TRADE AND ENVIRONMENT:

AN INTRODUCTION TO UNDERSTANDING AND PROMOTING SUSTAINABLE TRADE IN THE WTO

NEWLY INDEPENDENT STATES WTO/NCSD PROJECT

Background Paper prepared by the International Institute for Sustainable Development

September, 2002
1. INTRODUCTION

Trade growth over the past 50 years has been one of the leading factors for economic growth and development around the world. While the global economy grew by five times, the total value of traded goods grew by fourteen times, creating an important engine of overall economic growth. At the same time, the benefits of global economic growth have not been well distributed, with gaps between rich and poor nations growing over this same period. While global economic growth has not signaled the end of poverty, economic growth has been correlated with the growing environmental crisis facing the planet and its inhabitants.
Within the context of the role of trade in supporting global economic growth and development, the relationship between trade and the protection of the environment has become one of the most complex issues in the ongoing development of trade agreements. When the debate on this relationship began about fifteen years ago, it was almost all based on perceived conflicts between these two areas of national and international law and policy-making. Today, some of the myths surrounding the debate have been addressed, some of the concerns have been validated, and some new efforts are underway to look for positive ways to promote “mutually supportive” approaches between these two areas towards a more integrated vision of promoting sustainable development.

Section 2 of this paper highlights, in economic terms, some of the potential environmental benefits and costs associated with trade liberalization. In this context, it is important to note that neither trade nor joining the WTO in and of themselves necessarily have negative environmental consequences. Rather, it is the recognition of the possible environmental effects associated with increased trade – both positive and negative – can help secure the benefits and reduce or eliminate the negative impacts. Understanding the potential impacts in more scientific economic terms rather than the often more emotional terms of advocates in this area may assist in this process.

In section 3, we begin looking at how the WTO approaches environmental issues, and more broadly sustainable development issues. Section 3 provides a brief review of the inclusion of environment and sustainable development in the final negotiations on the 1994 Marrakesh Agreement Establishing the World Trade Organization. In section 4, several specific issues in this area will be considered in more detail. Each of these issues will include a discussion of how the matter is addressed in the Doha Ministerial Declaration from November 2001. As the Doha Declaration also has the most extensive mandate to negotiate aspects of the linkage between trade and environment in the history of the WTO, some additional considerations in this regard will follow in section 5, by way of the conclusions.

Annex 1 provides a text-based analysis of several paragraphs in the Doha Declaration. With its express links between trade and environment issues and, most important, the acknowledged responsibility of the World Trade Organization to be part of the process of addressing these links. This Annex tries to illustrate how and where the new WTO negotiating mandate may have future impacts, again both positive and negative, by using succinct, to the point annotations to the original paragraphs that are included in the Annex.

Finally, Annex 2 includes some readings that may assist in developing a deeper understanding of issues raised in this paper.

2. SOME BASIC ECONOMIC LINKAGES BETWEEN TRADE GROWTH AND THE ENVIRONMENT
Trade liberalization has some specific impacts on trade growth and trade patterns. Economists and trade policy experts have defined these impacts in a systemic way, as described below.

A key factor to understand in how all of these effects may arise is that trade liberalization allows product manufacturers to exercise more choices in where and how they make their products. As a result, they are able to pursue the most advantageous “economies of scale”, or the level of manufacturing or harvesting a product that is most cost-effective for them. Similarly, companies are now able more easily to seek the maximum “comparative advantage” compared to other producers, by choosing where to locate their facilities. Depending on the natural resources, labour resources, number of components in a final product, expected final markets for the product and related transportation costs, and other similar factors, a producer can now more easily choose its most cost effective location for making its products, based on economies of scale and location of the best comparative advantage. This is because a manufacturer or resource user (wood, fish, etc.) now faces fewer costs and other barriers to importing and exporting both product components and final products than ever before. This has led to two major economic phenomena: globalization of product manufacturing chains (where components of a finished product may come from several dozen countries) and the consolidation of many major industries around smaller numbers of global companies in any given sector. These economic processes lead to significant changes in economic activity, and therefore to possible impacts on the environment in different countries. (OECD, 1995; Nordström and Vaughan, 1999)

**Scale effects:** Because trade liberalization promotes the ability of companies to choose the most cost effective place for doing business, this has helped transform traditional economies of scale from a national to a global level. Production is now seen in global terms, not just national or regional. As a result, many resource extraction and industrial companies seek to maximize their economies of scale with larger production centres able to produce products at a cheaper cost. This makes good economic theory and practice from a production point of view.

However, analysts have acknowledged that when large-scale production is located in areas where there are insufficient environmental controls to manage the potential impacts of the higher levels of production on natural resource sustainability, on air and water quality and on waste management, the increased economic activity can lead to serious environmental degradation. Indeed, it is becoming increasingly clear that in some cases such environmental degradation may, in relatively short periods of time, become more costly to repair than the actual economic benefits to the region in question. Thus, from a development perspective, the longer-term economic benefits of better economies of scale are tied to the presence of appropriate environmental management structures. These measures are known not to exist in many countries seeking to benefit from trade-related growth.

**Structural effects:** Structural effects occur on a broader level than individual increased scale effects. Structural effects encompass changes in location or concentration of industrial sectors or groups of related sectors, based on broadly based comparative advantages. Resource-rich countries may increase their economic activity in that sector where they have a larger supply
of resources. Or, in a different way, computer component manufacturers that invest to take advantage of skilled workers at relatively lower wage levels may bring with them a whole series of new investors that supply goods or services necessary for making the components. This can reshape industrial sectors in many countries. Where the sectors that leave as a result of structural changes are heavily polluting or technologically out-of-date, this can have positive effects. However, as structural effects are essentially a magnification of scale effects, the requirement for appropriate environmental management is again critical to achieving longer-term economic benefits that are not later reversed by increased environmental degradation, especially if new sectors are fairly heavily polluting ones.

**Product effects:** Trade liberalization can promote the transfer of environmentally sound products to many countries as barriers to trade are reduced and removed. Indeed, the elimination of all barriers to trade in environmental technologies and related services (the scope of this is not completely clear), is one of the express goals set out for negotiations in the WTO under the Doha Declaration. However, trade liberalization also promotes trade in environmentally damaging goods and services, unless additional controls are put in place. In addition, trade opportunities can create pressures to increase the harvest of natural resources and plant or animal species. Indeed, international trade is well understood as a leading cause of harvesting species until near extinction.

**Technology effects:** Technology effects can also be positive and negative. First, there may be increased opportunities to trade in new technologies. Second, if increased trade promotes investments with new technologies, modernization of the industrial base will be promoted, with related environmental benefits. However, if new investments use outdated technologies that are transferred from older locations, technology impacts will be environmentally negative in most cases.

