manufacture of generic medicines]. Contested at the WTO Organ for Settling Disputes, the Indian policy consists in linking automobile import to investments, to local participation in the end product, and to the state of the trade balance."The recent introduction by India of new labelling regulations and other normative requirements could have negative repercussions on US exports to India".

Japan : Persistent market access barriers, structural rigidities and "excessive rules and regulations make it difficult for US firms to trade with Japan"; The 2001 Report suggests that Japan revise its Trading Code (which establishes the framework for trade in Japan). The US is particularly concerned by "barriers in the telecommunications sector (evaluated at 131 billion dollars)", and also by "ever more barriers in the Japanese agricultural market, notably with regard to US rice". [In 1999, Japanese imports of this product dropped from 8% of total consumption (corresponding to GATT obligations) to 2.5%]. Japan (again according to the report) should "conform to WTO rulings in favour of the US on plant variety tests" [tests set up by Monsanto et al.? Up to now, Japan has always refused to import or distribute GMOs].

Korea : High customs duties and other means designed to limit imports combine to severely restrict access to its markets for US products. The Korean automobile market remains practically closed to US groups.

The country imposes high duties and maintains other barriers to a large number of products in the sectors of agriculture and fisheries. The US also complains about the "recent governmental measure on loans, which would have a negative impact on the country's restructuration efforts", and which they judge to be "contrary to Korea's commitments at the WTO". The protection of intellectual property rights in Korea also strikes them as "causing a serious problem". And finally, the involvement of the Korean government in its steel industry has long been a subject of concern to the US.

Mexico : The second most important bilateral trading market for the US, and the export market which has developed the most quickly in the past seven years [NAFTA has really been a boon ... for the US].

But even this "good pupil" could do still better: Certain subjects of prime importance have not yet been brought into line with the country's commitments at the WTO. "It has failed to secure market competitiveness in international services". It has defaulted on its obligations "to apply the rules to prevent Telmex, Mexico's main telecom service, from engaging in anti-competitive policies".

The question remains to know whether all these far from trifling subjects of complaint will be susceptible to solution "by consensus".

2) The EU-US banana dispute ends with a US win

The EU has abandoned its initial "first-come-first-served" banana import project, and instead set up a new transitional system, which will last until 2006, when it will be replaced by a system of customs dues (without quotas). Until then, the EU will employ a system of import licences for bananas which will be granted in accordance with the previous trade period (1994 – 96), which is what the US wanted. Consequently, the US will suspend sanctions imposed on the EU (amounting to the equivalent of 191 billion dollars of European goods exported to the US). P. Lamy described this agreement as a "balanced compromise between the different interests concerned" [he must have erased ACP countries from his memory] He did however add a reminder that the agreement has to be validated by the European Council of Ministers and the EP.

It will be recalled that dollar-bananas represent ¾ of EU imports. It's certainly a "compromise", but hardly a "balanced" one.

The silver lining is that the new scheme should guarantee a share of the market to ACP countries, although the special quota of 750,000 TM reserved for them is lower than the 850,000 originally proposed.

For the German Minister of the Economy, this agreement signals a positive trend towards reconciliation in EU-US relations, and should have a positive influence on the launch of a new Round.

Lets just mention that Chiquita (claiming to have been driven to the wall by the previous system, and demanding \$525 billion from the Commission in consequence!!) declares itself satisfied with this agreement, which should lead to a "partial reconquest" of the EU market. Chiquita did indeed realise great sales on the EU market in 1994-96!

But Ecuador, top world exporter, and Dole, Chiquita's rival, remain adamantly opposed to the agreement. They support the "first-come-first-served" model. Ecuador accuses the EU and the US of clinching this deal behind its back, and is taking the matter to the WTO, considering the agreement to be contrary to its rules unless the EU modifies its position. If no other arrangement is made, Ecuador wants the reference period to be 1995-97, when the Andine Community exported more to Europe. For Dole, the new agreement gives to one single company a dominant share of the market, locked into the closed system of European quotas.

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## Good Havens!

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In Brittany and in the Pyrenees, the haven-hunting season begins on the June the 9th.

In the west of France, this will be at St Malo and St Helier (on Jersey). The programme includes information and training sessions, demonstrations, conference/debates and other events and a fleet of activists sailing to Jersey. With 200 delegates representing ATTAC's branch groups and other organisations, there will probably be participants from the USA but also people from different European countries will come to the port in St Helier to meet with the local authorities and to take part in actions to raise people's awareness of the problems caused by tax havens in the world and in the European Union in particular. A website has been set up where you can find all the information you need to take part:  
<http://attac.org/jersey2001/>

In the south-west of France there will be demonstrations near Andorra and, if possible, in Andorra itself. We are considering a number of ideas which will make our plans as effective as possible. It should be said that Jacques Chirac, as President of the French Republic is Co-Prince of Andorra! For more information contact [attac09@attac.org](mailto:attac09@attac.org)

By the tax benefits they give their clients but also by the bank secrecy and immunity from prosecution they provide, these 'havens' play a vital role in the globalisation of criminal financial activities.

