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The State of Trade and Environment Negotiations within the WTO

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1 Introduction

The Doha Ministerial Declaration (DMD), adopted at the fourth ministerial conference of the World Trade Organisation in 2001, set a four-year target for completion of negotiations on its various mandates.[1] Paragraphs 31–33 of the DMD explicitly recognised the link between WTO Agreements and multilateral environmental agreements (MEAs) and set terms of reference for 'without prejudice' negotiations to commence in this area.[2] Regard for the special needs of developing and least developed countries was to underpin the negotiations, as indicated by the wording of paragraphs 32 and 33.

The Committee on Trade and Environment (CTE) is the primary forum in which the negotiations are held and meets regularly for debate and consensus building. The fifth WTO ministerial conference to be held in September 2003 presents an opportunity, at the halfway point to the 1 January 2005 deadline for completion of negotiations, for a review and assessment of progress. This paper starts with a short assessment of the current state of play in the negotiations on key mandated issues on trade and the environment in the DMD, providing an insight into the respective positions of key developing and developed countries. Section 2 analyses the likely outcomes of the current negotiations and Section 3 puts forward some ideas on how to break deadlocks in a somewhat polarised negotiating environment and how to move forward to positive outcomes, highlighting issues at stake for developing countries. Finally, Section 4 provides some indicative conclusions.

2 Current State of Play in Trade and Environment Negotiations

Negotiations on trade and environment are divided between special sessions of the CTE (CTESS), which has a specific negotiating mandate on certain subjects such as the relationship between WTO rules and MEAs and the usual sessions of the CTE which continue discussion and debate on a number of other issues already in its original mandate, such as eco-labelling, TRIPs and the Convention on Bio-Diversity (CBD),

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and market access and environmental measures. However, issues such as environmental goods and services are taken up in other WTO bodies.[3]

The Relationship between WTO rules and MEAs (Paragraph 31(i))

Paragraph 31 (i) of the DMD provides the negotiating mandate on the relationship between WTO rules and provisions under multilateral environmental agreements:

> *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. 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.*

According to the language in the paragraph, the negotiations appear limited to *existing* WTO rules and *specific trade obligations* set out in MEAs, and to the application of such measures between Members that are also *Parties* to the MEAs. Despite, or perhaps as a result of, its restrictive wording, paragraph 31(i) has attracted detailed proposals to the CTE special sessions on a multiplicity of issues touching on both process and substance.[4] The process debate has been distilled into two distinct lines of discussion. The first is a conceptual approach aimed at defining the substantive meaning of the terms used in sub-section (i) and the second focuses on developing a framework within which negotiations can take place. The substantive debate has focused on analyses of the trade measures contained in the various MEAs, identifying those qualifying as 'specific trade obligations', contained either in MEAs in force or those MEAs not yet in force.

The Process

(a) The conceptual approach

The conceptual approach is particularly advocated by countries such as Argentina, Switzerland and the European Community, which take the view that the scope of paragraph 31(i) cannot be determined until the meaning of its terms is agreed. Terms which are of primary interest are 'multilateral environmental agreement', 'specific trade obligation' (STO) and 'existing WTO rules'.

(b) The structural approach

Some Members were particularly anxious to progress negotiations beyond establishing definitions and other conceptual issues towards a more tangible result. A proposal spearheaded by Australia was accepted by Members at the November 2002 meeting of the Council for Trade in Services (CTESS) as a reasonable way forward. This suggested a three-phased approach to structuring the negotiations.[5] First, Members should identify: (a) the '*specific trade obligations* in multilateral environmental agreements'

that are to be discussed; and (b) the WTO *rules* that are relevant to these obligations. Second, once WTO Members have identified the specific trade obligations and the particular WTO rules at issue, *information sessions with relevant MEA Secretariats* can be used to seek information from these secretariats, and from WTO Members' own experiences, concerning these provisions. The third phase would involve discussion of matters arising from the work undertaken in phases one and two, and focus on the *outcome of the negotiations*. It was further agreed that adoption of the so-called structural approach did not preclude the inclusion of any conceptual discussions as and when they arise.

The Substantive Debate

Members effectively arrived at a compromise at the fifth meeting of the CTESS in February 2003[6] by agreeing to use a revised document by the Secretariat, *Matrix on Trade Measures Pursuant to Selected MEAs*, as a starting point for substantive discussions.[7] This document has formed the basis for a more thorough analysis by Members of the terms used in sub-paragraph (i), and their significance to WTO rights and obligations.

(a) Specific Trade Obligation

A distinction is being drawn between MEA provisions containing explicit trade obligations (mandated by MEA) and those leaving a degree of discretion to states as to the selection of measures to be taken to achieve the established environmental objectives sought by the particular MEA. While India, Argentina and the USA propose that the term STO should be limited to MEA measures that are mandatory and specific in nature,[8] the EC, Switzerland and Canada advocate a definition of STO that also includes trade measures that are relevant or necessary to achieve an MEA objective, particularly where the MEA mandates a particular environmental outcome.[9] Other developing countries, such as Korea and Chinese Taipei, support the more restrictive interpretation of STO suggested by the USA and India.[10]

(b) Multilateral Environmental Agreement

Members differ on the meaning of an MEA. There appears to be consensus on the fact that it should be an environmental agreement negotiated under the auspices of the UN, its specialised agencies or UNEP, and that it should be open to participation/accession by all countries. From this basic premise some Members, such as India, have various qualifications, including that the agreement in question should not only be open to all countries but should have the effective participation of countries of all geographical regions, as well as those at different stages of economic and social development.[11] India, Chinese Taipei and the EC agree that the agreement should be open to accession by other countries on the same equitable terms as the original signatories.[12] However, India and Argentina would prefer the category to be restricted to

agreements already in force, while the USA, Japan and Canada wish to broaden this to include agreements not yet in force.[13] Examples of these include the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the Stockholm Convention on Persistent Organic Pollutants and the Cartagena Protocol on Biosafety.

(c) Relationship between Specific Trade Obligations in MEAs and Existing WTO Rules

In essence, this aspect of the negotiations turns on the extent to which specific trade obligations may be assumed to comply with WTO rules. Members have expressed general sentiments about the legal status of the environment and trade regimes and the meaning of terms, and have proposed principles to guide the relationship between WTO rules and trade measures in MEAs. The EC and Switzerland have been prominent supporters of the need to clarify the relationship. In their view, the relationship raises fundamental governance issues touching on the security and certainty of international legal systems (laws and institutions). They are of the opinion that the reconciliation of the relationship between MEA measures and WTO rules should not be left to the dispute settlement system of the WTO (from which substantive jurisprudence has emerged on this issue) but should be settled through political consensus based on negotiation. They have proposed sets of principles to be used to decide the extent to which STOs may be deemed to be automatically in conformity with WTO rules.[14] Most developing countries, including Chinese Taipei, assert that a STO should not automatically be presumed to be in conformity with WTO rules.[15] Unlike the EC and Switzerland, the USA takes the view that the MEA/WTO relationship is working very well and needs no new rules to give it legal clarity. It declares that WTO rules have not interfered with the use of MEA trade provisions and that MEA negotiators have taken WTO implications into account in designing MEA trade provisions. The route to the rationalisation of the MEA/WTO relationship preferred by the USA is co-ordination at the national level between MEA and WTO policy-makers and negotiators.[16]

(d) Party/Non-Party

On this issue, the lines are clearly drawn between those Members seeking to keep strictly to the limits of the mandate in sub-paragraph (i) dealing with trade obligations among *parties to the* MEA, and those wishing to consider the possibility that the mandate could be flexible enough to extend to non-parties. In the first camp are the USA, Norway and some developing countries.[17] The EC and Switzerland have raised the question whether 'among parties to the MEA' means that both parties which have acceded to an MEA must be parties to the MEA and its annexes in exactly the same way or whether it is enough that they should be parties to a framework convention without taking the annexes into consideration.[18] They have expressed the opinion that any specific trade obligation in an MEA is negotiated and agreed by consensus in

a multilateral context and challenges between Parties are, therefore, highly unlikely. Accordingly, if parties to an MEA have a dispute over a specific trade obligation, they should endeavour to solve the issue through the MEA dispute settlement mechanism.