A second trade-related factor is the role that competition plays in forcing innovation by domestic industry to remain competitive in the face of potential new imports. This competitiveness factor can help promote technological innovation.

**Regulatory effects:** Trade law sets out a number of different obligations that have an impact on how, and to what extent, a state can enact environmental protection and other public welfare measures. These obligations are not inherently opposed to the adoption of new measures, or the maintenance or pre-existing measures. However, some analysis indicates that many developing countries and NIS may simply lack the financial, scientific, technical and economic capacity required to meet all the obligations. For example, undertaking a risk assessment and defining the least trade restrictive measure available to meet a defined goal can both be substantially demanding steps in the legislative process now required by the WTO Agreement on Technical Barriers to Trade as well as the Agreement on Sanitary and Phytosanitary Measures. It is critical to understand all the elements in a trade agreement in order to understand how they may affect any one state’s capacity to protect its environment and public welfare.

It is easily seen from this review of different types of environmental effects of trade liberalization that there can be both positive and negative effects. Increased trade can be good
for the environment, and it can also be bad for the environment. But this rather simple realization becomes somewhat more complicated when one factors into the equation the main objective behind trade liberalization today: promoting development. Indeed, the Doha Round of new WTO negotiations is officially referred to as the Development Round. This raises the critical question from an environmental perspective: is the Doha Round about development, or will it be about sustainable development?

3. TRADE, ENVIRONMENT AND SUSTAINABLE DEVELOPMENT IN THE WTO AGREEMENT, 1994

The recognition of environmental issues in the development of trade law goes back to the beginning of the GATT in 1948. Article XX of the General Agreement on Tariffs and Trade provided a special regime for states to be able to protect the environment and public welfare in other areas, even if this meant breaching trade obligations to do so. At the same time, Article XX placed specific conditions on states when they exercised this right. Whether the balance between environmental rights and trade obligations that resulted is the right one remains the subject of much debate. In 1971, GATT tried to formalize that debate in the Group on Environmental Measures and International Trade. However, while it existed on paper, the group never actually convened. What is clear now, however, is that when the GATT changed into the WTO, the recognition of the trade and environment relationship, or the trade and sustainable development relationship, increased significantly. (Charnovitz, 1997)

Political pressure across Europe and North America forced the environment and sustainable development onto the agenda of the Uruguay Round as it had never before appeared in trade negotiations at the global level. Developing countries at that time opposed its inclusion, arguing that environment was not a trade issue. The result was the inclusion of two distinct means to reflect the issue in the final negotiating session of the Uruguay Round negotiations. One means was a specific reference to sustainable development in the preamble to what became the Marrakesh Agreement Establishing the World Trade Organization. The initial part of the paragraph below comes from the original GATT of 1947. The second half (in italics here) was inserted in 1994:

The Parties to this Agreement,

Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.
Perhaps more than many states anticipated at the time, this direct recognition of the importance of sustainable development became a key element in several disputes in the WTO since 1995, and has provided useful support for some environmental protection measures.

At the same time that the negotiators included the above provision, they also established a Committee on Trade and Environment (CTE) through a special Decision on Trade and Environment. The mandate of the CTE was, and remains, broad. It includes:

- the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements;
- the relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system;
- the relationship between the provisions of the multilateral trading system and:
  (a) charges and taxes for environmental purposes;
  (b) requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labeling and recycling;
- the provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects;
- the relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements;
- the effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions;
- the issue of exports of domestically prohibited goods,
- that the Committee on Trade and Environment will consider the work programme envisaged in the Decision on Trade in Services and the Environment and the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights as an integral part of its work, within the above terms of reference,

The CTE has since undertaken several years of debate and discussion on these issues. While some progress has been made, even generous assessments would find it limited. Indeed, there has only been one full report back to the Ministerial meetings of the WTO, in 1996. The lack of progress on issues within the CTE led the European Union and some other WTO members to pursue a greater level of environmental content in the Doha Round of WTO negotiations. As a result, the Doha Declaration has expanded the actual negotiation of trade and environment issues for the first time in a direct and explicit manner. Several issues in the

---

1 Other reports to the general Council have been made since then, but these show little progress on any issues since 1996.
negotiating mandate are related to the items in the CTE mandate. Others are new, or at least address aspects or details in a new way. In the next section, the major Doha items with a trade and environment link that are expressly identified in the Declaration are reviewed. This discussion is then supplemented by Annex 1, where many of the paragraphs of the Doha Declaration with a significant environmental dimension are reprinted, along with an annotated commentary.

To negotiate the specific mandate items, the CTE will convene in a special session. The Special Session has held two meetings so far, and is only in the process of examining the meaning and scope of its mandate. No substantial progress has been made so far. Other elements will be considered during its regular sessions, which are expected now to take place back-to-back with the special sessions. The CTE is open to all WTO members and state observers. In its regular session it is also open to a few inter-governmental organizations as observers, but not to any non-governmental organizations. When sitting as a Special Session, no inter-governmental organization observers will be permitted, however.

4. TRADE, ENVIRONMENT AND SUSTAINABLE DEVELOPMENT IN THE WTO: SOME SPECIFIC ISSUES

Paragraphs 31-33 of Doha set out two levels of further work. One is actual negotiations as part of the Doha Round, where a specific result is expected for inclusion in the final results. These elements are looked at first below. The second group of elements looked at will be those which prioritize the ongoing work of the CTE. Finally, the most important of the other paragraphs of the Doha Declaration with a direct trade, environment and sustainable development linkage will be noted.

4.1 The Negotiating Mandate Items

4.1.1 The Relationship Between MEA’s and the WTO

International environmental agreements have used trade measures since some of the very earliest ones, going back in fact to 1908 and 1916. Today, several bilateral or regional agreements include them, as well as about 20 more broadly based MEA’s. During the early and mid-1990s, many environmental groups and secretariats, as well as other, became concerned that trade law could somehow over-ride environmental agreements. This led to a whole series of arguments and technical legal analysis. However, the original concern has recently diminished, owing to some decisions of the Appellate Body of the WTO that have recognized the importance of MEA’s to understanding the application of trade rules. While the Appellate Body has not issued decisions on these agreements, and could not, they have

---

2 “Statement by the Chairperson of the Special Session of the Committee on Trade and Environment to the Trade Negotiations Committee”, TN/TE/2, 4 July 2002.
3 In 1908, the Bering Fur Seals Agreement between the United States and Great Britain included trade provisions. These were later extended to Russia as well. In 1916, the Canada-United States Convention on the Protection of Migratory Birds also included trade provisions.
4 The most important case is the Shrimp-Turtle case between the United States and Malaysia, India, Pakistan and Thailand.
carefully considered their terms in analyzing the rights of WTO members to legislate to protect the environment. These cases have, for many environmental groups, eased the concerns in this area.

