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Trade and Environment in the WTO: Negotiating Options for Developing Countries

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Abstract: The debate on the trade related environment issues has intensified in the Doha Round at WTO. The idea is to ensure sustainable development as proclaimed in the Preamble to the Marrakesh Agreement. At the Doha Ministerial Conference, Committee on Trade and Environment and the Committee on Trade and Development at the WTO were asked to act as a forum in which the environmental and developmental aspects of the negotiations launched at Doha could be debated. The Paragraph 31 of the Doha Ministerial Declaration is the operative paragraph that sets the guidelines for negotiations on the relationship between WTO rules and specific trade obligations as set out in MEAs and on the reduction or, as appropriate, the elimination of tariff and non-tariff barriers to environmental goods and services. This has encouraged India and other developing countries to approach the trade and environment debate in a new dimension. The project based approach instead of the usual list based approach is a major addition to this new strategy, developing countries seems to be thinking of to keep commitment for the sustainable development at the centre stage. The new approach may also help in ensuring access to environmentally sound technologies urgently needed by many developing and least developed countries.

I. Introduction

The mandate for the negotiations on trade and environment within the WTO was arrived towards the end of the Uruguay Round. There was limited progress on the issues in this Round but the Doha Ministerial Declaration brought back the focus on the trade and environment negotiations and gave it a much needed impetus by way of prioritizing three issues within the broader mandate and put it onto a fast track by convening a special session

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of the Committee on Trade & Environment (CTE). The special session of the CTE (CTESS) is tasked to carry out negotiations on the Para 31 mandate of the Doha Declaration. Paragraph 32 which is the other paragraph in the Doha mandate (on trade and environment) is a non-negotiating mandate on the effect of environmental regulations on market access, relevant provisions of TRIPS and the labeling requirements for environment purposes. Para 31 focuses on three issues; viz. (i) 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; (ii) procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status; (iii) the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.

Prima facie one could convincingly argue that the trade and environment linkage in the WTO is one that is focused on the environment and provides an impetus in order to understand and facilitate the fulfillment of environmental objectives, and more specifically ensures that trade does not become an impediment to the achievement of accepted environmental objectives. The Doha Mandate is primarily a development agenda, required to look into the concerns of the developing countries. This being the case, the paragraph 31 mandate and the negotiations carried out there under should be reflective of the developing country concerns, and should, amongst other objectives, aim to identify mechanisms and processes that would best fulfill the mandate and enable countries to achieve the environmental objectives and ensure sustainable development[1].

In this paper we make an effort to take up some of these issues for detailed discussion with a special focus on the paragraph 31(iii) mandate since this issue has witnessed significant debate and in which India has taken a lead in putting forward an alternative framework. Section I provides an overview in terms of the state of play at the current negotiations along with a review of the key submissions which section II addresses the issue of reciprocity in the EGS negotiations. The section III gives a detailed analysis

of the feasibility and viability of the Environment Project approach in addressing issues relating to technology transfer. Lastly Section IV is the conclusive section which gives specific recommendations for the negotiations and negotiating options for the developing countries.

II. The State of Play in the CTESS

II.1 Negotiations on Para. 31 (i) – WTO rules and specific trade obligations in the MEAs

Paragraph 31(i) of the Doha Ministerial Declaration (DMD) mandates negotiations on "the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs)". The negotiations are limited in scope to the applicability of such existing WTO rules among parties to the MEA in question, while at the same time not prejudicing the WTO rights of any Member a party to the MEA. Before the current round of negotiations, work had already been undertaken for several years within the Committee of Trade and Environment (CTE) on this particular aspect. At present, if a dispute were to arise between WTO Members that are both Parties to an MEA, the conflict between an MEA and WTO rules under the WTO dispute settlement body could be guided by the WTO 'jurisprudence' on environmental cases. That is, an environmental measure that infringes WTO rules could only be upheld if it can successfully qualify as an environmental exception under Article XX of the GATT.

Broadly speaking, the 'demandeurs' of the trade-environment linkage post-Doha, to know what the EC, Switzerland, Norway and Japan are proposing, in the event of a dispute involving an MEA, the environmental trade measure would automatically be found to be WTO-compatible. To this effect, they would like to amend Article XX of GATT. However, given the opposition to such a far-fetched amendment, a more likely or feasible outcome is the adoption of a "decision" that would reflect the mutual supportiveness of WTO Agreements and MEAs.

