

Trade and the Environment



PRESS/TE 013
27 September 1996

WTO TRADE AND ENVIRONMENT COMMITTEE CONTINUES DISCUSSING PROPOSALS ON RECOMMENDATIONS FOR THE SINGAPORE MINISTERIAL MEETING AND THE POST-SINGAPORE WORK PROGRAMME

At its meeting on 24-25 July 1996, the WTO Committee on Trade and Environment (CTE) continued discussion of issues and proposals covering all Items of its work programme. Several new papers were presented at the meeting, dealing with environmental reviews of trade agreements, trade and environment principles, eco-labelling, trade measures applied pursuant to multilateral environmental agreements (MEAs), market access and TRIPs.

Items 1 & 5: The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements / The relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements

Singapore, on behalf of ASEAN, introduced a proposal for creating the possibility of a multi-year, case-by-case waiver for trade measures applied pursuant to MEAs, based on non-binding guidelines for measures that might be eligible for such treatment. ASEAN suggested that trade measures required specifically to be used in MEAs could be recognized on a case-by-case basis as exceptional circumstances qualifying for a WTO Article IX waiver, subject to them meeting certain conditions and criteria including necessity, least trade restrictiveness, effectiveness, proportionality and degree of scientific evidence. Discriminatory trade measures should not be used to coerce countries to become signatories to an MEA, and the requirements for a waiver would help ensure discriminatory trade provisions *vis-à-vis* non-parties would only be used if absolutely necessary to attain an MEA's objectives. The benefits of a waiver approach were that it allowed for periodic review and it preserved the WTO's role as a trade body. The majority decision required for an MEA to be granted a waiver would reflect agreement that the environmental issue in question was of multilateral concern, without there being a need for the WTO to

96-3879

arrive at a definition of an MEA. WTO Members should formally renounce the use of non-specific measures pursuant to MEAs and unilateral measures. For environment-related disputes, WTO panels might use independent external experts. ASEAN's view was that further discussion of this issue could be continued, as necessary, after the Singapore Ministerial Conference.

Sierra Leone felt ASEAN's proposal for a waiver was useful because it advocated a cautious approach, and that a helpful distinction was made between trade-restrictive measures specifically mandated in an MEA, trade-restrictive measures authorized or envisaged in an MEA, and trade-restrictive measures connected with an MEA's implementation, including national measures to implement commitments in framework MEAs. However, some Members, including Switzerland, the United States and Canada, felt that the waiver approach was inappropriate in the context of MEAs. One said that ASEAN's criteria were too restrictive; they would impose additional constraints and restrict the use of trade measures in MEAs which were necessary to meet their environmental objectives.

Hong Kong introduced a paper which proposed: (i) that the WTO provide MEA negotiators with the best advice possible to promote the compatibility of MEA-based trade measures with the WTO through a Guide setting out WTO principles and obligations to be observed when trade measures were being considered in MEAs supplemented by briefings between MEAs and the WTO through their respective secretariats; (ii) that a multi-year waiver might be granted to trade measures taken pursuant to an MEA, subject to certain criteria having been met, based on the headnote to GATT Article XX and providing for tests of genuine international consensus, least inconsistency with WTO provisions, least trade restrictiveness, effectiveness, and proportionality. For trade measures specifically mandated in an MEA, the necessity test under Article XX might be dispensed with. A multi-year waiver, once granted, would be subject to a summary review procedure in the form of "negative vetting" which would enable the granting of an annual extension provided there had been no change in the original circumstances which had justified the waiver. This would afford security to legitimate actions to resolve environmental problems over an extended period of time; and (iii) that WTO Members who were MEA Parties might opt, voluntarily and based on mutual consent, to resolve disputes the MEA's dispute settlement mechanisms. However, any WTO Member who wished to resort to the DSU to resolve a dispute related to an MEA-based trade measure must be permitted to do so, irrespective of whether that Member was an MEA Party and whether or what MEA dispute settlement provisions were available.

The United States felt that attempting to create an abridged version of WTO provisions would likely confuse rather than clarify matters, for example the principle of "like product" for which there was no set definition.