Still, paragraph 31(i) of Doha calls for the negotiation of the relationship between MEA’s and the existing WTO rules. This relationship has been on the agenda of the CTE from the beginning. All WTO members have recognized that trade and environment agreements must be mutually supportive. However, the Doha mandate only includes a narrow part of the legal issues involved in ensuring this is achieved.

The mandate in paragraph 31(i) is very technically written. Negotiations can only go forward when two specific tests are met. First, the MEA has to have specific trade measures in its text. What is not clear is whether this means it has to require these trade measures be taken, or whether they can be listed as possible measures to take. Second, the Doha negotiation can only relate to legal issues between WTO members and states that are also party to the MEA. If one WTO member is not a party to the MEA, then the results of the negotiation will not be applicable, at least as the mandate is phrased now.

These limitations are very dramatic. Many negotiators expected the mandate in this area to be the exact opposite: to cover issues when a WTO member is not a party to the MEA, and when trade measures adopted by a state to meet its environmental obligations are not specified by the MEA. The reason this was expected is that there has never been a WTO case where a measure required by an MEA has been challenged by any other state, and little reason was seen to address this situation as it is very unlikely that members of an MEA will challenge measures it specifically calls for due to political pressures not to do so. The current negotiating mandate can now have the perverse result of setting out rules that will provide a specific legal basis for making just such a challenge, because the WTO will have set out legal tests for the relationship that will give a basis for such a challenge.

The current mandate can also have the result of creating two types of members: those with “full” WTO rights, and those whose WTO rights may be modified by the MEA. This risks creating an incentive for some countries not to support MEA’s in the future. It is worth noting that the limits described above were pushed by the United States, which remains a major non-party to many important MEAs, including the Biodiversity Convention, Basel Convention and Kyoto Protocol.

If the goal of a mutually supportive relationship is to be achieved, great care will have to be taken with how these negotiations move forward. The fact that the Doha mandate is almost entirely opposite to what many forward-looking countries wanted shows just how high the risk of a perverse result is now.

The negotiation of MEA’s has been described by the WTO as the most desirable way to address issues relating to the negative product effects that can arise as a result of trade liberalization. In fact, since 1995 this has already been accomplished in relation to trade in hazardous chemicals (Rotterdam Convention), products containing or that may create persistent organic pollutants (Stockholm Convention), and products of biotechnology
(Cartagena Protocol). Even prior to 1995, an agreement to control ozone depleting substances was set out in the Montreal Protocol, and trade in hazardous wastes has been controlled by the Basel Convention. There has never been a trade law case challenging the implementation of any of these agreements. If the existing negotiations unduly constrain future MEA negotiations this would, as noted, be counterproductive.

4.1.2 Procedures for information exchange between the WTO and MEA secretariats and criteria for granting them observer status

A significant concern of many people is how the WTO approaches its relations with outside organizations. Part of the original CTE mandate was to find appropriate ways to allow other inter-governmental organizations to participate as observers in its work. Under the CTE to date, several organizations have been allowed to do so, such as the United Nations Environment Programme. However, other organizations or Secretariats, such as the Biodiversity Convention Secretariat, have not been allowed to do so. This mandate seeks to set criteria for observer status in an effort to depoliticize this issue. It also seeks to introduce more consistent procedures for information exchange with these outside agencies. Success in both these areas would add to the transparency and validity of the CTE process, and may or may not have an impact on the substantive outcomes of the negotiations.

A problem that remains outside this mandate, however, is the role of non-governmental organizations (NGOs) - or civil society - as observers. To date, neither the CTE nor the WTO has allowed for such participation. The WTO has begun a series of workshops between Secretariat, NGO and national delegation representatives. These have been increasingly well attended, and are often well received by all participants. However, the step of observer access to the negotiations seems to be a long way away still.

4.1.3 The reduction and elimination of tariff barriers and non-tariff barriers to trade in environmental goods and services.

In section 2 it was noted that technological effects of trade liberalization could be beneficial for the environment if trade liberalization were effective in increasing trade flows in environmental goods and services. Such increases could speed the replacement of older technologies, and therefore assist in reducing levels of pollution or the environmental damage associated with wastes. Here, trade liberalization presents a win-win solution for trade and environmental benefits. There remains, however, considerable debate as to what constitutes an environmental good, and whether this should be assessed not solely on its performance or purpose, but also its own lifecycle environmental impacts.

Increased trade in environmental services can also be beneficial. A problem arises, however, when there is a lack of definition about the scope of such services. Many environmental services are now local and governmental in nature, for example the supply of drinking water or the handling of sewage. This is significantly different from providing environmental engineering services to a manufacturing plant to reduce its emissions. In those areas related to the supply of needed public services, many questions and problems have arisen concerning
costs, equitable access to the services, poverty-related denial of services, ownership of the infrastructure and of the resources needed to provide the services (e.g. of sewer systems and of water rights to operate them). In some cases, riots and other forms of public demonstrations have occurred, and many contracts between governments and foreign services providers have been cancelled. Many of these cancellations have now led to international arbitration between the foreign service providers and the governments where they provided the services.

In addition, there is a strong relationship between this subject and the General Agreement on Trade in Services (GATS), which sets out a number of rules on how foreign service providers must be treated. These rules come into force for sectors that are included by countries in special lists ("schedules") drawn up for this purpose. Again, it is far from clear how the environmental sector will be defined in the ongoing services negotiations. But there is a further connection of importance here: the GATS is also working on new rules that may limit the ability of governments to regulate foreign service providers. This is a very important negotiation that is often invisible in the media and public commentaries. If significant restrictions are placed on governments, it will be difficult in the future to regulate many aspects of the provision of environmental services.

In short, continued care needs to be taken to ensure that the benefit of early liberalization of trade in environmental goods and services has the long-term positive impact it promises to achieve. Issues relating to the provision of environmental services may be especially critical in this regard.

It should also be noted that trade in environmental goods remains subject to TRIPS, and the full respect for intellectual property rights. This is not likely to change in the Doha negotiations. (Efforts to trade in environmental technologies with fewer IPR constraints were rejected during the Climate Change and Biodiversity Convention negotiations from 1990-1992.)

