

Doha Round of Negotiations on Trade and Environment

The State of Play



The Doha Round of negotiations by the WTO (World Trade Organisation) Members for the first time explicitly included 'Trade and Environment' as part of the negotiating agenda - a need emphasised largely by the European Union and supported by Switzerland, Norway and Japan. After much heated opposition developing countries including India, contrary to their customary stand of not linking trade with non-trade issues, agreed to the inclusion of environment in the negotiating agenda of the WTO framework. Currently, negotiations are taking place through the Committee on Trade and Environment Special Session (CTESS). In particular, Members are instructed to discuss inter alia the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs), the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services, the effect of environmental measures on market access, the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS); and labelling requirements for environmental purposes.

Trade and MEAs

The core concern on environment in the Doha mandate is the harmonisation of WTO laws with trade measures in *multilateral environmental agreements* (MEAs). The idea is to fine tune governance in cases where trade and environmental issues are interlinked.

India with the support of Canada, New Zealand as well as many other countries have placed emphasis on the adaptation of Standard Trade Obligations (STOs) – that is, trade measures taken within MEAs to ensure their compatibility with WTO rules. On the other hand, the EU and Switzerland support an approach that is in favour of tweaking WTO laws to ensure their compatibility with Specific Trade Obligations in MEAs.

After much deliberation, members agreed that STOs in six MEAs would be married with WTO laws. Consensus amongst members was achieved to include only trade measures explicitly provided for and mandatory under the related MEAs.

Till date only India among South Asian countries has actively contributed and participated in this negotiation. However, it should be remembered that not only India but also other South Asian countries are a signatory to a number of MEAs. Each country should closely monitor and participate in the procedures of the MEAs to benefit from such agreements. There is a need to identify the MEAs that affect the trade performances of various countries in goods with

environmental significance; in this respect specific attention must focus on the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Convention on Biological Diversity, Montreal Protocol, and Basel Convention.

Environmental Goods and Services

Even after liberalisation, there is little potential for exports of EGS (Environmental Goods and Services) taking place from South Asian countries to saturated developed country markets. There would be more potential for these countries to export to other developing country markets. Also, liberalisation of trade in environmentally preferable products (EPPs), such as coir, jute and bamboo, could generate gains for South Asian countries, particularly countries like India and Sri Lanka who are principle exporters of such goods. During the negotiations there is a proposition to include these EPPs, such as organic products, non-timber forest products and related natural products as a category under EGS. This would imply an attractive enlargement of the global market for EGS.

Countries like India have already indicated its support for the expansion of the list of environmental goods. The Doha Declaration also mandates special attention to environmental products of export interest to developing countries and the special needs and concerns of developing and least developed countries (LDCs) in this regard. Despite all such pronouncements, the lists proposed do not embrace products of interest to developing countries.

Prior to the WTO Ministerial in Hong Kong, two strategies were submitted by WTO Members for the classification of EGS: the *list approach* and the *environmental project approach* (EPA). The US, EC, Switzerland, New Zealand and Canada have proposed 'list' approaches to the classification of environmental goods on the basis of listings prepared by Organisation for Economic Cooperation and Development (OECD) and the Asia-Pacific Economic Cooperation (APEC).

On the other hand, instead of following the submissions of developing countries with regard to the 'list' approach, India submitted the EPA (Environmental Project Approach). It emphasised that the EPA is a rule-based system and that *transparency, flexibility and predictability* are intrinsic to the process. Transparency is ensured by the involvement of the WTO Committee on Trade and Environment in the determination of a set of criteria concerning the EGS, while flexibility is guaranteed by policy space allowed to the national governments through the operations of a Designated National Authority.

Under this approach, environmental goods and services used in environmental projects would qualify for specified concessions for the duration of the project. Such projects would be approved by the Designated National Authority and could include those endeavouring to meet national or international environmental targets, facilitating thereby the realisation of national environmental goals and compliance with bilateral and multilateral environmental agreements. The strong proactive stand taken by India in these particular negotiations is a sign of India's geopolitical power. Other developing countries are also supporting the EPA, and at the same time, developed countries are also reconsidering their own 'list' approach in the light of the suggested EPA.

Market Access

The issue of market access was incorporated into the Doha Declaration as a CTE (WTO Committee on Trade and Environment) mandate because of consideration towards developing countries which feared that their products would be excluded from the international market due to environmental measures implemented by developed countries. In order to deal with the issue, it was agreed that there was a need to examine how environmental measures could be designed by importing countries in a manner that (a) was consistent with WTO rules; (b) was inclusive; (c) took into account the capabilities of developing countries, and (d) met the legitimate objectives of the importing country.

According to India's view, developing countries are more vulnerable to the adverse effects of environmental measures on market access and competitiveness. The way forward could be the identification of sector specific examples of environmental requirements impacting export performance. Some requirements may generate positive spillovers in the form of new trading opportunities, either through niche markets for environmentally friendly products or through competitive advantages arising out of factor endowments. These provide win-win opportunities. Other requirements may affect exports adversely, if not addressed properly.

