

After Doha

-Assessing the outcomes of the WTO Fourth Ministerial-

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The Fourth Ministerial Conference of the World Trade Organization, held in Doha, Qatar, November 9-13, 2001, created significant new challenges. After all, the conference Declaration is only the framework for a future negotiation. The actual work of negotiation remains largely to be done, and the size of the task has probably increased by virtue of the decisions taken in Doha.

Environment and Sustainable Development in the Doha Ministerial Declaration

The new Round of negotiations launched in Doha is notable for its environmental dimension. It offers several opportunities and entails a number of risks. Matters of concern from the perspective of environment and sustainable development are to be found in all parts of the Declaration. The environmental aspects can be divided into three categories:

1. *Environmental issues slated for negotiation.* This covers the relationship of WTO rules to certain Multilateral Environmental Agreements; information exchange between MEA Secretariats and relevant WTO Committees; and tariff and non-tariff barriers to environmental goods and services.
2. *Environmental issues to be considered for negotiation or other action.* This covers the effect of environmental measures on market access; relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS); and labelling requirements for environmental purposes.
3. *Environmental issues likely to arise while negotiating other issues.* This covers agriculture, services, investment, government procurement and TRIPS.

It is important to underline the fact that the most important environmental issues are likely to arise in relation to

negotiations on agriculture, services, investment, TRIPS and external transparency.

Development issues are to be found in many parts of the Declaration, particularly with respect to capacity building and the need for special consideration for the least developed countries. No negotiations on trade and development as a specific issue are foreseen, yet there is much talk of this being a "Development Round."

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Most interests that are linked to trade—for example agriculture, intellectual property rights, investment, competition and public

health—are limited to a single paragraph or section of the Doha Declaration. Environment and development are to be found all over it. This may dissipate efforts to promote sustainable development unless strong leadership is provided that ensures that the large environment and development agenda embedded in the Declaration is addressed coherently and systematically. Such leadership can only come from those responsible for environment and development in the Member states.

The new Round is the first to have been defined to a significant extent by the European Union (with support from other European countries) rather than the United States. This is reflected in many ways in the text of

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the Ministerial Declaration. The EU called for a “comprehensive” Round, that is one that includes investment and competition. Both issues are scheduled to be integrated into the negotiations following the next Ministerial in 2003. The EU pressed hard to include the environment as an integral part of the negotiations and succeeded in bringing some of its environmental agenda into the final negotiating package.

The final Declaration depended on several EU positions. Acceptance of language that envisaged for the first time a complete phase-out of export subsidies for agricultural products was the key EU concession. In the lead-up to Doha, the EU had negotiated the Cotonou Agreement, which provided the key to bringing many African countries on board who were willing to agree to broad negotiations in exchange for formal recognition of the Cotonou Agreement by the WTO. The United States was helpful in getting the Ministerial Declaration to support most of the goals of the EU. Yet its own interests were largely defensive: to avoid concessions on textiles; to keep discussion of its anti-dumping practices to a minimum; and to limit the concessions that had to be made on TRIPS and public health.

The vigorous support for inclusion of the environment in the new Round has widely been interpreted as a concession to public opinion in the European Union. In practice it is likely that the peculiarities of the institutional structure of the EU were decisive, particularly the complex relations between the Article 133 Committee (which oversees trade negotiations) and the Council (the ultimate legislative authority, and the institution where environmental decisions are taken). The central dilemma is that trade is within the exclusive competence of the European Union, whereas environment (and, for that matter, investment and competition) are areas of shared competence. A Round that did not include the environment entailed significant risk for institutional conflict within the EU, a risk that the trade negotiators could minimize by pushing hard for the environment.

In light of the exceptional role played by the European Union in shaping the Ministerial Declaration and its environmental aspects in particular, the EU will presumably also play a key role as the process continues. The EU carries a heavy burden of responsibility for ensuring the success of what it has worked so hard to initiate. Further development of the environmental agenda will pass through Brussels.

By the same token, the unprecedented strength of the developing countries in Doha and in the lead-up to Doha will continue to be a feature of the ongoing negotiations. It is therefore likely that the dynamics of this Round will differ markedly from those of the Uruguay Round, which was largely determined by U.S. priorities.

One aspect that has not been discussed in public is the almost complete absence of environmental expertise in Doha. Only one Environment Minister was present—from the United Kingdom, and thus not directly involved in

the negotiations that were led by the European Commission. Furthermore, none of the delegations included top level officials from environmental agencies, and even some of the large delegations—most notably that of the United States—included nobody whose primary responsibility was the environment. Even the EU delegation included only a mid-level environmental official who had no direct access to the decision-making process.