### 4.1.4 Fisheries subsidies

One area where the linkages between trade growth and sustainable environmental resource management has become a critical issue is in conservation of fisheries. It is estimated to day that over 60% of global fish stocks are being fished above their capacity to regenerate. With over 40% of all fish caught being traded, it is clear that trade markets are an important driver of the over-harvesting of fish. Here, we see a clear case where economies of scale for fish harvesting – the transfer of small-scale fisheries to large fishing boat factories – has a very damaging effect around the world. In addition, shifts by fishermen from one type of fish to another to take advantage of more lucrative export markets create a form of structural shift that has also been damaging, with fleets moving from one stock to another as resources decline. Thus, two major negative effects of trade liberalization have been experienced in this one sector.

The extent of the relationship between trade law and fisheries conservation is also well understood from the history of trade and environment cases in the GATT and WTO. About
25% of what may be called trade and environment related cases concern fisheries. This includes the most controversial of cases, the Tuna-Dolphin case between Mexico and the United States in 1991, and the Shrimp-Turtle case between the United States and Malaysia, Thailand, India and Pakistan from 1998-2000.

Paragraph 31 of Doha includes the fisheries issue as a definable trade and environment issue, even though it is actually found in paragraph 28. This cross-reference is useful however to remember.

The fisheries issue is raised in paragraph 28 as a subsidies issue under the title of WTO “Rules”. In other words, Doha conceives of the problem as one created by excessive subsidies for fishermen, leading to too many boats chasing too few fish. Subsidies are certainly a part of the problem, and contribute to the scale and structural effects. They also help distort fishing on a global basis, and reduce catches available for developing country fishermen in many cases. But the restrictions trade law places on conservation measures when trying to address a global resource problem in the face of strong trade pressures are also relevant. How far the WTO will go in allowing stronger conservation measures under this provision is not clear.

Also, one may note that because this is raised under the paragraph on “WTO Rules”, it will be negotiated in the newly formed Negotiating Group on Rules, as opposed to the CTE. Again, it is not clear how this will affect the final result.

4.2 The CTE Mandate Items

The CTE is directed in the Doha Declaration to carry on with its current mandate, but with a focus on three specific issues. These are the effect of environmental measures on market access, the relationship to TRIPS and eco-labels. These new priorities reflect negotiation mandates that other negotiating groups – not the CTE sitting in special session – have under the Doha Declaration. Thus, the CTE is to contribute information to those other bodies, but not to undertake the negotiations themselves. While it is empowered to recommend provisions of WTO law that may require clarification, it may not make or negotiate new rules itself.

4.2.1 The effect of environmental measures on market access

Paragraph 32(i) calls for special attention to be given to the impact environmental measures have on market access, especially for products made in developing and least developed countries. This is part of the development agenda under Doha, to reduce barriers to trade into developed countries. While it is possible that a reduction of environmental measures could be provided for developing countries, this is unlikely. Consequently, it will be important to trace this work carefully to ensure that the sustainable half of the agenda is not lost here.

Developing countries have argued for some time that they face unfair environmental hurdles for some of their products. This has been heard, for example, in relation to food and natural
resource harvesting. It is most often heard in relation to issues relating to process and production methods (PPMs): the environmental impacts of how a product is made or harvested. Many countries reject efforts by other countries to impose any standards or requirements in this regard. However, the Appellate Body has confirmed that WTO rules do not expressly prevent a country taking environmental measures that relate to PPM’s in a foreign country, while at the same time imposing a very rigorous set of conditions that must be met before doing so. One of these conditions is the requirement that there must be some form of environmental nexus between the state taking the measure and the harm allegedly caused by the PPM in the foreign country. A second condition is that there must be a good faith effort to negotiate an agreement prior to taking such a measure.

A related topic here is the increasing role international standards relating to sustainable development are beginning to play. International standards are non-legally binding instruments that may be developed and applied by industrial groups, environmental NGOs, formal standard setting bodies such as the International Standards Organization (ISO) and more. Increasingly, such groups are turning their attention to environmental, social and human rights issues that together make up a complete notion of sustainable development. As such standards emerge, the ability of many states to participate in their development and to meet their requirements comes into doubt. When this happens, the standards may become unfairly weighted to conditions in the participating countries and therefore unduly limit market access for developing country producers. Thus, it is possible that the CTE will include such measures in its work under market access issues. Care will have to be taken to ensure that this new and emerging tool does not itself become unduly restricted. Rather, an effort to ensure they remain effective tools is critical, while recognizing and working to ensure that they must also be developed and applied in an appropriate way for developing and NIS countries.

The main issues surrounding market access, including the impacts of environmental measures, will be negotiated in the Negotiating Group on Market Access.

### 4.2.2 The relevant provisions of the Agreement on Trade Related Aspects of Intellectual Property Rights

The relationship between TRIPS and the Convention on Biodiversity has also been a longstanding concern of the CTE, as well as of the Council for TRIPS. In paragraph 32(ii), the CTE is mandated to raise its work to a priority level. However, this work is again to feed into negotiations that take place elsewhere, in the TRIPS Council. Under paragraph 19, this Council is mandated to examine the relationship between TRIPS and the Convention on Biological Diversity. The scope of this mandate includes, but may not be limited to, the protection of traditional knowledge and folklore, the patenting of new life forms, and other issues raised by WTO members.

This relationship has been a major area of confrontation since 1995, after both the Biodiversity Convention and TRIPS came into force. Many countries have consistently argued that TRIPS favours modern technology over traditional knowledge and technology, and devalues life by allowing patents for new life forms. There has also been a concern that
TRIPS limits the transfer of technologies by requiring high prices to be paid for patented products. This is seen, in economic terms, as limiting the potential technology benefits of trade liberalization.

With the relationship between TRIPS and the provision of medicines also a very concerning issue, TRIPS will be a major focus for all countries in the negotiations.

4.2.3 Eco-labels

Eco-labels have also been a permanent part of the CTE agenda. Little progress has been made on this issue that goes to the heart of the development and sustainable development agendas. Many governments argue that eco-labels hinder market access unfairly, and often without any consideration of the actual environmental conditions in the country where a product is made. In addition, they argue that the focus on process and production methods distorts a proper analysis. Those who support eco-labels argue that these labels are a critical tool in harnessing market forces in support of sustainable development. Public information will, it is argued, be the best force to prevent the negative impacts – product, scale and structural – that trade liberalization might produce by allowing consumers to make informed choices, and ensuring that producers can be penalized by the market for unsustainable production methods. For them, eco-labels must address the process and productions methods, as this is where most environmental damage is done.

Both sides make good points. However, at present most eco-labels are voluntary and hence mostly outside the control of WTO rules. For many this is fine. For others it must be reversed. Again, this is an issue that has seen little resolution of differing points of view. The ISO has sought to address how eco-labels are produced and applied, as have many eco-labeling bodies. These efforts seek to ensure greater transparency and fairness in the eco-label process.

