

# Trade, the Environment and Poverty Alleviation: Challenges for the WTO's Doha Round

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## **ABSTRACT**

The WTO has managed, not without major difficulties, to achieve some sort of a working consensus at its December 2005 Ministerial Conference, even though as expected the Doha Round was not concluded at this occasion. This paper will focus primarily - from the perspective of early 2006 and based on the outcome of the Hong Kong Ministerial - at the trade & environment negotiations mandated under the Doha Declaration's Paragraph 31. The Millennium Ecosystem Assessment process signals a wide scientific consensus regarding global injuries due to environmental degradation. Nevertheless, the prospects for significant progress in this field are dismal; the WTO General Council's 2004 "July Package" which represented the previous approximation of negotiation targets had already clearly marginalized the Doha Round's hopes for a major inclusion of environmental considerations.

This paper will analyze, within this context and framework, the double role of the developing countries. They have played a major role as actors in WTO negotiations in this outcome; they often argue in essence that they have other and more urgent and important priorities. They especially point at access to industrialized markets which tends to be made more difficult through environmental trade measures that may in reality represent disguised or "green" protectionist barriers to trade. Furthermore, they note that global environmental problems in any case have historically been caused primarily by the North, especially on a per capita basis. At the same time, however, they tend to suffer disproportionately from environmental degradation, given that on the whole they depend far more than their industrial counterparts on agricultural exports which are more directly dependent on a sound ecosystem than industrial products. At the same time, however, developing countries are *demandeurs* in the negotiation of important aspects in some Multilateral Environmental Agreements. This dilemma raises difficult questions: How can they be brought more actively into these negotiation processes? Has Peru's success in the *EC-Sardines* WTO dispute convinced them that they can use the WTO dispute settlement system to their advantage? What consequences are resulting for the global South from of the present lack of interest in trade & environment negotiations? What are the responsibilities of the North and the South (the "East" being situated somewhere in between) in this conundrum?

## **INTRODUCTION**

It might be argued, somewhat cynically perhaps, that there is not really any relationship between the North-South divide and the trade-environment divide, simply because trade & environment (t&e) is not really a serious issue in the Doha Round, or as it is officially called, the Doha Development Agenda (DDA) negotiations, which are at the time of this writing (March 2006) generally considered to be in the final phase. In a broad-brush political sense, I would have to agree essentially with this kind of an argument. As we shall see, however, a considerable amount of negotiations on some very specific issues have taken place at the WTO and are continuing. These are a far cry from covering the t&e problematic as such, but they are starting to put some substance to this debate which is meaningful to both the trade and the environment constituencies.

In view of the fact that WTO negotiations in general are highly politicized by their very nature, think it is appropriate here to make my position with regard to the DDA negotiations and to the WTO in general explicit by stating that I think a successful conclusion of this Round deserves all the support it can get. It seems to me opponents of the global trading system who would like the WTO to fail in this goal or who would like to see it implode entirely don't take sufficiently into account what will invariably happen in case the Round should disintegrate like the originally planned Millennium Round did. If this Round should fail, that would not by any means indicate that the trade policy objectives pursued during these negotiations have not received enough political support by the economically most important member countries. It would simply mean that these objectives have not managed to generate consensus at the WTO according to the decision-making procedures and practices which are built into this organization. That does not preclude at all, however, that these objectives can be achieved through other means, it simply means that at this point in time they have not been realized through the multilateral trading system. Failure at the multilateral level leaves the major economic powers free to negotiate such agreements among themselves, on a regional basis, or especially through bilateral agreements, including in particular through bilateral free trade agreements between an industrial and a developing country of which there are a large and rapidly growing number in existence already. I agree with those who argue that these agreements by and large represent worse solutions for the developing countries as well as for the global ecosystem than a compromise sanctioned by the negotiations of a WTO Round.<sup>1</sup> This being said, I regret that environmental as well as developmental concerns are not taken into consideration at the WTO more consistently and substantially.

In any discussion of the developing countries' role in t&e negotiations, the first obstacle that is usually brought up is the issue of green protectionism, i.e. the disingenuous use of environmentally justified trade-restricting measures by industrialized countries which primarily serve not to protect the ecosystem but rather to advance the interests of their internal markets and privileges. There is no question that this is a serious policy issue, but it is also a very convenient excuse to avoid negotiations which are particularly difficult because they are dealing not with desired and immediate economic growth prospects, investments and profits, but more often than not with medium or long term environmental problems that are difficult to quantify, to corroborate scientifically, and most importantly which tend to result in expenditures for countries at all levels of development.

On the whole one can undoubtedly observe that green protectionism represents in the worst case only a small portion of those WTO features which have a deleterious effect on poor countries' economic development. Such procedural, structural, quota and tariff-based and other provisions have always been and still are deeply entrenched in our wider system of global economic governance which includes the commodity exchanges that determine the prices of developing countries' key export products. They have slowed down and hindered developing countries' emergence and their ascendancy to truly competitive levels for decades, especially through escalating and peak tariffs which are particularly unfair because they make it very difficult for them to move their exports from the raw material stage up in the

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<sup>1</sup> Center for International Environmental Law (CIEL) and Friends of the Earth-US 2005. See also the Double Issue 'Undermining Development – the threat of free trade agreements,' *Third World Resurgence*. Oct./Nov. 2005, 182/183: 11-52.

value chain toward more profitable manufactured stages – the more they become competitive in manufactured goods, the more they are penalized, where such measures are applied, by higher customs duties in their target markets. This is a crucial reason why it is so difficult for developing countries to climb out of a desperate situation that is often called the poverty trap.

