

Doha Mandates

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

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

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

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

(Doha Ministerial Declaration para. 31)

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

Trade and Environment

Prospects for Cancun

Trade and environment issues, an integral part of the Doha round negotiations launched in November 2001, will no doubt find their way into talks in September at the WTO's Fifth Ministerial Conference. Negotiations in special sessions of the Committee on Trade and Environment (CTE) on the relationship between WTO rules and multilateral environmental agreements (MEAs), observer status for MEA secretariats, and liberalisation of environmental goods and services will provide grist to the Doha Round stock-taking mill at Cancun. Environmental concerns will also figure highly in many non-governmental activities conducted around the Ministerial.

Despite the multifaceted Doha environment mandate, however, environmental issues are likely to take a back seat to other negotiating items that Members have identified as more pressing. This is not least because most environment issues remain at the 'examination' stage, and face no significant deadlines in the leadup to or at Cancun.

Nevertheless, Cancun will provide an important opportunity for ministers to review progress made on the Doha environment mandate since November 2001, provide political will to move some of the more difficult environmental issues forward and if necessary re-direct the agenda to fit countries' needs and priorities. Given the importance of certain trade-environment topics such as eco-labelling, and the WTO-MEA relationship to European countries and their constituencies, the EC may see fit to raise these topics at Cancun.

While several developing countries feel that efforts should be invested in trying to contain the negotiations, others favour broadening the discussion and re-crafting it within a sustainable development framework that better suits their long-term interests. This has begun to happen for instance in talks on fisheries subsidies (underway in the Negotiating Group on Rules, Doha Round Brief No. 7) and the definitional process around environmental goods.

Background

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

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

As a result, the negotiating mandate around the MEA-WTO relationship is strictly circumscribed, i.e. limited to existing WTO rules and specific trade obligations in MEAs. The scope of the negotiations is further restricted by the explicit injunction that they shall not "prejudice the WTO rights of any Member that is not a party to the MEA in question" or "add to or diminish the rights and obligations of Members under existing WTO Agreements."

Despite the mandate's limits, it retains some ambiguity, namely around what is meant by a 'specific trade obligation' and which MEAs to consider. Moreover, there is no set definition at the WTO for environmental goods.

Mandated Deadlines:

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

Doha Mandates

"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;

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

(iii) labelling requirements for environmental purposes.

Work on these issues 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."

(Doha Ministerial Declaration para. 32)

measures on market access, provisions related to the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs), and labelling requirements for environmental purposes (para. 32).

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

Current State of Play

Relationship between MEAs and WTO rules

Since the beginning of 2003, countries have deepened their analysis of the para. 31(i) mandate on the WTO-MEA relationship. Many submissions — including from Argentina, Canada, India, Malaysia and the US — have been based on a bottom-up, or 'specific trade obligations' (STO) approach that looks at the identification of particular provisions in certain MEAs with a view to examining their interaction with relevant WTO rules. These countries, which prefer a narrow approach to the mandate, argue that to qualify as an STO, a provision must be both mandatory and specific. This could include, for instance, provisions in the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) under which trade in species threatened with extinction is permitted only in exceptional circumstances.

But the EC and Switzerland, who favour a more expansive interpretation of the mandate, say that STOs could also include those measures that engender an 'obligation de résultat', that is trade measures which are not explicitly provided for nor mandatory under the MEA itself, but are necessary to achieve an MEA objective. They also argue 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 be neither exclusive nor exhaustive.

The discussions have been supported by an updated matrix of trade measures pursuant to 14 MEAs put together by the WTO Secretariat (WT/CTE/W/160/Rev.2), and a Secretariat paper compiling submissions up until May 2003 on para. 31(i) (TN/TE/S/3/Rev.1). Members seem to be converging on an analysis of STOs in six MEAs: three that have entered into force, i.e. CITES, the Basel Convention and the Montreal Protocol; and three that have not, i.e. the Rotterdam Convention on Prior Informed Consent Procedures for certain hazardous chemicals and pesticides, the Stock-

holm Convention on Persistent Organic Pollutants and the Biosafety Protocol to the Convention on Biological Diversity (this latter MEA is set to enter into force on 11 September 2003).

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

A number of environmental groups have expressed major concern about the potential for the MEA-WTO negotiations to lead to the creation of a hierarchy of international norms where trade concerns trump environmental ones, or lead to a 'chilling effect' on the use of trade instruments in future MEAs. Many are likely to use Cancun as an opportunity to ask governments to provide reassurance that the trade-environment negotiations will avoid creating such a situation.

Information Exchange and Observer Status

While no concrete decisions on information exchange between WTO and MEA secretariats and criteria for observer status have yet been taken, a number of suggestions have been made (see for example Switzerland, TN/TE/W/30). These include regularisation / institutionalisation of existing MEA information sessions focused on specific topics, and enhanced co-operation at the national level between trade and environment officials and at the international level between MEA and WTO Secretariats.