As is the case with international standards, it is not clear how far the WTO can go in this area, especially for voluntary eco-labels that rely upon market forces rather than legal measures to promote their use. While the CTE will continue to study this, it is the Negotiating Group on Market Access that will have the negotiating mandate to address this, under the rubric of reducing non-tariff barriers to trade in paragraph 16 of the Doha Declaration.

4.3 Other Key Paragraphs

4.3.1 Agriculture and agricultural subsidies

The single biggest issues of the Doha Round will be the agricultural negotiations. This will involve two types of issues: the reduction of subsidies and the reduction of tariff and non-tariff barriers to market access. Subsidies are a major factor, as the EU, United States and a few other countries distort agricultural markets with huge domestic production and export subsidies. These subsidies keep production located where it is uneconomical, often enabling very damaging environmental practices to continue to support the production. In addition, by
distorting trade the subsidies often cause producers in developing countries to turn to illegal narcotic crops or to other forms of land use that are environmentally damaging. Most observers, NGOs and academics have recognized that the existing subsidies are a significant problem from both the development and sustainable development perspective. This will be a major focus of the Doha round.

Agricultural tariff levels are also a major concern and a major source of trade restrictions in this sector. Again, by distorting trade in a significant way, they have significant negative environmental impacts in developed and developing countries.

Agriculture has the potential to be a major issue where developing countries and NIS, development agencies and environmental groups can get together and promote a single direction. Only fisheries issues are likely to command such a strong potential coalition of interests.

4.3.2 Regulatory effects

In section 2, the potential regulatory effects of trade agreements were noted. The existing agreements have significant impacts on how states can act to protect their own environment and human welfare. As long as there is a trade impact from these measures, trade rules must be applied. Key elements of the rules include scientific risk assessments, applying least trade restrictive tests, the use of international standards in defining levels of environmental protection that are being sought, and establishing careful linkages between these goals and the measure adopted to achieve them. Now, there is nothing inherently wrong with such rules. For the most part, they can be quite supportive of sound environmental law making. Some questions arise, most notably the linkages or conflicts between science-based risk assessment and the application of the precautionary principle. In this area, however, there seems to be a growing convergence of thought and practice that is reducing the scope of uncertainty.

The concern from an environmental or sustainable development perspective is that the focus of the rules is on ensuring market access. They are all designed for that purpose, and to prevent regulations from becoming what are known as non-tariff barriers to trade. As a result, all the different steps and tests apply to any environmental measure that may have an impact on trade. And the combination of tests and conditions that must be met create a very high level of capacity and financial requirements. Very few, and possibly likely no, developing countries and NIS can meet these requirements for the protection of their own environment. (Mann, 2000)

Consequently, two different issues in the Doha Declaration become very relevant here. One is the continued concern for the reduction of non-tariff barriers, which includes trade measures. This is seen both in paragraph 32(i), mandating further work on the trade impacts of environmental measures, and in paragraph 16, which deals with market access for non-agricultural products and includes a call to pursue the reduction of non-tariff barriers. Both of these issues will be addressed in the Negotiating Group on Market Access. While neither provision necessarily means a reduction in environmental protections, it is clear that they can
lead to this result, or to the creation of new rules that pose further challenges that cannot be met by countries taking steps to protect their environment.

The second track for addressing the lack of capacity to meet the existing trade rules as they relate to making environmental protection measures are the provisions on capacity building. These are noted shortly.

### 4.3.3 Market access

Paragraph 16 of the Doha Declaration has just been raised due to its inclusion of a call for reductions in non-tariff barriers to trade. However, paragraph 16 also includes two other elements of critical importance from a sustainable development perspective. These are negotiations for the broad reduction of tariff levels, and for the reduction or elimination of tariff escalation and tariff peaks. Tariffs are the bread and butter of trade negotiations. But as progress has been made over the years in reducing tariff levels, this has not always been done in an equitable way. Maintaining high tariffs (and subsidies) in agriculture is one example of this. Tariff escalation is another. This is an approach whereby raw materials and natural resources are given low tariff levels, while every additional level of work on the raw material attracts a higher level of tariff. In this way, value added work in the country of origin of a natural resource is effectively “penalized” with higher tariff rates.

For developing countries and NIS, especially those with a strong natural resource base, this imposes economic constraints on the ability of countries to develop higher levels of industrial activity. This in turn means that higher levels of natural resources must be sold without value added work in order to obtain trade-related income. As a result, tariff escalation causes many countries to harvest natural resources at faster rates than they can be replaced, thus causing unsustainable resource management practices. When these practices are in mining, forestry, fisheries and other sectors, considerable additional environmental damage may also ensue. In addition, this practice reduces opportunities for poverty alleviation by promoting lower wage jobs over higher wage jobs.

When these factors are considered together, it is evident that the negotiations under paragraph 16 on tariff levels and tariff escalation have the potential to be very constructive from an environmental and sustainable development perspective.

### 4.3.4 Monitoring the negotiations

Paragraph 51 of the Doha Declaration mandates the CTE to monitor and consider the environmental and sustainable development aspects of all the Doha Round negotiations. While this is not a full environmental assessment of the ongoing proposals, it could, in theory, provide a good sounding board for raising and addressing issues coming out of other negotiating groups. However, there is good reason to be skeptical.

First, the committee is composed mainly of trade diplomats reporting to senior negotiators. This means that they are often not able to properly analyze the environmental issues that may arise during the negotiations – it is not their primary field of expertise. Second, because the
members of the CTE report to the senior trade negotiators, they are not likely to be very motivated to question the wisdom or appropriateness of the proposals they make or support. Absent greater independence from senior negotiators, the process presents inherent obstacles to a serious environmental evaluation of proposals. In addition, in the absence of observers to monitor and test the substance of these deliberations against draft documents and negotiating proposals, there is a very high risk of one arm of the WTO simply being used to support and “greenwash” what another arm is doing. Without transparency, this process may well be treated with nothing but cynicism: it will be the trade rules proponents sending junior officials to review their bosses work and report back to them, and doing so in secrecy. How can this be credible? Finally, there is no clear avenue for raising and addressing concerns that might emerge.

The notion of empowering the CTE to monitor the environmental aspects of the Doha negotiations is an interesting one. However, unless the defects noted above are addressed, it is not likely capable of meeting its goals.