One would also have to mention Schedules of Concession<sup>2</sup> or Intellectual Property Rights<sup>3</sup> which industrialized nations impose on their new Southern competitors after they have managed to heave themselves to the top of the economic hierarchy by copying suitable technology for decades from other countries without punishment – “Kicking away the Ladder” as Ha-Joon Chang calls this phenomenon very fittingly in his much-cited book.<sup>4</sup> It is not the intention of this paper to discuss the underlying reasons of the misery and poverty in much of the world, but it is necessary to mention these impediments to the improvement of developing country economies in order to provide a context to the claim of green protectionism. These impediments are built deeply into the global trading system, and generally even more so into North-South bilateral agreements, and they are only very partially compensated by measures such as differential treatment and other trade preferences accorded especially to the least developed countries. The ubiquitous assertion that green protectionism is damaging the South’s economic prospects therefore is often taken out of context and out of proportion. We have to realize that there are forces at work here which are far more powerful than the economic impact of environmental measures, and which have nothing to do with t&e. It seems in fact that the green protectionism argument is in many if not most cases either wrongfully ignored or else exaggerated. We need to be sensitive to this real threat to market access of the South, but at the same time we need to weigh it against other much more important protectionist trade policies and barriers.

In order to focus the attention on trade & environment concerns, to contribute to a more effective reconciliation of these two universes, and to facilitate the discussion, negotiation and analysis of the interaction between ecology and economics I propose to use the term EcoLomics.<sup>5</sup> This relatively focused approach is clearly more “WTO compatible” than the much broader and comprehensive agenda of sustainable development. Of course the ecolomics approach does not have any answers to many important policy questions but that also applies to the sustainable development concept, no matter how it is defined. I furthermore propose to introduce the Trade, Environment and Poverty Alleviation (TEPA) framework as a natural component of ecolomic thinking, bearing in mind that a policy framework needs to be defined or explained. For a relevant comparable example we might look at the World Bank’s Poverty Reduction Strategy (PRS) which contains as a key component “a system for monitoring the implementation of the strategy and tracking progress in poverty reduction.”<sup>6</sup> In a similar sense, policy and legal analyses based on an ecolomic approach and a TEPA framework will necessarily have to take into

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<sup>2</sup> GATT Article II

<sup>3</sup> WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)  
[http://www.wto.org/english/docs\\_e/legal\\_e/27-trips.pdf](http://www.wto.org/english/docs_e/legal_e/27-trips.pdf)

<sup>4</sup> Chang 2002.

<sup>5</sup> See <http://www.EcoLomics-International.org/> for an explanation of the concept on the Homepage, and for its practical, scientific and diplomatic usefulness and ramifications the various thematic sections.

<sup>6</sup> <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPRS/0,,contentMDK:21000002~menuPK:384207~pagePK:148956~piPK:216618~theSitePK:384201,00.html>

consideration the developing countries' specific needs which are caused by the poverty of the large majority of their population. An ecolomic approach is based on the realization that poverty has numerous reasons which are outside the realm of the ecology-economics interaction, but at the aggregate collective level the very large average per capita economic discrepancies must be factored into international negotiations on trade & environment issues. This analysis which carefully balances a focused process and a policy and law agenda which is comprehensive within certain self-imposed boundaries characterizes the TEPA framework.

## **THE DEVELOPING COUNTRIES' RELATIVE INDIFFERENCE TOWARD T&E NEGOTIATION OBJECTIVES: HOW DID WE GET THERE?**

It is probably correct to say that the developing countries on the whole show less enthusiasm in the negotiation of environmental "measures," i.e. exceptions to the trading regime, than their industrialized counterparts, even though the picture looks less black and white if one examines the situation closely. The developing countries in fact are actually *demandeurs* in some instances, e.g. in the negotiations of the Convention on Biological Diversity. In any case the industrialized world shows just as little eagerness to assume its responsibility for its far larger per capita environmental footprint or its ecological shadow ecology.<sup>7</sup> Thus the mass media regularly compare US and Chinese raw material consumption figures or CO2 emissions at the aggregate national level rather than at the per capita level.

In order to appreciate the developing countries' perceptions with regard to environmental issues in the context of the DDA negotiations it is necessary to understand how the t&e negotiations evolved over the past few years in the context of the wider WTO negotiations. For a really in-depth understanding of this question we would have to look into the creation of the WTO, and in fact into the history of the preceding GATT negotiations. Again, this is not the purpose of this paper. Rather, the objective here is to gain an appreciation of the geopolitical and ecopolitical forces and factors that have brought about the results of the Doha Round's t&e negotiations as they are evolving at the present time. We shall therefore limit ourselves here to a citation on the Uruguay Round from Martha Shahin, an influential Egyptian trade official and diplomat. She asked herself why developing countries have signed on to the April 1994 conclusion of this Round and thus to membership in the WTO and concluded:

The main reason – in my view – for developing countries signing the agreement in Marrakesh was the fear of being left behind, rather than truly being convinced of any benefits accruing to them from the agreements.<sup>8</sup>

The question of the benefits or otherwise accruing to developing countries from the WTO is of course hotly debated. Nobel Prize economist Joseph E. Stiglitz as a former World Bank chief economist undoubtedly can be trusted for a good knowledge of the issues, of the multilateral institutions, and of their member countries' policy objectives and negotiation processes. He considers that the

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<sup>7</sup> "This ecological capital, which may be found thousands of miles from the regions in which it is used, forms the 'shadow ecology' of an economy." MacNeill, Winsemius Yakushiji 1991, 58-61.

<sup>8</sup> Shahin 1996, 6.

governance of the three key multilateral economic institutions IMF, World Bank and WTO needs to be changed in order to better accommodate the needs of the developing countries: *"The most fundamental change that is required to make globalization work in the way that it should is a change in governance (his italics)."*<sup>9</sup> It arguably is too early to predict the impact of the DDA on developing countries, a task that will be made difficult due to the fact that the impact on different economies will unquestionably vary considerably from one country to another.

