

Doha Mandates

"With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudging their outcome, on:

(i) the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question;

(ii) procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status;

(iii) the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services."

(Doha Ministerial Declaration para. 31)

Trade and Environment

Background

As the principal *demandeur* for WTO negotiations on environmental issues, the European Union, supported by Japan, Norway and Switzerland, pushed hard for their inclusion in the Doha Ministerial Declaration.

The great majority of other Members opposed such negotiations. Developing countries' objections were primarily due to their desire to keep the agenda focused on development priorities and concern that environment negotiations might expand the potential for use of environmental measures to restrict market access for their goods. The US and Canada were chiefly concerned about the potential for the EU to use an environmental mandate to slow down agricultural subsidy reform or to further restrict entry of agricultural goods — including genetically-modified organisms — via eco-labelling or the precautionary principle.

As a result, the negotiating mandate is strictly circumscribed, i.e. limited to existing WTO rules and specific trade obligations in multilateral environmental agreements (MEAs), and parts of it remain vague. The scope of the negotiations is further restricted by the explicit injunction that they shall not "prejudice the WTO rights of any Member that is not a party to the MEA in question" or "add to or diminish the rights and obligations of Members under existing WTO Agreements" (see sidebar on page 2).

Mandated Deadlines:

- Fifth WTO Ministerial Conference (10-14 September 2003 in Cancun, Mexico):
 - The Committee on Trade and Environment (CTE) shall report with recommendations on future action, including the desirability of negotiations, on the need to clarify relevant WTO rules with regard to the effect of environmental measures on market access, TRIPs-

related provisions and labelling requirements for environmental purposes (para. 32).

- The CTE shall present a report on technical assistance and capacity-building on trade and environment to developing countries and on environmental reviews at the national level.
- By 1 January 2005, conclusion of para. 31 negotiations as part of the single undertaking agreed in Doha.

Current State of Play

Relationship between MEAs and WTO

Discussions on para. 31(i) have focused on how to structure the negotiations. Members agreed in November 2002 to an approach consisting of three phases: (i) examination of individual MEAs; (ii) identification of specific trade obligations in those MEAs; and (iii) identification of relevant WTO rules. While the majority of Members favour this approach, put forward by Australia, New Zealand and others (see TN/TE/W/7 and TN/TE/W/12), the EU and Switzerland have advocated starting from conceptual and definitional issues before moving to specifics such as those identified above. The November agreement does not preclude addressing conceptual or other issues if these arise in the course of the negotiations. In 2003, most Members are expected to call for discussions to be based on a revised June 2001 WTO Secretariat document on MEA trade obligations identified in 14 specific MEAs (WT/CTE/W/160/Rev.1).

A number of possible outcomes have been envisioned for the MEA-WTO negotiations. Switzerland, for instance, has argued in favour of an interpretative decision to clarify WTO texts (TN/TE/W/16). A document issued by the WTO Secretariat on 23 May 2002 presents the main approaches proposed by Members since 1995 on this issue, grouping them under 11 categories (TN/TE/S/1).

Doha Mandates

The negotiations carried out under paras. 31(i) and (ii) "shall be compatible with the open and non-discriminatory nature of the multilateral trading system, 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, nor alter the balance of these rights and obligations."

(Doha Ministerial Declaration para. 32)

Further instructions to the Committee on Trade and Environment (CTE) are included in paragraphs 32, 33 and 51; see section on non-negotiating Doha Mandates below.

Information Exchange and Observer Status

While no concrete decisions on information exchange between WTO and MEA secretariats have yet been taken, a number of suggestions have been made. These include regularisation/institutionalisation of existing MEA information sessions focused on specific topics, and enhanced co-operation at the national level between trade and environment officials and at the international level between MEA and WTO Secretariats.

Lack of observer status for MEAs at special sessions of the CTE continues to dog the negotiations. Many have pointed to the need for MEA Secretariats to be present while negotiations on WTO-MEA linkages are underway. The impasse is linked to the ongoing geopolitical conflict regarding the Middle East: the Arab League's application to qualify as an observer has been rejected by the US and Israel since its presentation, several years back, because the League's charter calls for a trade boycott on Israel. As a result, all applications of other intergovernmental entities for observership at the Doha round negotiation special sessions remain unresolved and on the waiting list. The issue of MEA observer status to the CTE special sessions has been elevated from the CTE to the Trade Negotiations Committee and the General Council, where resolution has thus far proven elusive. At the February 2003 negotiating session, Members agreed to allow MEA secretariats to attend the CTE's June special session as *ad hoc* invitees.