4.3.5 Capacity Building

Finally, paragraph 33 of the Doha Declaration includes a commitment to improve capacity building and technical assistance in the trade and environment area. This is a critical call that is found in many parts of the Declaration. It is clear that it is necessary in the trade and environment area as well. It is also clear that capacity building and technical assistance under this paragraph must extend to environmental capacity building and assistance, not just the narrow elements of the trade rules and obligations. Although the amount of resources being pledged for capacity building has increased since the Doha meeting, it remains a largely inadequate process at this time.

Paragraph 33 requires a report to the next Ministerial meeting (Cancun, Mexico, September 2003) on this issue. Developing countries and NIS will therefore have an opportunity to express their concerns as regards the levels of assistance and the way in which it is being directed.

5. CONCLUSIONS: MEETING THE SUSTAINABLE DEVELOPMENT CHALLENGE IN THE WTO

The WTO has committed itself to a “development” round, but it is not yet clear whether this is to be a “sustainable development” round. How the issues noted above are dealt with in the Doha Round will be critical to determining that answer. The economic analysis described in section 2 shows how trade liberalization can be beneficial to the environment if certain conditions are met. The analysis in section 4 shows how different elements of the Doha Declaration lead in directions that support potential environmental benefits, while other elements appear to be going indirections that will facilitate negative consequences emerging. Whether a philosophy of promoting sustainable development will emerge to help ensure a
consistent positive result remains to be seen. It is hoped that this paper provides a sense of where and how this might be done.

At the same time, it is clear that each current and future WTO member has the opportunity to establish its own path towards quality, sustainable growth. To meet that latter challenge, states must understand the potential benefits of trade growth, and its potential negative impacts. Governments need to be willing to forego some opportunities when the environmental costs are likely to be significant or long term. In short, trade (and investment as well) liberalization does not eliminate the need or the capacity for governments to continue to steer economic growth in ways that are positive and sustainable for their countries. It does, however, often require an increased political commitment to doing so. Governments, industry and non-governmental organizations generally have to work together to achieve such a result.
ANNEX 1: THE DOHA MINISTERIAL DECLARATION, KEY PARAGRAPHS, WITH ANNOTATIONS

WORLD TRADE

ORGANIZATION

WT/MIN(01)/DEC/W/1
14 November 2001
(01-5769)

MINISTERIAL CONFERENCE
Fourth Session
Doha, 9 - 14 November 2001

MINISTERIAL DECLARATION

...........

6. We strongly reaffirm our commitment to the objective of sustainable development, as stated in the Preamble to the Marrakesh Agreement. We are convinced that the aims of upholding and safeguarding an open and non-discriminatory multilateral trading system, and acting for the protection of the environment and the promotion of sustainable development can and must be mutually supportive. We take note of the efforts by Members to conduct national environmental assessments of trade policies on a voluntary basis. We recognize that under WTO rules no country should be prevented from taking measures for the protection of human, animal or plant life or health, or of the environment at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, and are otherwise in accordance with the provisions of the WTO Agreements. We welcome the WTO’s continued cooperation with UNEP and other inter-governmental environmental organizations. We encourage efforts to promote cooperation between the WTO and relevant international environmental and developmental organizations, especially in the lead-up to the World Summit on Sustainable Development to be held in Johannesburg, South Africa, in September 2002.

The first sentence reaffirms the commitment to sustainable development in the WTO preamble. This is useful, and may enhance its role in the future interpretation of the WTO obligations if this is included in the final negotiating result. However, the middle sentence legally reasserts the primacy of the WTO trade agreements as governing when and how the right to take measures can be exercised. It is a WTO supremacy clause, reaffirming the application of disciplines and conditions that most developing countries have no capacity to meet. Even without this latter problem, it is not a statement that is “accommodating” to the environment, but is one that is reasserting of the current WTO position.
7. We reaffirm the right of Members under the General Agreement on Trade in Services to regulate, and to introduce new regulations on, the supply of services. This is a potentially important statement, relating directly to still secretive negotiations currently taking place in the GATS Council on government regulatory disciplines. It remains to be seen how it plays out in the near future in that forum.

8. We reaffirm our declaration made at the Singapore Ministerial Conference regarding internationally recognized core labour standards. We take note of work under way in the International Labour Organization (ILO) on the social dimension of globalization. In other words, no labour issues in the WTO. The International Labour Organization has just launched a high level commission to investigate how to address social aspects of globalization.

10. Recognizing the challenges posed by an expanding WTO membership, we confirm our collective responsibility to ensure internal transparency and the effective participation of all Members. While emphasizing the intergovernmental character of the organization, we are committed to making the WTO’s operations more transparent, including through more effective and prompt dissemination of information, and to improve dialogue with the public. We shall therefore at the national and multilateral levels continue to promote a better public understanding of the WTO and to communicate the benefits of a liberal, rules-based multilateral trading system. How this commitment is met will be critical: will observers be allowed into the negotiations? Will draft texts be made public? Will parliaments be able to publicly scrutinize ongoing documentation? Etc. The last paragraphs of the declaration suggest there is no current plan for any external transparency at all, and the first meeting at the WTO on how to run the negotiations suggest a closed shop will be maintained. The current agreed process for the negotiations suggests likewise.

WORK PROGRAMME

IMPLEMENTATION-RELATED ISSUES AND CONCERNS

AGRICULTURE

13. We recognize the work already undertaken in the negotiations initiated in early 2000 under Article 20 of the Agreement on Agriculture, including the large number of negotiating proposals submitted on behalf of a total of 121 Members. We recall the long-term objective referred to in the Agreement to establish a fair and market-oriented trading system through a programme of fundamental reform encompassing strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets. We reconfirm our commitment to this programme. Building on the work carried out to date and without prejudging the outcome of the negotiations we commit ourselves to comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support. We agree that
special and differential treatment for developing countries shall be an integral part of all
elements of the negotiations and shall be embodied in the Schedules of concessions and
commitments and as appropriate in the rules and disciplines to be negotiated, so as to be
operationally effective and to enable developing countries to effectively take account of their
development needs, including food security and rural development. We take note of the non-
trade concerns reflected in the negotiating proposals submitted by Members and confirm that
non-trade concerns will be taken into account in the negotiations as provided for in the
Agreement on Agriculture.

This is the major caveat: what will remain subject to subsidies or other economic incentives
for non-trade reasons? There is a need to assess the true environmental values and services
provided by agriculture and agricultural areas, and ensure these are balanced with the
legitimate concerns against subsidies.