Numbering between 60 and 90, tax havens and financial safe-havens are micro-territories or states with lax or inexistant legislation. One of the characteristics they share is their unlimited acceptance of capital in anonymity.

Finance. Money-laundering, tax evasion. Corruption, security agencies, the registration of sea-going vessels in different countries...

There are many who seek to conceal all or a part of their revenue from other people, and especially from the eyes of public authorities (fiscal, financial, judicial and police). The revenue



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concerned may have been gained legally or illegally. These practices occur inside each national territory, exploiting legislative, regulatory, administrative and judicial weaknesses. But they also develop at a national level.

The present situation is often the result of tolerance, laxity and even leniency on the part of governments.

For more information and/ or if you wish to take part: <http://attac.org/jersey2001/>

Call for Day of Action by Attac Austria, Attac Belgium, Attac Spain, Attac France, Attac Switzerland, CFDT Banques, CGT Finances, SNUI (Syndicat National Unifié des Impôts)

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### **ADB in Asia : Creating Poverty through Corporate Colonization**

By ADBwatch-UH-Hawai'i

MOBILIZE HONOLULU MAY 4- 11 2001!!!

In May 2001, a little-known institution called the Asian Development Bank will hold its Annual Meeting in Honolulu, Hawaii. As it has done for the last 35 years, Bank staff and directors will meet behind closed doors to make decisions that will affect people living throughout Asia and the Pacific-decisions that have impoverished the lives of hundreds of thousands of people and wreaked environmental destruction.

Like other international financial institutions, the ADB has come under increasing fire in recent years. At the ADB's last Annual Meeting in Chiang Mai, Thailand, thousands of Thai villagers demonstrated for three days outside the Bank's meeting place demanding that the Bank stop several projects. The ADB is hoping to avoid controversy by holding its upcoming meeting in Honolulu.

What is the ADB?

The Manila-based Asian Development Bank was created in 1966 to provide loans and technical assistance to so-called "developing" countries in the Asia-Pacific region. The Bank has lent billions of dollars to governments and private companies, mainly for large-scale resource exploitation and infrastructure development projects, such as

roads, dams and coal-fired power stations. Together with the World Bank and the Japanese government, the ADB has also played a major role in promoting deregulation, economic liberalization and privatization in the region over the last 34 years.

What is the US role in the ADB?

Japan and the US are the two largest funders of the ADB. Our tax dollars go toward supporting this little known and unaccountable institution. A board of 12 Executive Directors governs the operations of the ADB and its 2000-person staff. Japan and the US are the two largest shareholders in the ADB, together controlling more than 32% of the voting power within the Bank.

The ADB-poverty reduction or poverty creation?

Poverty is a vivid reality for millions living in Asia. While the ADB declares 'poverty reduction' to be its most important mission, its project often lead to further impoverishment of the poor. The ADB promotes and imposes a development model based on rapid economic growth and free market reforms. These policies fail to recognize the value of subsistence livelihoods and their contributions to national economies. ADB-supported infrastructure projects, such as roads and dams, have destroyed the natural resource base upon which communities depend and have damaged the social fabric of the region. At the same time, these projects serve to transfer money and resources into the hands of local elite and foreign corporations. The ADB's plans for privatizing basic government services in the region have largely backfired as prices have skyrocketed and the poor can no longer afford energy and water services.

The ADB fails to recognize the impacts of its own policies. Instead, the Bank continues to promote more loans to developing countries and encourages them to restructure their economies toward the export of goods and services. For developing countries, this strategy has resulted in increased debt, impoverishment and environmental destruction, and has increased their vulnerability to the ups-and-downs of foreign markets. Meanwhile, developed countries have benefited from a flurry of contracts for Western corporations. Today, the poor are sending more money to the rich than the other way around, and all in the name of poverty reduction.

Unaccountable and Undemocratic





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The ADB operates in a secretive and undemocratic manner and is unaccountable to those whose lives and livelihoods it affects. Decisions on large projects with significant social and environmental impacts are made in remote offices at the central government or international level with little input from members of civil society or the local communities who are the intended "beneficiaries" of development projects. The ADB is not accountable to the people affected by its projects and programs, nor to the taxpayers in donor countries whose money supports the Bank, its staff and operations.

