

## Environment at the WTO Implications for Poor Countries

It had been hoped that the United Nations World Summit on Sustainable Development (WSSD), which concluded in Johannesburg at the end of September 2002, would be a forum for setting the action plan to tackle the myriad environmental problems being faced by the world. Though the focus was not trade itself, one trade-related issue discussed was farm subsidies. The high amounts of cash (US\$1.3mn every two minutes<sup>1</sup>) that the West spends on its farmers are an important barrier to Third World development through trade. Subsidies mean African farmers cannot get a toe-hold in the Western marketplace. But, despite fine words from the North, the fact is that decision-makers in countries such as Ireland, France and the US are not keen on upsetting their farming lobbies and, hence, have not countenanced a reduction in subsidies. The main issue is that these agricultural subsidies are environmentally unsound and flout international trade rules.

The Summit's Action Plan on trade and globalisation was, therefore, unsatisfactory. It failed to realise that the WTO-driven agenda for trade and globalisation already raises trade and environmental issues that still have to be adequately solved. There is a fear even at the WTO, that, the interests of the poor countries and the natural environment, in general, may not be adequately solved. The short history of the WTO as an institution seems to validate this view.

This Briefing Paper emphasises the point that the work on trade and environment in the GATT/WTO is not new and, though dating back to 1972, there is still much to be done. Environment is one of the key post-Doha WTO Ministerial Conference areas for immediate discussion. From the perspective of the rather quick turnabout of the EU at Doha in agreeing to certain concessions on the Agreement of Agriculture in return for the three main elements that it felt needed to be pushed for immediate discussions under environment, it is useful to analyse how these issues would manifest themselves from the perspective of the poor countries. These are Multilateral Environment Agreements (MEAs), the precautionary principle, and eco-labelling.

### INTRODUCTION

The work on trade and environment in the GATT/WTO dates back 30 years. As early as 1972, the international trading system recognised the relationship between trade and environment, through GATT's participation in the 1972 United Nations-organised Conference on the Human Environment in Stockholm, where it presented a paper entitled 'Industrial Pollution Control and International Trade.' In the paper, the GATT Secretariat focused on the implications of environmental protection policies and how these could become obstacles to trade as well as constitute a new form of protectionism. During the Tokyo Round that ensued between 1973 through to 1979, contracting parties debated the extent to which environmental measures in the form of technical regulations and standards could frustrate trade. These deliberations led to the adoption of the Agreement on Technical Barriers to Trade (TBT). The "Standards Codes," as alternatively referred to, called for transparency and non-discrimination in the preparation, adoption and application of TBT measures. In addition, GATT introduced a General Exception clause, Article XX, whereby signatories were at liberty to take measures necessary to protect human, animal and plant life or health.

Therefore, WTO's predecessor adverted itself to the implications that environmental protectionism could have

on trade. In a sense, therefore, the GATT acknowledged the link between trade and environment, a stand that resulted in the adoption of sustainable development as a guiding beacon to international trade policy. This position formed the basis for the GATT 1994's sustainable economic development provisions. Since the relationship between trade and environment had become irrefutable, the preamble to the Marrakesh Agreement establishing the WTO spells out environment protection, conservation and sustainable development, among others, as being objectives to be pursued by the organisation.

Environment is one of the seven areas of the Doha Development Agenda agreed for immediate negotiations after the WTO's Doha Ministerial Conference.

### WORK IN CTE: AREAS OF SOUTHERN CONCERN

Two broad themes consistently appear in the discourse on trade and environment. Does trade damage the environment and do the WTO's rules prevent environmental protection? These are, of course, concerned with the broader relationship between trade liberalisation and the environment; and, more specifically, how trade

relates to environmental protection policies and international environmental agreements.

Since its establishment at the beginning of 1995, the WTO Committee on Trade and Environment (CTE) has discussed pertinent issues covering the subject of trade and environment, arriving at a number of conclusions, which were presented to the WTO Ministerial Conferences of December 1996 and November 2001. Post-Doha, the work of the Committee continues in earnest and a programme has been developed for 2002. During 2002, the Committee will give particular attention to issues identified in paragraph 32 of the Doha Ministerial Declaration at each meeting, while allowing Members to address all the other items on the work programme of the CTE, as well as paragraphs 33 and 51 of the Doha Ministerial Declaration. There are nine broad issues of interest, which are items of deliberation by the Committee. These are:

