

Trade and Environment

Sustaining Development or Promoting Protectionism!

Many environment proponents in the trade and environment debate have feared that there could be conflicts between trade liberalisation and enhanced environmental protection and that competitive deregulation could lead to downward harmonisation of environmental standards. Many in trade community, on the other hand, feared that environmental concerns could be used for protectionist purposes.

The subject of environment follows on from Marrakesh and has been under intense consideration in the WTO since then. At the Marrakesh Ministerial of the GATT/WTO, the Committee on Trade and Environment (CTE) was set up. At the Fourth Ministerial Conference in Doha, Members agreed to launch negotiations on certain aspects of the trade and environment linkage. Environmental issues in the ongoing WTO negotiations are set to take on a more formal and comprehensive agenda than before.

I. The Doha Mandate

In paragraph 31 of the WTO's Doha Ministerial Declaration, Members agreed to negotiate on: (i) the relationship between WTO rules and specific trade obligations set out in MEAs (Multilateral Environmental Agreements); (ii) procedures for regular information exchange between MEA secretariats and relevant WTO committees, and the criteria for granting of observer status; and (iii) liberalisation of trade in environmental goods and services. These issues are being addressed in the special CTE sessions. Besides this, para 32 instructs the CTE to focus on issues around market access, intellectual property rights and eco-labelling, with a view to making recommendations, where appropriate, with respect to future action, including the desirability of negotiations.

II. Current State of Play

MEA-WTO Relationship

Discussions on MEA-WTO relationship are in preliminary phase, with delegations putting forward their own ideas around scope of the 31(i) mandate, including which MEAs to consider and what constitute specific trade obligations (STOs) in them. Members began a substantive discussion along the lines, addressing submissions from USA, India, Canada and Switzerland.

WTO Members convened on 1-2 May 2003 for a special session of the CTE in this regard. The EC and Switzerland, which were *demandeurs* on trade and environment, reiterated their view that broader concepts – such as the mutual supportiveness of trade and environment – should be elaborated by examples, but that a list of qualifying STOs should not be exclusive or exhaustive. A submission from Hong Kong, China (TN/TE/W/28), however, noted that it was not easy to generalise a set of common criteria for defining STOs, nor was it feasible to find a one-size-fits-all solution, and that some tailor-made solutions for identified STOs might be required.

Most developing countries have tended to view the environment mandate with suspicion. As a result, most are looking to limit the mandate so as to prevent it from expanding to include issues that could constrain their future market access. They are in general supported in this position by the US and Canada, who advocate that STOs be both specific and mandatory. At the CTE meeting, the support for a very specific definition of STOs was reflected in submissions by Malaysia (TN/TE/W/29), Argentina (TN/TE/W/2) and India (TN/TE/W/23).

The US submission (TN/TE/W/20) and the Indian submission advocated limiting the definition of a specific trade obligation in an MEA to one that is mandatory and specific in character. They identified six MEAs that would qualify under this criteria.

According to USA, the special session should now begin to build a factual foundation that can subsequently permit the Committee to examine the relationship between these two sets of international obligations (MEAs and WTO). This position was supported by Australia and Argentina. Canada in its submission combined both US-India "STO" approach with a conceptual approach (TNTE/W/22). Like USA and India, it also focused on the six MEAs, but qualified its stance by saying that it did not view them as definite list of all MEAs with STOs, not that examination of the six could provide significant insights.

Observer status and Information Exchange

At the 12-13 February 2002 meeting, Members agreed to a proposal brought forward by Chair Yolande Biké of Gabon to allow MEA secretariats to attend the next meeting of the CTE special session as ad hoc observers. After some discussion, delegates agreed that existing CTE regular session observers and those with pending requests for observership at the special sessions could qualify to attend. Under this criterion, the UN Environment Programme (UNEP) and six MEAs were authorised.

Members convened on 1-2 May 2003 for a special (negotiating) session of the CTE, where discussion focused on the relationship between the WTO and STOs. Although the question of formal observer status was yet to be decided, secretariats from six trade-related MEAs attended as ad-hoc invitees, and responded to questions from Members. Several secretariat representatives expressed frustration with the process, questioning the value of putting resources into their involvement in the discussions at the WTO if their presence might simply serve to legitimise a WTO decision.

On 7-8 July 2003, WTO Members convened for the final meeting of the CTE before the Cancun Ministerial in September. The EC proposed that trade ministers in Cancun invite UNEP and MEAs to regularly attend the special session rather than to continue inviting them on an ad hoc basis. The EC also proposed that trade ministers formalise the currently informal annual MEA information sessions.

While Canada and Norway agreed with the EC that a strong signal should be sent on MEA relations in Cancun, other including Philippines, Malaysia, Pakistan, and Egypt, that oppose allowing observers in the negotiating group, said

that the EC's suggestion would circumvent the para.31(ii) mandate to establish criteria on observership. They were explicit in ensuring that the decision was taken without prejudice to the large observership question (which remains unresolved at the Trade Negotiations Committee/General Council level), and applies only to the CTE special session.