Another Member introduced a paper on Items 1 and 5, suggesting that experience with the GATT/WTO dispute settlement mechanism in dealing with trade measures for environmental purposes, including those pursuant to MEAs, had not demonstrated any need to recommend changes to existing provisions of GATT 1994. By analysing trade measures in isolation from other measures in MEAs, the CTE risked encouraging dependence on trade measures to achieve environmental objectives and legitimizing the use of trade measures as sanctions to enforce non-trade issues. Existing DSU provisions appeared adequate to meet any demand to provide environmental expertise in dispute cases involving trade-related environmental measures. It was suggested that this issue be examined again, as necessary, after the Ministerial Conference.

Several Members felt that existing WTO provisions could be adequate to accommodate and properly discipline trade measures in MEAs. Some recalled the recent WTO Appellate Body Report on the dispute involving the United States Reformulated Gasoline legislation in this regard.

Nonetheless, it was felt that the CTE should continue to keep the issue under consideration after Singapore.

Item 2: The relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system

The United States advocated the use of environmental reviews in the context of trade agreements to help identify complementarities between environmental and trade policies and identify actions to enhance positive and avoid negative environmental implications in support of sustainable development. It proposed that WTO Ministers recommend governments carry out national environmental reviews of trade agreements likely to have significant environmental effects as part of the process of developing these agreements, and WTO Members be invited to provide copies of such reviews and their methodologies to the Secretariat for reference.

Canada welcomed the United States' suggestion, and noted the environmental reviews it had undertaken on NAFTA and the Uruguay Round. Several other Members including New Zealand, Nigeria, Egypt and Korea, felt that a recommendation on the use of an environmental policy instrument lay outside the mandate of the WTO.

Another Member proposed that the CTE begin a discussion of general trade and environmental principles in order to assess how to use existing WTO provisions flexibly to meet the objectives of sustainable development, keeping in mind the interests of developing countries. Relevant trade principles which could be examined were non-discrimination (MFN, national treatment), protection through tariffs, transparency, necessity and effectiveness, least trade restrictiveness, proportionality and equivalence and special and differential treatment for developing countries. Relevant environmental principles were common but differentiated responsibilities, sovereignty over environmental resources, fair and equitable sharing of benefits, and the special needs of developing countries.

Several Members including Singapore, on behalf of ASEAN, Egypt, Peru and Bangladesh supported the proposal. Some others felt that the list of principles described was too narrow, and should include the principle of cooperation, and the polluter pays and precautionary principles. The United States said that the notion of effectiveness was not found in GATT jurisprudence.

Item 3(b): The relationship between the provisions of the multilateral trading system and requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling

Canada introduced a draft Decision on eco-labelling based on the main elements contained in its earlier interventions and proposals under this Item (see *Trade and Environment Bulletin*, PRESS/TE/008). Emphasis was placed on ensuring "transparency with teeth" under the TBT Agreement, which was in the interest of exporters both in developed and developing countries. The draft Decision recognized further analysis was necessary after Singapore, particularly on non-product related process and production methods (PPMs) which should be conducted without prejudice to any Member's views on this complex issue.

The EC introduced a non-paper on voluntary eco-labelling schemes based on Life Cycle Analysis (LCA). It recalled Chapter 4 of *Agenda 21*, and suggested that voluntary eco-labelling schemes were less trade-restrictive than other environmental policy instruments which resulted in product-related trade barriers. It felt that voluntary eco-labelling schemes based on LCA did not seem to be fully covered by the TBT Agreement, and that non-product-related PPM criteria did not fall within the definition of a standard in the TBT Agreement. Partial coverage of eco-labelling programmes by the TBT Agreement excluding non-product-related criteria would not make sense. The EC felt it was not possible to shape an agreement dealing only with those elements for which a certain measure of consensus had emerged, and it was inappropriate to address transparency before clarifying the

status of LCA in voluntary eco-labelling. Therefore, the EC could not agree to provide formal recognition in Singapore that eco-labelling programmes were covered by the TBT Agreement; the status of LCA under WTO Agreements should be clarified first.

Several Members, including Nigeria, Pakistan and Sierra Leone expressed concern and disagreement with suggestions to extend TBT coverage to technical regulations or standards based on LCA. Others, including Korea, Egypt and Australia, felt it was premature to draw any conclusions on this issue, although Australia suggested that the CTE agree on the desirability of eco-labelling schemes adhering to the TBT Code of Good Practice. Several Members felt that further analytical work was warranted on the impact of eco-labelling on trade. Concerns raised in previous CTE discussions about the appropriateness of the ISO in setting multilateral standards for LCA were recalled. Sierra Leone and Venezuela felt that future work should focus on the concepts of mutual recognition and equivalence. Korea felt that the relationship between LCA and the TBT Agreement should be clarified before addressing the trade effects of eco-labelling schemes. One Member suggested that the effectiveness of eco-labelling schemes needed to be tested and discussed further, particularly with regard to their impact on developing countries.