Nevertheless, we can undoubtedly observe that for the WTO the 1999 Ministerial Conference in Seattle was "a watershed"<sup>10</sup> in the sense that for the first time the developing countries managed to make their voices heard vigorously. The primary objective of most developing countries was to prevent a Millennium Round based on a vast expansion of the WTO's domain of authority. Instead, they considered that there was a large need in reforming the existing WTO system to make it more responsive to the needs of developing countries.<sup>11</sup> Developing countries' grievances were particularly focused on the negotiation process, especially the so-called 'Green Room'<sup>12</sup> process which consists in preparing important drafts among an exclusive group of countries which are selected or included in these negotiations based on very opaque selection criteria, and which meet in seclusion and inaccessibly to the majority of countries which have, for whatever reason, not been invited. Furthermore, "they were not even informed which meetings were going on or what was being discussed."<sup>13</sup> After the failure of the Seattle Ministerial, developing countries were very upset that the exceptionally intensive preparatory negotiations of the 2001 Doha Ministerial continued the same kind of non-transparent and exclusionary negotiation processes.<sup>14</sup>

The political foundation of the t&e component of the the Doha Declaration is particularly problematic, one may say even shaky. The EC introduced the two key environmental paragraphs 31 and 32 at the very last moment as a surprise, they were "...sprung without notice on the developing countries and even some developed countries at 3 am on 13-14 November night [i.e. literally a few hours before the official termination of the conference]..."<sup>15</sup> One of the key procedural issues at the Doha Ministerial Conference and already in its preparatory negotiations consisted in the question of the role and authority of the chairpersons of the various negotiation groups. Most developing countries vigorously contested the practice of chairpersons presenting clearly non-consensual drafts under their own authority to the Ministerial Conference with the explanation that this was necessary in the name of flexibility. Developing countries insisted, not very successfully on the whole, that more transparent and predictable procedures need to be developed and implemented for the Ministerial Conferences of this "rule-based" body.<sup>16</sup> They were particularly incensed that the Secretariat in many instances presented strongly disputed drafts as a 'clean text,' i.e. without the customary brackets that denote disagreements which need further negotiations. In this way the concerns of the less powerful members

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<sup>9</sup> Stiglitz 2002, 226.

<sup>10</sup> Stiglitz and Charlton, p. v.

<sup>11</sup> Khor 1999, 11.

<sup>12</sup> Named after a room at the WTO Secretariat which was commonly used for limited, exclusive consultations and pre-negotiations, and which used to be painted in a greenish color.

<sup>13</sup> Khor 2000, 10-11 in the Seattle negotiations.

<sup>14</sup> Khor 2001, 9.

<sup>15</sup> Raghavan 2001, 29.

<sup>16</sup> Raghavan 2002, 37.

were simply ignored or downplayed.<sup>17</sup> At the WTO's Fifth Ministerial Conference in 2003 in Cancun similar problems with "process and substance"<sup>18</sup> were at the center of the negotiations' failure, to an important degree because developing countries refused to integrate the so-called "Singapore issues"<sup>19</sup> (investment, competition, transparency in government procurement, and trade facilitation) in the WTO framework. In the end it was "green room gridlock"<sup>20</sup> and the "manufacturing of consensus"<sup>21</sup> which contributed decisively to the conference's breakdown.

It is of course most regrettable that environmental issues and t&e negotiations were literally forced upon developing countries with economic and political pressure tactics, essentially against their will. In the end they gave in to these (mostly European) pressures because they felt too vulnerable to resist a consensus that included provisions on environmental negotiations and discussions (see Annex I), especially since in November 2001 the disingenuous argument was used that they were under the obligation to show "global solidarity" in the wake of 9/11, and any resistance to the Doha consensus would carry a heavy political price. With this background, it is hardly surprising that these same countries tend to withhold cooperation now on issues they did not want in the Doha Declaration in the first place. But then again – what choice did the EC have? It is quite plausible that this was the only way to bring t&e negotiations into the DDA, and that this process of doubtful democratic virtue was the price to be paid. The unusual process of bringing t&e into a WTO Ministerial Conference clearly highlights the importance of real concessions of the industrialized countries in order to prevail over the developing world's misgivings over this particular part of the negotiation. Be that as it may, it is important to keep the history of the t&e negotiations in mind as a procedural factor which further complicates this very complex interface between long-term ecological concerns and more short-term economic priorities, not to mention real economic emergencies in the developing world. One also needs to keep in mind that especially the Environmental Goods and Services negotiations are very demanding on delegations with regard to detailed technical knowledge. It is obvious that understaffed developing countries often lacking such expertise in their Geneva Permanent Missions are further disadvantaged compared with their industrialized counterparts who have a far easier access to specialists in any given area.

## **THE DOHA ROUND: HOW EARLY ENVIRONMENTAL AMBITIONS FIZZLED OUT**

After the two failed Ministerial Conferences at Seattle and Cancun in 1999 and 2003 the pressure on the negotiators as well as on the WTO Secretariat to achieve a consensus or at least to avoid another breakdown was intense at its Sixth Ministerial in Hong Kong in December 2005. This may explain to some extent the continuation of negotiation processes which had been at the root of so much criticism and tension at the previous Ministerials, especially exclusive green room meetings or "non-meetings." "Who said what, which countries were invited or were present will not be

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<sup>17</sup> Khor 2002, 25.

<sup>18</sup> Raghavan 2003, 21.

<sup>19</sup> The name goes back to the WTO's First Ministerial Conference in Singapore in 1996 where these four issues were discussed but not formally negotiated.

<sup>20</sup> Raghavan 2003, 22.

<sup>21</sup> Kwa 2003, 35.

known or at least will not be made public.”<sup>22</sup> Thus we have to realize that the negotiation of t&e issues which was never one of the WTO’s major preoccupations comparable to agriculture subsidies, non-agricultural market access (NAMA), or tariff reduction in trade in services is stuck uncomfortably more or less in limbo in negotiation processes which are frustrating and unpredictable for most member countries and pushed aside by politically more weighty issues. Furthermore, we have to recognize in all fairness that not only in the environment but also in the other areas the negotiation targets had to be lowered considerably since the Doha Ministerial Declaration<sup>23</sup> was accepted on November 14, 2001.