Specific Submissions

The initial submissions made at the CTESS mainly focuses on the definition of MEAs and the identification of the specific trade obligations as set out in

those MEAs. Australia in its first submission to the CTESS had suggested a three stage negotiating procedure[2]. In the first stage the members could identify the specific trade obligations (STOs)[3] in the various MEAs, in the second stage the members would exchange information on their own experiences vis-à-vis the implementation of the specific provisions and in the third stage the focus would be on the outcome of the negotiations.

Beginning with that, and with the submissions by Hong Kong, China[4], the United States[5], and the latest being that of Australia[6], the negotiations have graduated to the second stage (i.e. sharing of national experiences in the implementation of the provisions of MEAs and the effects (if any) of the implementation of these provisions on business and trade). In the latest submission to the CTESS, Australia discussed its experience in negotiating the MEAs and implementing the specific trade obligations in relation to the CITES, Basel Convention and the Montreal Protocol. It discussed the specific aspects of national experiences viz. the consultative processes and regulatory policies which are necessarily involved in the implementation of these MEAs.

The latest Swiss submission[7] on this issue focuses on clarifying the concepts of non-hierarchy, mutual supportiveness and deference. Qatar, Taiwan Province of China and Korea are the only developing economies that have submitted a list so far. Not surprisingly, the vast majority of the proposed lists are variations of the APEC list; with the exception of the proposal by Qatar, targeting low-carbon (natural gas) and carbon-free (renewable energy) technologies, and that of the EC and Switzerland, which seek to broaden the scope of the negotiations to include certain *examples* of EPPs of interest to developing countries. Qatar's proposal deals specifically with non-tariff barriers. It cites subsidies, fiscal incentives, tax and duty exemptions that favour environmentally harmful (carbon-emitting) PPMs for energy.

India's stand is largely supportive of the bottoms up approach that essentially consists of sharing of national experiences. It believes that exchange of national experiences should guide the negotiations, since there exists a multiplicity of mechanisms and institutional structures which has been successfully applied at the national level by various countries that have

forged mutually supportive realizations of their international trade and international environmental obligations. In view of the heterogeneous socio-economic background of the members (especially in economic development) supportive measures such as capacity building, technical and financial assistance must play important role in inducing compliance of the developing and least developed countries. As the focus of MEAs is on global commons and trans-boundary externalities, it is desirable to ensure wide participation and also compliance by the members. The environmental effectiveness and larger compliance observed in the case of Montreal Protocol is largely due to the supportive measures. Compliance is in the interest of all due to the trans-boundary nature of externalities; hence a voluntary compliance is most desirable in case of MEAs.

India recognizes the importance and necessity of countries having the national policy space in implementing their environmental objectives under the MEAs. This should however not undercut or in any way clash with the international trade obligations within the WTO. This problem has been faced and dealt with by most of the WTO members and sharing of national experiences therefore would provide a source of valuable input. This is therefore an important negotiating issue.

The report[8] of the CTESS to the TNC on the Para 31(i) issues acknowledges the differences particularly on the issue of an outcome of the negotiations on the subject. Some countries indicated that the mandate is limited in scope and does not extend to the general WTO – MEA relationship. But the governing principles and parameters such as principles of no hierarchy, mutual supportiveness and difference between the trade and environment regimes cannot be overlooked. It has also been pointed out that the WTO-MEA relationship has so far not thrown up any conflict situation which would need clarification to ensure mutual supportiveness of the trade and environment regimes.

II.2 Negotiations on Para. 31 (iii) – Environmental Goods and Services

Paragraph 31(iii) of the Doha Ministerial Declaration provides for the following negotiating mandate on the trade and environment agenda: "*With*

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

The underlying rationale for the para 31 (iii) has been primarily to exploit the "win-win" situation that is expected to result from the general reduction of tariff on environmental goods and services and the resultant ease in accessing of these goods and services for environmental purposes which would facilitate prevention and mitigation of environmental pollution and general environmental well-being. In relation to the two other mandates under Para 31 (i) and (ii), the present mandate has been largely viewed as one, which has a high probability of delivering a tangible result[9]. A unique feature of this mandate is that it provides for a holistic negotiating mandate for the tariff reduction of both environmental goods and services. This marks a significant departure from the essential differentiation between the goods and services negotiating methodologies. It however reflects an essential reality of the environmental product sector i.e. of the need to procure services in conjunction with products so as to enable them to perform effectively not only individually – in that sense performance of a significant number of environmental goods is dialectically dependent on access to certain supportive environmental services. Another important point that needs to be made in this regard is that this mandate is primarily oriented towards environmental benefit and market access is the identified means to the objective. Therefore it is important to remember that mandate is not focused on market access for the sake of free trade but only in as much as it contributes or facilitates access to environmental goods and services, thereby generally benefiting the environment.