The lack of clear rules for MEA observers at special sessions of the CTE (currently stalled at the level of the General Council) continues to dog the negotiations. While a number of MEA secretariats and the UN Environment Programme (UNEP) have attended the past few sessions in 2003 as *ad hoc*, informal guests, their participation has been limited to replying to queries from Members on para. 31(i). Indeed, they have been asked to leave the room during discussions under para. 31(ii). As a result, MEA secretariats have begun to express frustration with the process. Some have asked whether they have anything to gain from participating, particularly as they do not see any sign that the WTO talks are helping them to implement their own mandates. Others have questioned how they are supposed to figure out how to exchange information if they are not even allowed in the room for the entire sessions.

MEA secretariats are supported in their concerns by some Members and many environmental groups, which have pointed to the need for MEA secretariats to be present while negotiations on WTO-MEA linkages are underway. The EC in particular has asked that ministers at Cancun decide that MEA secretariats be formally invited to attend CTE special sessions. However, some developing countries, including the Philippines, Malaysia, Pakistan and Egypt, have said such a decision would circumvent the para. 31(ii) mandate to establish criteria on observership. As such, until a broader systemic decision is taken on observership in the negotiations, the issue remains unresolved leading into Cancun.

Environmental Goods & Services

In early 2002, Members agreed to shift the para. 31(iii) mandate on liberalising environmental goods and services to the Negotiating Group on Non-Agricultural Market Access and to the Council for Trade in Services special sessions, respectively. However, since there is no clear definition for environmental goods, the CTE special sessions in 2003 have continued to examine the scope and definitional aspects of this mandate. Regarding environmental services, most of the negotiations are currently at a 'bilateral' request-offer stage.

Goods: As pointed out by CTE special session Chair Ambassador Yolande Biké in her report to the Trade Negotiations Committee before Cancun, there has been relatively little discussion on environmental goods in 2003 compared with other issues addressed by the CTE special sessions. The Chair has encouraged countries to come forward with their suggested lists. For the most part, talks have been based on an illustrative list of environmental goods compiled by the OECD and operationalised by the Asia-Pacific Economic Cooperation (APEC) countries in 1999. The APEC / OECD classifications focus on an 'end-use' approach of primarily goods used to clean the environment or to contain or prevent pollution. The US in particular supports the APEC approach.

Some developing countries have expressed concern that the OECD / APEC lists constitute an emerging definition for the WTO negotiations that is too heavily focused on goods of interest to developed countries. Given that negotiations on this point fall under the market access mandate (Doha Round Brief No. 4), they point out that discussions should focus on products of export interest to developing countries and take fully into account the special needs and interests of poorer countries, including through less than full reciprocity in reduction commitments. Kenya, India and Colombia are reportedly in the process of devel-

oping their own lists, which could be ready for the next CTE special session in October. A group of African countries (TN/MA/W/40) has pointed to their comparative advantage in environmental goods that are agriculturally based, and has posed the question of how and under which negotiating group these will be dealt with.

Nevertheless, most countries remain wary of including so-called process and production methods (PPMs) criteria in defining environmental goods. The closest evocation of this has been Switzerland's suggestion of including products with 'environmentally friendly physical characteristics', such as bicycles and solar energy cookers. The EC has suggested including products made in an environmentally sound manner, which has been opposed by most other Members. Japan has also outlined its suggested list of environmental goods (TN/TE/W/171). It remains unclear how a final list would be treated under market access negotiations. The US has suggested a two-phase approach that would see environmental goods split into two categories which would then be subject to differing liberalisation commitments (TN/TE/W/38).

It should be noted that the World Customs Organisation has taken a first step in identifying criteria covering environmental and social issues in the identification of its 'Harmonised System' custom codes in January 2002.

Services: Negotiations on reductions in barriers to environmental services have been delegated to the special session of the Council for Trade in Services. Members are currently considering liberalisation requests and offers across a broad range of services, including environmental services, as part of the request-offer process. While the mandate of para. 31(iii) has put some political emphasis on having deeper commitments regarding environmental services, it has not influenced the speed of the process. Classification for environmental services continues to be loosely based on a 1991 Services Sectoral Classification List (MTN.GNS/W/120), which outlines four categories of environmental services: sewage, refuse disposal, sanitation and 'other'. Some Members, particularly the EC, have argued that the current classification no longer reflects market realities, and have suggested alternatives that could address, for instance, services with multiple end-uses.¹

Some observers have pointed out that liberalisation of environmental services without commensurate movement in environmental goods may not lead to meaningful market access, as many environmental services firms also make use of environmental goods.

To provide background for the negotiations, the Secretariat has produced two discussion papers on the environmental effects of services trade liberalisation: WT/CTE/W/218 and WT/CTE/GEN11.