Item 4: The provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects

Hong Kong said its proposal for an environmental database (see *Trade and Environment Bulletin*, PRESS/TE 010) could be developed from information contained in the Central Registry of Notifications (CRN), and secondary information could be generated from the CRN on trade-related environmental measures, including the patterns and types of measures and the number of notifications. Certain information would not be available, including trade volumes involved, or WTO conformity of such measures. Hong Kong suggested Members could provide information on trade-related environmental measures through existing or new national enquiry points or relevant authorities.

Several members, including Japan and Peru, supported the establishment of a database to enhance the transparency of environmental measures. Regarding an earlier intervention by Hong Kong, Peru and Nigeria felt that using the TPRM to enhance environmental transparency was not warranted and might create additional obligations for the Member under review. The United States felt that, given existing TBT and SPS enquiry points, the benefit of an environmental enquiry point was not clear and environmental measures did not require a greater amount of scrutiny than any other measures.

Item 6: The effects of environmental measures on market access, especially to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions

The United States introduced a paper which expanded on Argentina and Australia's proposals under this Item (see *Trade and Environment Bulletins*, PRESS/TE 009 & 010), and stated that the effect of freer trade on environmental quality depended on what happened to the level of economic activity and associated pollution, intersectoral changes in economic activity, and changes in production methods. The effects also depended on whether appropriate environmental protection policies were already in place. Well-designed and enforced environmental policies were more likely to ensure trade liberalization would bring economic growth and environmental improvement. Removing agricultural distortions that affected the relative price of food products and farm input prices along with the implementation of sound environmental policies would change economic incentives and benefit the environment. The CTE should identify "win-win" situations in other areas as well.

Australia introduced a paper¹ noting that an underlying theme in the CTE's work was the relationship between trade liberalization, the environment and the promotion of sustainable development, and recalled the preamble to the WTO Agreement. It recommended a continuing work programme on this Item, and outlined particular issues that should be addressed in relation to low-income commodity-dependent countries and agricultural trade reform. The Ministerial Conference should endorse a positive message about the contribution of a strong multilateral trading system to promoting sustainable development. There was a danger of protectionist interests using environmental justifications to put up trade barriers, and even when there was no protectionist intent some environmental measures still had the potential to create trade barriers. This pointed to the need for dialogue and cooperation to ensure countries were able to address environmental concerns in ways that did not create unnecessary trade barriers. Developing countries, in particular, had expressed concern that their access to markets and competitiveness might be affected by environmental initiatives, such as eco-labelling schemes.

The EC introduced a non-paper underlining the importance of striking a balance between trade, environment and development. It suggested that the trade community welcome newer environmental measures, such as voluntary eco-labelling which tended to be less trade-restrictive than traditional measures. It noted that trade-induced growth need not be incompatible with sustainable development, and an open multilateral trading system made possible more efficient resource use to achieve any given income level. The removal of trade restrictions and distortions was important for all countries, particularly developing countries and LLDC's. Commitments made in the Uruguay Round needed to be implemented to ensure potential benefits were realized. However, environmental benefits were not automatic and required the implementation of sustainable development strategies and effective environmental policies at the national and international levels. It was not the level of production, but the means of production which was important to achieve sustainable agriculture. Market mechanisms would only lead to both economically and ecologically optimal resource allocation with the full internalization of environmental costs. Sustainable agriculture depended on a coherent framework combining environmental, social and economic factors. Structural, regional rural development and land-use policies, including non-distorting measures (such as those in the Green Box) were needed to achieve the environmental and social assets which were part of the agricultural landscape. The EC felt that further work should take account of these considerations, and additional examination was needed of tariff structures, export restrictions, commodity-dependency and the environment.

Korea introduced a non-paper which drew attention to the limited availability of evidence on the relationship between government policies, trade liberalization and environmental quality. Any assessment of the agriculture sector called for a multi-dimensional approach. There was need for a broadened framework to examine this issue, taking into account, transmission mechanisms related to sustainable agriculture and rural development, food security, and market failures.