A total of nine Members have forwarded to the CTESS submissions containing lists of environmental goods: Canada, the European Communities, Japan, Korea, New Zealand, Qatar, Switzerland, Taiwan Province of China[10] and the United States. Most submissions come from the list that APEC members had built at the time of the Early Voluntary Sectoral Liberalization initiative. The tariff part of the initiative ended up at the WTO as the Accelerated Tariff Liberalization (ATL). The ATL has no formal status at the WTO.

In order to set the pace for the negotiations and put them in a more structured area, the CTESS requested the WTO Secretariat to compile an overall list of environmental goods, putting together the lists submitted by Members to date. This compilation would be updated regularly by the Secretariat as new submissions, complete with lists, are received. At present, the combined list contains round about 480 items (726 if the entire Chapter 48 is included).

India proposed environmental project approach constitutes a major departure from the list-based approach. It derives from the existing practice, common in Asia, of waiving duties on the goods and giving special treatment to services that are supplied to specially designated projects. Three submissions have been made by India so far in this respect.

III. Reciprocity in the EGS negotiations

By default rather than by design, the APEC and OECD lists have been used as a starting-point for discussions on product coverage. UNCTAD has carried out a statistical analysis of trade in products on the APEC and OECD lists, at the 6-digit level of the HS.

All developing countries for which trade data are available are net importers of environmental goods on the APEC list. Only two developing countries are net exporters of environmental goods on the OECD list, but this is due to exports of one or two chemical products. Developed countries account for over 80 per cent of world exports, while the developing countries' share is only around 15 per cent. Exports from the top nine exporting countries represent 90 percent of total developing country exports. African countries' exports of products on the APEC list are less than US$ 80 million. South-South trade may be relatively more important, particularly in Asia, which accounts for 70 percent of trade in goods on the combined APEC and OECD lists.

A more detailed analysis shows that developing countries may have export opportunities in some items. Developing countries as a group are net exporters of 26 out of the 182 environmental goods on the combined OECD and APEC lists. However, the analysis of the 20 largest developing

country export and import items, accounting for two thirds of their trade in products on both lists, reveals that in most cases HS descriptions start with "other" or "parts of", suggesting that the "environmental good" fraction of trade in these items may be small.

The high share of multiple use products in their imports implies that developing countries may face a difficult trade-off between reduced tariff revenues and not-so-certain environmental benefits. "Complementary" and "development" lists may provide some flexibility to developing countries in discussions on possible lists of environmental goods, in conjunction with issues relating to negotiating modalities.

The developing countries - as a group and regionally - are significant exporters of natural gas and of EPPs such as wool carpets, yarns and textiles, natural rubber, cork, vegetable parts, vegetable derivatives, and basketry manufactures. The more recent analysis seems to suggest that the developing Members may benefit from the inclusion of wood and wood-based products, e.g. building supplies and furniture, as well as raw cotton and textiles and apparel manufactured from natural cotton, silk and wood. These other groups of EPPs analyzed in the most recent edition of UNCTAD statistical paper merit further consideration, especially since the hypothetical "win" for the developing countries is enormous: the $50 bn deficit in trade in goods on the OECD and APEC list could be turned into a $20 bn surplus for the developing countries in terms of all traded environmental goods.

Given the limitations inherent in a statistical analysis done at the HS 6-digit level, with the value of underlying environmental good(s) varying from 0 to 100 percent, it can serve to track rather than to accurately measure the trade flows. The analysis has been conducted for *groups* of countries and *groups* of products. Whether it holds for individual countries and individual products is a separate question, and UNCTAD has been helping interested developing countries with getting access to the World Integrated Trade Solutions Software (WITS) or conducting individualized analysis for them.

The results of UNCTAD's analysis have been quoted by both developing and developed Members - the US delegation has done this repeatedly, and

somewhat indiscriminately, to support its own position. At the last CTESS, the US delegation expressed interest in comparing the results of statistical analysis done by their experts with that coming from UNCTAD.