The absence of significant environmental expertise in all delegations is recognizable in the final text of the Ministerial Declaration, which gives more emphasis to issues that are of lesser importance—such as the relationship between WTO rules and MEAs—and less emphasis to some that are more significant from an environmental perspective, such as cost internalization in traded products, investment, services, TRIPS, and external transparency. It is critical to ensure an adequate balance of environmental and trade expertise in the actual negotiations. This can only be achieved if those responsible for the environment at the highest levels make it clear to their counterparts in trade policy that they will personally supervise the environmental aspects of the new Round.

Environmental Issues Slated for Negotiation

Multilateral Environmental Agreements. Prior to Doha, this is one of the issues on which significant progress had been made in the WTO through the dispute settlement process. The major risk here is that the negotiations do not confirm the interpretation that underlies recent Appellate Body reports, notably on the shrimp/turtle dispute (Malaysia, India, Pakistan and Thailand vs. United States) and the asbestos dispute (Canada vs. France). From these reports it would appear that trade measures agreed by the parties to an MEA will be viewed as acceptable, provided they are not arbitrary or more tradedistorting than necessary.

Reduction or elimination of tariff and non-tariff barriers to environmental goods and services. This could provide a welcome reduction in the costs of environmental goods and services while promoting their more efficient production in domestic markets.

Environmental Issues to be Considered for Negotiation or Other Action

The effect of environmental measures on market access. This is one of the most contentious issues, since there are persistent questions about whether environmental measures adopted by developed countries actually act as non-tariff barriers to trade. It is an issue that requires very careful analysis. Many measures result in the internalization of environmental costs at the point of production (in a developing country). That is desirable, provided it is possible to pass the increased costs to the ultimate consumer (in a developed country). Under these circumstances, environmental measures may act to limit market access to those producers who can meet the standards—but they provide these producers with the financial means to address environmental problems in the country of production and actually increase unit revenues

from these products. Consequently the impact of environmental measures on developing countries depends on the markets in which goods are traded, and whether they properly reflect environmental costs along the entire product chain.

Labelling requirements for environmental purposes. The draft Ministerial Declaration referred only to “eco-labelling.” By extending the issue to cover all forms of environmental labelling it has become more appropriate and much more difficult to handle. Labelling is a tool to attach information on processing and production methods to a product as it moves through its various stages of production, trade, transformation, use and disposal. This issue of “processing and production methods” is the most important of all issues of relevance to environment and sustainable development that may arise in relation to trade in goods. It is closely related to the issue of market access and, like that issue, responses are likely to vary depending on the nature of the market for certain goods.

The entire mandate on trade and environment is carefully hedged to limit its possible impact. Apart from the exclusion discussion concerning WTO members not party to certain MEAs, the Declaration states that action on environmental issues “shall not add to or diminish the rights and obligations of Members under existing WTO agreements, in particular the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), nor alter the balance of these rights and obligations, and will take into account the needs of developing and least-developed countries.” The reference to the SPS Agreement has the effect of excluding negotiations on the precautionary principle (appropriately, since this is not a matter that is ready for negotiation).

Environmental Issues Likely to Arise in the Process of Negotiating Other Matters Slated for Negotiation

Agriculture. The environment will be central to the agriculture negotiations. As tariff barriers are reduced and subsidies fall, the importance of “non-trade concerns” in agriculture increases. The environment is a key non-trade concern, arguably the most important of all since it permits the most expansive interpretation. However, the stability of rural communities, an issue of transcendent importance to China, is also likely to emerge as one of the critical “non-trade” issues in the agriculture negotiations. These will revolve around definitions of the “Green Box,” which includes subsidies that are acceptable and the proposed “Development Box,” which would include policy measures of specific concern to developing countries. The Green Box is already part of the Agreement on Agriculture. No agreement has yet been reached on inclusion of a Development Box.

It is important to recognize that WTO negotiations do not aim at solving specific policy problems, such as the protection of the rural environment. They revolve around issues raised by member states and ultimately involve a process of

bargaining that tends to exclude any item not represented at the table. Consequently the process of agenda-setting, initiated in Doha and likely to continue for the next two years, is of critical importance. Issues that have not been raised in this time will prove very difficult to introduce later—and only at considerable cost in terms of bargaining leverage.

Fisheries. The issue of fisheries—and fishery subsidies—is new within the WTO. The commitment to negotiate fisheries subsidies (“clarify and improve WTO disciplines on fisheries subsidies” is the precise language) raises one of the more complex issues of contemporary environmental management—namely how to avoid incentives to overproduce and overexploit environmentally-sensitive resources. The outcome of this negotiation could have broad implications for subsidies in other areas that impact on both the environment and commodity markets, notably forestry and mining.

Services. The services negotiations focus on two areas: the extension of commitments and the development of rules on domestic regulation. Under the “opt-in” system of the General Agreement on Trade in Services (GATS) countries are bound only for service sectors and delivery “modes” on which they have specifically made commitments. The underlying assumption is that countries will continuously enlarge the commitments they have undertaken. Several service areas are particularly sensitive from an environmental perspective, in particular transport, tourism and energy. Banking and insurance have emerged as potential tools in the maintenance of environmental disciplines in international markets.

