

**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**

1. The purpose of this report is to provide the Trade Negotiations Committee (TNC) with an overview of the progress made in the trade and environment negotiations under Paragraph 31 of the Doha Ministerial Declaration up to the time of the Hong Kong Ministerial Conference.<sup>1</sup>

**I. STATUS OF WORK**

**A. PARAGRAPH 31(I)**

2. In Paragraph 31(i), participants are instructed to negotiate on: *"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."*

3. There has been serious engagement on the part of all delegations in the discussions on this part of the mandate. Since the early stages of the negotiations, two main approaches have been followed under Paragraph 31(i), namely: the identification and discussion of specific trade obligations (STOs) set out in MEAs; and a broader and more conceptual approach to the WTO-MEA relationship. These approaches to the mandate have been pursued in parallel, and have both contributed to enriching the debate in the Committee.

4. In a preliminary phase of the discussions, Members focused on some of the terms of the mandate. In this context, some delegations shared their interpretation of the terms "multilateral environmental agreement"; "specific trade obligation"; "as among parties to the MEA"; etc. With respect to the definition of "specific trade obligation", Members have examined various types of trade measures set out in a number of MEAs, and how these measures may qualify as STOs for the purpose of the mandate.<sup>2</sup> In this context, it has been suggested that specific trade obligations included measures that were explicitly provided for and mandatory under MEAs. Some Members, however, considered that other types of trade measures may also be considered as STOs.

5. The identification of STOs set out in MEAs led subsequently to a discussion of national experiences in the negotiation and implementation of MEAs. It has been argued in this context that information on coordination and information exchange at the national level could provide insight into measures for ensuring coherence between trade and environmental policies at the international level.

6. Differences have emerged from the beginning of the discussions under Paragraph 31(i) over the issue of an outcome for the negotiations. Some of the proposals submitted by Members have

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<sup>1</sup> See document TN/TE/INF/4/Rev.8, dated 25 November 2005, for a full list of the submissions made.

<sup>2</sup> The Secretariat Note entitled "*Matrix on Trade Measures Pursuant to Selected Multilateral Environmental Agreements*" in document TN/TE/S/5/Rev.1, was used as a reference for this discussion.

addressed this particular issue, focusing, for instance, on the need to develop certain "principles and parameters" to govern the WTO-MEA relationship, such as the principles of no hierarchy, mutual supportiveness and deference between the trade and environment regimes. The delegations that have put forward these proposals are of the view that the WTO-MEA relationship could be further clarified and improved.

7. Several other delegations indicated that the mandate was more limited in scope, and did not extend to the general WTO-MEA relationship. In their view, the mandate is circumscribed to a specific aspect of this relationship, as it focuses on existing WTO rules and specific trade obligations set out in MEAs. Furthermore, the mandate clearly states that the negotiations are limited in scope to the applicability of WTO rules as among parties to the MEA, and shall not prejudice the WTO rights of any Member that is not a party to the MEA. For these delegations, the WTO-MEA relationship has proved to be working well, and the experience to date does not support the need for further clarification to ensure the mutual supportiveness of the trade and environment regimes.

8. Despite the extensive discussions held under Paragraph 31(i), much work still remains to be done. In order to make progress in the negotiations in 2006, Members will have to take stock of their discussions to date and engage in substantive work, with the objective of reaching a desirable outcome and fulfilling the mandate.

B. PARAGRAPH 31(II)

9. The mandate of Paragraph 31(ii) stipulates that participants shall negotiate: "*procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status.*" This mandate therefore has two main components, namely information exchange between WTO and MEA secretariats, and criteria for the granting of observer status.