SERVICES

15. The negotiations on trade in services shall be conducted with a view to promoting the
economic growth of all trading partners and the development of developing and least-
developed countries. We recognize the work already undertaken in the negotiations, initiated
in January 2000 under Article XIX of the General Agreement on Trade in Services, and the
large number of proposals submitted by Members on a wide range of sectors and several
horizontal issues, as well as on movement of natural persons. We reaffirm the Guidelines and
Procedures for the Negotiations adopted by the Council for Trade in Services on 28 March
2001 as the basis for continuing the negotiations, with a view to achieving the objectives of
the General Agreement on Trade in Services, as stipulated in the Preamble, Article IV and
Article XIX of that Agreement. Participants shall submit initial requests for specific
commitments by 30 June 2002 and initial offers by 31 March 2003.

Initial requests and offers for what services will be included by each country under the GATS
will be critical, but not as critical as final offers. The issue of government regulatory scope,
which is already being negotiated, as noted in the opening paragraphs, remains one of the
most critical substantive issues. Services and environmental services remain ill-defined, and
hence their potential relationship to such things as water management and freshwater
management is ill-defined. Oversight of the details will be needed to ensure the scope is not
expanded in the fine print of services definitions and industrial sector lines, etc.

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

16. We agree to negotiations which shall aim, by modalities to be agreed, to reduce or as
appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high
tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export
interest to developing countries. Product coverage shall be comprehensive and without a priori
exclusions. The negotiations shall take fully into account the special needs and
interests of developing and least-developed country participants, including through less than
full reciprocity in reduction commitments, in accordance with the relevant provisions of
Article XXVIII bis of GATT 1994 and the provisions cited in paragraph 50 below. To this
end, the modalities to be agreed will include appropriate studies and capacity-building
measures to assist least-developed countries to participate effectively in the negotiations.
This opens the door for negotiating more extensive controls on environmental and other social legislation and regulation, always referred to in the WTO as non-tariff barriers. Thus, gains made through litigation in the WTO, where the appellate body has shown a strong desire to try to reconcile the trade and environment conflicts with some respect for environmental concerns, risk actually being eroded here. The relationship of the WTO to process and production method standards may become part of this negotiation.

TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

19. We instruct the Council for TRIPS, in pursuing its work programme including under the review of Article 27.3(b), the review of the implementation of the TRIPS Agreement under Article 71.1 and the work foreseen pursuant to paragraph 12 of this Declaration, to examine, *inter alia*, the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore, and other relevant new developments raised by Members pursuant to Article 71.1. In undertaking this work, the TRIPS Council shall be guided by the objectives and principles set out in Articles 7 and 8 of the TRIPS Agreement and shall take fully into account the development dimension. *The implementation of this paragraph will be closely watched, not just for whether the letter is followed, but also the spirit. This will be a bell-weather of the WTO’s intentions vis-à-vis environmental agreements.*

RELATIONSHIP BETWEEN TRADE AND INVESTMENT

20. Recognizing the case for a multilateral framework to secure transparent, stable and predictable conditions for long-term cross-border investment, particularly foreign direct investment, that will contribute to the expansion of trade, and the need for enhanced technical assistance and capacity-building in this area as referred to in paragraph 21, 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 that Session on modalities of negotiations.

*Only the modalities for a negotiation are to be decided at the next session. But what happens if a member withholds consensus on modalities may be a question of some difficulty. The chair of the Doha meeting said states could legitimately withhold consensus on modalities and stop these negotiations. This is unlikely to happen. Thus, developing countries will now find trade market access issues bargained against investment market access for developed countries. This could be the worst scenario for developing countries whose priorities have been market access. Whether the notion of modalities will encompass the scope of an agreement on investment is not clear. It could, but may also not do so. Whether the promotion of sustainable investments will be included is, therefore unknown. There are no apparent state “champions” of a broader investment agenda now.*

22. In the period until the Fifth Session, further work in the Working Group on the Relationship Between Trade and Investment will focus on the clarification of: scope and definition; transparency; non-discrimination; modalities for pre-establishment commitments based on a GATS-type, positive list approach; development provisions; exceptions and balance-of-payments safeguards; consultation and the settlement of disputes between
Members. Any framework should reflect in a balanced manner the interests of home and host countries, and take due account of the development policies and objectives of host governments as well as their right to regulate in the public interest. The special development, trade and financial needs of developing and least-developed countries should be taken into account as an integral part of any framework, which should enable Members to undertake obligations and commitments commensurate with their individual needs and circumstances. Due regard should be paid to other relevant WTO provisions. Account should be taken, as appropriate, of existing bilateral and regional arrangements on investment.

*There is nothing that limits future negotiations to these listed elements. That will be an issue in the “modalities” debate.*

TRANSPARENCY IN GOVERNMENT PROCUREMENT

26. Recognizing the case for a multilateral agreement on transparency in government procurement and the need for enhanced technical assistance and capacity building in this area, 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 that Session on modalities of negotiations. These negotiations will build on the progress made in the Working Group on Transparency in Government Procurement by that time and take into account participants’ development priorities, especially those of least-developed country participants. Negotiations shall be limited to the transparency aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers. We commit ourselves to ensuring adequate technical assistance and support for capacity building both during the negotiations and after their conclusion.

*How decisions here effect government green procurement policies will be important. Market access for government purchasing is important for developing countries. Undue constraints can eliminate such opportunities.*

WTO RULES

28. In the light of experience and of the increasing application of these instruments by Members, we agree to negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures, while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives, and taking into account the needs of developing and least-developed participants. In the initial phase of the negotiations, participants will indicate the provisions, including disciplines on trade distorting practices, that they seek to clarify and improve in the subsequent phase. We note that fisheries subsidies are also referred to in paragraph 31. In the context of these negotiations, participants shall also aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries.

*This is a vitally important issue for the sustainable harvesting of fish resources around the world. More clarity would have been welcome, in language similar to agriculture perhaps.*
DISPUTE SETTLEMENT UNDERSTANDING

30. We agree to negotiations on improvements and clarifications of the Dispute Settlement Understanding. The negotiations should be based on the work done thus far as well as any additional proposals by Members, and aim to agree on improvements and clarifications not later than May 2003, at which time we will take steps to ensure that the results enter into force as soon as possible thereafter.

Transparency and public access to hearings, the role of amicus curiae, and other issues relating to improved public legitimacy of this largely secretive process will be important tests of the commitment of the WTO to transparency and the other commitments in para. 10 above.

TRADE AND ENVIRONMENT

31. 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;

This formulation limits the negotiations to specific trade measures required by an mea, and by excluding the same issue as it relates to a non-party to the mea. This division may actually result in a more limited application of MEA’s than the appellate body has already shown it is willing to consider. The appellate body has shown a willingness to consider the application of the same standards in an MEA to non-parties in recent cases, making this division here a precarious one from an environmental perspective. It could also create a legal disincentive for states to join MEA’s, thus undermining these critical instruments. This provision is a potential disaster from an environmental perspective, for little apparent gain from a trade perspective: no MEA-related measure has ever been challenged to date.