At present tariffs on environmental goods in developed countries are low i.e., 5 percent or less. On the other hand tariffs on environmental goods in developing countries are around 25 percent. Further, developed countries account for about 80 percent of the world export of environmental goods. Under these circumstances unrestricted reductions or eliminations of tariffs in developing countries would increase their trade deficits.

III.1. A List-based Approach

Building a list is the traditional approach to tariff negotiations. Each interested WTO Member submits a (positive) list of environmental goods and thus determines what it considers an environmental good. As is common with tariff negotiations, the list(s) would be based on the HS.

However, even if there were no paragraph 31 (iii) in the Declaration, environmental goods, no matter how they were defined, would have been within the scope of the NAMA negotiations. On the other hand, the liberalization of trade in environmental goods is not going to take place automatically just because they have been defined as environmental. More to the point, if a Member considered that the environmental benefit from reducing the cost of imported environmental goods was worth the cost foregoing tariff revenue on those goods; it would already presumably have lowered the applied rates of tariff on the goods in question. Most developing countries have recorded their inability – both in technical and in terms of substantially investing in such an exercise – to draw up negotiating proposals and their own list of environmental goods.

The negotiations have been driven by mostly submission by the developing countries[11] that have overwhelmingly focused on drawing up list of goods for inclusion within a list of environmental goods – expected to be the tangible output of this negotiations. Starting with that of New Zealand[12], which was the first to submit a list of environmental goods by suggesting a "learning by doing" approach to the negotiations. There has

also been substantial discussion on means to incorporate the continuously evolving and developing nature of this sector[13]. This challenge has been sought to be circumvented by way of developing a "living list" – that would be regularly updated so as to reflect the latest development in this sector. Others like that of South Korea[14] have pushed for a least common denominator approach – by submitting a list that is "practical" and is expected to enjoy the broad support of most WTO members. The United States has taken a stance – and terming it as "creative and flexible" – by proposing a dual list approach – core and complementary, as a way out of the negotiating deadlock. The "core list" would contain a list of consensus items – wherein there would be clear tariff concessions granted through commitments. With respect to the "complementary list" it would set a further agenda for negotiations on those goods in which consensus could not be arrived at. The EC submission[15] takes a similar stance of submitting two lists of proposed items for inclusion. The proposed list was also explained in terms of the ways and means by which it contributed to the *fulfillment of the MEAs, MDGs and the results of the World Summit on Sustainable Development.* The second list in the EC submission focused on "high environmental performance or low environmental impact goods".

The response of most developing countries to these lists submitted by the developed countries has been at best luke-warm. There has been an overall impression that most of the lists submitted, feature goods wherein these countries have a clear export advantage. Developing countries have also pushed for clear product identification criteria[16]. Brazil[17] for instance, commented that multiple lists based on differentiated criteria would not be of much help in moving the negotiations forward. It supports a basic principle approach in developing criteria and has reiterated that "development" (as it is within the mandate of DDA) should feature prominently in any such development of criteria. It has also expressed its reservations to the "living list" approach suggested by the EC and New Zealand, and had compared it to a "blank cheque". The EC has pushed for a product identification exercise with environmental objectives in mind such as those under the MDGs, MEAs. It has actually gone ahead to suggest that identification criteria could also be guided by national environmental priorities. The US[18] has however gone on record in critiquing such an

approach as it could potentially render the CTESS negotiations "out of synch" with that of the NAMA. Furthermore UNCTAD[19] has presented its study in which it found that a majority of products included in the list represented a fraction of the NAMA mandate and included few products on interests of developing country WTO members. Furthermore the study had found that a significant share of developing country trade consisted of multiple end-use products, which implied that these countries faced a trade-off between reduced tariff revenues and uncertain environmental benefits. However, the applied rates in developing countries in practice were low. Thus if developing countries were to undertake binding commitments on tariff reduction they would have to identify substantive national developmental benefits in doing so. This important fact needs to be grasped if the negotiations were to move forward in a manner that would hold benefits for all the countries involved.

The Indian submission[20] has sought to break the current deadlock and forge a way forward in the midst of this lack of consensus. This has been in the context in which despite widespread acceptance of the practical gains in following a list approach there has been very little achieved in terms of substantive results in the negotiations. The Indian submission in this respect has unveiled an alternative approach to the negotiations in the form of an Environmental Project Approach (EPA).

