



Doha Mandate:

"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

Negotiations on the relationship between WTO rules and multilateral environmental agreements (MEAs), under paragraph 31(i) of the Doha Declaration, have been largely bogged down with procedural issues. Discussions on environmental measures and market access, eco-labelling and paragraph 51 (on integrating sustainable development into the round as a whole) are also virtually at a standstill. Only the negotiations on environmental goods, under paragraph 31(iii), have seen some movement.

Mandated Deadlines

No specific interim deadlines have been set for the negotiations. The 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 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 environmental 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 by citing the need for precautionary measures.

Current State of Play

Paragraph 31(i): MEA-WTO Relationship

Discussions on the relationship between WTO rules and specific trade obligations (STOs) in MEAs continue to largely focus 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.

The main *demandeurs* of the trade and environment negotiations would like a broader, conceptual approach which, in addition to discussing specific MEAs, would also address the basic principles underlying the MEA-WTO relationship. Rather than limiting the discussions to mandatory specific trade obligations under a given MEA, they have called for the inclusion of all measures necessary to achieve the treaty's overall objective.

In July 2005, the EU submitted a document (TN/TE/W/53) outlining its internal policy co-ordination, development and processes for dealing with the MEA-WTO relationship. Switzerland, in a bolder paper (TN/TE/W/58), suggested that it was

'useful and necessary' to consider three principles for this relationship, namely: 'no hierarchy' between the environmental and trade legal systems; 'mutual supportiveness' of the two regimes; and 'deference' to the framework that includes particular issues within its primary area of competence. Upon request for clarification from New Zealand and other Members, Switzerland submitted another paper that explained the meaning of these terms (TN/TE/W/58). Referring to general principles of international law, Switzerland argued that MEA and WTO provisions must be interpreted in ways that maintain compatibility with both sets of rules in order to ensure the integrity of each. No discussion took place on the submission.

The US and several developing countries indicated that they would rather focus on Members' national experiences than revisit the debate on principles. While they saw little contradiction between the two regimes, some developing countries pointed to a clear tension in certain fields, including that between the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) and the provisions of the Convention on Biological Diversity (CBD).

Paragraph 31(ii): Information Exchange and Observer Status

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

The lack of clear rules for MEA observers at the negotiating sessions on the environment (currently stalled at the level of the General Council) continues to dog the negotiations. A number of MEA secretariats, UNEP, the United Nations Conference on Trade and Development (UNCTAD) and the Organisation of Economic Co-operation and Development (OECD) have attended the past few sessions as ad hoc, informal guests.

Paragraph 31(iii): Environmental Goods & Services

In early 2002, Members agreed to shift the paragraph 31(iii) mandate on liberalising environmental goods and services (EGS) to the Negotiating Group on Non-agricultural Market Access (NAMA) and to the Council for Trade in Services Special Sessions, respectively. However, since there is no clear definition for environmental goods, the Committee on Trade and Environment (CTE) has 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 as part of the overall services negotiations.

Goods

Discussions on environmental goods have dominated the CTE agenda in 2005. Some Members, including Japan, Taiwan and the US, have proposed to use the OECD and Asia-Pacific Economic Co-operation (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 and 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 emphasise 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 less than full reciprocity in tariff reduction commitments.

Several Members, including the EU, Switzerland, Brazil, New Zealand and India, have raised the possibility of broadening the definition to include environmen-

tally preferable products (EPPs), i.e. goods with high environmental performance and/or low environmental impact. Such products could include organic agricultural products; sustainably-harvested timber or non-timber forest products; fish products from sustainably-managed fisheries; or products made from natural fibres such as jute and coir.

The EU, in its March 2005 submission (TN/TE/W/47), acknowledged that some of these products might need to be defined through standards requiring certification and proposed using schemes included in the existing international Global Eco-labelling Network. However, developing countries in particular have been cautious about including EPPs in a possible list due to concerns that such products might need to be distinguished based on the process and production methods (PPMs) used. They fear that 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. They are also against the use of eco-labelling schemes for distinguishing EPPs. In response to these concerns, the EU pointed out that not all EPPs would necessarily be distinguished on the basis of PPMs.