Analysis of Positions

The European Community has been the most consistent advocate in the WTO of reconciling MEA measures with WTO rules through either an amendment to the existing exception provisions (GATT Article XX) or a separate WTO agreement dealing with measures taken pursuant to MEAs. This stance stems from the EC's internal policy agenda, where environment has increasingly assumed a prominent role among Member States. Since 1999, the legal agreements that provide the basis for European political and economic integration (the Amsterdam Treaty) have required that Community action must aim at a high level of protection of human health, consumers and the environment and that these objectives must be integrated into the European Community's policies and action. The EC, supported by Switzerland, as a major actor in several MEAs, is therefore seeking to assure the coherence of its Community laws with international trade law. A case in point is the EC's approach to the use of precaution in meeting environmental or human health objectives. As early as the Seattle ministerial conference in 1999, the EC sought to include operational elements of the precautionary principle into the new round of negotiations, but was strongly opposed by the majority of the WTO Members including the USA.

For its part, the USA has taken a cautious approach to the idea that new WTO rules are needed to accommodate MEA measures. In recent years, its trade-related environmental measures have been the target of complaints submitted to the WTO dispute settlement system and through the jurisprudence of the Appellate Body it has more or less achieved the result that it wanted, leading it to conclude that no obvious problem remains to be solved on the relationship between MEA measures and WTO rules. It should also be noted that the USA is not a party to some key MEAs such as the Convention on Biological Diversity, the Kyoto Protocol and the Biosafety Protocol, even though it played a key role in their negotiation, seeking to mitigate the impact of any trade-related measures in these MEAs on WTO commitments. Thus the USA is effectively the most powerful MEA non-party in the WTO and as such its strong interest lies in preventing any attempt to prejudice the WTO rights of any Member that is not a party to an MEA. In particular, it would seek to limit any attempt by the EC to enshrine the precautionary principle in WTO rules, since it has huge economic interests at stake, and because it believes that the ideas about the precautionary principle mask a deeper debate about fundamental differences in societal perceptions of risk: witness the most recent US complaint to the WTO dispute settlement system over the EC ban on GM products.[19]

Developing countries have traditionally been suspicious of the relationship

between trade-related environmental measures and the multilateral trading system, due to the fact that the relationship has usually been described in terms of trade restrictions on products of key interest to them (so-called green protectionism). They have taken a more proactive stance in the debates in the CTE and other fora, and better perceive where their strategic interests lie in the trade and environment relationship, but some of their suspicions remain. In their view, reconciling the MEA/WTO relationship is not an immediate priority; they prefer to focus on negotiation of issues such as the impact of environmental standards and requirements on market access for their products, to assure themselves better integration within the multilateral trading system. In the negotiations on paragraph 31 (i), India has been a key Commonwealth developing country voice, as has Singapore, Kenya, Malaysia and Pakistan. Developing countries in Asia and Africa, in particular, will be seeking to ensure that the mandate in paragraph 31 (i) is strictly interpreted to avoid any circumstances where their products could be the target of unilateral trade-related measures. They and other developing countries will be anxious to avoid any discretion on the part of countries in using trade measures under MEAs to restrict trade, hence India's insistence that the definition of a STO is limited to measures that are specifically mandated and prescribed by the MEA. At the same time, developing countries will be relieved that there are differences between the EC and the USA on this issue.

Information Exchange and Observer Status (Paragraph 31(ii))

Paragraph 31(ii) declares that negotiations should also cover '*the procedures for regular information exchange between the MEA Secretariats and the relevant WTO committees and the criteria for granting observer status ...*' The importance of co-operation and information exchange has been acknowledged among Members and recent discussion on this issue has been described as 'constructive', if not conclusive.[20]

Information Exchange

Proposals for procedural arrangements for MEA-WTO information exchange have been made that closely resemble existing informal processes. These include:

i. Co-operation arrangements between the WTO and UNEP Secretariats;

ii. MEA Information Sessions held by the CTE;

iii. WTO Trade and Environment Regional Seminars;

iv. Technical assistance workshops in parallel to main WTO meetings.[21]

Overall, information exchange is considered to be fairly advanced, although the importance of formal procedures to assure efficient information dissemination has been emphasised. Most Members have noted that regional seminars and parallel workshops at main meetings are an important means of helping developing countries to

keep abreast of current trends and progress in the CTE debates. The pre-existence of information exchange among the WTO and MEA Secretariats suggests that this is not a contentious issue and so the prospects for an agreement on this aspect are good. The EC and USA are supported by New Zealand, Australia and Japan in calling for early action on this part of the trade and environment negotiation mandate. Australia and Canada agree with the EC and US suggestions that it would be useful to develop a more formal structure for the information sessions, and that value could be added by clustering the sessions around specific issues.[22] However, the EC's proposal to involve NGOs and other non-governmental experts in the information sessions has caused concern among some countries including Australia and Kenya, which believe that this is outside the current mandate. Malaysia is supported by Brazil and Nigeria in calling for three issues on information exchange to be explored: (1) the nature of the information being exchanged; (2) the procedures involved in the exchange; and (3) the frequency of the exchange.

Observer Status

In contrast, the question of granting observer status to MEA Secretariats and UNEP in the CTESS is more controversial and has been linked to the question of general observer status being considered in the Trade Negotiations Committee (TNC)/ General Council. In both fora the issue remains unresolved. The question has also arisen as to which other WTO bodies and MEA Secretariats should participate, given that paragraph 31(ii) refers to 'relevant WTO Committees'. Both the EC and USA, supported by Nigeria, Canada and Chinese Taipei, propose that a core set of MEA Secretariats that have been participants in the regular CTE should be given *ad hoc* observer status in the CTESS, without prejudicing the General Council's ultimate decision on comprehensive observer status. Australia, while in principle supportive of the idea of observer status for MEA Secretariats, appears wary of creating a subcategory of privileged MEA Secretariats. Other countries, such as Cuba and Argentina, wish to see prior resolution of the issue of observer status in the TNC/ General Council.

In the meantime, Members have agreed a provisional, *ad hoc* solution to allow existing CTESS observers and those with pending requests for observership at the CTESS to be qualified as observers.[23] Under this arrangement, UNEP and six MEA Secretariats have been granted observer status.[24] Some Members, including Egypt and Malaysia, stress that this is without prejudice to ongoing discussions within the CTESS and the TNC/General Council. Discussions will continue in the CTESS about the criteria for observer status at the CTE level and on the relevant WTO Committees concerned by the mandate. A factual document on the observer question and applications by UNEP and MEA Secretariats for observer status in different WTO committees has been prepared.[25]

Analysis of Positions

Where the EC is concerned, observer status for MEA Secretariats and UNEP is a crucial aspect of the legal certainty and security it seeks to achieve between the trade and environment regimes. It forms part of its strategy to ensure improved governance and policy coherence at the international level. It is broadly supported in this latter aspect by New Zealand and Japan. For the USA, paragraph 31(ii) is one of the more innocuous aspects of the trade and environment mandate in the DMD. It coincides with its emphasis on trade and environment policy co-ordination at the national level and underlines its approach to transparency in environment and trade policy-making.