10. With respect to information exchange, the proposals tabled by Members have explored how existing practices can be complemented or further improved upon by other forms of cooperation. It has been suggested that some of the existing mechanisms already in place to facilitate information exchange between the WTO, UNEP and MEAs could be formalized or further consolidated.<sup>3</sup>

11. The suggestions and ideas put forward were summarized by the Chairperson of the CTESS in her Report to the TNC in July 2003.<sup>4</sup> These include, for instance: formalizing MEA Information Sessions in the CTE, and organizing them on a regular basis; holding MEA Information Sessions on specific themes by grouping the MEAs that share a common interest; organizing meetings with MEAs in other WTO bodies, either together with the CTE or separately; organizing more systematically WTO parallel events at MEA Meetings of Parties; organizing joint WTO, UNEP and MEA technical assistance and capacity building projects; promoting the exchange of documents, while respecting confidential information; creating avenues for information exchange between government representatives from the trade and environment sides; and establishing an electronic database on trade and environment. These suggestions could be taken up by Members as a basis for further discussion.

12. Some delegations have expressed the view that enhanced cooperation between the WTO and MEA secretariats could contribute to improving both international and national coordination, and could further contribute to conflict prevention between the trade and environment regimes. In this regard, it has been suggested that an outcome under Paragraph 31(ii) could go some way in addressing

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<sup>3</sup> See "*Existing Forms of Cooperation and Information Exchange between UNEP/MEAs and the WTO – Note by the Secretariat*" circulated in document TN/TE/S/2/Rev.1.

<sup>4</sup> TN/TE/7.

the mandate under Paragraph 31(i). Members may wish to further explore the synergies between Paragraphs 31(i) and (ii) in light of their relevance to the WTO-MEA interface.

13. With regard to observer status, it has been suggested that the general criteria pertaining to the granting of observer status to international intergovernmental organizations contained in Annex 3 of the Rules of Procedure of the General Council could provide a basis for discussing specific criteria for MEA observership.<sup>5</sup> Further discussions are therefore called for, including on the WTO bodies that could benefit from greater interaction with MEAs.

14. I would encourage delegations to try and make concrete progress in pursuing their work on this aspect of the mandate, notwithstanding the fact that substantive discussions on the issue of observer status are pending in other bodies of the WTO.

15. Finally, I would like to note the valuable contribution of the MEAs and other international organizations which have been invited to participate on an ad hoc basis in the deliberations of the CTESS.<sup>6</sup> Given the relevance of the work of these organizations to the discussions in the CTESS with respect to all aspects of the mandate in Paragraph 31, I encourage Members to continue to extend these ad hoc invitations.

#### C. PARAGRAPH 31(III)

16. The mandate in Paragraph 31(iii) calls for negotiations on "*the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services*". After the reaffirmation by Members of their commitment to make progress in the negotiations on trade and environment in July 2004, the CTESS devoted more time to the discussion of this subject. Efforts were made to develop a more in-depth understanding of the issues before the CTESS, especially with regard to environmental goods. Discussions of a technical nature were held at the formal meetings, as well as at informal information exchange sessions organized in the latter half of 2005. However, so far, the CTESS has not reached a common understanding of how it should proceed to the next stage of work to fulfil the mandate.

17. Different approaches to Paragraph 31(iii) negotiations have emerged from the submissions made to date. In the initial phase of negotiations, discussions in the CTESS, based on submissions by a number of Members, revolved around the identification of environmental goods for the establishment of a multilaterally agreed list. However, in early 2005, an alternative approach to negotiations was proposed by one delegation, described as the "Environmental Project Approach". Another delegation came forward with a proposal for an "integrated approach" to the negotiations, which combines some of the elements of the previous two approaches. Furthermore, other delegations have made contributions that focused on developing countries' interests in the negotiations. The challenge before the CTESS is to find common ground between these different approaches and other approaches that may be developed.

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<sup>5</sup> *Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council*, WT/L/161, 25 July 1996.

<sup>6</sup> The following organizations have been invited to attend the meetings of the CTESS on an ad hoc basis: the Basel Convention on the Transboundary Movements of Hazardous Waste and their Disposal, the Convention on International Trade in Endangered Species (CITES), the Montreal Protocol on Substances that Deplete the Ozone Layer, the Convention on Biological Diversity (CBD), the United Nations Framework Convention on Climate Change (UNFCCC), 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, the United Nations Environment Programme (UNEP), the United Nations Conference on Trade and Development (UNCTAD), the World Customs Organization (WCO), and the Organization for Economic Cooperation and Development (OECD).