III.2. An Environment Project Approach

The EPA is a distinct and separate approach from that what has been the usual approach in the WTO negotiations - that of tariff reduction through trade negotiations by mandating definite concessions to be extended by individual member countries. The EPA actually locates the actual decision to extend tariff concession to individual product lines (of environmental goods) within the functioning authority of the Designated National Authority (DNA). Under this approach a project which meets the certain pre-determined criteria shall be considered by the DNA. The DNA would be the sole authority for extending approval for goods and services included in the project – for granting specific tariff concessions for the duration of the project. This is of course a diametrically different from the usual approach that had been followed in the CTESS – that of permanent elimination of

tariffs on EGS on a most-favored nation basis[21]. The EPA provides for a temporary tariff concessions granted for goods and services deemed necessary for achieving nationally identified environmental goals[22].

The product identification criteria to be applied by the DNA could be environmental objectives that have identified at three levels – international, regional and at the national level. At the international level the environmental objectives intrinsic to the achievement of the Millennium Development Goals (MDGs), Johannesburg Plan of Implementation and those under the World Summit on Sustainable Development and multilateral environmental agreements (MEAs)[23]. At the regional level the environmental agreements[24] could be taken into consideration, and at the country level – national environmental priorities would be taken into consideration.

The CTESS can play an important role in this regard in terms of identifying the broad sectors (may include water, waste management, air pollution control, etc) or facilitating a consensus in terms of identifying internationally recognized environmental priorities. This could also serve as an effective mechanism for applying special and differential treatment within the EGS negotiations. Thus by enabling policy flexibility to developing countries in fashioning product criteria on the basis of nationally determined environmental priorities it would provide an opportunity to functionalize the special and differential treatment that has been demanded by a number of developing countries[25]. This kind of an approach is also sensitive to the fact that, environmental priorities, issues and problems are largely local and context specific in nature and need inputs, solutions and interventions need to be fashioned locally in order to be most effective. In this context the NAMA would also play its role in providing a forum for negotiating of tariff concessions that are to be applied once the environmental input has been granted approval.

In the context of the EPA, the term "project" would either include projects that would fall squarely within the identified sectors (e.g. Ganga Action Plan if we were to identify waste water management as a priority sector) or it could be in the nature of an environmental component of a larger developmental project. Thus the meaning of the terms "project" is

flexible and open to debate within the CTESS. However care should be taken to ensure that the project is not defined in terms of its capital outlay or its capacity for consuming an environmental goods or services. Projects should include all kinds of industrial projects (whether requiring a significantly large capital outlay or one which is an SME venture).

The composition and structure of the DNA would be determined largely by individual member countries to facilitate the best mode of optimal mode of operation – it could thus be primarily a government agency or could invite the participation of stakeholders both from the non-governmental and private sectors. The composition of the DNA should reflect its mandate in terms of its functioning capacities. The decision of the DNA could be open to challenge not only on general administrative law grounds[26] (procedural grounds), but also on substantive grounds that could be determined by the CTESS through consensus. Herein it would be appropriate to make the point that the environmental problems, priorities and the institutional structure of each country would determine the nature, form and functioning apparatus of the national authority. The example of the DNA is thus only illustrative and not instructive in any sense.

The Indian submission envisaged primarily two aspects to the functioning of the DNA[27] - that of granting approvals and the other operating as nodal information points. With respect to the former, the evaluation process would include an assessment of the environmental input sought to be made by the environmental goods or service to be imported in terms of their functional utility in achieving the following:

- Production objective of the project activity
- Enabling the fulfillment of the objective of sustainable development/ national environmental priorities.

Thus the DNA would be performing a crucial function in assessing approval applications on the basis of the utility that the goods and services sought to be imported for the specific purposes of the project. The entire process would follow strict time lines in terms of delimiting the time taken for application to be perused, additional information to be sought and the final grant of approval to be finally granted or denied.

With regard to the latter function – that of operating as nodal information points: the DNA would establish and maintain a registry of environmental inputs approved and related project details. This would also help in assessing the approval criteria and methodologies for application in different sectors and contribute to the building of an institutional memory vis-à-vis the approval criteria.