The impasse over observer status stems from the tension in the General Council where the approval of observer status for the Arab League has been blocked by the USA and Israel (because the Arab League maintains a trade ban on Israel). All other applications for observer status are now on a waiting list for approval.[26]

Most developing countries welcome interaction between MEA and WTO Secretariats through regular information sessions because this provides them with valuable information on the complex inter-connecting issues in the negotiations. Since developing countries are better represented in MEA negotiations, they are in a stronger position than they are in the WTO to influence the direction and nature of MEA Secretariat interaction with the WTO. Any discomfort they have about observer status for MEA Secretariats may arise due to the fact that they view the WTO as a forum primarily for governments. Their hostility to the potential involvement of NGOs in the WTO/MEA information sessions also stems from this emphasis on the intergovernmental nature of WTO and because developing countries themselves struggle with effective participation in the CTE and CTESS. Moreover, they view permanent observer status for environmental bodies as gradually enshrining environment within the institutional framework of the WTO, given that many acknowledge that the WTO should not become involved in environment policy-making.

Environmental Goods and Services (Paragraph 31(iii))

Paragraph 31(iii) mandates negotiations on '*... the reduction, or as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services*'. The DMD further states that the elimination of trade barriers would lead to 'win–win' situations as it would have beneficial effects on trade, the environment and development.

Definitional and classification issues are crucial to the negotiations on environmental goods and services, since there is no agreed definition, nor are there internationally agreed criteria to classify environmental goods and services and, therefore, it is not clear which goods or services would automatically qualify for liberalisation.[27] Some Members have argued that negotiations on reduction or elimination of tariff/non-tariff barriers cannot proceed to completion until definitional issues have been resolved. Negotiations on environmental goods have been assigned to the Nego-

tiating Group on Market Access for Non-Agricultural Products (NGMA), while the negotiations on environmental services are under the auspices of the special sessions of the Council for Trade in Services (CTSSS). However, the CTESS has been given a monitoring role on progress in the negotiations and will contribute to these negotiations by examining the definitional aspects and the scope of environmental goods and services.

Environmental Services

The negotiations on environmental services have progressed to consideration of liberalisation requests across a broad range of services, as part of the request-offer process. WTO already had a benchmark for the classification of environmental services; a 1991 GATT Services Sectoral Classification List contains four categories of environmental services – sewage systems, refuse disposal, sanitation and 'other' services.[28] The OECD and the Statistical Office of the European Communities (Eurostat) have developed a broader classification of environmental services. First, relevant industry activities are defined and then a preliminary and indicative list is developed. Industry activities are classified under three broad headings: pollution management group;[29] cleaner technologies and products group;[30] and resource management group.[31]

The broader OECD definition/classification has found favour with some developed countries, such as the EC, USA, Canada, Japan, Switzerland and Australia. In their view, the current WTO classification system (W/120) is too narrow and fails to reflect the market realities of the industry. Adopting a core listing approach, the USA is in favour of a new classification that incorporates a list of environmental sectors that are significant in the provision of environmental services, e.g. construction, engineering and consulting.[32] The USA also mentions the need to focus the classification on pollution prevention rather than 'end-of-pipe' clean up services, i.e. goods that are used to clean the environment or to contain or prevent pollution. The EC has suggested an advanced definition that offers more categories than the W/120 classification, based on what it considers 'pure' environmental services.[33] Such services would be the subject of a cluster negotiation so that they would fall within other sections of the GATS (avoiding the mutual exclusivity pitfall). Australia and Switzerland are broadly in favour of the EC's approach.[34] Switzerland takes the view that there are several fields of activities that would accommodate the gradual integration of environmental services, including professional services relating to the environment, research and development relating to the environment, consultancy, sub-contracting and engineering relating to the environment and construction relating to the environment.[35] Canada also proposes the use of clusters in the negotiations as a check-list,[36] noting that there are relevant services available elsewhere in the W/120 that are important for the delivery of environmental services, such as technical testing and analysis services, scientific and technical consulting services, engineering services and construc-

tion services. Developing countries have not made explicit proposals on environmental services, apart from Colombia which emphasised pollution control and waste management. It accepts the EC classification as a working basis but would add three further services: (i) the implementation and auditing of environmental management systems; (ii) the evaluation and mitigation of environmental impact; and (iii) advice in the design and implementation of clean technologies.[37] Cuba has proposed that developed countries should commit themselves to exporting services from developing countries in the modes of supply that are of key developing country interest.[38] It calls for differential treatment in order to enhance the competitiveness of developing countries. For the moment, environmental services are being negotiated in the Committee on Specific Commitments on a bilateral basis as Members respond to each other's requests, and thus it is likely that in the short term Members will use a variety of different classifications as environmental services. Meanwhile, the CTESS has not yet played the guiding role it has been given on the definitional issues. However, it is likely that the Quad will continue to push strongly for a broadening of the W/120 classification.

Analysis of Positions

Developed countries are market leaders in the conception and delivery of environmental services. The USA is the world's largest producer and consumer of these goods and services, apart from being the second largest net exporter after Germany. The USA, Japan and the EC combined control 85 per cent of the trade in this industry. Most developing countries are net importers of such services. On the other hand, with increasing environmental awareness and the imposition of stricter environmental standards and regulations, markets in developing countries are catching up fast. With the faster rate of growth of demand in developing countries and the over-capacity of supply in developed countries, the latter are looking vigorously to penetrate emerging developing country markets. The further liberalisation of a broader range of services classified as 'environmental' will clearly help them achieve this objective. Meanwhile, the response from developing countries on environmental services will vary depending on the domestic demand for such services which in turn is driven by increasingly strict environmental standards and regulations.[39]

Environmental Goods

Members of the CTESS have broadly supported a proposal by New Zealand[40] for classification based on lists compiled by the Asia Pacific Economic Cooperation (APEC) forum, which in turn is based on the definitions developed by the OECD:

> ... *the goods and services used to measure, prevent, limit or correct environmental damage to water, air and soil, as well as problems related to waste, noise and ecosystems, and may also include clean technologies, processes, products and services which reduce environmental risk and minimise pollution and material use.*

New Zealand also produced an annex listing all products it considered 'environmental goods' together with examples for each category.[41] The classification focuses on end use rather than production characteristics. The list is considered 'open' and subject to further elaboration and discussion.

Proposals for the composition of the final list show a clear split among WTO Members. The EC is a major proponent of using process-based criteria (so-called process and production methods (PPMs)) to include goods produced in an environmentally friendly way. It considers that there is a particular need to 'pay attention to goods whose sustainable materials or production characteristics mean that increased trade in such products would also be environmentally supportive'.[42] This view is firmly resisted not only by developing countries, such as Korea[43] and Singapore,[44] but also by the USA[45] and Switzerland.[46] Most developing countries prefer the focus to remain on an 'end-use' approach that focuses on goods that can be used to remedy environmental problems. This position is supported by several Members from across the economic spectrum including Australia, New Zealand, India,[47] Argentina, Chile[48] and Canada.[49]

Analysis of Positions

In the negotiations on environmental goods, PPMs are the proverbial 'elephant in the room'. It is difficult to imagine how substantial liberalisation can take place without addressing this issue. Developing countries are in a difficult position vis-à-vis PPMs. They are understandably anxious to exclude PPMs from the negotiations because of their potential to undermine market access or the competitiveness of their products. At the same time, in some key product sectors, such as organic products, developing countries may find comparative advantage through the differentiation inherent in the consideration of PPMs. Yet how can such goods be distinguished from other products without considering the way in which they have been produced?