Informal MEA information sessions have been arranged as one way around this issue (the first was held on 11-12 November 2002), although some say these are not a sufficient replacement to granting MEAs observer status in the special sessions. Some Members have also suggested that an early harvest on the information exchange mandate in para. 31(ii) could provide a way around the observership deadlock, but others are unwilling to make concessions at this early stage.

Environmental Goods & Services

Members agreed to shift the para. 31(iii) mandate on liberalising environmental goods and services to the Negotiating Group on Non-Agricultural Market Access and to the Council for Trade in Services special sessions, respectively. However, the CTE special sessions will maintain a monitoring role and contribute by examining the definitional aspects and scope of environmental goods and services.

Goods: While the Negotiating Group on Market Access has been allocated the task of negotiating reductions in barriers

to environmental goods, ongoing definitional difficulties have pushed much of the debate back to the CTE special sessions. At the CTE special sessions, most Members support New Zealand's proposal for clarifying the concept of environmental goods (TN/TE/W/6). New Zealand's paper is based on a list of environmental goods drawn up by participating Asia Pacific Economic Co-operation (APEC) economies in the context of APEC's Early Voluntary Sectoral Liberalisation (EVSL) and on illustrative categories of environmental goods elaborated by the Organisation for Economic Co-operation and Development (OECD). The APEC/OECD classifications focus primarily on an 'end-use' approach of including primarily goods used to clean the environment or to contain or prevent pollution.

Members for the most part see the APEC/OECD classifications as a good — albeit insufficient — starting point for discussions, but many want to add or subtract items on the list. In particular, the EU would like to broaden the list to include products made in an environmentally sound manner, a restricted version of the environmentally preferred products (EPPs) category that has been informally explored in various other fora. This has been roundly rejected by most other Members, particularly by developing countries, who are concerned about introducing process and production method (PPM) criteria to the WTO. Many fear that PPM-based criteria could become a perverse tool in the broader WTO context and be used to undermine the market access or competitiveness of weaker Members. Members have been asked to submit further lists of goods for consideration, and discussion around scope and definition will continue in 2003, including as part of talks under the sustainable development mandate of the CTE (para. 51).

Services: Negotiations on reductions in barriers to environmental services have been delegated to the Council for Trade in Services (CTS) special session. Activity at the CTS is more advanced than in the Goods Negotiating Group, and Members are currently considering liberalisation requests across a broad range of services, including environmental services, as part of the request-offer process. Members are due to report on this bilateral stage at a stocktaking exercise in March 2003. Classification for environmental services continues to be loosely based a 1991 Services Sectoral Classification List (MTN.GNS/W/120), which outlines four categories of environmental services: sewage, refuse disposal, sanitation and 'other'. Some Members, particularly the EU, have argued that the current classification no longer reflects market

realities, and have suggested alternatives.¹ This debate is currently stalled in the WTO's Committee on Specific Commitments, and as a result countries are using various categorisations for environmental services in their bilateral negotiation requests. Due in part to the current bilateral stage of the services negotiations, the CTE special sessions have spent little time on this issue.

To provide background for the negotiations, the Secretariat has produced a discussion paper on the environmental effects of services trade liberalisation (WT/CTE/W/218). Further material on the possible scope of work on environmental services is available in a 1997 US paper on definition, industry structure and outlook (WT/CTE/W/70), a 1998 Secretariat overview paper on scope and definition (WT/CTE/W/67/Add.1), and a 1998 UNCTAD paper on strengthening capacities in developing countries to develop their environmental services sector (WT/CTE/W/96).

Non-negotiating Doha Mandates

In paragraph 32 of the Doha Ministerial Declaration, the Committee on Trade and Environment was instructed to give particular attention to:

- (i) the effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development;
- (ii) the relevant provisions of the Agreement on Trade-related Aspects of Intellectual Property Rights; and
- (iii) labelling requirements for environmental purposes.