The most important milestone in the DDA process was established after very intense negotiations with the adoption by the General Council on August 1, 2004 of a text that became known as the “July Package.” As in all other trade areas, this document gave a significant outline of targets and expectations with regard to t&e. This state of play can therefore be seen as an early reality check which confirmed the pessimistic assessment expressed by observers of t&e developments.<sup>24</sup> In fact this July Package seems to have pretty much spelled out the very modest achievements in t&e that can be expected in this Round under the best circumstances. The following quite self-explanatory paragraphs contain all references that are made to the environment in this document:<sup>25</sup>

1 (f) Other negotiating bodies:

Rules, Trade & Environment and TRIPS: the General Council takes note of the reports to the TNC by the Negotiating Group on Rules and by the Special Sessions of the Committee on Trade and Environment and the TRIPS Council (2). The Council reaffirms Members' commitment to progress in all of these areas of the negotiations in line with the Doha mandates.

Annex B

Framework for Establishing Modalities in Market Access for Non-Agricultural Products:

17. We furthermore encourage the Negotiating Group to work closely with the Committee on Trade and Environment in Special Session with a view to addressing the issue of non-agricultural environmental goods covered in paragraph 31 (iii) of the Doha Ministerial Declaration.

## **THE FINAL SPRINT OF THE DOHA DEVELOPMENT ROUND**

In the analysis of environmental concerns in the context of the DDA it is important to realize that their treatment in the Doha Round is characterized by a split of these issues into two categories, namely on one hand those which are to be “negotiated,” i.e. where the trade ministers have mandated the achievement of a result that will

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<sup>22</sup> Khor 2006, 10.

<sup>23</sup> DOHA WTO MINISTERIAL 2001: MINISTERIAL DECLARATION WT/MIN(01)/DEC/W/114, November 2001, [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm)

<sup>24</sup> Eckersley 2004, Thomas 2004.

<sup>25</sup> Text of the ‘July package’ — the General Council’s post-Cancún decision. WT/L/579, 2 August 2004. [http://www.wto.org/english/tratop\\_e/dda\\_e/draft\\_text\\_gc\\_dg\\_31july04\\_e.htm](http://www.wto.org/english/tratop_e/dda_e/draft_text_gc_dg_31july04_e.htm)



have legal standing among the WTO's trade provisions and can thus be taken into consideration by its Dispute Settlement Body, and on the other hand by "discussions" which are of a much more exploratory nature. The discussions take place in the Committee on Trade and Environment's regular session (CTE), whereas the negotiations are handled by the CTE in Special Session (CTESS). The first category of environmental issues is listed in para. 28 and 31,<sup>26</sup> whereas the second category is contained in the remaining environmental paragraphs, all of which are listed in Annex I. In this section we shall limit ourselves to paragraphs 31.(i) and (iii), i.e. so-called Specific Trade Obligations (STOs), and Environmental Goods, because they have received on the whole much more attention than other environmental issues during the Doha Round. There are two exceptions to this observation, namely fisheries subsidies and environmental services which both have also been negotiated seriously but not at the CTE. The Hong Kong Ministerial has achieved an important breakthrough with regards to fisheries subsidies because it has recognized that fisheries subsidies contribute to overfishing, which indicates that the WTO at least in this instance explicitly recognizes that the protection of the environment is "an agreed goal worth pursuing"<sup>27</sup> and not just a justification for exceptions to the trade rules.<sup>28</sup>

The negotiations on fisheries subsidies and environmental goods and services illustrate a crucial, very general and often overlooked feature of all environmental discussions and negotiations at the WTO: the CTE and the CTESS are by no means the only – or even the most important - fora where environmental debates take place, in numerous cases these debates take place elsewhere such as in the SPS or the TBT Committees, or the GATT or the TRIPS Council. In this case the fisheries subsidies are negotiated in the Rules Committee which deals with subsidies and countervailing duties, and environmental services in the Council of the General Agreement on Trade in Services (GATS). In the case of Environmental Goods (EGs) the negotiations have been divided into two separate tracks: the CTESS negotiates the clarification and definition of the concept of an EG, whereas the Negotiating Group on Market Access for Non-Agricultural Products (NAMA) has been put in charge of the strategy, formulae and other modalities as well as the bargaining over the actual tariff reductions.<sup>29</sup>

The fact that environmental concerns are thus sliced up is arguably detrimental for the ecosystem in many instances because environmental issues are mostly interdependent and holistic by their nature. This problem is seriously aggravated by the fact that EGS tend to be offered in packages that include different categories of both goods and services. Regrettably, the WTO's obsolete negotiation system is largely unable – at the expense of both the environment and of developing countries' needs! - to accommodate this economic and business reality. The fact that it only looks very narrowly at either certain goods categories or certain service categories is completely detached from the DDA's official objectives.<sup>30</sup> This practice, however, very much conforms to the WTO's organizational culture and negotiation tradition, and to its established practices in most areas. At issue here are the negotiation processes which lead to decisions at the General Council and at the other Councils and Committees that depend on it.<sup>31</sup> These practices represents a

<sup>26</sup> including a reference to para. 31 in para. 32

<sup>27</sup> ICTSD 2006, 4.

<sup>28</sup> That applies especially to Art. XX of the GATT.

<sup>29</sup> WTO 2005.

<sup>30</sup> UNCTAD Communication, 2006.

<sup>31</sup> Thomé 2003, 332.

serious obstacle in the implementation of the DDA's fundamental pronouncement that "International trade can play a major role in the promotion of economic development and the alleviation of poverty."<sup>32</sup> The TEPA framework aims at strengthening win-win and mutually supportive strategies, but also at shedding light on lose-lose cases with mutually destructive outcomes where profits from ill-conceived trade patterns exacerbate at the same time already serious environmental problems and deep-rooted poverty, e.g. destructive logging, fishing, or mining practices that are often illegal.

