

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

In the lead-up and at Cancun, the EU continued to advocate for placing environmental issues into the Ministerial text. The EU's efforts focused on establishing a permanent solution for the observership question, proposing to invite MEA Secretariats, UNEP and UNCTAD to the negotiating sessions for the duration of the negotiations, and on moving forward on eco-labelling. At the Ministerial meeting, however, environment featured but little in the discussions and progress has been slow ever since. In the July Package, Members simply reaffirmed their "commitment to progress [on environment] in line with the Doha mandates". Negotiations on the relationship between WTO rules and multilateral environmental agreements (MEAs), under para. 31(i) of the Doha Declaration, have been largely bogged down on procedural issues, while discussions on environmental measures and market access, eco-labelling and paragraph 51 (on integrating sustainable development into the round as a whole) have been virtually at a standstill. Only the negotiations on environmental goods, under para. 31(iii), have seen some movement with some countries proposing lists of environmental goods although many, in particular developing countries, have yet to put forward their positions.

Mandated Deadlines

No specific interim deadlines have been set for the negotiations. The para. 31 negotiations, encompassing the specific environmental mandate, will be concluded as part of the single undertaking agreed in Doha.

Background

As the principal *demandeur* for WTO negotiations on environmental issues, the EU, 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 envi-

ronment 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 EU to use an environment 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.

Current State of Play**Para. 31(i): MEA-WTO Relationship**

Discussions on the relationship between WTO rules and specific trade obligations (STOs) in MEAs have largely focused on procedural issues. One group, including the US, Canada, Australia, Argentina, India and Malaysia, would like to keep the mandate as narrow as possible, focusing on a limited number of MEAs and on the mandatory and explicit STOs that they contain. They also favour an experience-based, analytical approach, with discussions focusing on national experiences in negotiating and implementing MEAs.

As the Committee on Trade and Environment (CTE) special (negotiating) session started to meet again in 2004, the US and Australia presented submissions on their national experiences. The US stressed the importance of national coordination as well as the design and implementation of STOs in particular (TN/TE/W/40). Similarly, Australia noted the need for effective coordination at the national level between domestic agencies and stakeholders as a "key to achieving compatibility between countries' different international obligations and their smooth domestic implementation" (TN/TE/W/45).

The main *demandeurs* of the trade and environment negotiations would like a broader, conceptual approach which in addition to discussing specific MEAs would also elaborate basic principles underlying the MEA-WTO relationship. They would not limit STOs to mandatory obligations, but also include measures

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.

which are not explicitly provided for nor mandatory under the MEA itself, but are necessary to achieve the MEA's objective ('obligation de résultat').

The EU submitted a paper on the relationship between WTO rules and MEAs in the context of the global governance system (TN/TE/W/39), outlining basic principles for the relationship between WTO rules and MEAs in this regard. These could include the recognition of the importance and necessity of MEAs; the fact that multilateral environmental policy should be made within MEAs; the need for close cooperation and information exchange to enhance the mutual supportiveness between international trade and environment policies; and the recognition that MEAs and the WTO are equal bodies of international law.

While some Members supported the EU paper, many others, and developing countries in particular, felt it went beyond the scope of the CTE mandate.

Para. 31(ii): Information Exchange and Observer Status

While no concrete decisions on information exchange between WTO and MEA secretariats and criteria for observer status have been taken, a number of suggestions have been made. These include regularisation / institutionalisation of existing MEA information sessions focused on specific topics; organising joint WTO, UNEP and MEA technical assistance and capacity building projects; organising WTO parallel events at the Conferences of the Parties (COPs) of MEAs more systematically; and enhanced co-operation at the national level between trade and environment officials and at the international level between MEA and WTO secretariats (listed in TN/TE/7).

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. A number of MEA secretariats, UNEP, the OECD and UNCTAD have attended the past few sessions as ad hoc informal guests.

Para. 31(iii): 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 have continued to examine the scope and definitional aspects of this mandate. Regarding environmental services, most of the negotiations are currently at a 'bilat-

eral' request-offer stage, as part of the overall process in services negotiations.

Goods: Some Members, including Japan, Chinese Taipei and the US, have proposed to use the OECD and Asia-Pacific Economic Cooperation (APEC) lists as starting points. These lists focus mainly on 'end-of-pipe' technologies used to address environmental problems. 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, 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.