By its own analysis, more than 40% of ADB projects fail to achieve their stated objectives. Neither the ADB as an institution-nor its highly paid staff-accept legal, financial or moral responsibility for these failures. Project development studies and environmental and social impact assessments of ADB-funded projects and programs are not subject to public hearings and independent peer review and are often undertaken by consultants who have a vested interest in the implementation of these projects. In several donor countries, the income received by private companies through project contracts with the ADB is equal to, or greater than, the amount contributed to the ADB by these countries. The ADB is simply a mechanism for donor governments to subsidize their own domestic private sector.

<http://hawaii.indymedia.org/>

#### Asian Development Bank WATCH

Asian Development Bank Watch (ADB-Watch) is a network of environmental, indigenous rights, social and economic justice, human rights, religious, and development groups and concerned citizens. Our work involves raising awareness about the ill effects of the ADB. Creating dialogue around environmental and social justice issues surrounding the ADB. Building solidarity with local communities in Asia and the Pacific. Articulating and exploring alternatives to the destructive policies and projects of the ADB.

#### A GLOBAL CALL TO ACTION FROM ADBWATCH HAWAII

Join the campaign against the Asian Development Bank ADB Annual Meeting \* Honolulu May 9-11  
Non-Governmental Organization (NGO) Events  
May 5-11 2001 No Aloha for the ADB ! Join the  
Global Movement for Justice! Expose the

Destructive Policies and Projects of the ADB! The Asian Development Bank (ADB) is a multilateral sister of the World Bank that funds projects which create poverty and undermine local control and cultural rights throughout Asia and the Pacific. The ADB is holding its Annual Meeting in Honolulu, Hawaii from May 9-11. Parallel NGO event opportunities May 5th to May 11th ADBwatch Hawaii invites you to join in and create non-violent activities and events challenging globalization and the ADB's record of imposing destructive and oppressive policies, projects and programs on communities throughout Asia and the Pacific. ADBwatch is a broad network of people working for economic justice in Hawaii, and includes youth, students, economic and environmental justice and human rights activists, Kanaka Maoli (Native Hawaiian) cultural rights activists, clergy, academia, and unions. The ADB Annual Meeting was originally scheduled for Seattle but after massive WTO protests in Nov/December of 1999, the venue changed to Honolulu with the expectation of avoiding resistance and scrutiny. At last year's ADB Annual Meeting in Chiang Mai, Thailand, 5,000 Thai villagers and farmers protested for 3 days against water usage fees being imposed by the ADB. Keep the pressure on! Help to expose ADB's destructive policies and show the world there is no aloha for the ADB. Show the World that There is NO ALOHA FOR THE ADB!! ADBwatch challenges financial institutions that perpetuate economic terrorism. Our goals: Educate the public on specific ways that ADB (and globalization) increases the gulf between rich and poor. Identify ways that globalization impacts people and resources in Hawaii. Identify the impacts of globalization on cultural and economic rights of indigenous peoples. Help to unravel the corporate myth of Hawaii as paradise. Hawaii is occupied by the US military, colonized politically and economically and we face serious pollution problems. The rights of the Kanaka Maoli are under serious increasing attack by the US and state governments and now by organized right and Campaign for a Colorblind America, a conservative racist, anti-affirmative action organization.

For more information, contact us: ADBwatch-UH-Hawaii 2465 Campus Road RIO Box # A-4 Honolulu, Hawaii 96822 [adbwatch@lava.net](mailto:adbwatch@lava.net)  
<http://www.crosswinds.net/~hexis/ADB-Watch.html>

#### Labor Notes Conference Report

By Steve Early

While many union militants from Canada and the northeastern United States spent the weekend of April 21-22 on the march in Quebec, nearly 1,000 gathered instead at Detroit's Cobo Hall for an international conference sponsored by Labor Notes.

Launched 22 years ago as an alternative to the vapid mainstream union press, Labor Notes has evolved into a unique vehicle for grassroots networking among left-wing activists, union democracy advocates, and rank-and-file workers, here and abroad.

The publication's 11th biennial meeting showcased causes ranging from anti-sweatshop organizing and nurses' strikes against mandatory overtime to Teamster reform and the defense of South Carolina dock workers, who face felony riot charges after a bloody clash with state police.

A major topic of this year's workshops and panel discussions was how to build durable community-labor alliances-so that unions can function more effectively on behalf of their own members and the broader working class.