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

This is useful, but in many ways already exists at an informal level, so will not be a major development. It may help, however, prevent one country from blocking an international agency having observer status as has happened on occasion. How will participation during the negotiations be managed is equally important as after the negotiations, if not more so.

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

The definition of environmental goods and services will be important, but this has some promise in establishing a special category for rapid expansion of these goods and services. Care must be taken not to expand into areas of resource management, such as freshwater, by broad definitions or fine print.
We note that fisheries subsidies form part of the negotiations provided for in paragraph 28. 

32. We instruct the Committee on Trade and Environment, in pursuing work on all items on its agenda within its current terms of reference, 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;

This is just one side of the agenda, and fits with the negotiations under para. 16 above. Compare this to how impacts of trade rules on environmental protection is dealt with: only in the consultative process of the ill-equipped CTE.

(ii) the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights; and

This is a major political test of the WTO

(iii) labeling requirements for environmental purposes.

Is this an effort by the WTO to constrain eco-labels, or to set standards that will ensure there integrity from an environmental perspective while constraining undue impacts on markets? Discussions on eco-labels have been going on for years, without resolution. It is not clear whether the result of a negotiation will have positive or negative effects on the future role of eco-labels.

Work on these issues should include the identification of any need to clarify relevant WTO rules. The Committee shall report to the Fifth Session of the Ministerial Conference, and make recommendations, where appropriate, with respect to future action, including the desirability of negotiations. The outcome of this work as well as the negotiations carried out under paragraph 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, and will take into account the needs of developing and least-developed countries. These sentences set out limitations to the scope of the negotiations in articles 31 and 32. They state going in that the rights and obligations under the WTO agreements shall not be altered by any negotiations under these provisions, leaving implementing measures pursuant to an MEA as fully subject to WTO rules and WTO dispute resolution processes. What this will accomplish for MEA’s is very unclear. The remaining issues then may be limited to whether some predetermined rules for interpreting trade law in a way to be consistent with environmental agreements can be introduced, perhaps through their recognition as an applicable international standard or some other mechanism. What “price” might be extracted for such an approach is, of course, unknown.

33. We recognize the importance of technical assistance and capacity building in the field of trade and environment to developing countries, in particular the least-developed among them. We also encourage that expertise and experience be shared with Members wishing to perform environmental reviews at the national level. A report shall be prepared on these activities for the Fifth Session.
Providing such technical assistance and capacity building will be critical to a fair and balanced future in this area.

LEAST-DEVELOPED COUNTRIES

42. We acknowledge the seriousness of the concerns expressed by the least-developed countries (LDCs) in the Zanzibar Declaration adopted by their Ministers in July 2001. We recognize that the integration of the LDCs into the multilateral trading system requires meaningful market access, support for the diversification of their production and export base, and trade-related technical assistance and capacity building. We agree that the meaningful integration of LDCs into the trading system and the global economy will involve efforts by all WTO Members. We commit ourselves to the objective of duty-free, quota-free market access for products originating from LDCs. In this regard, we welcome the significant market access improvements by WTO Members in advance of the Third UN Conference on LDCs (LDC-III), in Brussels, May 2001. We further commit ourselves to consider additional measures for progressive improvements in market access for LDCs. Accession of LDCs remains a priority for the Membership. We agree to work to facilitate and accelerate negotiations with acceding LDCs. We instruct the Secretariat to reflect the priority we attach to LDCs’ accessions in the annual plans for technical assistance. We reaffirm the commitments we undertook at LDC-III, and agree that the WTO should take into account, in designing its work programme for LDCs, the trade-related elements of the Brussels Declaration and Programme of Action, consistent with the WTO's mandate, adopted at LDC-III. We instruct the Sub-Committee for Least-Developed Countries to design such a work programme and to report on the agreed work programme to the General Council at its first meeting in 2002.

This is important, indeed critical, from a sustainable development perspective.

ORGANIZATION AND MANAGEMENT OF THE WORK PROGRAMME

45. The negotiations to be pursued under the terms of this Declaration shall be concluded not later than 1 January 2005. The Fifth Session of the Ministerial Conference will take stock of progress in the negotiations, provide any necessary political guidance, and take decisions as necessary. When the results of the negotiations in all areas have been established a Special Session of the Ministerial Conference will be held to take decisions regarding the adoption and implementation of those results. Virtually impossible deadline, and not worth the rush. Modalities for negotiations are not yet fully set out, and investment and services modalities won’t be concluded until the Ministerial in 2003. Two years to negotiate and balance everything afterwards is just not enough. This is what makes it a “round”, and ensures cross-bargaining among areas of negotiation.

48. Negotiations shall be open to:

(i) all Members of the WTO; and

(ii) States and separate customs territories currently in the process of accession and those that inform Members, at a regular meeting of the General
Council, of their intention to negotiate the terms of their membership and for whom an accession working party is established. Decisions on the outcomes of the negotiations shall be taken only by WTO Members. *It is not clear if this is intended to preclude observers from civil society, or leave that for a decision of the trade negotiations committee. There is no indication if or how draft documents will be made available to the public. This likely means the continuation of existing practice which precludes any public distribution.*

49. The negotiations shall be conducted in a transparent manner among participants, in order to facilitate the effective participation of all. They shall be conducted with a view to ensuring benefits to all participants and to achieving an overall balance in the outcome of the negotiations. 

*What about transparent to the rest of the world?*

51. The Committee on Trade and Development and the Committee on Trade and Environment shall, within their respective mandates, 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. *This provision may have some potential, but not without significant changes in the composition and orientation of the committees. Because these committees are composed almost exclusively of trade diplomats reporting to senior negotiators, this mandate is almost useless unless significant changes are made to ensure knowledgeable and effective environmental and developmental participants are included and given real voice; and the process is made independent of the trade negotiators. In addition, in the absence of observers to monitor and be able to test the substance of these deliberations against draft documents and negotiating proposals, there is a very high risk of one arm of the WTO apparatus simply being used to support and “greenwash” what another arm is doing. This has been done at the national level before. In addition, the committees have no decision making powers in their own right, and none is granted under this mandate in this regard. Without transparency, this process will be treated with nothing but cynicism.*
ANNEX 2: SUGGESTED READINGS


OECD: Report on Trade and Environment to the OECD Council at the Ministerial Level, OECD, Paris, 1995, OCDE/GD(95)63


WTO resources: All WTO resources concerning the environment that are publicly available can be found through http://www.WTO.org/english/tratop_e/envir_e/envir_e.htm