

**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**

TRADE AND ENVIRONMENT NEGOTIATIONS: STATE OF PLAY

1. The purpose of this report is to provide the Trade Negotiations Committee (TNC), at its meeting of 14 July 2003, with an overview of the progress achieved in the trade and environment negotiations in preparation for the Cancun Ministerial Conference.

2. Delegations have actively engaged in the negotiations, formulating constructive proposals that have given orientation to the work of the Committee on Trade and Environment Special Session (CTESS). The Committee has made significant progress on certain aspects of the mandate given to it by Ministers at the Doha Ministerial Conference.

I. PARAGRAPH 31 (I)

3. In Paragraph 31 (i), participants were 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."*

4. Since the launching of the negotiations, delegations have actively engaged in developing a common understanding of the mandate. That understanding has evolved on the basis of two complementary approaches: the identification of specific trade obligations (STOs) in MEAs; and a more conceptual discussion on the WTO-MEA relationship. Delegations have examined the different components of the mandate, such as the terms "existing WTO rules," "STOs," "set out in MEAs," "MEAs," and "among parties to the MEA in question." A few of the submissions made have also begun to look ahead at the possible outcomes that the mandate could deliver.

5. On the different components of the mandate, the bulk of the discussion has revolved around the terms "MEAs," "STOs," and the notion of measures being "set out in MEAs." On "MEAs," while some believe that there is a need to define the concept so as not to overstep the boundaries of the mandate, others do not view this as necessary. Some focus was placed on six MEAs that could contain STOs. However, delegations have not agreed to limiting the discussion to any particular number of MEAs.

6. On "STOs," several delegations believe that these must be measures that are explicitly provided for and mandatory under MEAs. However, discussion is still taking place on other kinds of trade measures contained in MEAs and whether they can be considered STOs. Furthermore, some delegations are arguing that the entire operational framework of MEAs needs to be looked at in identifying the STOs that are "set out in MEAs," suggesting that Conference of Parties (COP) decisions must be addressed. The various forms that COP decisions can take, and their legal status, is being discussed.

7. Some suggestions were made in a few of the submissions on the potential outcomes of the negotiations, such as the need to develop certain "principles and parameters" to govern the WTO-MEA relationship, and to establish the conformity of certain kinds of trade measures in MEAs with WTO rules. However, there seemed to be a general sense in the CTESS that it was premature to discuss potential results.

8. It seems clear that the various components of the mandate discussed to date, some of which may merit further discussion, will need to be drawn together at some stage to address "the relationship between existing WTO rules and specific trade obligations set out in MEAs." It also seems clear that greater national coordination between trade and environment officials can itself contribute to a more mutually supportive trade and environment relationship.

II. PARAGRAPH 31 (II)

9. The mandate of Paragraph 31 (ii) stipulates that participants negotiate "*procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status.*" The mandate involves two components; one, the issue of regular information exchange; and, two, that of the criteria for the granting of observer status. Several delegations have also pointed out that negotiations under this paragraph can have a positive spillover on Paragraph 31 (i), in terms of reducing the risk of conflict between the WTO and MEAs.

10. On this paragraph, the CTESS held an MEA Information Exchange Session with six MEAs and the United Nations Environment Programme (UNEP) on 12 November 2002, in which a useful exchange of ideas took place. A number of suggestions were made by UNEP and the MEAs on how to enhance cooperation and information exchange between the WTO and their respective organizations, as well as on how to address the issue of observer status.

Information Exchange

11. With respect to information exchange, delegations are in agreement that existing forms of cooperation and information exchange between the WTO, MEAs and UNEP have proven to be valuable and should be enhanced. Reference was made to UNEP's efforts to organize meetings back-to-back with those of the CTESS. Such meetings have provided a valuable forum for information exchange, and have allowed numerous capital-based environment officials to attend the CTE Regular and its Special Session.

12. Progress in the CTESS was made in identifying the forms that enhanced cooperation and information exchange could take. The following suggestions were made:

- 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 WTO parallel events at the COPs of MEAs more systematically;
- 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.

13. However, a number of delegations have highlighted that it is important to maintain flexibility in information exchange, stressing the financial and human resource constraints of the WTO and MEAs, and of smaller delegations. Other delegations argued that it was necessary to identify the WTO Committees that could benefit from widening their contacts with UNEP and MEAs.

Observer Status

14. On observer status, while several delegations have argued that the outcome of the General Council and TNC deliberations on this matter must be awaited, others have stated that discussions in the CTESS were required in light of the Committee's mandate. They have added that such discussions could provide direction and impetus to the horizontal discussions taking place.

15. Several delegations expressed the view that the observer status issue needs to be resolved as expeditiously as possible. Delegations took note of the pending requests for observership by UNEP and MEAs in various WTO bodies. Reference has been made in the discussions to the criteria set forth in Annex 3 of the Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council (WT/L/161), with some delegations suggesting that there is a need to build on them. Further work will be required on the criteria to be used, and the WTO bodies concerned by this mandate.

III. PARAGRAPH 31(III)

16. In Paragraph 31 (iii), participants were instructed to negotiate on *"the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services."* Delegations supported the idea that the negotiations on environmental goods and services be conducted in the Negotiating Group on Market Access for Non-Agricultural Products and the Council for Trade in Services Special Session. However, some participants called on the CTE Special Session to clarify the concept of environmental goods. The Chairs of the three negotiating bodies concerned by this mandate have agreed to coordinate on the progress made in their different Committees on a regular basis.

17. In discussing the concept of environmental goods, several references were made to the Organization for Economic Cooperation and Development (OECD) and the Asia Pacific Economic Cooperation forum (APEC) lists of such goods. However, some delegations argued that a "WTO list" needed to be developed. Other delegations felt that the interests of developing countries in these negotiations needed to be taken into account. The question of the inclusion of agricultural goods was also raised. Various criteria for the definition or identification of environmental goods were debated, and a few delegations advanced lists of products that they wanted considered as environmental goods, including for example in the energy domain.

IV. OTHER ISSUES

18. The CTESS has invited, on an ad hoc basis, six MEAs and UNEP at its meetings of 1-2 May and 8 July 2003. Through this form of cooperation, the CTESS has benefitted from an enriching exchange of ideas with MEA Secretariats and UNEP. Delegations and the ad hoc invitees expressed the hope that this cooperation would be continued.

19. Several delegations have raised the issue of technical assistance in the negotiating context, and in particular the possibility of financing the participation of delegates from developing countries in CTESS meetings. Delegations were invited to continue to reflect on their future technical assistance needs.

20. By way of a recommendation for the Cancun Ministerial Conference, one delegation proposed that Ministers be asked to invite UNEP and those MEAs identified in the Matrix prepared

by the WTO Secretariat (WT/CTE/W/160/Rev.2) to observe the work of the CTESS, and to endorse the MEA Information Sessions held in the CTE so they may be held at least once a year. The proposal contained in document JOB(03)/116 was discussed at the 8 July 2003 meeting of the CTESS, but no consensus was reached on forwarding it to the Ministerial Conference.