III.3. EPA: Addressing the concerns of the List Approach

The EPA adequately circumvents the most urgent and divisive problem of the list approach –that of the dual use nature of most of the environmental goods included in the lists. The EPA provides for temporary tariff concessions on approved environmental goods and services that are required for the duration of the project. Thus the tariff concessions would be focused and limited to the time period of the project. It is therefore entirely need based and project specific. Therefore to a great extent the dual use of these products are negated – even in case of some downstream usages of the product after its application in the project – the leakage would be negligible in comparison to its potential under the list approach.

The concerns with the updation of the list in terms of it reflecting the latest in terms of technology up gradation in the EGS sector – and the suggested solution in terms of a living list, is also to an extent addressed as the concessions would to the products demanded to be imported. Since each project would require the best and most advanced environmental technology – in terms of goods or services, the need to evolve a "living list" is effectively negated. The EPA would also require very incremental changes in the current structure of negotiations and commitments undertaken. The current commitment schedules in both goods and services would largely remain unchanged and there would be no immediate requirement for amendment of the schedules.

A further advantage of the EPA is that of its understanding and recognition of the essential implication of the Para. 31(iii) mandate in terms of the synergy between liberalization of the environmental goods and services. The EPA would function as the approval authority for environmental inputs in general – which would include environmental goods and services (and may also include environmental technologies).

Most importantly however the EPA provides for national policy flexibility to individual countries in mainstreaming its national sustainable development and environmental priorities – and using trade devices and selective market access arrangements to facilitate the importation of environmental inputs that directly contribute to the achievement of the environmental objectives and goals through project implementation. Additionally the national policy flexibility could also be used to develop additional criteria for project approval – by internalizing and requiring applications to show the extent of technology transfer and technical assistance that would be achieved.

Also the implementation costs of the EPA in terms of the setting up of the institutional mechanism of the DNA would not be too burdensome as most developing countries would gain from the prior experience of the working of the National CDM Authority – that is functional under the Marrakech Accords of the Kyoto Protocol.

IV. Conclusion and Recommendations

The trade and environment negotiations within the WTO have not witnessed consensus. There has however been plenty of movement in terms of country submissions and responses and the active participation of developing countries in terms of expressing their reservations and support at the CTESS meetings. Following are the key areas which deserve detailed attention.

IV.1. Transfer of Environmentally Sound Technologies (ESTs) to Developing Countries

There is an urgent need to ensure that the developing countries get access to ESTs. Two specific problems in this regard are most environment-related technologies of the developed world are under intellectual property protection which affect the access to and terms of the transfer technologies developed abroad may not be appropriate to developing countries in view of differences in the factor endowments and the environmental standards and hence the need for adapting the western technologies or/and developing indigenous technologies. Agenda 21 defines transfer of environmentally sound technologies (ESTs) as follows: "ESTs are not just individual technologies, but total systems which involve know-how procedures, goods and services,

and equipments as well as organizational and managerial procedures". It says that ESTs should be compatible with nationally determined socio-economic, cultural and environmental priorities.

The proposed alternative project approach tries to bring in positive measures like capacity building, technology transfer to meet the environmental as well as development goals of both Agenda 21 and Doha Development Agenda.

On Trade and Transfer of Technology, Para 37 of the Doha Ministerial Declaration says: we agree to an examination, in a Working Group under the auspices of the General Council, of the relationship between trade and transfer of, and of any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries. This Working Group considered submissions from different countries/regional groups and intergovernmental organizations and analyzed the relationship between trade and transfer of technology.[28]

VI.2. Role of International Institutions

The roles of different agents must be clearly identified. Home country governments' main functions are providing access to ESTs to developing countries at most favourable terms. This can be done via compulsory purchase or government purchase at nominal prices from the IPR holders and selling the ESTs at concessional prices to developing countries. The home country governments can also arrange for training, development of skills in host countries and promotion of joint research between laboratories in home and host countries. Inter-governmental agencies like UNCTAD and UNIDO and development cooperation agencies can facilitate information exchange, identify best practice ESTs appropriate to different developing countries and offer their experiences in successful transfer of ESTs to developing countries. The host country governments, apart from providing an enabling environment for successful transfer and absorption of ESTs, must undertake policy measures to make transfer of ESTs attractive to SMEs. Such policy measures would include creation of signals for internalization of environmental costs, concessional finance for investments in plants and equipment associated with ESTs, fiscal incentives, and lowering

transaction costs of the technology transfer by undertaking legal and administrative reforms. The demand for ESTs by SMEs in export-oriented industries will increase when the costs and terms of access to ESTs are lower and they realize that compliance with environmental standards (domestic and international) is an essential requirement for entry in the export markets.