Work on these issues was to include "the identification of any need to clarify relevant WTO rules", and the Committee was instructed to report to the WTO's fifth Ministerial Conference and "make recommendations, where appropriate, with respect to future action, including the desirability of negotiations." So far, it remains unclear what recommendations (if any) will be forwarded to Cancun. Much of this may depend on how much emphasis the EU places on its environmental agenda in the context of the wider negotiations.

Market Access: Most developing countries warmly welcomed a 21 May 2002 paper from India, which highlighted how environmental measures in major export markets hamper the entry of developing country goods that may themselves be environmentally friendly (WT/CTE/W/207). The Quad (Canada, the EU, Japan and the US) said they were prepared to

discuss the proposal, but that not everything it contained was achievable.

Relevant Provisions of the TRIPs Agreement: Debate at the CTE remains stalled on the issue of clarifying WTO rules relating to TRIPs and environment, in particular on the relationship between TRIPs, the Convention on Biodiversity (CBD) and the protection of traditional knowledge (TK).² Brazil, India and Pakistan would prefer this discussion to take place in the TRIPs Council, where they are seeking to modify the TRIPs Agreement such that it provides, *inter alia*, greater consideration of patent rights related to biological materials and TK. Most developed countries, on the other hand — notably Canada, Switzerland and the US — view TRIPs and the CBD as mutually supportive, and resist revising the TRIPs Agreement to make it more restrictive of current IPR practices.

Labelling: Members also remain far from agreement over how to address labelling issues at the CTE. The body is struggling with how it can add value to an issue-area that most Members prefer to deal with at the Committee on Technical Barriers to Trade (TBT). The EU (WT/CTE/W/212) and Switzerland (WT/CTE/W/219) have proposed, *inter alia*, that the TBT and the CTE work towards devising guidelines or interpretation of the TBT Agreement with respect to labelling requirements for environmental purposes. Many developing — and some developed — countries are wary of engagement in this area due to concerns that stronger eco-labelling regimes could prove a barrier to their market access.

Capacity-building and Environmental Reviews: Para. 33 of the Doha Ministerial Declaration recognises the importance of technical assistance and capacity-building in the field of trade and environment; encourages the sharing of expertise and experience with Members wishing to perform environmental reviews at the national level; and requests the CTE to prepare a report on these activities for the fifth Ministerial Conference.

Canada, the EU, Mexico, Norway, Switzerland, the US, UNEP and UNCTAD have presented their capacity-building and technical assistance activities. Some countries have called for better follow-up on these efforts, with Mexico advocating more country-specific capacity-building initiatives and the US recommending that the WTO identify specific aspects of capacity-building, such as environmental assessments, environmentally sound technologies, and customs reforms on which to focus its activities.

On environmental reviews, an EU paper describing its multi-year programme to conduct Sustainability Impact Assessments of the Doha negotiations (WT/CTE/W/

208) met with much scepticism from a number of countries. Australia, together with Canada and the US, expressed concern, saying it showed a misunderstanding of the links between trade liberalisation and social and environmental issues.

Reflecting Sustainable Development in the Negotiations

Discussions have inched forward on the Doha Declaration's para. 51, which instructs the CTE and the Committee on Trade and Development to "each 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." While modalities or procedures have yet to be established, Members have agreed to begin a substantive discussion under para. 51 on market access — particularly environmental goods — and agriculture at the first CTE session in 2003 (currently scheduled for the second week in February). The EU has pushed for the CTE and the WTO's Committee on Trade and Development to convene jointly on para. 51, or to hold an outreach event, but CTE Chair Oguz Demiralp has said that the timing for such a meeting is not yet right.

Endnotes

- 1 See the EU's 28 September 1999 submission to the Committee on Specific Commitments, "Classification Issues in the Environmental Sector" (S/CSC/W/25).
- 2 A CTE discussion around a 10 June 2002 paper submitted by the CBD on the relationship between TRIPs, the CBD and protection of traditional knowledge and folklore (WT/CTE/W/210) elicited similar views to those expressed at the TRIPs Council (see Doha Round Briefings No. 5 on Intellectual Property Rights and No. 1 on Implementation-related Issues and Concerns).

Proposals and other documents can be found at <http://docsonline.wto.org/gen/under>

- TN/TE/S (for Secretariat documents submitted to the negotiating sessions);
- TN/TE/W (Members' negotiating proposals); and
- WT/CTE/W (regular Member submissions).

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