

**Committee on Trade and Environment  
Special Session**

**COMMITTEE ON TRADE AND ENVIRONMENT IN SPECIAL SESSION**

Report by the Chairman, Ambassador Manuel A.J. Teehankee  
to the Trade Negotiations Committee<sup>1</sup>

1. Since the last report to the Trade Negotiations Committee in July 2007<sup>2</sup>, the Committee on Trade and Environment in Special Session (CTESS) has held several formal and informal meetings where it has considered proposals by Members on the different parts of the mandate; a series of informal consultations have also been undertaken during this period on the way forward under Paragraph 31 of the Doha Ministerial Declaration.

2. This report takes stock of the work recently carried out and identifies areas where more discussions will be needed to fulfil the mandate. It also provides timelines for the continuation of work in the coming months. At this advanced stage of the negotiations, rapid progress will be required on all parts of the mandate in order for the CTESS to deliver in time with other areas of the single undertaking.

A. PARAGRAPH 31(I)<sup>3</sup>

3. In recent discussions under Paragraph 31(i), Members have exchanged views on the ideas put forward in the proposals for an outcome<sup>4</sup>, without prejudice to the nature or format of the final outcome. These discussions were aimed at identifying areas where convergence could be found and exploring where there might be scope to accommodate concerns raised with respect to some of the suggestions on the table.

4. A number of proposals focused on how discussions in CTESS pertaining to specific trade obligations (STOs) in multilateral environmental agreements (MEAs) could be captured in the outcome. In the course of these discussions, Members identified certain provisions in MEAs that could qualify as "STOs". Some delegations have noted that given the wide variety of STOs, illustrative examples drawn from the main MEAs discussed in the Committee<sup>5</sup> could be provided on

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<sup>1</sup> The report is submitted on the Chairman's own responsibility and is without prejudice to the position of Members.

<sup>2</sup> TN/TE/17.

<sup>3</sup> The mandate in Paragraph 31(i) calls for negotiations on: "the relationship between existing WTO rules and specific trade obligations set out in MEAs." The mandate also states that "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."

<sup>4</sup> TN/TE/W/68 (European Communities); TN/TE/W/72/Rev.1 (Argentina, Australia); Job(08)/33 (Norway); Job(08)/38 (African Group).

<sup>5</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Montreal Protocol on Substances that Deplete the Ozone Layer; Basel Convention on the Transboundary Movements of Hazardous Wastes and their Disposal; Cartagena Protocol on Biosafety to the Convention on Biological Diversity; Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; Stockholm Convention on Persistent Organic Pollutants.

an indicative basis, without necessarily having a strict definition of the term "STO". Certain features of STOs considered by some delegations as key to enhancing mutual supportiveness between trade and environment were also highlighted, though it was noted in this regard that prescriptive language should be avoided in the outcome.

5. The sharing of national experiences regarding the negotiation and implementation of STOs set out in MEAs provided some useful insights into the role of internal processes and national level coordination in fostering mutual supportiveness between STOs and WTO rules. Many Members consider that the importance of national coordination between trade and environment experts, and the value of national experience-sharing to enhance the mutually supportive relationship of trade and environment should form an integral part of any outcome under Paragraph 31(i). It was further suggested that Members could continue to share their experiences relating to the negotiation and implementation of STOs in MEAs and their national coordination processes as part of the work programme of the CTE in Regular Session.

6. One particular proposal addressed the issue of technical assistance and capacity-building to assist Members in implementing STOs in MEAs in a WTO-compliant manner. This proposal should be further examined in conjunction with other suggestions relating to the development dimension of Trade and Environment negotiations, also bearing in mind Paragraph 33 of the Doha Ministerial Declaration.

7. There was also a discussion in the Committee relating to proposals by some delegations to consider certain "principles" that could govern the WTO-MEA relationship, such as no subordination. While Members recognize that enhancing mutual supportiveness between trade and environment is a key objective of the mandate, reservations were made by many delegations regarding the suggestion to reflect these proposals in the outcome, on the basis that this would go beyond the mandate of Paragraph 31(i).