In June 2005, India proposed an alternative to list- or criteria-based approaches. It suggested that a potentially wide array of both goods and services could be temporarily liberalised for the duration of a project seeking to fulfil a specific environmental objective, approved by a 'designated national authority' (TN/TE/W/51, TN/TE/54 and TN/TE/60). According to India, this approach would address a number of problems attributed to the list approach, including the fact that many of the items likely to appear on such lists could have dual or multiple uses; the negative impacts of unrestricted concessional market access for environmental goods on indigenous innovation and the competitiveness of local industries; and the separation between environmental goods and environmental services (EGS). EGS

eligible for specific concessions for the duration of the environmental project could include, for instance, air pollution control, renewable energy facilities, or EPPs. The national authority would base its assessment on criteria to be developed by the CTE. In its second submission, India argued that operations through designated national authorities would provide countries with policy space, while the determination of criteria by the CTE would ensure transparency. Furthermore, the project approach would ensure that approved EGS were used only for environmental and not for other purposes.

Developed country Members questioned whether such an approach, applied on a case-by-case temporary basis, would have as widespread an effect as envisaged under the paragraph 31(iii) mandate on EGS. Some noted that the benefits might be limited to multinational corporations due to the necessary scale of environmental projects. Even after India's third submission on technical and implementation aspects of the approach, it was criticised for not being clear, viable or practical enough, as well as for failing to provide sufficient predictability and market access for exporters. Other concerns were related to the transfer of authority to the national level and the long time it would take for the CTE to develop criteria.

Many developing countries welcomed the new, alternative approach as a basis for further discussion. They feared that a list approach would not provide any benefits to them and therefore resisted attempts to push for a list to be finalised by the December 2005 WTO Ministerial Conference in Hong Kong. A submission by Brazil (TN/TE/W/59) articulated these concerns, pointing out that negotiations thus far had privileged a definition of environmental goods focused on high-technology products of little interest to developing countries. In addition to calling for improved market access for products with low environmental impacts and/or derived from or incorporating cleaner technologies,

Brazil proposed adopting UNCTAD's approach to EPPs as a basis for negotiations. Brazil insisted on the need to consider criteria for identifying environmental goods as a means of building confidence among developing countries to come forward with their lists. Cuba also presented a paper (TN/TE/W/55) that raised doubts about the benefits to developing countries from using the OECD and APEC lists. In addition to the concerns raised by India, it stressed the problem of non-tariff barriers such as certification and eco-labelling requirements.

Argentina made an attempt to bridge the gap between India's project approach and the list approach by incorporating the merits of both into what it called an 'integral approach' (TN/TE/W/62). Under the proposed 'integral approach' national authorities would decide on whether to temporarily eliminate tariffs for environmental products used in particular environmental projects. Members would multilaterally pre-identify categories of environmental projects and environmental goods that could be used in them. However, Members opposed to the project approach, in particular the US and Hong Kong, argued that the Argentine proposal was simply a variant of India's earlier submissions.

New Zealand has suggested employing certain 'reference points' - such as the OECD or APEC lists, or relevant bilateral or regional Free Trade Agreements (FTAs) - for the identification of possible environmental goods (TN/TE/W/47 and TN/TE/W/49). It also supported the US proposal to identify a 'core list' containing goods that everyone agreed on and a 'complementary list' of goods, which would be subject to different liberalisation commitments. These should be 'living lists' that could be updated at a later stage, responding to the dynamic nature of environmental goods. Several Members requested further clarification on how a living list would work. Others also remained sceptical regarding the use of FTAs for the establishment of lists. In its second submission, which was generally well received, New Zealand added EPPs, cleaner and more resource-efficient technologies and products, and waste and scrap utilisation as new categories.