- a) Trade rules, environmental agreements, and disputes - The relationship between the rules of the multilateral trading system and the trade measures contained in multilateral environmental agreements (MEAs) and their dispute settlement mechanisms. On the issue of dispute settlement mechanisms, poor countries have expressed concern that the system is, therefore, prohibitively expensive and, effectively, unavailable for their use. Tied to this is the fact that it is a highly technical area in which they usually have little or no local litigation or negotiating expertise.
- b) Environmental protection and the trading system - The relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system.
- c) Taxes and other environmental requirements - The relationship between the provisions of the multilateral trading system and: (a) charges and taxes for environmental purposes; and (b) requirements for environmental purposes relating to products, such as standards and technical regulations, packaging, labelling and recycling requirements. (Particularly the issue of "product" versus "process").
- d) Transparency of environmental trade actions - The provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes.
- e) Environment and trade liberalisation - This is arguably one of the most sensitive issues in the agenda of the CTE. Questions such as how the implementation of environmental measures affect market access, especially in relation to developing countries and, in particular, least developed countries, will need to be adequately answered. In addition, how the environmental agreement under the WTO will benefit poor countries is an important question for the CTE to ponder.
- f) Domestically prohibited goods - The issue of exports of domestically prohibited goods (DPGs), in particular hazardous wastes. (Please dump, but not in my poor country backyard!)
- g) Intellectual property - The relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).
- h) Services - The work programme envisaged in the Decision on Trade in Services and the Environment.
- i) The WTO and other organisations - Input to the relevant bodies in respect of appropriate arrangements for relations with inter-governmental and non-governmental organisations (NGOs).

### **THREE MAIN AREAS OF CONCERN FOR DEVELOPING COUNTRIES**

Given the rather quick turn-around of the EU in agreeing to certain concessions on the Agreement of Agriculture in return for the three main elements that it felt needed to be pushed for immediate discussions under environment, it is useful to analyse how these issues would impact the options of poor countries. The three issues are Multilateral Environment Agreements (MEAs), precautionary principle and eco-labelling.

#### ***Multilateral Environmental Agreements (MEAs)***

The main issue for discussion here is examination of the relationship between the existing WTO rules and trade-related obligations set out in the MEAs. It seems that most of the MEAs have been working rather well, and, in any case, only 10 percent of the MEAs really address the environment and trade interface. The poor countries would want to ask: given that no significant trade dispute has arisen over the uses of MEAs in any trade-related dispute, is it really useful to devote too much time examining this issue?

Another area of concern would be that where there are failures by the Southern exporters to comply with environmental obligations, the main reason is lack of technical and financial capacity. Therefore it is positive measures e.g. transfer of technology, financial assistance and capacity building that should be the focus of discussions.

### **Precautionary Principle**

The precautionary principle justifies trade bans on health grounds, even where there is, as yet, no clear evidence of any risk arising from the consumption of that product. The recent bans (e.g., hormone treated beef) following this principle not only undermine rich country consumers' confidence in such imported foods, but also provides a ready excuse for importing countries to impose often-unjustified bans.

Poor countries have reason to worry that allowing such practices would create further barriers to trade, even over and above the already difficult problems faced from sanitary and phyto-sanitary (SPS) measures and technical barriers to trade (TBT) agreement measures that can be very expensive for the poor countries. In a paper that assesses the impact on Kenya of SPS measures, Dr. Halima Noor finds<sup>2</sup> that there were heavy costs in the horticultural and fish exports in terms of compliance cost and the impact on employment (see Box 1).

### **The TBT and SPS Agreements**

Important export market threats for the poor countries are barriers to trade in the form of SPS measures and TBT. Sanitary and phyto-sanitary measures are regulations and standards applied to both imported and domestic goods that aim to protect human and animal life (or health) from food-borne risks, humans from animal and plant carried diseases, plants from pests or diseases.

The TBT Agreement sets a regulatory framework for regulations, standards, testing and certification procedures as well as measures to protect human, animal and plant health as well as safety.

While SPS and TBT regulations and standards aim to satisfy the above genuine objective, they may, however, be powerful tools to impede international trade and protect domestic producers through unjustified different requirements in different markets, unnecessary additional costs and time-consuming testing and duplicative conformity. This is foreseeable, particularly in the light of the reduction in other forms of protection.

### **Main Elements of the SPS and TBT Agreements**

It is notable that the major goal of the SPS agreement is to prevent SPS measures being used as tools for impeding international trade unnecessarily, and at the same time recognising the legitimate interest of countries setting up rules to protect food safety, animal and plant health. SPS measures take the form of inspection of products, permission to use certain additives, determination of maximum level of pesticides, designation of disease-free areas, quarantine requirements, etc. Members are provided with guidelines to develop their own national standards, based on international recommendations and promotion of the harmonisation of SPS regulations in order to achieve mutual recognition of standards. The agreement, while

recognising different climatic and geographic conditions of its members, encourages its members to adopt SPS measures that are less trade restrictive, technically defensible and economically feasible.

If there is scientific justification based on assessment of risk to human life, SPS agreements allow members to introduce SPS measures that result in higher levels of protection than the current international standards. Countries, through their SPS office 'entry point', are required to notify the WTO Secretariat of any new SPS measures or modifications in advance before they are implemented.