Investment. There has been much discussion about the question whether the Doha Ministerial involves a commitment to negotiate on investment (and other Singapore issues) after the next Ministerial Conference, due in late 2003. Some observers believe that a statement by the Chair at the closing session effectively negates the strong language of the Declaration itself in this regard (“we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at the Session on modalities of negotiations.”). This text suggests that voting will take place on this matter rather than the traditional declaration of the Chair that assumes consensus absent any contradiction. In practice, the process outlined in the Declaration for the coming two years is not that different from the initial phases of any negotiation, so that the burden of proof is likely to shift to those who wish to oppose formal negotiations.

This issue is as significant for environment and sustainable development as any other item on the WTO agenda. Most international actions in favour of sustainable development involve investment, whether private or public. An agreement that establishes a “multilateral framework to secure transparent, stable and predictable conditions for long-term cross-border investment” can create a framework for future promotion of sustainable development. The reference to

“long-term” limits it to productive investments that are the most important from the perspective of environment and sustainable development.

Government procurement. The environmental dimension of this negotiation has not received any attention thus far. Governments have rarely imposed stringent environmental requirements on the goods they buy. In practice government agencies have not been environmentally-conscious consumers. Nevertheless it is conceivable that efforts to increase the transparency of government procurement may also create new incentives for the imposition of environmental standards, effectively as potential barriers to entry to newly-liberalized procurement markets.

Agreement on Trade Related Intellectual Property Rights (TRIPS). The TRIPS Agreement has given rise to numerous complaints. It is now evident that many countries were unaware of its implications when it was signed. It is also evident that studies undertaken by the World Bank and others predicting the likely impact of the Uruguay Round failed to take into account the powerful distributive effects of the TRIPS Agreement (or of the GATS, for that matter). This omission caused them to underestimate the benefits of the Uruguay Round for countries whose citizens held significant IPR and overestimate them for countries that did not, primarily developing countries.

The Declaration on TRIPS and Public Health that was adopted at the Doha Ministerial paved the way for an interpretation of that agreement that is less likely to require large transfer payments from poor to rich countries in regard to public health. It represented one of the most important results of the Ministerial Conference. The Ministerial Declaration also opened negotiations on two aspects of TRIPS that are potentially significant from the perspective of environment and sustainable development: Art 23.4 dealing with geographic designations and Art. 27.3(b) on the exclusion from patenting of plants and animals. There has been extensive debate about the relationship between Art. 27.3(b) and the Convention on Biodiversity.

Sustainable Development in the Round

The relationship of the WTO to sustainable development remains ambiguous. Sustainable development is the only qualitative criterion for the work of the WTO that is identified in the Preamble of the WTO Agreement. The preamble to the Ministerial Declaration is even more effusive in its declarations of adherence to sustainable development as a principle for the WTO. The phrase does not occur once in the operative sections of the Declaration. Yet the Declaration is full of declarations concerning development, developing and least developed countries. Indeed, some observers had tried to declare that this was a “development” Round—presumably in contrast to the Uruguay Round, which dealt primarily with matters of concern to developed countries. Consequently achieving a proper balance between environment, development and the economic policies that will be negotiated in the new Round is a task that remains to be tackled.

One possible approach to this task would be more effective cooperation between the Committee on Trade and Development (CTD) and the Committee on Trade and Environment (CTE), something that has not been possible in the past. Both organs are given a new role in the negotiations, “each to act as a forum to identify and debate developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected.” This is a novel provision whose significance remains to be seen.

Issues Not Slated for Further Negotiation

The Doha Declaration does nothing to promote further “external transparency.” One of the paradoxes of the WTO is that an organization that is devoted to liberalizing markets and creating economic opportunities for private actors remains deeply resistant to any direct contact with representatives of civil society. This leaves the organization vulnerable to the behind-the-scenes lobbying that has always been part of the process and even more vulnerable to suspicion of such lobbying.

Those interested in environment and sustainable development have always pressed for greater transparency and participation. The fundamental reason for this interest is that transparency and participation is core implementation tools of environmental regimes at all levels, comparable in importance to the dispute settlement system of the trade regime. Even though the Ministerial Declaration said next to nothing about external transparency this is an issue that is unlikely to go away.

Conclusion

The environment and sustainable development agenda in the new Round is surprisingly extensive. While other interests that are linked to trade—for example agriculture, intellectual property rights, investment, competition and public health—are confined to a single paragraph or section of the Doha Declaration, environment and development are to be found all over it. This may dissipate efforts to promote sustainable development unless strong leadership is provided that ensures that the large environment and development agenda embedded in the Declaration is addressed in a coherent and systematic manner. Such leadership can only come from those responsible for environment and development in the Member states.