Developed countries are not in such a quandary because the products for which they have a competitive advantage are more or less recognised in their own right as technologically-enhanced (environmental) goods (for example catalytic converters and water purifiers). They therefore have less to gain from an insistence on consideration of PPMs in the definition of environmental goods.

To avoid consideration of PPMs, it could be argued that organic products (for instance) are different from other goods because they are inherently environmentally friendly (through their impact on human health, etc). However, this means that such goods must have different customs codes assigned under the international customs system known as the Harmonised System (HS), which is maintained by the World Customs Organisation (WCO). The six-digit codes, which are regularly updated by the WCO to take account of changes in technology or patterns of international trade, are based on national customs codes. In the latest amendments to the HS codes in January 2002, the WCO for the first time included social and environmental fields,

particularly relating to products under certain MEAs including CITES, the International Convention on the Conservation of Atlantic Tunas (ICCAT) and the Basle Convention.[50]

Amendments to the HS codes in order to differentiate between products based on their environmental characteristics are arrived at through fairly protracted deliberations in the WCO. As a start, such customs codes may need to be developed at the national level and then gradually be harmonised. This issue may also provide an opportunity for developing countries to play a more proactive role in the WCO to ensure that their trade interests are taken into account in the development of customs codes.

The Effect of Environmental Measures on Market Access and Win–Win Opportunities (Paragraph 32(i))

Paragraph 32(i) negotiations have focused on two elements: the effect of environmental measures on market access and opportunities for sector-based 'win–win–win' improvements for trade-environment-development by reducing or eliminating trade restrictions or distortions.

The Effect of Environmental Measures on Market Access

Paragraph 32(i) instructs the CTE to give particular attention to the effect of environmental measures on market access, especially in relation to developing and less developed countries.[51] India and other developing countries have consistently attempted to raise the profile of this issue in the CTE. The following issues, *inter alia*, have been highlighted:

i. Developing countries are more vulnerable to adverse side effects of environmental measures because of, *inter alia*, lack of infrastructure and inadequate access to technology, environmentally-friendly raw materials and information;

ii. Environmental standards should take account of the uniqueness of the environmental conditions in each country;

iii. Different environmental measures may be applied in different countries to achieve the same environmental objective and exceptions should be made for these;

iv. Foreign producers should be given the opportunity to participate at an early stage in the development of standards and developing countries in particular should be given more time to adjust.[52]

These concerns have not garnered general consensus in the CTE and although developed countries have expressed themselves willing to discuss these issues, they have warned that some of the recommendations may not be achievable.

Win–Win–Win Opportunities

Paragraph 32(i) instructs members to give particular attention to 'those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development', which are commonly referred to as 'win–win–win' opportunities.[53] Discussions have centred on four sectors: fisheries, agriculture, forests and energy.

i. Fisheries: Some members have argued for the elimination of fisheries subsidies in order to combat over-fishing and stock depletion, while other members, particularly Japan, suggest that some subsidies are not environmentally harmful, and that such problems are compounded by factors such as poor fisheries management.[54] Other countries suggest that the Negotiating Committee on Rules is a more appropriate forum for such a debate.[55]

ii. Agriculture: A number of countries believe that eliminating trade and production-distorting subsidies would allow international commodity prices to reach market levels, thereby increasing returns from agriculture and encouraging investment and production in developing countries.[56]

iii. Forests: Reference has been made to WSSD efforts to combat illegal logging. Some countries have suggested that the United Nations Forum on Forests (UNFF) was a more appropriate body to address such concerns.[57]

iv. Energy: Issues on coal subsidies and a carbon tax have been raised, while some members believe that there are more appropriate fora for such discussions.[58]

The Agreement on Trade-related Aspects of Intellectual Property Rights (Paragraph 32(ii))

Consensus is yet to be achieved on whether clarification of the TRIPs Agreement to reflect its relation to biodiversity conservation and the environment in general is required. This is an area where the differing priorities of developing and developed countries are most obvious. The rift between developing and developed countries lies primarily in three issues:

i. Clarification of the link between the TRIPs Agreement, the CBD and traditional knowledge;

ii. Whether the TRIPs agreement should be modified to provide intellectual property protection for traditional knowledge relating to biodiversity conservation;

iii. The appropriate forum for these discussions.

Developing countries led by India, Pakistan and Brazil are pushing for clarification of the relationship between TRIPs and the CBD and for such clarification to take place

under the work programme of the TRIPs Council. The most vocal developed countries – the USA, Canada and Switzerland – oppose any such moves in the TRIPs Council. In their view there is no conflict between the TRIPs Agreement and the CBD, and they consider the two instruments to be mutually supportive. Further, they reject any effort to restrict trade in patented goods. Widely diverse nations believe that the mechanism of access to genetic resources and traditional knowledge should ensure the conservation and sustainable use of biological diversity in the countries of origin, with their peoples – and particularly local and indigenous communities – reaping the benefits, including monetary benefits, transfer of technology, development of value-added products and improvement in their economies.[59]

Labelling requirements for environmental purposes (Paragraph 32(iii))

Eco–labelling and packaging requirements are also a prime concern for developing countries due to the fact that they are faced with the proliferation of both voluntary and mandatory eco-labelling schemes, which may act as another potential barrier to market access. The issue has remained unresolved for some time within the CTE. The EC[60] and Switzerland[61] have both made submissions suggesting ways of moving forward the discussions on the interpretation of the Agreement on Technical Barriers to Trade or the development of guidelines on the application of its provisions. Suggestions have also been made on combining meetings of the CTE with those of the TBT Committee to discuss this issue; however, these proposals have not progressed further in the CTE. The EC is likely to seek a negotiation mandate for eco-labelling, i.e. moving discussions from the regular CTE to the CTESS. Developing countries are wary of this move since they believe they already have many complex issues to handle in the existing negotiations under paragraph 31(i)–(iii).

2 Likely Outcomes from Trade and Environment Negotiations

The trade and environment negotiations are likely to be affected by the slow pace of progress in Geneva on the entire negotiations under the DMD. Trade-offs will be made depending on the developments in other crucial aspects of the trade negotiations, such as agriculture or textiles. The apparent apathy over the agriculture negotiations will affect the likelihood that trade and environment will produce concrete outcomes at the Cancún ministerial conference in September. In the longer term, progress depends on the political will and changing strategic interests of Members, as well as developments at the bilateral and regional levels.

Short-term Outcomes (Cancún Ministerial Conference)

From the current atmosphere in the CTESS, two possible outcomes seem the most likely.

Political Declaration on Information Exchange between WTO and MEA Secretariats

The negotiations on this issue are the most advanced in the CTESS mandate, and the general atmosphere of co-operation makes this one of the most viable outcomes from the Geneva talks. WTO Members may conclude a political declaration establishing a formal process for information exchange between WTO and MEA Secretariats that seeks to improve information dissemination and achieve policy coherence between environment and trade regimes. The Declaration is likely to contain references to the WSSD Plan of Implementation which advocates mutual supportiveness between the multilateral trading system and MEAs. It may also emphasise the need for national policy co-ordination between environment and trade ministries. However, the Declaration is likely to be silent on the issue of formal observer status for MEA Secretariats and UNEP in WTO Committees. WTO Members may decide to monitor the way the informal ad hoc observer status in the CTESS works, as well as awaiting the TNC/General Council decision on observer status for the whole of WTO.

Recommendation to Advance Market Access (paragraph 32 (i)) and Eco-labelling (paragraph 32 (iii)) Discussions to Negotiation Mode

This would be a simple trade-off between the different proponents of these issues – the EC and Switzerland, on the one hand, and India and other developing countries on the other, and can be viewed as quite likely with a bit of flexibility from both sides. It is likely that the EC will seek to move eco-labelling from discussion to negotiation. Developing countries should be prepared for this and as a counterpart to this effort, they should actively work towards advancing market access to negotiation and be prepared to concede on eco-labelling as the trade-off. Each side can then claim a substantive result from the negotiations.