No conference participant symbolized this community-based unionism better than Ken Riley, president of International Longshoremen's Association (ILA) Local 1422 in Charleston, South Carolina. Riley's local is a progressive, predominantly African-American union that embraces campaigns like the fight against South Carolina's flying of the Confederate flag over its state capitol. ILA members have some of the best paying jobs for minority workers anywhere in the state, which boasts the lowest level of unionization (3.8 percent) in America. "Our problems began when we started getting involved in state politics," Riley explains. "We were trying to be socially responsible to those around us. We can't sit here and say, 'We got ours, forget about everybody else' We wanted to change what's going on in South Carolina." The union's activism ran smack up against the state's conservative political establishment, its powerful Chamber of Commerce, and vengeful law enforcement agencies. ILA picketing of a non-union stevedoring company triggered a police crackdown in Charleston's port last year. A specially assembled task force of 600 cops attacked Riley and his co-workers, leaving nine in jail and more than a dozen injured. In the aftermath of this picketline battle, the scab company involved filed a \$1.5 million lawsuit against the ILA, Riley, another local

officer, and 27 rank-and-file members of Local 1422. South Carolina's politically ambitious Republican Attorney General Charlie Condon jumped on as well, with a grand jury indictment of five of the workers. They now face up to five years in prison if convicted on felony riot charges.

The case of the "Charleston 5" is rapidly becoming a cause celebre. As Riley reported to the conference in Detroit, support for his local is growing within organized labor overseas, the black community in this country, and the AFL-CIO. If South Carolina proceeds with its criminal case against the ILA pickets, "dockworkers around the world have pledged to shut down their ports on the first day of the trial," Riley said. This coordinated "day of action" has been endorsed by all the longshore unions in Europe, plus the West Coast-based International Longshore and Warehouse Union (ILWU), which is donating \$100,000 to Local 1422's defense.

Supporting such cross-border alliances-particularly those initiated through unofficial channels-is a key goal of Labor Notes. Along with the large North American contingent attending this year's conference participants included trade unionists from France, England, Germany, Japan, Mexico, El Salvador, Argentina, and Columbia. Many came to Detroit in search of rank-and-file allies within common multinational employers like Lucent, Daimler-Chrysler, or Delphi (a recent spin-off of General Motors) or to discuss strategies for resisting worldwide threats like privatization. Out of their meetings came at least one new coalition-the "International Bayer Workers Network"-which now links union members from three nations at plants operated by the German pharmaceutical firm. "Building international solidarity over issues related to globalization and free trade requires more than demo-hopping," says Kim Moody, author of *Workers In A Lean World* and director of the Labor Education and Research Project, which publishes Labor Notes. "Ninety percent of that work is local or national, on-going and on-the-ground-like a fight for union jobs on the docks of Charleston, a general strike in Argentina, or maquiladora zone organizing in Mexico. At Labor Notes, we try to help with the other ten percent-sharing information, generating publicity and making the organizational connections that can lead to concrete pressure on governments or employers."

Similar rank-and-file networking can also help build workers' power within individual unions or industries. At the conference, there was the usual



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large turn-out by truck drivers, flight attendants, warehouse and food processing workers who belong to Teamsters for a Democratic Union (TDU). They caucused with Tom Leedham, the Teamster local officer from Portland, Oregon who ran against James Hoffa for the union's presidency in 1998 and who is gearing up, with TDU help, for a re-match this Fall. Activists in a recently victorious reform movement--inside Transport Workers Local 100--reported on efforts to transform their 36,000-member New York City subway workers' union. Meanwhile, registered nurses from several AFL-CIO affiliates, the American Nurses Association (ANA), and state organizations that have broken away from the ANA found common ground in their discussion of recent strikes against forced overtime at hospitals in Massachusetts and Michigan.

The conference ended with an awards dinner that broke with the usual conventions of union fundraising banquets. In labor's mainstream, such events tend to be lavish and focused on self-congratulatory toasts to the top officialdom. Sometimes, even management gets invited. At Labor Notes, the fare is as basic as the group's bare-bones budget and no bosses are welcome. Not surprisingly, everyone honored is--in the words of their awards certificate--"a troublemaker."

Among this year's winners were Riley of the ILA, a Steelworker plant-closing activist from Indiana named Trudy Manderfield, and an Auto Worker from Kentucky, Billy Robinson, whose local is engaged in a controversial 2-year-old lock-out. Also recognized were Margarita Rincon and Maria Orozco, two courageous young women fired and beaten for challenging a company union at Duro Bag, an American firm operating in Rio Bravo, Mexico. The two received a standing ovation--before heading back, after a tour of the Midwest, to continue their agitation among the 1.3 million maquiladora zone workers who lack both independent unions and effective legal protection of their right to organize. "It's face-to face contacts like these that enable union members here to understand what's really happening to workers in other countries," says Dan LaBotz, a solidarity activist from Cincinnati and author of Labor Notes' *Troublemaker's Handbook*. "The global can become local almost anywhere if we create more opportunities for people to share experiences, learn from each other, and work together against common enemies."

(Steve Early works as a national union representative. For more information on the case of the "Charleston 5," contact the South Carolina AFL-CIO at 803-798-8300.)