Environmental Goods

In discussions at the special session under para 31(iii), some developing countries expressed concern that the emerging definition of what constituted environmental goods was too heavily focused on goods of interest to the developed countries. Most definitions to date have focused on 'end-use' or industrial products that aim to mitigate or clean up environmental pollution. There continued to be little enthusiasm for including so-called process and production methods (PPMs) criteria to define "environmentally friendly physical characteristics", such as bicycles and solar energy cookers, that could also favour developing country products. Japan submitted the paper outlining its suggested list of environmental goods that it felt should be included in the market access talks (TN/TE/W/171) and another paper from Qatar on lower-carbon and pollutant-emitting fuels and technologies (TN/TE/W/19).

The US presented two papers on environmental goods. In its first paper (TN/TE/W/34), the US suggested that Members use the list of environmental goods emanating from the Asia-Pacific Economic Cooperation (APEC) forum as a starting-point in negotiations. It argued that the APEC list deserved attention as it was intended to serve as the basis for tariff liberalisation among participating economies, a situation similar to that currently at the WTO.

In its second submission (TN/TE/W/38), the US proposed that two lists be established: a core list would comprise products on which there is consensus that they constitute environmental goods, (i.e. sewage treatment equipment, pollution control and clean technologies); and a second complementary list of other proposed environmental goods on which definitive consensus could not be reached out but for which there is a high degree of acknowledgement that they can have significance. Tariffs would be eliminated on the core list of goods by 2010, and countries would be required to liberalise a certain percentage of products from the proposed list by 2010.

Environmental Services

The negotiations on environmental services have been taking place under the aegis of the Special Session of the Council for Trade in Services. In regard to classification of environmental services, in the Committee on Specific Commitments, Members began considering issues related to sectoral classification, including examination of the adequacy of the existing Secretariat Services Classification List (MTN.GNS/W/120).

Work on a revised classification of environmental services is currently based on seven sectoral proposals by US (S/CSS/W/25), the EC (S/CSS/W/38), Canada (S/CSS/W/51), Switzerland (S/CSS/W/76), Australia (S/C/W/112), Colombia (S/CSS/W/121) and Cuba (S/CSS/W/142). These proposals generally share the view that the W/120 classification is not adequate and should be revised so as to better reflect the current reality of the environmental services industry.

Some Members (US, EC and Switzerland) also propose that, in addition to the identification of "core" environmental services, a list

be established which would comprise services which are not environmental *per se*, but which are nevertheless important to the provision of environmental services, for instance because they have environmental end-uses (such as engineering, R&D, etc). These environment-related services would be subject to a "cluster" or "check-list" that could be used as an *aide-memoire* during the negotiations. Some proposals raise regulatory issues. Several Members shared the view that negotiations on environmental services should not impair Members' ability to regulate.

Fisheries Subsidies

The CTE met for its regular session on 29-30 April 2003, where delegates focused on the 'non-negotiating' mandate contained in the Doha Declaration. This, inter alia, included a Japanese proposal on fisheries subsidies and over-fishing (WT/CTE/W/226). Later, at the 5-7 May 2003 meeting of the WTO Negotiating Group on Rules, the EU presented a new proposal on fisheries subsidies. The EU submission (TN/RL/W/82) takes a more proactive stance following the adoption of the EU Common Fisheries Policy reform in late 2002 where EU Member States had agreed to phase out subsidies for the renewal of fishing vessels.

Chile – a member of the "Friends of Fish" group, which also includes the US, Argentina, Iceland, New Zealand, Norway and Peru – presented a new proposal to the WTO Negotiating Group on Rules on possible approaches to improved disciplines on fisheries subsidies (TN/RL/W/115). The paper observes that fisheries subsidies act as a barrier to trade to non-subsidising countries, as these countries cannot participate in the exploitation of shared, and sometimes their own, fishery resources on equal terms. The subsidisation of fleets, allowing them to exploit fish stocks under pressure, also has a negative impact on conservation measures put into place by other WTO Members.

Eco-Labeling

At the 7 July 2003 regular CTE session, the EC, supported by Switzerland, the Czech Republic and Hungary, proposed that the group shall before the end of 2004 hold, in addition to its usual schedule of meetings to be agreed, [three] 'dedicated sessions' to engage in a positive dialogue on governmental and non-governmental voluntary eco-labelling schemes, notably those based on "life-cycle analysis".

While Japan and Canada said that this could be a useful basis for discussion after Cancun, a number of other Members – notably Australia, Brazil, China, Hong Kong, Indonesia, Malaysia, the Philippines, Thailand and the US – opposed the EC's suggestion. These countries said that a life-cycle analysis approach was too close to the sensitive issue of PPMs, and that the sessions would duplicate ongoing work in the Committee on Technical Barriers to Trade (TBT). In its response, the EC said that labelling was not currently a focus of the TBT Committee, and cited a study indicating that only ten percent of life-cycle elements were related to PPMs.

III. Conclusions

The substantive negotiations on trade and environment have yet to start. So far, the negotiations have mainly focused on issues related to observer status of MEA Secretariats, defining the scope of environmental goods and services and fisheries. There have been no recent developments in the other negotiating areas related to environment and biodiversity, including the relationship between the Convention on Biological Diversity and TRIPs, eco-labelling and the effects of environmental measures on market access. The revised Draft Cancun Ministerial Text (JOB(03)/150/Rev.1), which was released on 24 August 2003, does not propose anything specific but simply takes note of the progress made in the negotiations so far.

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

CUTS-CITEE Issue Papers

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