Longer-Term Outcomes (Post-Cancún and beyond)

There are a number of outcomes from the current negotiation mandate which will take time to emerge.

Classification of Environmental Goods and Services

Consensus is unlikely over a final list of environmental goods at Cancún, and while progress continues to be made on a bilateral basis on environmental services, classification issues also remain problematic in this area. Since there is a clearer benchmark for environmental services, it seems clear that the classification in this sector will be divided into 'core' (those contained in W/120) and 'related' (e.g. engineering, construction or education) services. For environmental goods, the position is not so clear, although the consensus on using the APEC classification as a starting point is useful. This increases the chances of reaching an agreed definition or classification of

environmental goods which reflects a broad range of developing and developed country interests. One major issue that would need resolution in this area is, of course, the issue of PPMs. Developing countries will need to look past their wariness on this issue to the potential trade gains they can make in the sector. The question of how to distinguish environmental products and services from others is central to classification. This necessitates not only developing a methodology in order to establish the distinction, but assigning different customs (HS) codes to these products and services.

Interpretative Decision on the Relationship between Specific Trade Obligations in MEAs and WTO rules

Although the negotiations on the relationship between specific trade obligations in MEAs and WTO rules remains controversial, it may be possible for WTO Members to develop an interpretative decision that keeps within the letter and spirit of the mandate in paragraph 31(i). In the Decision, Members may outline principles and criteria that they have used to determine the definition of: (a) specific trade obligations; and (b) multilateral environmental agreements in the context of the relationship to the WTO and as between Parties to a given MEA. The Decision is certain to start with a preambular statement that environmental and trade regimes have equal status in international law and are to be seen as complementary to each other. It may then identify the STOs already contained in the WTO Secretariat's *Matrix* and go on to establish that they are a privileged category that would be shielded from the application of WTO rules and WTO procedures when these STOs are applied between Parties to the relevant MEAs. In essence, such a Decision would simply be endorsing an application of the law of treaties that recognises that the Parties to these MEAs have, by ratifying these agreements, waived certain rights under the WTO.

3 Ideas for Positive Outcomes from the Trade and Environment Negotiations

The initial debate on environment in the WTO has shifted from a focus on 'trade and environment' towards 'trade and sustainable development'. This change reflects greater participation in the debates at international and regional level by developing countries and a gradual realisation by them that the issues may present more opportunities than threats to their economic interests. It also reflects the perception by developed countries that the trade and environment relationship includes many development issues. This convergence of opinion on the core sustainable development issues of the relationship means that it is important that developing countries do not lose the momentum in engaging their developed country counterparts on the key issues in order that the trade and environment agenda stays focused on real sustainable outcomes. The following are three ideas for avoiding the pitfalls of polarisation in the

current negotiations. At the heart of each of these ideas are the core elements of market access and capacity-building, which are critical for advancing the negotiations.

Defining Environmental Goods and Services to Support the Export Interests of Developing Countries

Forecasts by the OECD indicate that the average growth in the environment-related industry in the next few years in the developing countries of Asia and Latin America will be 5–7 per cent, against the overall annual rate of growth of 3–4 per cent in the Western industrial countries and Japan.[62] Therefore the mandate to liberalise environmental goods and services offers a unique chance to bring together developed and developing countries in a common understanding of the benefits of the environment for trade and vice versa (the so-called win–win scenario). Thus, a comprehensive approach to product and service coverage in these two sectors would demonstrate the strong comparative advantage of developing countries. In particular, the broadening of the environmental goods classification to include products derived from sustainable agriculture, fisheries, forestry or mining may provide opportunities for specific trade interests from developing countries that the current WTO classification does not provide.

However, the benefits of liberalisation in environmental goods and services may not be realised unless WTO members can find viable trade interests and environmental strategic objectives within the framework of the negotiations. Two issues therefore arise:

(a) The extent to which trade liberalisation may enhance the availability of environmental goods and services used to address national environmental problems;

(b) The necessary conditions for trade liberalisation to open markets for environmental goods and services from both developed and developing countries.

Thus, when WTO Members are negotiating commitments in their respective Schedules, the aim should be two-fold: (a) to liberalise market access in sectors and modes of supply of export interest to developing countries;[63] and (b) to strengthen developing countries' capacity in domestic services (including access to technology) and improve developing country access to information networks.

An important factor for developing countries to consider in the negotiations is that the environmental industry in developed countries is extremely well-organised and competitive, particularly for environmental services where capital technologies and large-scale engineering services provide them with considerable comparative advantage. However, although firms from developed countries presently meet most of the emerging demand for environmental goods and services in developing countries, firms from other developing countries may be able to enter these markets too. Trade liberalisation in environmental goods and services as between countries in different develop-

ing country regions could create export opportunities for firms with acquired technologies for addressing similar environmental problems.[64] Firms from developing countries may be in a better position to address environmental problems peculiar to developing regions. Moreover, they may be able to offer a range of products and services that are not only price competitive with those from developed countries, but also based on appropriate technology for the developing country market. For example, in Malaysia, a private company operating privatised waste-water plants is following the example of British and French water companies by providing integrated water services domestically and to other countries in the Asia Pacific region.[65] Another Malaysian company has expanded into manufacturing in order to complement its design of licensed and proprietary water-treatment systems, enabling it to serve markets in Indonesia and Thailand.

It is important to note, though, that developing countries are not a homogeneous group. Most are in the first phases of addressing environmental problems through command and control instruments. This is likely to generate demand for a broad spectrum of environmental goods and services relating to health and sanitation. Others are introducing market instruments to complement regulation, which generate differentiated demand for goods and services in cleaner technologies and resource management. Growth of the industry in developing countries will also depend on the ability of potential producers and consumers, particularly SMEs, to be aware of export opportunities for, and be able to access information on, environmental goods and services.[66] This may come in the form of partnerships or joint ventures between developed and developing country service suppliers, whereby environmental expertise is imported and used with indigenous capacity, making it possible to increase the adoption and operation of new technologies and generate knowledge and skills which can contribute to improving the environment. Even where this is successful, reliable and substantial supply of environmental goods from SMEs is a key factor. It is a fact that many developing country producers of environmental goods, particularly natural-based products may only appeal to niche markets. However, markets are expected to expand in the future for products such as organic foods or sustainable forest products. For example, in Tanzania, trade in honey and other bee products such as beeswax and royal jelly is a larger contributor to the country's GDP than all other forest products combined.[67]

While trade liberalisation in environmental goods and services sectors may be a potential 'win–win', there are multiple factors which may present challenges to WTO Members in the negotiations. Much will turn on the nature of the industry itself, the factors affecting availability and diffusion of goods and services, the preconditions for technology co-operation and innovation, local capabilities, and the nature of domestic environmental and economic conditions.[68] At the same time, these are sectors that cut across a range of other sectors and issues that are currently the subject of the DMD

negotiations, such as agriculture, energy, forestry and textiles. Moreover, negotiations on environmental goods and services will also touch on other issues at the heart of the trade and environment relationship, such as eco-labelling, PPMs, technology transfer and compliance with environmental agreements. Developing countries should use environmental goods and services as a way of mainstreaming some of their core interests in the multilateral trading system.