The SPS agreement also provides Special & Differential Treatment in favour of poor countries in terms of longer time-frames for compliance, grace periods (two years for developing countries and seven years for LDCs from 1<sup>st</sup> January 1995), as well as facilitating developing countries' participation in standards setting international organisations. The TBT agreement sets out a code of good practices for the preparation, adoption and application of standards by central and local government bodies as well as non-governmental organisations. It stipulates that procedures used to decide whether a product conforms to national standards or not have to be fair and equitable and discourages methods that protect domestic producers unjustly. It encourages mutual recognition of each other's testing procedures.

### **Box 1: Kenya: Fish Exports from Lake Victoria**

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*Lake Victoria contributes 92 percent to Kenya's total fish production, of which Nile perch contributes approximately 50 percent of the total production.*

*In November 1996, Spain and Italy imposed a ban on Kenyan fish, claiming the presence of *Salmonellae* in Kenyan fish. The ban caused a reduction in Kenya's foreign exchange earnings by 13.1 percent in value, with total exports to Spain decreasing by 86 percent. In December 1997, a ban restricted to fresh fish was imposed by the European Union on fish from East Africa because of a Cholera outbreak in those countries.*

*The World Health Organisation, subsequently, intervened and the ban was lifted in June 1998. The significant drop in production and export of fish negatively affected the fishing communities and the country. This ban had a catastrophic impact on Nile perch exports to the European Union causing a drop of 66 percent and a 24 percent drop in total fish exports from Kenya with a corresponding 32 percent decrease in value.*

### **Eco-labelling**

Labelling requirements for environmental purposes aim to ensure that exports are harmless to humans and the environment in the importing country. A critical concern of the poor countries is that eco-labelling places an extra cost on their exports, since it is both an expensive undertaking and it is the exporting country that has to contend with it to the benefit of the importing country consumers.

From a domestic market discrimination perspective, one can argue that insistence on eco-labelling schemes for imports is discriminatory and would create a market barrier for foreign competing producers. Arguably, improvements in process and products under the labelling scheme would benefit poor country exporters in the long run<sup>3</sup>.

## **RECOMMENDATIONS AND CONCLUSION**

### **Safety Concerns or Protectionist Devices?**

It is important to note that it is unlikely that the proposed measures by importing countries are solely due to protectionist devices used for shielding home producers and suppliers as in many cases, no major competition threat was posed to them by the imported products. That is not to say, however, that a developed country will not employ these measures as protectionist devices or for restraining trade.

### **Some Observations from the previous SPS Cases**

SPS measures can and do impede trade in agricultural and food products, since in many instances they are incompatible with the prevailing systems of production and marketing in developing countries with insufficient account taken of the needs, constraints and problems that they face. The manner in which the SPS Agreement has been implemented in the interests of the developed countries is a cause for concern. An acute problem is the lack of adequate and appropriate scientific and technical expertise. Thus, far little technical assistance is being given to poor countries. The challenge being faced by developed and poor countries is for collaborative ventures in order to reach a point of mutual accommodation and to reconcile

the disparate views relating to trade and the protection of human, animal and plant health and the environment. Given the experience to date with the way the rich countries handle trade and environmental issues, are not the poor countries justified in suspecting that bringing environment into trade would be used as a potential source for additional trade barriers?

### **Some Recommendations**

There is need to exhaustively discuss both the sides of the eco-labelling issue in detail within the CTE, in order to fully address and incorporate poor country concerns.

- MEAs issues should not be rushed into the WTO. MEA provisions should be carefully examined separately and a decision taken, if there is need to include them in future WTO deliberations.
- Poor countries should lobby for special support from their trading partners in relation to transfer of environment-friendly technologies.
- Poor countries should call for firm commitment from developed countries to provide technical assistance (capacity-building of officials in charge of 'entry points', upgrade technical skills of personal working in laboratories, certification bodies and accreditation institutions) to help them meet SPS requirements. It should be understood, however, that such capacity-building and technical assistance is not, and will not, be a panacea for all the problems that they face in this regard.
- Technical co-operation should be broad based and include financial support. Agreements should include strong and legally enforceable language and place clear obligations on developed country members to provide technical and financial support to developing country members in various fields in the agenda of the CTE.

In conclusion, the approach in the current negotiations before the next Conference should be to strike a balance between two fears: that trade and environmental protection might be in conflict, and that environmental concerns could turn into trade protectionism.

### **Endnote**

- 1 For a short newspaper article on farm subsidies, see, Carl Bildt's "Want to Help Africa? Stop Farm Subsidies" in the *Wall Street Journal* dated June 18, 2002. It mentions the often-quoted US\$ 1-bn in daily farm subsidies, which translates to US\$-1.3 mn every two minutes.
- 2 "*The Impact of SPS Measures on Kenya*" can be read at [http://cuts.org/spa-analysis-sps\\_case\\_kny.htm](http://cuts.org/spa-analysis-sps_case_kny.htm)
- 3 Of course I am not forgetting Keynes' often quoted rebuttal that in the long run we are all dead!

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