In some cases, however, dividing up environmental issues horizontally makes sense *a priori* because just about all trade issues have some environmental ramifications and implications. This interconnectedness and this frequently cross-sectoral nature of environmental concerns is precisely what makes it often difficult for the WTO's institutional planners to determine logically in which negotiating group a certain environmental issue ought to be located. These questions in fact are very important, they are at the core of DDA's para. 51 whose function it is to monitor generally the WTO negotiations with regard to their environmental and developmental ramifications. In October 2005 the WTO Secretariat conducted a closed symposium with access restricted to the staff of the Missions on para. 51 about which some partial information is available.<sup>33</sup> Regrettably, in spite of this very innovative symposium, little progress has been made so far on this paragraph, which undoubtedly indicates a serious resistance, undoubtedly both from the North and the South, to any kind of a comprehensive intersectoral approach with structured targets and timelines regarding the complex and often interlinked t&e issues. Nevertheless, based on discussions at the WTO Secretariat, it seems quite conceivable that this paragraph can be useful as a platform to launch a new set of t&e discussions and negotiations which could be independent from the outcome of the Doha negotiations.

The t&e negotiations and discussions, specific as they are, nevertheless form part of a somewhat wider context within the multilateral trading system which is often called 'non-trade issues.' These negotiations relate in very general terms to the different and often opposed viewpoints that are prevalent in industrialized and developing countries. Generally speaking, the developing countries' primary concerns in this domain relate to export possibilities and market access, whereas industrialized countries tend to be concerned mainly about threats to their ecosystem arising from developing country imports that may not meet their environmental standards and other requirements, such as e.g. maximum residue limits for pesticides or other chemicals, and restrictions on how primary products were produced or harvested. These restrictions are particularly noteworthy because they concern some of those sectors which are of particular economic importance to developing countries, such as textiles, leather, fish or horticultural products.

The purpose of the WTO's Agreements on Sanitary and Phytosanitary Measures (SPS) and on Technical Barriers to Trade (TBT) is precisely to avoid import barriers in these kinds of areas for reasons which cannot be justified based on scientific evidence, or which go beyond least trade-restricting measures.<sup>34</sup> These

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<sup>32</sup> Para. 2, [http://www.wto.org/English/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](http://www.wto.org/English/thewto_e/minist_e/min01_e/mindecl_e.htm)

<sup>33</sup> WTO Symposium on Trade and Sustainable Development within the Framework of Paragraph 51 of the Doha Ministerial Declaration, Geneva, 10-11 October 2005.  
[http://www.wto.org/english/tratop\\_e/envir\\_e/sym\\_oct05\\_e/sym\\_oct05\\_e.htm](http://www.wto.org/english/tratop_e/envir_e/sym_oct05_e/sym_oct05_e.htm)

<sup>34</sup> For a detailed overview of the highly complex and continually evolving domain of risk analysis, scientific evidence and precaution related to scientific uncertainty in the context of trade &

agreements, however, solve the developing countries' problems in this regard only partially, mainly because they and their national implementation are highly complex and tend to require expensive and specialized legal and scientific counseling and infrastructures that they often cannot afford. In the same vein, it may be too expensive for developing countries do prove successfully to the WTO Dispute Settlement Body cases of environmentally disguised forms of WTO-illegal protectionism. OECD has carried out over twenty case studies of these problems and concludes, among other points, that a one-size-fits-all approach is inappropriate, that it is difficult to quantify the impact of environmental measures, and that the responses among developing countries' industries and governments may vary considerably. The study furthermore found that NGOs in many cases play a constructive and helpful role in reconciling the needs of developing countries' industries and the import conditionalities of industrialized markets, for instance in the cases of the Marine Stewardship Council or the Green Globe 21 programme.<sup>35</sup>

## **The Two Remaining Environmental Issues of the CTESS**

We shall look now in somewhat more depth into the two most important negotiation issues which are presently negotiated at the CTESS. Interestingly, they are of a very different, even opposite nature. The Specific Trade Obligations contained in MEAs can be seen as a defensive instrument used in the protection of the ecosystem, whereas the reduction or elimination of tariff and non-tariff barriers for items which qualify as environmental goods represents a more proactive approach. At the same time, we need to distinguish between two quite different kinds of MEAs, namely those which show primarily ecological characteristics (e.g. measure that lead to reforestation or which favor renewable forms energy), whereas other MEAs clearly emphasize trade restrictions (e.g. measures trying to prevent trade in protected and endangered species or particularly toxic substances). Boisson de Chazournes and Mbengue use the terms of MEAs "à texture écologique" and "à texture commerciale"<sup>36</sup> which can be translated as MEAs that show either an ecological or a commercial emphasis.

### *A) Specific Trade Obligations*

The Relationship between Multilateral Environmental Agreements (MEAs) and the WTO agreements has given rise to legal analyses for a long time, but the introduction of this issue into the DDA's *negotiation* targets constitutes a major innovation for the trading system because until the 2001 Doha Ministerial Conference trade & environment issues were never negotiated but only discussed without any binding ramifications for the WTO members. This is indeed a positive development from an environmental perspective. At the same time, however, the price to be paid is important also, namely the imposition of the new term of "Specific Trade Obligations" at the core of these negotiations. First of all it means that the longstanding debate on

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environment policies and WTO jurisprudence see Petitpierre et al. 2004 a & b, and 2006, available at [http://www.ecolomics-international.org/ecologic\\_policy\\_and\\_law.htm](http://www.ecolomics-international.org/ecologic_policy_and_law.htm)

<sup>35</sup> OECD 2005, Executive Summary 11-20.