Technology Transfer Side Agreements

The importance of technology transfer for sustainable development and for environmental protection, especially in the present context of international liberalised trade, cannot be over-emphasised. Access to appropriate technology is often a prerequisite for market access, particularly when access depends on compliance with environmental regulations. Developing countries' main concern here is the facilitation of access to, and transfer of, technology, including environmentally sound technologies (ESTs). Recognition of the role of technology transfer for sustainable development has found expression in many international treaties and instruments, including Agenda 21, the Rio Declaration, the Montreal Protocol, the CBD and the TRIPs Agreement. Yet enforcement of these technology transfer provisions remains patchy, ranging from reasonably adequate as in the case of the Montreal Protocol to non-existent in case of the CBD. Moreover, the entry into force of the TRIPs Agreement has witnessed a situation where patents and patent protection is steadily increasing and widening its scope of application to genetic resources, plant varieties and even living organisms.

Thus far, international law has focused on states and international organisations in attempting to improve EST transfer. However, it is important to recall that technology is possessed by, and technology transfer takes place between, private actors (enterprises) whose standing in international law is much less clear.[69] The rise of the influence of private actors, particularly business, in international law-making calls for a perceptibly different approach to this group in international law. It may be time to expressly recognise their implicit power by including them in certain international agreements through specific side agreements on technology transfer, which impose binding obligations on these multinational enterprises. For instance, a technology transfer side agreement could be negotiated to the TRIPs Agreement which provides for the technology transfer of ESTs which is vital for the compliance of several MEAs, such as the Framework Convention on Climate Change or the Kyoto Protocol, the CBD or the Biosafety Protocol, or the POPs and PIC Conventions. Such a technology transfer side agreement could also include technology elements which assist developing countries in addressing the issue of domestically prohibited goods (DPGs) or the trade in hazardous wastes. A technology transfer side agreement could also be built into the negotiations of future MEAs, or the further development of current MEAs, which more or less require technology transfer for their effective implementation.

At the same time, it will be important that various capacity-building initiatives are developed parallel to a binding side agreement, which enable developing countries (the *demandeurs* of the technology transfer) to exploit technology once it is transferred, and to distinguish technology appropriate to their economic and social conditions.

4 Conclusions

Developing countries now constitute the majority of the membership of the WTO and their voice in the organisation has become progressively authoritative, as their participation in WTO decision-making increases. Through their influence in the CTE and CTESS process, the debate has gradually shifted from a focus on trade and environment to an emphasis on trade and sustainable development. This proactive stance by developing countries must continue in the WTO. Far from shying away from discussion of trade and environment issues, developing countries should ensure that the discussion is oriented towards support for accelerated liberalisation of trade in goods of special interest to them. To do this, developing countries should decisively indicate their priorities and interests, and ensure that the necessary links are made between issues emerging in the CTE and those in other WTO committees. For instance, to ensure better market access for their agricultural goods, developing countries should take positions on organic food products in the environmental goods negotiations in the NGMA; classification of such goods under the CTESS; labelling either affecting or improving trade in such goods in the Committee on Technical Barriers to Trade; requirements for notifications of subsidies which distort trade in such goods in the Committee on Subsidies and Countervailing Measures; and on high tariffs and tariff escalation affecting such goods in the Committee on Agriculture. The same series of issues could be taken up in bilateral trade agreements or regional trade agreements on a consistent basis, backed up with requests for technical assistance and capacity-building to improve trade facilitation.

Developing countries should not be wary of seeking trade-offs as long as the trade-offs serve their strategic interests. At the same time, it is important that developed countries enter into partnerships with developing countries to ensure that the Doha Development Round exists not merely in name but in fact. Some of the anomalies in the trade and environment relationship could be easily addressed by measures from developed countries, such as the elimination or reduction of perverse subsidies in agriculture and fisheries that distort trade and harm ecosystems. Traditional, low-impact community farming may be covered under the notion of sustainable agriculture (one of the OECD environmental goods classifications), and may be properly distinguished from large-scale mechanised agriculture with capital inputs such as pesticides. Through the negotiations in the NGMA, the CTE and the Committee on Agricul-

ture, developing countries could explore differentiation between products derived from sustainable agriculture and similar products from large-scale intensive agricultural practices in developed countries. Trade-offs may be made not only among the issues covered by the trade and environment negotiations but also across issues and sectors in the WTO. For instance, developed countries may be persuaded of the merits of faster and fuller implementation of their obligations under the Agreement on Textiles and Clothing to enable improved market access for developing countries products, if developing countries were minded to reconsider upgrading the issue of labelling for environmental purposes to negotiation mode. Obviously, such trade-offs should be explored within regional groupings of developing countries to test out hypotheses and assumptions before any attempts are made. However, the underlying premise of the proactive stance remains.

To increase their influence in the WTO and to improve the chances for successful trade-offs, developing countries should co-operate more effectively within their regional groupings. Many developing countries have limited resources to devote to maintaining missions in Geneva or to ensure the essential participation of capital-based policy makers in the WTO negotiations. Since 1999, African countries in particular have attempted to surmount technical and logistical difficulties associated with participation through regional seminars hosted by the (then) OAU to update capitals on progress in Geneva. Developing countries need to share information and exchange experiences at the regional level, developing common or co-ordinated positions where appropriate in order to be more effective in both WTO and MEAs processes. Where possible, various countries could be selected to take the lead on certain issues to advance developing country interests in the negotiations. It is interesting to note that developing countries are also co-ordinating positions across geographical regions. For instance, the Like Minded group of countries includes countries from Asia, Africa and Latin America. These developments are welcome and should be built upon to ensure the continued integration of developing countries into the multilateral trading system.

Annex 1. Doha Declaration paragraphs 31–33

Trade and environment

31. 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.

We note that fisheries subsidies form part of the negotiations provided for in paragraph 28.

32. 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;

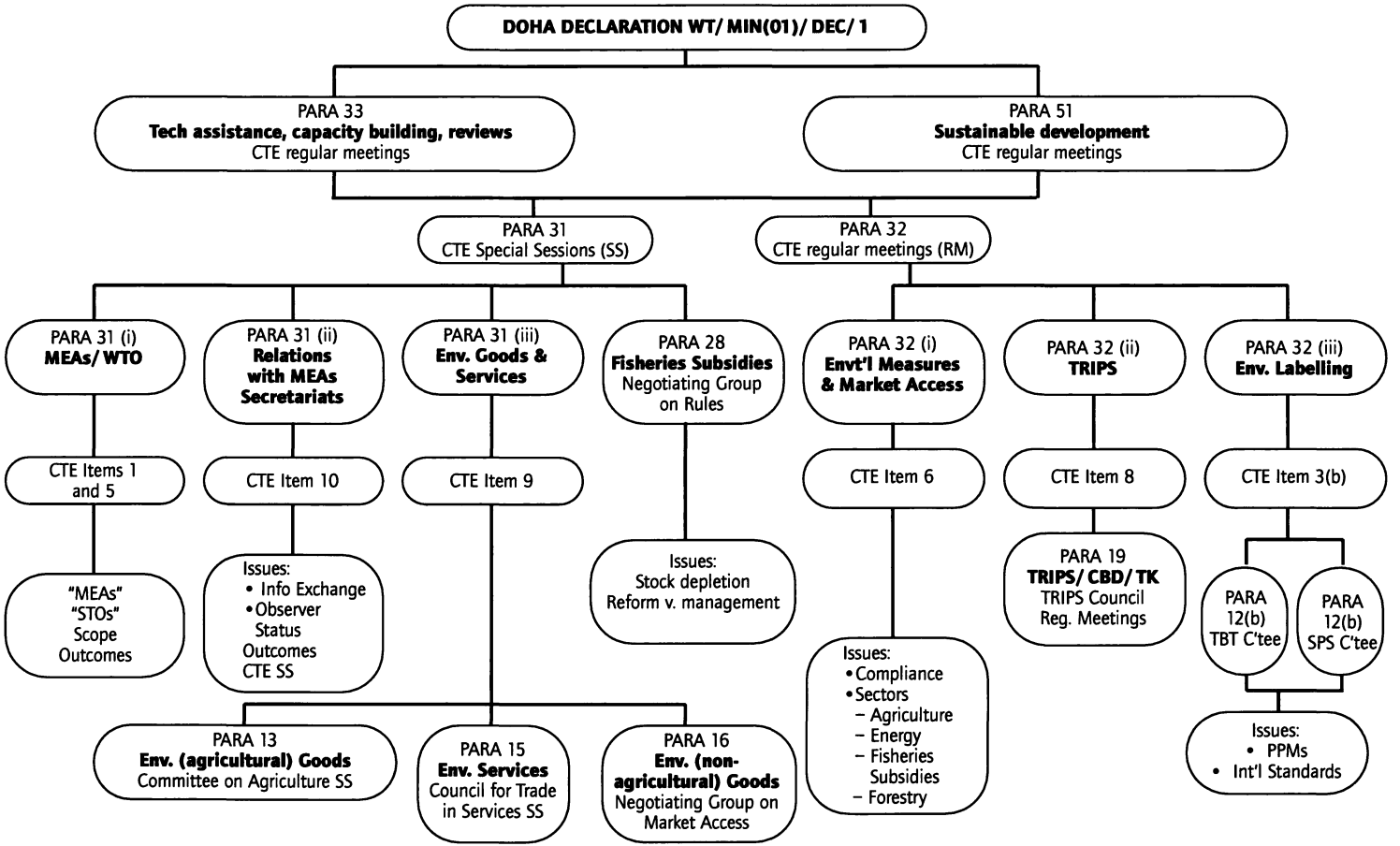
(ii) the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights; and