New lists have also been proposed by Switzerland, the EU, the US, Canada and the Republic of Korea. Both the EU (TN/TE/W/57) and the Swiss (TN/TE/W/56) submissions include EPPs with 'high environmental performance and/or low environmental impact' in their lists, selected according to their end-use or disposal characteristics, as also supported in New Zealand's submission. Although the new US submission (TN/TE/W/52) does not explicitly recognise EPPs, it includes seven EPPs identified by UNCTAD in a list of 158 possible products. The Canadian list (TN/TE/W/50) contains environmental goods identified mainly on the basis of the OECD and APEC lists. Korea's submission (TN/TE/W/48) emphasises the need for 'practical and simple' criteria for the identification of environmental goods. It proposes drawing up a list based on criteria, which include ensuring that the end-use of the products is primarily for environmental purposes; that products are classifiable under the HS code; and that EPPs and goods defined according to their process and production methods are excluded 'for practical reasons'. The paper proposes a list of 89 products primarily related to pollution management. Korea's submission attracted significant support as a practical way forward.

The Swiss list was criticised by some delegates for containing few products of interest to developing countries and other products - such as bicycle and railroad parts - of dubious environmental value. The US and New Zealand responded to earlier criticisms that their lists only included products of export interests to developed countries by citing statistics showing that they imported significant percentages - 40 percent in the US case - of the listed products from developing countries.

In September 2005, the US convened a meeting where it provided case studies on the environmental and developmental benefits of proposed environmental goods. This exercise was perceived by many delegates as an opportunity to test the credibility of the lists, streamline them and analyse potential win-win-win scenarios for trade, environment and development. Canada proposed structuring

the discussions according to categories as a way to clean up existing lists and to support developing countries in the preparation of their own lists, naming sanitation, wastewater management and renewable energies as three possibilities. The proposal was generally welcomed.

Services

Negotiations on environmental services continue without dramatic outcomes in terms of either scope or coverage. A number of Members have tabled offers in the area of environmental services as part of their overall services offers. These offers have been limited, however, particularly among developing countries, with commitments made in only few sub-sectors such as environmental consultancy. There have been no offers in relation to the more sensitive water sector.

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 elaborated within the WTO Committee on Specific Commitments. Discussions in this forum, however, are currently at a standstill. In the meantime, Members are free to use their own classifications of environmental services. Another factor that could affect the quality of Members' market access commitments in services will be the completion of negotiations for disciplines on domestic regulations (Article VI:4), subsidies (Article XV) and government procurement (XVIII:2), (see Doha Briefing No. 3 on services).

Non-negotiating Doha Mandates

Paragraph 32

At the regular session of the CTE, the Chair proposed structuring the debate under paragraph 32(i) on environmental measures and market access in accordance with the four main issues raised by delegations during discussions: using a sectoral approach to consider the effect of environmental measures on market access by identifying sector-specific environmental requirements which impact export performance; 'process issues' in the areas of transparency, notification and consultation procedures when preparing environmental regulations; technical assistance to facilitate developing country compliance with new environmental requirements; and issues concerning the preparation of environmental measures. However, progress has yet to be made on how to structure talks on environmental measures and market access.

Discussions on the relationship between the TRIPS Agreement and the CBD under paragraph 32(ii) have taken place in the TRIPS Council (see Doha Briefing No. 5 on

intellectual property rights). Talks on labelling for environmental purposes under paragraph 32(iii) have not shown much movement.

Paragraph 51 – Reflecting Sustainable Development in the Negotiations

Discussions have inched forward on the Doha Declaration's paragraph 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 their approach.

Members held a workshop on paragraph 51 on 10-11 October, which included sessions on: trade and development; agriculture; fisheries subsidies; environmental goods and services liberalisation; relevant aspects of intellectual property rights; and capacity-building for developing countries. In his opening speech, WTO General-Secretary Pascal Lamy called on Members to give meaning to paragraph 51, emphasising in particular the important role that 'accompanying policies' play in realising the social benefits of economic growth resulting from trade liberalisation.