<sup>36</sup> Boisson de Chazournes et Mbengue 2002

MEAs has in reality been constrained and channeled toward trade objectives by the trade ministers; consideration is given to only a narrow segment within this debate, to the exclusion of all other segments. Furthermore, it also means that in spite of the lack of any more or less official definition of the term of STOs (or of MEAs for that matter!) it is assumed automatically that the WTO is entitled to decide which MEAs or which aspect of MEAs are appropriate to be negotiated and worthy of a recognized relationship with the WTO, and which are not. Obviously, the epistemic community dealing with MEAs has its own ideas on these issues, and whose ideas are prevailing in a diplomatic forum is not necessarily a question of logic but of the power dynamics. For instance, the Biosafety Protocol of the Convention on Biological Diversity (CBD) specifies in Art. 16<sup>37</sup> the process which an importing country should apply in *managing* the risks that the Protocol addresses. The question indeed arises whether these provisions represent “obligations,” whether they are “specific” enough, and whether it should be up to the WTO to decide upon such matters.<sup>38</sup>

The original demandeurs of t&e negotiations, i.e. primarily the EU, Norway and Switzerland, wanted to see the establishment of a broad approach which would analyze the basic principles underlying the WTO-MEA relationship, including all trade measures considered necessary to fulfill a treaty’s goals. The European Commissions (EC, for historic reasons the WTO does not use the term European Union but continues to use the old term of the European Commissions) emphasized in a Submission<sup>39</sup> the need for interministerial policy coordination at the national level, whereas Switzerland went a step further and spelled out three principles on which these negotiations ought to be based upon:<sup>40</sup> (1) there should not be a hierarchy between the legal provisions of trade and environmental agreements; (2) these two regimes should be ‘mutually supportive;’ (3) each regime should pay ‘deference’ toward the specific issues which are located within the other’s primary area of competence. The EC and Switzerland supported a comprehensive “‘full-scale accommodation’ approach, whereby WTO rules should be changed to allow explicitly for the use of trade measures by members pursuant to MEAs, so as to give environmental policy makers the certainty and predictability that their regimes would not be overturned in the WTO.” Switzerland was subsequently prodded to clarify its Submission by New Zealand and some other members and argued that MEAs and WTO law must be interpreted in ways which maintain each other’s integrity. The approach advocated by these countries is often called a “top down” approach because it emphasizes the validity of general principles of international law which should guide the t&e discussions and negotiations.<sup>41</sup>

This approach has been challenged by a “bottom up” approach advocated by the US and several developing countries which clearly shies away from the use of general concepts and on the contrary emphasizes the value and pertinence of case-by-case national experiences. Many countries opposing the EC-Swiss viewpoint (called a “tabula rasa” t&e policy by one intimately involved negotiator) propose what they call a “‘soft accommodation’ approach aimed at increasing the compatibility of environmental agreements with WTO rules.”<sup>42</sup>

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<sup>37</sup> Art. 16, Risk Management <http://www.biodiv.org/biosafety/articles.shtml?lg=0&a=cpb-16>

<sup>38</sup> Ogolla, Lehmann and Wang 2003.

<sup>39</sup> TN/TE/W/53 2005.

<sup>40</sup> TN/TE/W/58 2005

<sup>41</sup> Hoffmann 2004, 11-12.

<sup>42</sup> *Ib.*

The US generally attempts to trivialize any potential divergences between WTO and MEA provisions, for instance it claims that the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the CBD are fully compatible. Here the developing countries part company with the US and insist that the fact that access to plant genetic resources is tied to benefit sharing under the CBD's Art. 8 (j) marks a distinct difference between the two frameworks.

The issue of Access and Benefit Sharing (ABS) indeed is one of the key t&e negotiation topics. It is tied in with the question of the disclosure of the origin of traditional knowledge and of genetic resources, and of the demonstration of prior informed consent – a large and complex domain where the North-South divergence over trade policy is arguably particularly visible.<sup>43</sup> These issues are mentioned in the Doha Declaration in two instances, para. 19 and para. 32 (ii), but in spite of the fact that these are perhaps the most important t&e issue from a Southern perspective no major change is expected to result here from the Doha negotiations. This stalemate in ABS of course contributes to the frustration of developing countries regarding the whole Doha process, they tend to point to this example of t&e power politics to demonstrate the bias toward industrialized countries' interests in this Doha "Development" Round. The exceptionally complex ABS debates which are characterized by shifting coalitions in a number of separate negotiations processes (administered primarily by the CBD, FAO, WIPO, and the WTO) represent a particularly interesting example of the complexities and the wide ramifications and implications of the whole t&e issue area. We should not forget, however, that this same issue also clearly demonstrates that t&e issues are by no means simply a ploy of the North to make market access for Southern products more difficult! The ABS nexus of issues and negotiations goes well beyond the reach and scope of this article but it needs to be kept in mind in order to contextualize the t&e debate at the generic level, and in order to maintain an appropriate 'reality check' with regard to developing countries' t&e priorities.<sup>44</sup>

In addition to bottom up and top down, the Japanese in an explicitly exploratory Submission<sup>45</sup> introduced in 2002 the term "obligation de résultat" into the STO negotiations, a term which can be explained as emphasizing a need that has arisen from experience, or non-codified vaguely understood rights that fill gaps in legal agreements and which are based on precedent and habits. The Europeans added another element to this approach by looking at clusters of such vaguely defined rights. This seems to be an interesting approach but for the time being it seems not to have generated a great deal of support, and according to interviews at the WTO Secretariat has hardly been used subsequently at the CTESS.

There are approximately twenty MEAs which contain explicit trade measures, but trade officials have indicated that in most cases these measures are not really problematic for the WTO. The relationship between the MEA's trade restrictions and WTO agreements does, however, represent a potential for conflict primarily in the following MEAs:

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<sup>43</sup> See for instance Bellmann, Dutfield and Meléndez-Ortiz 2003; Chouchena-Rojas, Muller, Vivas and Winkler ed. 2005; Cullet 2005, Twarog and Kapoor ed. 2004, UNCTAD-ICTSD 2005.

<sup>44</sup> For an up to date set of analyses on the CBD's 8<sup>th</sup> Conference of the Parties in Curitiba, Brazil, in March 2006, and the negotiations and decisions regarding ABS see [http://www.ecolomics-international.org/iprsat\\_cbd\\_cop\\_8\\_curitiba\\_0306.htm](http://www.ecolomics-international.org/iprsat_cbd_cop_8_curitiba_0306.htm)

<sup>45</sup> Submission by Japan on Paragraph 31 (i). The Relationship between existing WTO rules and STOs set out in MEAs. October 3, 2002.