TRIPS and the CBD

The Doha Declaration requires the CTE to review the relevant provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) that contain several environment related provisions and further discuss the relationship between the TRIPS Agreement and the CBD (Convention on Biological Diversity). India is actively involved in these negotiations and has made several important submissions to the CTE on this issue. According to India's proposal, there are two major contradictions between the provisions of CBD and those of the TRIPS Agreement.

The first important contradiction is the lack of any requirements for patent applications to mention the origin of biological/genetic resources and indigenous/traditional knowledge used in the biotechnological invention. The next contradiction is the lack of provisions in the TRIPS Agreement on prior informed consent of the country of origin and the knowledge-holder of the biological raw material meant for usage in a patentable invention. This needs to be reconciled with Article 15.5 of the CBD. Thus, if any inventor wants to develop such biological materials for commercial purpose, he or she would have to get the prior informed consent of the country as well as of the owner and, if required by such owner, enter into agreements with the country of origin.

In order to overcome these contradictions, India has called for an amendment to the TRIPS Agreement to accommodate the essential elements of the CBD. Moreover, India fears that there could be several cases of bio-piracy of traditional knowledge associated with biological resources. Examples included the patent on the wound-healing properties of turmeric in India, a patent that was granted in the US. Because the problem of bio-piracy cannot be resolved with revocation actions and domestic legislation alone, India has underscored the need to take international action to prevent bio-piracy.

But developed countries such as the US, Canada and Australia have put forward that there is no conflict and no likelihood of conflict between the two multilateral agreements. However, the rest of the Asian developing countries have not expressed much concern about the issue, and have made few submissions and suggestions on the issue at the CTE.

Ecolabelling

Around the world ecolabels are becoming an important addition to the toolkits of environment regulators. The expectation from ecolabelling, by both international organisations such as the Global Ecolabelling Network and national Governments, is that it will have a positive impact on the environment.

Although negotiations have continued, the CTE has produced few tangible outcomes on the issue. Its work has been limited to information collection and analysis of environmental labelling. Some Asian developing countries, including India, Indonesia and the Philippines, have spoken out on the issue at the CTE meeting, and shared the same view as other developing countries. That is, they were reluctant to interpret the WTO compatibility with environmental labelling in a broad sense; these also reject labelling based on life cycle analysis.

Korea and China have had some specific concerns with the issue. For instance, China has stressed the need for more time to consider the issue at the CTE meeting without any clarification on its stance. To sum up, the views put forth at the CTE have reflected subtle differences in the negotiating positions of Asian developing countries such as India, Indonesia, the Philippines, China and Korea.

In this regard, each South Asian country should first develop its own national and voluntary eco-labelling scheme with the help of domestic standard-testing bodies to get access to niche markets. They could even approach their neighbour, India, for such assistance given the fact this country has already established a national ecolabel in 1991. Also it is vital that all South Asian countries do ensure that they actively take part in

international standard setting bodies such as ISO, Codex, etc.

Conclusion

It could be said that the WTO Committee on Trade and Environment (CTE) has only brought to light the changing negotiating positions of developing countries but has achieved precious little apart from that. While numerous proposals have been forwarded by developed countries, there have been very few proposals from developing countries to the CTESS (Committee on Trade and Environment Special Session). Till date, only the negotiations on environmental goods have seen some movement with a few countries proposing lists of environmental goods; many developing countries have yet to put forward their positions.

It is quite important for South Asian countries to come together on the basis of mutual interest and geographic considerations, and push a common agenda in negotiations on the Environment. These countries have a lot in common in their economic situation, environmental concerns and interest in the global market. Since the environment issue has already been recognised as a mandate under Doha negotiations, it is always better for the region to discuss and arrive at a common position. Taking a common position in the negotiations will increase the bargaining strength of the region and help in getting better deal for the region.

As of now, the Doha Round of negotiations have not yielded much result with developing and developed countries staying poles apart on the issues of agricultural subsidy and market access for industrial goods. However this does not mean that the environmental negotiations have come to a standstill; members have continued discussions in the CTESS on principal issues mandated for negotiation. Small group meetings were convened in January and February 2008 in the lead up to the informal CTESS held on 27th February, 2008. At a recent informal CTESS, the US and EC submitted a proposal on the liberalisation of a discrete group of 'climate-friendly' goods. This is something that all developing countries need to closely monitor and discuss!

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This Viewpoint Paper has been written by Simi T. B. of and for CUTS Centre for International Trade, Economics & Environment (CUTS-CITEE), D-217, Bhaskar Marg, Bani Park, Jaipur 302 016, India. Ph: 91.141.228 2821, Fax: 91.141.228 2485, Email: citee@cuts.org, Web Site: www.cuts-international.org.