8. Furthermore, the Committee had before it a proposal to address dispute settlement procedures that could apply to trade measures taken pursuant to an MEA; one particular idea put forward relates to the use of MEA expertise in WTO disputes. Several delegations consider the proposal to be outside the scope of the mandate in Paragraph 31(i); the view was also expressed that such proposals could alter the balance of rights and obligations under existing agreements, including under the DSU. This is an area where further clarification would be needed to assess whether and how any of these ideas could be reflected in an outcome.

9. Regarding the introductory part of the outcome, some delegations suggested to reflect the mandate contained in Paragraphs 31(i) and 32 of the Doha Ministerial Declaration; other proposals which also draw upon other parts of the DDA to give context to the mandate will require further discussion among Members. As several delegations observed, this part will to some extent be shaped by the substance of the outcome. The importance of reflecting the trade, environment and development triple-win dimension of the mandate was also emphasized in this context.

10. In summary, significant work has been undertaken in this area which delegations must now seek to build upon. Following the detailed examination of proposals carried out so far, text-based negotiations should begin in September on the basis of Members' proposals. Further consultations will be held on specific elements covered in the proposals with a view to producing a draft text by end-October.

B. PARAGRAPH 31(II)<sup>6</sup>

11. Discussions under Paragraph 31(ii) have progressed significantly based on new submissions by Members that consolidated work already undertaken on the issues covered in the mandate.<sup>7</sup> In the course of the discussions, Members have considered elements drawn from Members' proposals that could be included in an outcome under Paragraph 31(ii).

12. Several of these elements have garnered broad support from the membership. For instance, with respect to information exchange, concrete suggestions were put forward regarding information exchange sessions with MEAs to be held by the CTE; document exchange; and future collaboration in the context of technical assistance and capacity-building activities. As regards the issue of observer status, the Committee considered some criteria that could guide WTO committees in their consideration of requests for observer status by MEAs.

13. There are still some outstanding issues that will require further consultations. One issue relates to the proposal that as part of the outcome under Paragraph 31(ii), observer status be automatically granted to a number of MEAs who have taken part in the work of the CTE.<sup>8</sup>

14. Building on progress made in the negotiations so far, the Group should proceed in September with text-based negotiations on the basis of the elements drawn from Members' proposals. Following a similar timeframe as for Paragraph 31(i) negotiations, further consultations will be held with a view to producing a draft text by end-October.

C. PARAGRAPH 31(III)<sup>9</sup>

15. Further work has been undertaken on this part of the mandate based on a number of proposals submitted by Members over the past year.<sup>10</sup> For instance, the proponents of the list approach submitted a "potential convergence set" of environmental goods; two of the proponents also put forward a list of goods selected on the basis of their "climate-friendliness". In an attempt to address some of the concerns raised by developing country Members, some delegations also submitted ideas for an "integrated approach"; a request and offer approach; and a possible combination of key elements from the main proposals and positions discussed in CTESS, with a particular focus on the environment and development dimensions. At this stage of the negotiations, all proposals on how to respond to the mandate remain on the table.

16. In the early part of 2008, work under Paragraph 31(iii) proceeded on parallel tracks. On the one hand, work continued on the issue of coverage with a view to determining the universe of goods that could be considered to fulfil the mandate. Using environmental categories<sup>11</sup> on which there was convergence, a number of delegations began to identify, on an indicative basis, environmental goods

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<sup>6</sup> The mandate in Paragraph 31(ii) calls for negotiations on: "procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status."

<sup>7</sup> TN/TE/W/70 (United States) and TN/TE/W/71 (Canada and New Zealand).

<sup>8</sup> TN/TE/W/66 (European Communities).

<sup>9</sup> 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."