Several Members, including Sierra Leone and Hong Kong, supported proposals by Australia and others calling for a balanced Report on this Item, as well as support for further work. Emphasis should be placed on sustainable development, with attention to developing countries, as well as analysis of specific sectoral links, including textiles and clothing as well as agriculture.

Argentina felt that with regards agricultural trade issues, it remained difficult to quantify the value of externalities stemming from trade distortions and restrictions. Earlier proposals by Argentina, Australia, India,

¹ At the request of Australia, the Committee agreed to derestrict this non-paper. Copies are available from the WTO Secretariat.

the United States and Norway highlighted the need to identify situations in which “win-win” reforms were possible, and agriculture should be mentioned in the CTE Report as one of those sectors. The removal or correction of government policies which exacerbated negative externalities would allow the identification and quantification of market failures and permit environmental cost internalization. Japan said the Committee on Agriculture was responsible for overseeing the Agricultural Agreement, and reiterated the point that although positive environmental effects could stem from agricultural liberalization, conditions may differ from country to country and consideration should be given to various factors.

Bangladesh felt discussion should focus on the financing of environmental policies and the internalization of environmental externalities, which would not be automatic. It was also necessary to examine the impact of policies, such as eco-labelling, on the development prospects of developing countries. Their capacity to combat poverty, adjust to trade liberalization and introduce environmental measures should be examined so that a balance could be achieved between environmental and other development priorities.

Item 7: The issue of exports of domestically prohibited goods

Switzerland, Japan, the United States and others commented on the draft Decision of Nigeria (see *Trade and Environment Bulletin*, PRESS/TE 010). Switzerland felt the WTO's contribution should be to address DPGs not subject to notification obligations in other relevant MEAs or instruments (such as the London Guidelines) and the WTO should limit its role to information exchange on regulatory action. This could be accomplished by using information in the TBT or SPS Agreements and including these notifications under an appropriate heading. Only banned products on the domestic market should be subject to WTO notification. Extending notification obligations to severely restricted products risked a flood of notifications which would endanger the transparency objective of the exercise. In order to provide information on exports of severely restricted products to countries which were not parties to relevant international instruments, Switzerland felt that TPR reviews could cover applicable bans or severe restrictions on hazardous goods. Regarding technical assistance, Switzerland said that the CTE was not the appropriate place to discuss this issue as other organizations with expertise were preferable to the WTO.

The difficulty in defining product coverage of DPGs was raised by several Members. It was felt that strengthening cooperation between the WTO and other relevant international bodies should contribute to limiting uncertainty, although definitional difficulties remained about the scope of severely restricted products.

Item 8: Trade-related Aspects of Intellectual Property Rights and the environment

One Member proposed the CTE discuss further the relationship between the TRIPS Agreement and the Framework Convention on Biological Diversity (CBD), which contained several IPR-related obligations. The TRIPS Agreement recognized IPRs to be private rights and incorporated specific obligations on the issue of patenting life forms to the extent that it obliged Members to provide product patents for micro-organisms and non-biological and microbiological processes. The CBD reaffirmed that countries had sovereign rights over their biological resources and recognized the desirability of sharing equitably the benefits arising from their use.

Korea introduced a non-paper examining the possibilities for the transfer of environmentally-sound technology (EST) as an instrument to achieve MEA objectives, noting that strong IPR protection promoted technological development. In the context of MEAs, the IPR issue invited attention since if the use of existing technology were controlled, those with the rights for alternative technology were able to exercise stronger monopoly power. If access to alternative technology under an MEA was severely restricted, there seemed to be a potential that MEA goals and IPR protection could be rendered mutually exclusive. Korea highlighted two cases in the

Montreal Protocol related to methyl bromide and HCFC production which were illustrative of the problem although not sufficient to lead to any general conclusions.

Several Members, including the United States, the EC, Japan, Canada and others commented on these proposals. Some did not agree that there was an ambivalent relationship or any inconsistency between the TRIPS Agreement and the CBD. The EC said the TRIPS Agreement should not be weakened by anything which might transpire in the CTE, and several Members said that IPR was only one of a number of factors affecting technology transfer.

Item 9: The work programme envisaged in the Decision on Trade in Services and the Environment

One Member introduced a non-paper which proposed that this Item be included in future CTE work.