- Cartagena Protocol on Biosafety;<sup>46</sup>
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;
- Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES);
- Framework Convention on Climate Change / Kyoto Protocol.

In these instances a case-by-case approach will have to be used. In any case, legal incompatibility does not cause the main difficulty for developing countries. A bigger problem for them resides in the enormous complexity and the sheer number of rules and other provisions of both the trade and the environmental agreements.<sup>47</sup>

### *B) Environmental Goods*

At the most fundamental level, Environmental Goods (EGs) are classified either as “Industrial goods used to provide environmental services to address pollution and waste affecting water, soil and air,” (e.g. plastic lining material for landfill sites or trash compactors), or else “Industrial and consumer goods that have environmentally preferable characteristics relative to substitute goods,”<sup>48</sup> (e.g. CFC-free refrigerants or chlorine-free paper). It is fair to say that there has been a considerable amount of negotiations on Environmental Goods since the 2001 Ministerial, but that as of this writing (March 2006) we are still very far from any substantive conclusions. As a matter of fact, the WTO members are still embroiled in wrangling over the basics of definitions, criteria and of categorizing EGs – admittedly very complex issues which were undoubtedly underestimated at the outset.

One of the most divisive issues is a question which arose relatively late in the process. India in June 2005 proposed an alternative to list- or criteria-based approaches. The suggestion was to liberalize tariffs on both environmental goods and services on a temporary basis for the duration of a *project* that seeks to fulfill an environmental objective.<sup>49</sup> It should be mentioned that “The focus, however, is on negotiations with environmental goods, as their significance for sustainable development is much higher [than services].”<sup>50</sup> The management of the details of the tariff reduction would be mandated to a ‘designated national authority.’<sup>51</sup> India claims that this approach would facilitate dealing with very complex issues that arise with goods and services which have not only environmental but also other uses.

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<sup>46</sup> For an up to date set of analyses on the Biosafety Protocol’s 3<sup>rd</sup> Meeting of the Parties in Curitiba, Brazil, in March 2006, and the negotiations and decisions regarding changes in the labeling requirements for the trade of GM commodities see [http://www.ecolomics-international.org/biosat\\_bp\\_mop\\_3\\_2006\\_curitiba\\_brazil.htm](http://www.ecolomics-international.org/biosat_bp_mop_3_2006_curitiba_brazil.htm)

<sup>47</sup> For an in-depth analysis of the WTO jurisprudence on t&e issues see Bernasconi-Osterwalder, Magraw, Oliva, Orellana and Tuerk 2005.

<sup>48</sup> UNEP-UNCTAD Capacity Building Task Force, 2005.

<sup>49</sup> ICTSD and IISD 2005, 35.

<sup>50</sup> Carpentier, Gallagher and Vaughan, 227.

<sup>51</sup> TN/TE/W/51, TN/TE/W/54, TN/TE/W/60, 2005.

One of the key instruments at the heart of these EGs negotiations is the Harmonized Commodity Description and Coding System tariff nomenclature, generally referred to as Harmonized System (HS).<sup>52</sup> This multipurpose international product nomenclature has been developed by the Brussels-based World Customs Organization.<sup>53</sup> The linkage of the WTO negotiations with this HS is exceedingly complex and represents undoubtedly one of the key stumbling blocks, especially for developing countries, in clarifying their own interest in these negotiations. The application of the HS is further complicated considerably by the fact that lists of EGs need to be “living lists” due to technological progress, i.e. the characteristics which contribute to the environmental nature of a product may change considerably over a relatively short time.<sup>54</sup> These characteristics of course are related to process and production methods which have been one of the WTO’s thorniest topics since its inception.<sup>55</sup> These very technical negotiations are further complicated by the introduction of the term ‘Environmentally Preferred Product’ (EPP). UNCTAD defines these as

products which cause significantly less ‘environmental harm’ at some stage of their life cycle than alternative products that serve the same purpose or products the production and sale of which contribute significantly to the preservation of the environment, for example bio-pesticides.<sup>56</sup>

The negotiations on Environmental Goods and Services represent a very substantial additional t&e challenge to seriously understaffed and under-funded developing country Missions, not to mention their Ministries. This is an area which is so technical and product-specific that for many if not most developing countries it is very difficult to elaborate a strategic approach to these negotiations. Interviews at UNCTAD have shown that it is actually in many cases not clear at all what the added value of certain tariff reductions is for many developing countries, and what kind of a relevant balance between rights and obligations would evolve from specific changes. In fact it is in many instances a challenge for their overstretched human resources to figure out what are the strategic questions for which they must prepare, i.e. the quintessence of preparing a negotiating position: “What is it exactly that the WTO members may achieve with the negotiations that they would not be able to achieve without them?”<sup>57</sup> It is very disturbing in this context that the intentions expressed in para. 33 of the DDA which calls for the preparation of a Report on technical assistance, capacity building, and on the sharing of experience and expertise for the 2003 Ministerial Conference at Cancun seem to have fizzled out. Whatever may have happened to this Report at and after the failed fifth Ministerial, it is clear that the level of financial support from the industrialized countries for the implementation of t&e provisions represents a clear signal of their political will to make progress in this area. Unfortunately, there are hardly any signs that such a political will is present to a substantial degree.

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<sup>52</sup> Steenblik 2005, 7.

<sup>53</sup> <http://www.wcoomd.org/ie/En/en.html>

<sup>54</sup> Steenblik 2005, 13, 19.

<sup>55</sup> *Ib.*, 13.

<sup>56</sup> Vikhlyayev 2005, 35.

<sup>57</sup> Vikhlyayev 2004, 33.

