

**COMMUNICATION FROM CUBA**

Paragraph 31(iii)

The following communication, dated 8 July 2008, is being circulated at the request of the delegation of Cuba.

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**I. INTRODUCTION**

1. This proposal is a contribution to the work of the Committee on Trade and Environment in Special Session, pursuant to the mandate under paragraph 31(iii) of the Doha Declaration.<sup>1</sup>
2. A number of proposals have been tabled in this regard, but no decision has yet been taken on the course to follow to achieve results in keeping with that specific mandate, which must be viewed within the broader context of enhancing mutual supportiveness of trade and environment by establishing a framework of commitments affording both environmental and trade benefits to the Membership as a whole, while taking into account the development and sustainable development dimensions set forth in paragraphs 2 and 6 of the Doha Declaration.
3. This proposal seeks to cover the key elements of the main proposals and positions already examined by the Committee, that is, the list approach, the project approach and the integrated approach; the request and offer procedure; concerns regarding the development dimension; special and differential treatment; and the importance of including all products and actions that Members may regard as beneficial to the environment and sustainable development.
4. An obvious conclusion to be drawn from the discussions in this Committee is that there is no single perception among Members as to how to fulfil the mandate, and hence any attempt to impose one formula for all, viewed from a single perspective, would be doomed to failure.
5. In view of the tremendous urgency of ensuring protection of the environment, it is more important to secure minor results on a regular basis than to procrastinate for years and achieve absolutely nothing. We must therefore persist in our efforts to reach consensus on the grounds that protection of the environment is the overriding objective in this negotiating process.

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<sup>1</sup> With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudging their outcome, on the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.

## **II. DEFINITION OF THE TERM 'ENVIRONMENT' AND FULFILMENT OF THE MANDATE**

6. Taking a look at any widely accepted definition of the term 'environment' and taking another look at the mandate of this Committee, we might find that we are only just beginning to address the relationship between trade and environment.

7. Today, many of us agree in considering the environment as a combination of natural, social and cultural values that prevail in one place at any given time and have an impact on people's lives and on future generations. In other words, the term 'environment' encompasses not only the physical environment (soil, water and air) and the living beings that inhabit it, but also the interrelationships between the two at the cultural, sociological and economic levels.

8. Whether based on this or on any other definition of the environment, the approaches discussed hitherto have obviously failed to accommodate all of the present concerns supported by scientific data. Restricting the focus on environment to climate change alone – the most conspicuous and widely discussed aspect of the problem – is likewise insufficient as the Committee has suggested.

9. It is not the purpose of this paper to address the other, disregarded environmental dimensions or to analyse the mandate. The objective is merely to outline a few points relating to the definition given above. Clearly, there have yet to be discussions and proposals in this regard.

## **III. APPROACHES**

10. There has been abundant but somewhat fruitless discussion since the adoption of the Doha Declaration. Some Members insist on approaches that have limited environmental scope and other shortcomings, as noted in previous documents.

11. The issue of the environment in the WTO calls for a broad, participatory, conscious and honest debate. From the trade perspective, we must adopt decisions that will help put an end to man's adverse impact on the human habitat. Liberalization of trade in goods, mostly produced in the developed countries, is not the answer. Other approaches taken on their own may also prove inadequate.

12. It is necessary to recognize that trade interests are the root of the present deterioration of the environment. Irrational consumption patterns prompted by the constant quest for profit have resulted in the disappearance of forests, species, and non-renewable sources of marine and terrestrial life, impoverished the soil, contaminated river and ocean water sources through industrial activity, displaced indigenous peoples, and so forth.

13. In order to speak of the relationship between trade and environment, we need to examine the issue from a dual perspective. Indeed, while trade can help preserve the environment, it may also contribute to environmental degradation through the adoption of irresponsible policies.

14. Both of these assertions are true. The first has yet to demonstrate its potential, while the second is an irrefutable reality that has not been considered by the Committee. Any trade-directed approach would necessarily have to accommodate these two criteria. Before any measure is developed, there should be an assessment of the support that trade can provide to the environment in the light of the benefits that would be gained from environmental conservation and protection.

15. Another crucial aspect for discussion is the question of common but differentiated responsibility. This is a principle recognized by the international community.<sup>2</sup> The responsibility of the industrialized countries for the state of the environment is infinitely greater than that of those who have not yet achieved industrialization, and the former's contribution to pollution is incomparably higher than that of the developing countries and LDCs.<sup>3</sup> Therefore, the contribution of industrialized Members should be much higher than the rest of the Membership, whatever the approaches, modalities or decisions adopted by the Committee.

16. Members have either supported or objected to issues reflected in earlier documents. It would be worth assembling the elements of consensus and exploring different ideas in order to broaden the debate by taking new directions in search of convergences. Environmental protection cannot be harnessed through trade liberalization measures alone. Such a path is not only inadequate but also misleading, so that other alternatives should be explored within the WTO's sphere of competence.

#### IV. PROPOSALS

17. The approaches proposed to date do not reflect all possible courses of analysis of feasible actions under the current mandate to protect the environment. The mandate itself represents the main constraint because of its focus on tariff reduction or elimination. Without ignoring the trade liberalization interests pursued by some of the Members, many other trade measures in related fields can be explored so as to facilitate and regulate environmental practices that have a real impact on the environment, trade and development. Within these broad areas and "without prejudging the outcome", new proposals could be assessed.