Several Members, including some African countries, Switzerland, the EU and India, have raised the possibility of broadening the definition to also include environmentally preferable products (EPPs), i.e. goods or services where the environmental benefits derive in the course of their production, use and disposal. Such products could include organic agricultural products; sustainably harvested timber or non-timber forest products; fish products from sustainably managed fisheries resources; or products made from natural fibres such as jute and coir. However, developing countries in particular have been cautious to include EPPs in their proposed lists over concerns that such products might need to be distinguished based on the process and production methods (PPMs) used. They fear PPM distinctions could be misused for 'green protectionism' and could open the door for other PPM-based criteria, such as labour standards, to be brought into the WTO.

Japan (TN/TE/W/17) and Chinese Taipei (TN/TE/W/44) have both submitted lists of potential environmental goods to the WTO. The Japanese list focuses on those goods included under the OECD definition, i.e. goods used for pollution management, cleaner/resource efficient technology and products, and resources management. Chinese Taipei draws primarily on the list by APEC, focusing on end-of pipe technologies used for air pollution control; waste water management; solid/hazardous waste management; remediation/clean-up of soil and water; noise/vibration abatement; and monitoring/analysis and assessment. Switzerland and South Korea are planning to submit a proposed list of environmental goods and services by the end of 2005.

China has put forward the possibility of

developing a “common” and a “development” list of environmental goods (TN/TE/W/42). The common list would include goods of interest to both developed and developing countries, with priority given to products of export interest to developing and least-developed country Members. The development list would provide for special and differential treatment, allowing developing and least-developed countries to select a list of products on the common list for no or less reduction commitment. China also stressed the importance of facilitating technology transfer when discussing trade liberalisation in environmental goods.

The US has suggested a two-phase approach that would see environmental goods split into two categories, i.e. a core list of goods that everyone agrees are environmental (i.e. sewage treatment equipment); and a second list of other proposed environmental goods, which would then be subject to differing liberalisation commitments (TN/TE/W/38).

Services: Negotiations on environmental services continue without dramatic outcomes in terms of scope or coverage of services. A number of Members have also tabled offers in the area of environmental services as part of their overall services offers. The offers in environmental services, particularly among developing countries, have been limited however, with only a few sub-sectors such as environmental consultancy being committed. There has been no offer in the sensitive sector of water.

Classification issues will have a major bearing on the type of environmental services that will be included in liberalisation commitments. A multilaterally accepted classification system can only be resolved within the WTO Committee on Specific Commitments where discussions are currently at a standstill. In the meantime, Members are free to use their own classification of environmental services.

The new deadline for the revised offers in services in general is May 2005 according to the July Package. An important issue to bear in mind will also be the

completion of negotiations for disciplines on Domestic Regulation (Article VI:4), Subsidies (Article XV) and Government Procurement (XVIII:2) which could affect the quality of market access commitments tabled (see update on services).

Non-negotiating Doha Mandates

Para. 32(i) - Market Access: The EU has suggested focusing on national experiences under this agenda item. This could include developed country Members sharing national experience on their decision-making process in the development of environmental regulations, experience on how their environmental regulations could be applied in such a way that adverse effects on market access were minimised; and how to assist developing country Members to comply with measures and policies in place. In this context, the EU submitted a paper, providing information on reforms carried out in the EU policy-making process that contribute to addressing – in the development and implementation stages of legislation – concerns highlighted by developing countries (WT/CTE/W/239).

India has repeatedly raised its submission under this agenda item, dated 21 May 2002, in which it had put forward a number of proposals to ensure that environmental requirements were applied in a manner that would minimise the adverse effects on market access for developing countries (WT/CTE/W/207). Many Members felt that some of India's proposals should be pursued in future discussions.

Discussions have explored sectoral issues, namely agriculture, energy, fisheries and forests, where trade liberalisation could also play a positive role for the environment and development. In this context, Japan has submitted a paper describing various short, medium and long-term measures for bilateral cooperation between Japan and Indonesia to combat illegal logging (WT/CTE/W/233).

Not much progress has taken place on

the debate on the relationship between the TRIPS Agreement and the Convention on Biological Diversity (Para. 32(ii) – Relevant Provisions of the TRIPs Agreement); labelling (Para. 32(iii) – Labelling for environmental purposes). On Para 33 (Capacity building and environmental reviews), Members have emphasised the importance of market access; aid can not replace trade.

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.” Virtually no progress has been made to put the mandate into action, and the CTE and CTD continue to struggle with determining the approach to take.

The EU has suggested holding a workshop in 2005 that would involve international organisations presenting ideas on ways to move forward on ensuring that sustainable development is reflected in the Doha Round. Chair Naéla Gabr (Egypt) asked Members to submit their suggestions for the structure of the workshop as well as suggest speakers to the Secretariat, which could prepare a draft agenda.

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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