18. At present, the CTESS has before it nine initial lists of environmental goods. The products included in the individual lists have been compiled in Annex II to the Secretariat's *Synthesis of Submissions on Environmental Goods*.<sup>7</sup> In the preparation of their list, Members have used different parameters and categories of environmental products.

19. Some Members have also advanced ideas on the possible structure of an environmental goods list by suggesting the development of a "living list" that could be updated in future to incorporate new products, so as to reflect the reality of the evolution of environmental goods as well as technological change. Another proposal discussed suggested the creation of two lists, a core and a complementary list, involving different sets of commitments.

20. While there appear to be some elements of convergence among the existing lists, there would need to be an intensification of the analytical and technical work if the proponents of the lists were to address the question of developing a consolidated set of environmental goods for the consideration of the CTESS.

21. Under the "Environmental Project Approach", it was proposed that Members would identify, at the national level, the environmental goods and services that they wish to liberalize for the purposes of environmental projects. Such projects, aimed at meeting national environmental objectives, would be subject to approval by a Designated National Authority (DNA). The goods and services included in the approved project would qualify for specified concessions for the duration of the project. The broad criteria for selecting these "environmental projects" could be agreed upon in the CTESS with due consideration to the policy space of national governments.

22. Finally, the "Integrated Approach" was presented as an attempt to bring together elements from the previous two approaches. In order to benefit from liberalization under Paragraph 31(iii), the goods would have to be included in one of the environmental project categories to be identified by the CTESS. The application of tariff and non-tariff concessions granted by the importing Member would cover the period of project implementation.

23. Pursuant to the objective of enhancing the mutual supportiveness of trade and environment in the chapeau of Paragraph 31, whatever the approach supported by Members, their general consideration in the negotiations under Paragraph 31(iii) has been to reach a triple-win outcome that would deliver benefits from the perspectives of trade, the environment and development.

24. While there remain differences of opinion among Members on the issue of approach, it emerged from the discussion that there were some underlying questions common to the list, environmental project and integrated approaches, which delegations could usefully address in order to make some further progress in their work. In the latter half of 2005, delegations have engaged in technical discussions with a practical focus on the potential environmental attributes of individual products or groups of products, based on concrete examples and case studies. National experiences were also shared with respect to the implementation of environmental projects. It is hoped that this process will contribute to sketching out areas of commonality, in order to proceed further in the negotiations under Paragraph 31(iii).

25. There is still, at this stage, a divergence of views as to how the work should be carried out after the Hong Kong Ministerial Conference. There are Members who would wish to see the work continue towards developing a common understanding of the different approaches to the negotiations. There are other Members who consider that the main work in this area is to identify environmental goods, and who would like this work to be completed in 2006. It is clear that there is a need for convergence if the negotiations are to advance on substantive issues.

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<sup>7</sup> This Note is contained in document TN/TE/W/63.

26. Members have noted that there is some degree of overlap in the mandate of the CTESS and those of other relevant negotiating groups. It has also been noted that, within the respective mandates of these bodies, Members have given some consideration to the issues of relevance under Paragraph 31(iii). In the next phase of the CTESS's work, increased information flow between the relevant negotiating groups will be crucial to fulfilling the Paragraph 31(iii) mandate in a comprehensive manner.

## **II. CONCLUSION**

27. I welcome the recent call by Members to intensify the negotiations. After the Hong Kong Ministerial Conference, it will be important to consult with delegations on how to structure the CTESS deliberations so as to enable Members to engage substantively on all parts of the mandate. The fulfilment of the mandate under Paragraph 31 and the completion of the negotiations within the overall time-frame for the conclusion of the Round is the ultimate objective for us all.

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