18. With no conclusive definition of environmental goods, which has been the main obstacle so far, and on the basis of the fact that trade can and should contribute to environmental conservation, the following measures could be adopted:

##### Tariff measures

- (a) Facilitate market access by reducing or eliminating tariffs on environmental goods to be agreed forthwith as being for environmental use alone, having regard to the principle of special and differential treatment and less-than-full reciprocity in respect of any tariff treatment as may be adopted. To that end, the Committee should agree on a list of goods for exclusively environmental use, grouping categories and activities proposed under both the **list approach** and the **integrated approach**<sup>4</sup> and other goods produced by means of environmentally friendly practices. The primary considerations to be borne in mind for the implementation of this measure in the

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<sup>2</sup> States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command (Principle 7, Rio Declaration on Environment and Development, Earth Summit, Rio de Janeiro, 1992).

<sup>3</sup> "Those most affected by climate change are not those most responsible for causing it", Javier Solana, High Representative for the European Union Common Foreign and Security Policy, in "Before the flood", *The Guardian*, 10 March 2008.

<sup>4</sup> According to documents Job (07)/54 and Job (07)/77, the common categories and activities proposed are as follows: waste water management and water resources (drinking water treatment); environmental monitoring and analysis; renewable energy; management of solid and hazardous waste and recycling systems; air pollution control; and soil conservation or protection.

developing countries are the latter's sustainable development policies and objectives at national level.<sup>5</sup>

- (b) As regards goods on which there is no consensus as to their exclusively environmental use or impact, Members may, on a voluntary basis, arrange one [two] request-offer round[s] with a view to according mutually agreed preferential treatment for the relevant tariff lines. Such preferences will be multilateralized at the end of the negotiating process.
- (c) Facilitate access to developed country markets by eliminating tariffs on primary commodities for export by the developing countries<sup>6</sup> that require enhanced technology to ensure environmentally friendly production, so as to generate sufficient revenue for this purpose. The goods concerned should be defined by mutual agreement between developed and developing country Members, since they are already being exported by the developing countries and it is not a question of developing new industries.

#### Non-tariff measures

- (a) Identify and eliminate non-tariff barriers for goods described under "Tariff measures" above, so as to complement the tariff treatment to be accorded to such goods. The Committee may monitor compliance with this measure through notifications.
- (b) Developed countries and developing countries that declare themselves to be in a position to do so will grant soft loans, aid for trade and other incentives to facilitate the purchase of goods, the implementation of projects, the acquisition and transfer of technologies, and the contracting of environmental services by developing countries. The Committee will take note of these concessions through notifications.
- (c) As a way of contributing to the transfer of clean technologies, Members agree to reduce by [X] years the term of patent protection laid down in the TRIPS Agreement for goods and procedures for environmental use or having an environmental impact, as defined under "Tariff measures", paragraphs (a) and (b), above, and apply tax exemptions or reductions for the production and export thereof to developing countries. Other forms of technology transfer should be explored and agreed by the Committee.

19. On the basis of the fact that trade may contribute to deterioration of the environment, a number of other measures could also be adopted.

20. Although many of the elements that could be outlined under this heading are covered by the Multilateral Environmental Agreements, there are still some possibilities for addressing the issue from a trade standpoint that could strengthen the goals and outcomes of such agreements, for example:

- (a) Ban on export of goods prohibited for use in the producing country because they are considered dangerous to the environment and human health (example: certain herbicides, pesticides or fertilizers). Today, this form of trade is possible with the

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<sup>5</sup> This means that the developing countries will not be under any obligation to undertake commitments in respect of goods which they deem to be necessary for their own industrial development or domestic production.

<sup>6</sup> Primary commodities for export by the developing countries being understood to mean the top 20 essential goods listed in a developing country's domestic export schedule, or those on which more than 10 per cent of the country's exports of manufactures depend.

permission of the importing country, hence the need for an exporter's undertaking. Such trade is generally conducted from developed countries to developing countries, with harmful effects on the environment and human health, plants and animals in recipient countries (Rotterdam Convention).<sup>7</sup>

- (b) Ban on export of hazardous wastes, which should be stored until their treatment in the countries that have generated them. The Basel Convention<sup>8</sup> does not permit export to countries which have banned imports or to those who do not give their written consent to a specific export. These provisions of the Convention show that there is recognition of non-compliance with the law on the part of some States and violation of the sovereignty of other States. If there is a genuine will to protect the environment, the export ban should be general and all-encompassing.
- (c) Undertakings by the developed countries not to export polluting technologies and industries, new or used, to third countries. Such transfers should be subject to written consent by the government of the importing Member and accompanied by contractual commitments in terms of funding and know-how for modernization and adaptation, within a specified period, which should be as short as possible, to existing environmental standards or requirements in the exporting country.
- (d) Ban on export of recycled or used goods that have no or a short useful life, and have highly polluting components, at least for goods subject to strict regulations in the producing countries which cannot be met by the developing countries.

21. The Committee should discuss and agree on simple but effective mechanisms to follow up the undertakings to be agreed.

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<sup>7</sup> Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

<sup>8</sup> Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.