The development cooperation approach involving many agents requires creation of institutional arrangements and incentive structures to facilitate and sustain cooperation among different agents. Developed countries can meet their commitments under various multilateral agreements and also promote mutually beneficial gains from trade. Developing countries can accelerate their export growth and improve domestic environmental quality, while realizing their development goals.

VI.3. Agenda for Negotiations

In the context of paragraph 31 (i) mandate the sharing of national experiences have been broadly supported as a concrete methodology of taking forward the negotiations. In the context of Para 31(iii), India has attempted to take lead in the negotiations in putting forward an alternative to the list approach which is both unique and promise concrete deliverables that substantially achieves the negotiating mandate. The EPA therefore provides a real and substantive alternative to the list approach that has failed to enlist developing country support and has resulted in a deadlock in the negotiations. Though there are several issues which would need to be addressed in this regard. It would be instructive to reiterate that the basic and the primary purpose of Para 31(iii) negotiations is to facilitate the achievement of environmental objectives by way of granting specialized market access to environmental goods and services and in this regard the EPA holds a much substantive potential to achieve this objective than the "list approach". Also the EPA promises to serve as a useful vehicle which inherently recognizes the national policy space with common and differentiated responsibilities.

In view of the impending Hong Kong ministerial in December 2005 there is a need for all the countries to urgently refocus on the negotiations in terms of adopting an approach that ensures for all the member countries

a "win-win" for the environmental, developmental and economic objectives. The EPA holds substantial potential to address these objectives, truly mutilateralise the negotiations, and create active stakeholders to the negotiations.

Endnotes

1 Paragraph 51 of the DMD states that "The "Committee on Trade and Development and the Committee on Trade and Environment shall, within their respective mandates, each act as a forum to identify and debate the developmental and environmental aspects of the negotiations, in order to achieve the objective of having sustainable development appropriately reflected".

2 TN/TE/W/7 (June 2002)

3 For a more detailed discussion on STOs, please refer to Annex B.

4 (TN/TE/W/28) 30th April 2003.

5 (TN/TE/W/40) 21st June 2004

6 (TN/TE/W/45) 12th October 2004

7 (TN/TE/W58) Submission made by Switzerland on 5th July 2005

8 TN/TE/14, 28th November 2005

9 (TN/TE/11) Report by the Chairperson of the CTESS to the Trade Negotiations Committee, 14th March 2005.

10 Not a UN member.

11 There have been a total of thirteen submissions so far by developed countries – of which 90% have focused on submission of actual lists of environmental goods. In contrast to this developing countries have made only ten submissions so far – of which only four (Qatar, China, Korea and Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu) have drawn a list of environmental goods.

12 (TN/TE/W/6) submission made on 6th June 2002.

13 The environmental goods and services is a rapidly developing sector in terms of innovations and have one of the highest R&D investments amongst the industrial goods sector.

14 (TN/TE/W/48) submission made on 18th February 2005

15 (TN/TE/W/47) submission made on 17th February 2005

16 (TN/TE/R10) Para. 43 India's query on the "direct use" criterion used in the Chinese Taipeian submission – TN/TE/W/44;

17 (TN/TE/R11) Para. 81.

18 Ibid Para. 53

19 Ibid Para. 69

20 (TN/TE/W/51) submission made on 3rd June 2005

21 Environmental Goods: A Hong Kong Deliverable, Bridges News Weekly; Year 9No. 6 – 7 June/July 2005

22 Ibid

23 This could include the Montreal Protocol, Basel Convention, CITES, etc.

24 Rotterdam Convention, NAFTA Environmental Side Agreement, Aarhus Convention, OSPAR, etc.

25 (TN/TE/R11) Para. 58 - Cuba's statement, (TN/TE/R9) Para. 14 – Venezuela's statement.

26 Herein we refer to the failure to adhere to the principles of natural justice as applied within administrative law – in terms of a speaking order, procedural fairness, etc.

27 This is also similar to the nature and scope of functions of the National Designated Authority – which grants CDM Approvals mandated to be set up under the Marrakech Accords of the Kyoto Protocol.

28 See the Working Group's documents WT/WGTTT/W series.

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