Non-negotiating Doha Mandates

Para. 32: In the context of para. 32 discussions (see Doha Mandate, p. 2), a proposal by Canada to recommend to ministers that the 10-point CTE work programme be reviewed "to determine whether it continues to meet the requirements of Members" was not adopted. While most Members agreed that there was value in reviewing the work programme, they thought the idea needed further discussion in the CTE, saying that this could happen after the Ministerial. China, Egypt, India, Indonesia, Malaysia and Thailand said they did not want to see the CTE work programme changed from its current format.

As such, the CTE report to the Ministerial does not make recommendations to 'advance' any of its three main areas to a negotiating level as listed under para. 32(i)-(iii).

Para. 32(i) - Market Access: Most developing countries welcomed a 21 May 2002 paper from India, which highlighted how environmental measures in major export markets hamper the entry of developing country goods that may themselves be environmentally friendly (WT/CTE/W/ 207). The Quad (Canada, the EC, Japan and the US) said they were prepared to discuss the proposal, but that not everything it contained was achievable.

Discussions under the win-win-win item have explored sectoral issues, namely agriculture, energy, fisheries and forests, where trade liberalisation could also play a positive role for the environment and development. Major agricultural exporting countries, for instance, said that trade- and production-distorting agricultural subsidies had a negative effect not only in the countries that applied such policies, but also on the environment of other countries, particularly developing countries. They said that lower agricultural returns were linked to poverty — a major cause of environmental degradation. Conversely, increased returns would lead to higher incomes for developing country producers, thereby improving their financial capacity to maintain and pursue sustainable farming practices.

32(ii) - Relevant Provisions of the TRIPs Agreement: Discussions here have largely mirrored those at the TRIPs Council (Doha Round Brief No. 5). Members generally agreed that the key aspects of the debate on the CBD-TRIPs relationship were being dealt with appropriately by the TRIPs Council — with some noting that they should

be addressed in the World Intellectual Property Organization rather than the WTO — and that the CTE should avoid duplicating work.

32(iii) - Labelling for environmental purposes: Members remain far from agreement on how to address labelling issues at the CTE. The body is struggling with how it can add value to an issue area that most Members prefer to deal with in the Committee on Technical Barriers to Trade (TBT).

An EC proposal at the 7 July 2003 regular CTE session that ministers in Cancun decide that the CTE hold three dedicated sessions on voluntary eco-labelling schemes before the end of 2004 was not adopted due to opposition from Australia, Brazil, China, Hong Kong, Indonesia, Malaysia, the Philippines, Thailand and the US. These countries said that a life-cycle analysis approach (as proposed by the EC) was too close to the sensitive issue of PPMs, and that the sessions would duplicate ongoing work in the TBT Committee.

The EC (WT/CTE/W/212) and Switzerland (WT/CTE/W/219) have also proposed that the TBT Committee and the CTE work towards devising guidelines on or an interpretation of the TBT Agreement for labelling requirements for environmental purposes. Many developing — and some developed — countries remain wary of engagement in this area due to concerns that stronger eco-labelling regimes could prove a barrier to their market access.

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

The importance of market access was repeatedly stressed in this context: aid

did not replace trade. Emphasis was also placed on the need to ensure that developing countries had the resources and the capacity to engage fully in, and make contributions to, the Doha mandate. Despite valuable efforts to try and correct some of the past shortcomings in the WTO's technical assistance and capacity building work, assistance, including that related to trade and environment, still remains essentially standardised (Doha Round Brief No. 12).

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

On environmental reviews, Canada, the EC, UNEP and the US shared their experiences in conducting Environmental and Sustainability Impact Assessments (EIA/SIA). While voluntary EIAs were generally seen to be useful tools, some countries said they nevertheless posed difficulties to poorer states. An EC paper describing its multi-year SIA (WT/CTE/W/208) met with scepticism from some developed and developing country Members, who said it added intangible elements to the concept of an EIA and could threaten market access opportunities. The EC responded that it did not intend to use SIA in such a way, and that it provided an important tool to gauge the sustainable development effects of trade liberalisation.

Para. 51 - Reflecting sustainable development in the negotiations: Discussions have inched forward on the Doha Declaration's para. 51, which instructs the CTE and the Committee on Trade and Development (CTD) to "each act as a forum to identify and debate developmental and environmental aspects of the negotiations, in order to help

achieve the objective of having sustainable development appropriately reflected."

While paragraph 51 provides a unique opportunity to mainstream sustainable development concerns in the WTO negotiations, virtually no progress has been made to put the mandate into action, and the CTE and CTD continue to have difficulties in determining the approach to take. In the CTE, some Members have suggested cooperation between the CTE and CTD, but there has been no movement on this yet. So far, the WTO Secretariat has given four briefings covering the environmental aspects of the agriculture, services, market access (environmental goods), and WTO rules negotiations. On the basis of this input, there were substantive though inconclusive discussions among Members.

Several countries, developed and developing, have expressed hope that this review mechanism can be used to effectively assess the possible impacts of negotiations on development prospects, and feel frustrated by the lack of creative, viable proposals and movement to operationalise the mechanism.

Endnote

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

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

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

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