(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 jmWTO Agreements, in particular the Agreement on the Application of Sanitary and Phyto-sanitary Measures, nor alter the balance of these rights and obligations, and will take into account the needs of developing and least developed countries.

33. We recognise the importance of technical assistance and capacity-building in the field of trade and environment to developing countries, in particular the least developed among them. We also encourage that expertise and experience be shared with members wishing to perform environmental reviews at the national level. A report shall be prepared on these activities for the Fifth Session.

Annex 2. Doha Negotiations on Trade and Environment



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Notes

1 Doha Ministerial Declaration, WT/MIN (01)/DEC1, 20 November 2001.
2 The full text of paragraphs 31–33 is set out in Annex 1 of this paper.
3 See Annex 2 of this paper.
4 See Compilation of Submissions under paragraph 31(i) of the Doha Declaration, TN/TE/S/3/Rev.1, 24 April 2003.
5 Committee on Trade and Environment – Special Session – Suggested Procedure for the Negotiations under Paragraph 31(i) of the Doha Declaration – Submission by Australia – Paragraph 31(i), TN/TE/W/7, 7 June 2002.
6 See Report by the Chairperson of the Special Session of the Committee on Trade and Environment to the Negotiations Committee, TN/TE/5, 28 February 2003.
7 See *Matrix on Trade Measures Pursuant to Selected Multilateral Environmental Agreements*, Note by the Secretariat, WT/CTE/160/Rev.1, 14 June 2002.
8 See Argentina: TN/TE/W/2; India: TN/TE/W/23; US: TN/TE/W/20.
9 See EC: TN/TE/W/1; Canada: TN/TE/W22; Switzerland: TN/TE/W4; TN/TE/W/16; TN/TE/W/21.
10 See Korea: TN/TE/W/13; Chinese Taipei: TN/TE/W/11.
11 See India: TN/TE/W/23.
12 See India: TN/TE/W/23; Chinese Taipei: TN/TE/W/11; EC: TN/TE/W/1.
13 See India: TN/TE/W/23; Argentina: TN/TE/W/2; US: TN/TE/W/20; Japan: TN/TE/W/10; Canada: TN/TE/W/22.
14 See EC: TN/TE/W/1; Switzerland: TN/TE/W/4, TN/TE/W/16, TN/TE/W/21.
15 See Chinese Taipei: TN/TE/W/11.
16 See US: TN/TE/W/20.
17 See US: TN/TE/W/20; Norway: TN/TE/W/25; Argentina: TN/TE/W/2; Chinese Taipei: TN/TE/W/11.
18 See EC: TN/TE/W/1; Switzerland: TN/TE/W/4.
19 http://europa.eu.int/rapid/start/cgi/guesten.ksh?reslist
20 See Report by the Chairperson of the Special Session of the Committee on Trade and Environment to the Negotiations Committee,TN/TE/5, 28 February 2003.
21 For a more detailed list see Summary Report of the MEA Information Session on paragraph 31(ii) of the Doha Declaration, TN/TE/R/4, 21 January 2003; Committee on Trade and Environment – Special Session – Report by the Chairperson of the Special Session of the Committee on Trade and Environment to the Trade Negotiations Committee; TN/TE/4, 2 December 2002.
22 See EC: TN/TE/W/15; US: TN/TE/W/5.
23 *Bridges Weekly Trade News Digest*, Vol. 7, No. 6, 19 February 2003, http://www.ictsd.org/weekly/03-02-19/story4.htm
24 They are the Basle Convention on Transboundary Movement of Hazardous Waste; The Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES); The Convention on Biological Diversity (CBD); The Montreal Protocol on Ozone-depleting Substances; The International Tropical Timber Organisation (ITTO); UN Framework Convention on Climate Change (UNFCCC).
25 Not yet publicly available.
26 See Doha Round Briefing Series, Vol. 1 No. 9 of 13, February 2003, IISD, ICTSD.
27 See *Environmental Goods and Services: The Benefits of Further Global Trade Liberalisation*, OECD 2001 [OECD (2001)].
28 Group on Negotiations on Services. MTN.GNS/W/120, July 1991.
29 The pollution management group, which is the most developed environmental sphere, consists of activities that produce equipment, technology or services to treat or remove environmental effects. This usually includes end-of-pipe treatment that is intended solely for environmental purposes, and is statistically identifiable. The following activities fall into this category: air pollution control; wastewater management; solid waste management; remediation/clean up of soil and water; noise/vibration abatement; monitoring, analysis and assessment. Of these, wastewater management is of crucial importance to many countries.
30 The cleaner technology and products group includes any activity that continually improves, reduces or eliminates the environmental impact of technologies, processes or products, but which may be supplied other than for environmental purposes. Methods of classification and assessment are still under discussion in this group. This group comprises cleaner or resource efficient technology or products such as those that reduce energy consumption, recover valuable by-products, reduce emissions or minimise waste disposal problems.
31 Within the resource management group are activities that prevent environmental damage to air, water and/or

soil. These include activities that produce equipment, technology or specific materials, design, construct or install, manage or provide other services for recycling new materials or products; for the generation of renewable energy (such as biomass, solar, wind, tidal or geothermal sources); for reducing climate change, for sustainable agriculture and fisheries (such as biotechnology applied to agriculture and fisheries activities); for sustainable forest management; for natural disaster risk management; or related to eco-tourism.

32 Communication from the United States to the Council for Trade in Services, S/CSS/W/25, 18 December 2000.

33 Communication from the European Communities and their member states to the Council for Trade in Services, S/CSS/W/38, 22 December 2000. The proposal also covers all sectors and sub-sectors of the environmental services 'cluster' or 'checklist' described in the EC Communication S/CSC/W/25 as modified on 28 November 2000.