<sup>10</sup> Job(07)/54 (Canada, European Communities, Japan, Korea, New Zealand, Norway, Switzerland, United States and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu); Job(07)/193/Rev.1 (United States and European Communities); Job(07)/77 (India and Argentina); Job(07)/146 (Brazil); TN/TE/W/73 (Cuba).

<sup>11</sup> Air Pollution Control; Renewable Energy; Waste Management; Environmental Technologies (for conservation, monitoring, analysis and assessment); and all Others. These categories were derived from the different proposals on the table.

of interest to them, without prejudice to the ultimate approach taken by Members to fulfil the mandate in Paragraph 31(iii), or to their position as to which goods would ultimately fall within the mandate. On the other hand, work also continued on the issue of modalities to clarify delegations' views on how negotiations should be framed given the approaches that have been proposed. This discussion covered development aspects of the mandate, including S&D treatment, and how these aspects could be taken into account in an outcome.

17. The importance of the environmental pillar of the negotiation was emphasized by many delegations, who consider that the final result under Paragraph 31(iii) should be credible both from an environmental and sustainable development point of view. The aim is to achieve an environmentally meaningful and multilateral outcome pursuant to the mandate.

18. In my recent consultations, all delegations seemed to acknowledge that some guidance was needed for the continuation of the work under Paragraph 31(iii), in order for the Committee to finalize a result and fulfil the mandate in time with other parts of the single undertaking. Based on my exchanges with delegations, it seems that there is support for a work plan on the way forward that will identify relevant environmental goods and address cross-cutting issues, including those of particular importance to developing countries.

19. The Committee will therefore proceed on the basis of the following work plan as the way forward under Paragraph 31(iii).

20. A **first phase** of consultations and submissions in September will allow Members to identify and discuss the universe of environmental goods that may be relevant to the Paragraph 31(iii) mandate. This first phase of work is without prejudice to the proposals currently on the table with respect to the approach; it is also without prejudice to the treatment that Members may agree to grant to individual environmental goods, or to the final shape of the outcome.

21. By 10 September, Members are invited to submit to the Secretariat:

- environmental goods of interest to them identified across as many categories as possible; and/or
- environmental goods identified in any requests/offers they would have made to other Members.

22. A format will be provided to facilitate the process of submission of environmental goods and requests/offers. In this format, Members will be invited to specify: HS codes and ex outs; the environmental rationale or benefit of the goods; the environmental category under which the goods may fall; potential tariff treatment, including any proposals on special and differential treatment; and any non-tariff barriers encountered by particular environmental goods which Members would like to see addressed.

23. In addition to the submission of environmental goods through the format, Members may also during this first phase come forward with concrete proposals or ideas on cross-cutting issues, such as technical assistance, capacity-building or transfer of technology.

24. Contributions relating to any clarification of existing approaches should also be made at this stage to enable further discussions.

25. The next CTESS meeting is scheduled on 15-17 September. Before and during this meeting, the Chair will convene informal consultations focussing on the five categories. For the purpose of these consultations, the Secretariat will circulate a compilation of the information put forward by Members in their submissions. Moreover, in the lead-up to the September meeting, delegations are

encouraged to engage in informal consultations among themselves. With regard to requests and offers, such consultations could also be held on a bilateral or plurilateral basis.

26. Hopefully, at the end of this initial phase, Members will have a clear understanding of the universe of environmental goods, as well as other aspects of the work that the CTESS needs to tackle.

27. The consultations held based on submissions made in September will enable Members to move to a **second phase** in October.

28. By 8-9 October, Members may, as appropriate, update the submission of environmental goods of interest and/or requests and offers made in the initial phase; as well as indicate new environmental goods of interest or put forward further offers.

29. At the CTESS meeting on 15-17 October, extensive consultations and discussions will be held in order to review what is on the table. To ensure transparency, delegations will have before them an updated compilation. This meeting will also provide Members with an opportunity to have focused discussions on cross-cutting issues.

30. At the October meeting, Members will consider the way forward for the remainder of the negotiations, including definitive steps to achieve a credible outcome.

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