34 Communication from Australia to the Council for Trade in Services S/CSS/W/112, 1 October 2001). Australia supported the EC communication on classification of environmental services (S/CSC/W/25, 28 September 1999), i.e. to schedule commitments according to a revised classification which preserves the mutually exclusive nature of W/120 while addressing most of its recognised problems.

35 Communication from Switzerland to the Council for Trade in Services, S/CSS/W/76, 4 May 2001.

36 Communication from Canada to the Council for Trade in Services, S/CSS/W/51, 14 March 2001.

37 Communication from Colombia to the Council for Trade in Services, S/CSS/W/121, 27 November 2001. According to Colombia, the commercial presence of foreign enterprise in the provision of environmental services may be beneficial for developing countries through: (i) increased investment and contribution to capital formation; (ii) technology transfer; (iii) wider coverage; (iv) an improvement in environmental and sanitary conditions.

38 Communication from Cuba to the Council for Trade in Services, S/CSS/W/142, 22 March 2002.

39 Jolita Butkeviciene, 'Gats Negotiations and Issues for Consideration in the Area of Environmental Services from a Development Perspective', Workshop on Post-Doha Negotiating Issues on Trade and Environment in Paragraph 31 (Singapore, May 16, 2002) <http://www.unep-unctad.org/cbtf/meetings/singapore.htm>

40 Communication to the Committee on Trade and Environment, TN/TE/W/6, 6 June 2002. See particularly Section III, paragraphs 5–8. Annex III.1 and Annex III.2

41 New Zealand's Communication includes some examples of environmental goods: (i) Air pollution control includes soot removers for boilers, scrubbers/precipitators, catalytic converters, waste gas incinerators; (ii) Water pollution control includes pumps, equipment for filtering/purifying water or other liquid industrial discharge; (iii) Solid/hazardous waste management: waste incinerators. (iv) Remediation/clean-up of soil and water: absorbent material used in booms or socks used for containing oil spills, inflatable spill recovery barges, pollution protection booms; (v) Noise /vibration abatement includes industrial mufflers; (vi) Monitoring/analysis and assessment includes pH meters, gas or smoke analysis apparatus (vi) Potable water treatment includes water treatment systems, (vi) Other recycling system includes metal recycling equipment, machinery for cleaning or drying bottles or other containers, asphalt recycling equipment; (vii) Renewable energy plant includes wind turbine pumps, solar panels; (viii) Heat/energy management includes heat exchangers, economisers for boilers; (ix) other – soil conversion, erosion control matter, environmental protection cloth. Annex III.2 of the Communication includes some additional product specifications.

42 Communication to Negotiating Group on Market Access, TN/MA/W/1, 24 June 2002). See paragraphs 6, 11 and 21. Second Communication TN/MA/W/11, 21 October 2002 deals with Post Doha developed-developing countries market access issues.

43 Communication made to negotiating Group on Market Access, TN/MA/W/6, 5 August 2002. In Paragraph 5, Korea makes the point that 'environmental goods to be included in the list should be determined in terms of their end-use, but not in terms of their production and process methods'.

44 Communication made to the Negotiating Group on Market Access, TN/MA/W/8, 10 September 2002. Para. 16 adds that OECD and APEC's list should be the starting point to define environmental goods.

45 Communication to the Negotiations Group on Market Access, TN/MA/W/3, 3 July 2002. Second communication, TN/MA/W/18 was made on 5 December 2002.

46 Communication made to the Negotiating Group on Market Access, TN/MA/W/16, 28 November 2002. In paragraph 13, Switzerland notes that there is a lack of internationally recognised standards in the application of PPM. Secondly, the application of such a criterion may prove to be difficult at the border.

47 Communications made to the Negotiating Group on Market Access, TN/MA/W/10, 22 October 2002. See paragraph 9, where India notes that environmental goods need to be defined in the light of the need of developing countries and LDCs and may include environmentally friendly products. See also TN/MA/W/10/Add.1, 8 January 2003.

48 Communication made to the Negotiating Group on Market Access, TN/MA/W/17, 2 December 2002.
49 See Summary Report on the Third Meeting of the Committee on Trade and Environment Special Session, TN/TE/R/3, 31 October 2002.
50 See http://:www.wcoomd.org
51 Paragraphs 32 and 33 contain the non-negotiation mandate given to the regular CTE.
52 See 'The Effects of Environmental Measures on Market Access, especially in relation to Developing Countries, in particular the Least Developed among them', WT/CTE/W/207, 21 May 2002.
53 See Annex 1.
54 See Committee on Trade and Environment – Report of the Meeting Held on 14 February 2003 – Note by the Secretariat; WT/CTE/M/32, para.37.
55 See Committee on Trade and Environment – Report of the Meeting Held on 29 April 2003 – Note by the Secretariat; WT/CTE/M/33, para. 24.
56 See Committee on Trade and Environment – Report of the Meeting Held on 13 – 14 June 2002 – Note by the Secretariat; WT/CTE/M/30, paras 66–67.
57 See Committee on Trade and Environment – Report of the Meeting Held on 8 October 2002 – Note by the Secretariat, WT/CTE/M/31, 2 December 2002, paras 70–72.
58 Ibid. WT/CTE/M/31, 2 December 2002, paras 61–68.
59 See *Cusco Declaration on Access to Genetic Resources, Traditional Knowledge and Intellectual Property Rights of Like-minded Megadiverse Countries*, http://www.comunidadandina.org/ingles/document/cusco29-11-02.htm (Presented at Committee on Trade and Environment – Report of the Meeting Held on 14 February 2003 – Note by the Secretariat; WT/CTE/M/32). These widely diverse nations include Bolivia, Brazil, China, Colombia, Costa Rica, Ecuador, the Philippines, India, Indonesia, Kenya, Malaysia, Mexico, Peru, South Africa and Venezuela, representing 70 per cent of the biological diversity of the planet.
60 See Committee on Technical Barriers to Trade – Committee on Trade and Environment – Labelling – Submission by the European Communities, WT/CTE/W212, 12 June 2002.
61 See Committee on Trade and Environment – Labelling for Environment Purposes – Submission by Switzerland, WT/CTE/W/ 219, 14 October 2002.
62 In 1996, the global environment industry was estimated US$453 billion. Basic infrastructure services of waste treatment, water treatment and water supply account for more than half, while equipment accounts for nearly quarter of the total. Future Liberalisation of Trade in Environmental Goods and Services, OECD COM/TD/ ENV (98)37/FINAL, p. 7.
63 For instance, pulp and paper processing, steel smelting and refining, energy, coal, textiles and footwear. See *Cleaner Production and Waste Minimisation in OECD and Dynamic Non-Member Countries*, OECD, Paris 1998.
64 'Strengthening Capacities in Developing Countries to develop their Environmental Services Sector', Background Note by the UNCTAD Secretariat, TD/B/COM.1/EM.7/2, 12 May 1998 [UNCTAD (1998)], para. 16.
65 Ibid, para. 52
66 Environmental Benefits of Removing Trade Restrictions and Distortions. Note by the Secretariat, Addendum. Committee on Trade and Environment. WT/CTE/W/67/Add.1, 13 March 1998, para. 10.
67 See 'Environmentally Preferable Products (EPPs) as a Trade Opportunity for Developing Countries', Report by the UNCTAD Secretariat, UNCTAD/COM/70, 19 December 1995, p. 24.
68 See Beatrice Chaytor, *Negotiating Further Liberalisation in Environmental Goods and Services: An Exploration of the Terms of Art*, RECIEL 11.3.
69 More than 90 per cent of existing ESTs involve proprietary knowledge, often developed and belonging to TNCs. See 'Factors affecting Transfer of Environmentally Sound Technology', Note by the Secretariat. WT/CTE/W/22, 1996.