## **CONCLUSIONS**

One of the most difficult and arguably the most important challenge in the Southern perspective on the Doha Development Round is to demonstrate to developing countries that in spite of their numerous other immediate and short-term emergencies priorities, it is necessary for them to integrate medium and long-term t&e concerns into their public policies. A deteriorated ecosystem will make it impossible for them to look after their economic and other needs, such as quantitatively and qualitatively sufficient drinking and irrigation water or agricultural soils, not to mention the stability and predictability of the climate – a fundamental concern where they tend to be much more vulnerable than the geographical as well as the economic North. The fact is that even in the North “there is still little understanding of the direct link between ecosystems and trade policy.”<sup>58</sup>

As far as the DDA negotiations are concerned, it is very regrettable that a more comprehensive approach to the t&e problematic is now out of sight. Para. 51 of the Doha Agenda essentially expresses the international community’s view that members ought to monitor how environmental and developmental considerations are brought to bear on all aspects of negotiations. Unfortunately it is clear now that the trade Ministries are not fulfilling this mandate which they had given themselves: “environmental considerations were absent in the ongoing negotiations on agriculture, non-agricultural market access and services.”<sup>59</sup>

The enormous enlargement of its scope and activities which the Uruguay Round gave the trading system inevitably brought about a multiplication of overlaps and interactions between it and UN organizations. One should think, therefore, that the coherence between the two governance systems would be one of the key international policy questions. In fact, however, nothing is further from the truth. The WTO system is much more isolated and impermeable from global ecosystem considerations than the UN system and seems in no hurry to make its agreements compatible with developmental and environmental priorities, contrary to UN agreements and organizations which are arguably far more open to all kinds of stakeholders.<sup>60</sup> The pathetic impasse over the DDA’s para. 31 (ii) dealing with information exchanges and with the observer status for MEA Secretariats is perhaps the most visible and glaring example.<sup>61</sup> Even though it is obvious that the WTO has a far stricter organizational culture than UN organizations, which does make change and adjustment more difficult, at the end of the day it is political will which blocks institutional change or makes it possible.

Of course strictly speaking it is not the WTO’s fault that the two universes of the environment and of trade are still so far separated, it is its members’ fault. It is very sobering to realize that UNEP’s mandate in trade & environment goes back to 2001 (Annex II) because the UNEP Secretariat has since then abstained from

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<sup>58</sup> ICTSD 2006, 4.

<sup>59</sup> CIEL 2005, 2.

<sup>60</sup> Sampson 2005, 294-298.

<sup>61</sup> Abdel Motaal, 2002



seeking a renewed confirmation of this mandate, undoubtedly because it has good reasons to reckon with the possibility of a further weakening of its already very much under-funded small Economics and Trade Branch in Geneva.<sup>62</sup> Would a new World Environment Organization be more effective?<sup>63</sup> That might happen but only if there is a change in the dynamics of the exercise of power, especially a better balanced relationship between the WTO, the Bretton Woods Institutions, and the UN which is at the root of the TEPA framework, and which must give more weight and consideration to multilateral environmental agreements and problems:

Just as at the IMF it is the finance ministers that are heard, at the WTO it is the trade ministers. No wonder, then, that little attention is often paid to concerns about the environment.<sup>64</sup>

I would conclude therefore that it doesn't really matter a great deal where exactly institutional innovation is introduced, it is more important that the political will is present and determined to overcome the political obstacles. This may be at the UNEP Governing Council, at the WTO, at several other intergovernmental fora, or at a new organization. The fact of the matter is that the fundamental issues are essentially the same. Some progress has been achieved over the past years in the area of project management, but it is more important to carry out change at the multilateral policy level where trade & environment negotiations in the widest sense are of crucial importance. Last but not least, if the industrialized countries do not take the lead, because they are the only ones that can afford to do so, it is counterproductive to blame the developing world for its lack of initiative.

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<sup>62</sup> <http://www.unep.ch/etu/etugen/about.htm>

<sup>63</sup> Biermann and Bauer, ed. 2005.

<sup>64</sup> Stiglitz 2002, 225

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**Annex I:  
Environment-related Paragraphs of the Doha Declaration**

**WORLD TRADE**

**ORGANIZATION**

**WT/MIN(01)/DEC/W/1**

14 November 2001

(01-5769)

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**MINISTERIAL CONFERENCE**

**Fourth Session**

**Doha, 9 - 14 November 2001**

**MINISTERIAL DECLARATION**

[http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm)

6. We strongly reaffirm our commitment to the objective of sustainable development, as stated in the Preamble to the Marrakesh Agreement. We are convinced that the aims of upholding and safeguarding an open and non-discriminatory multilateral trading system, and acting for the protection of the environment and the promotion of sustainable development can and must be mutually supportive. We take note of the efforts by Members to conduct national environmental assessments of trade policies on a voluntary basis. We recognize that under WTO rules no country should be prevented from taking measures for the protection of human, animal or plant life or health, or of the environment at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, and are otherwise in accordance with the provisions of the WTO Agreements. We welcome the WTO's continued cooperation with UNEP and other inter-governmental environmental organizations. We encourage efforts to promote cooperation between the WTO and relevant international environmental and developmental organizations, especially in the lead-up to the World Summit on Sustainable Development to be held in Johannesburg, South Africa, in September 2002.

19. We instruct the Council for TRIPS, in pursuing its work programme including under the review of Article 27.3(b), the review of the implementation of the TRIPS Agreement under Article 71.1 and the work foreseen pursuant to paragraph 12 of this Declaration, to examine, *inter alia*, the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore, and other relevant new developments raised by Members pursuant to Article 71.1. In undertaking this work, the TRIPS Council shall be guided by the objectives and principles set out in Articles 7 and 8 of the TRIPS Agreement and shall take fully into account the development dimension.

28. In the light of experience and of the increasing application of these instruments by Members, we agree to negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures, while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives, and taking into account the needs of developing and least-developed participants. In the initial phase of the negotiations, participants will indicate the provisions, including disciplines on trade distorting practices, that they seek to clarify and improve in the subsequent phase. In the context of these negotiations, participants shall also aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries. We note that fisheries subsidies are also referred to in paragraph 31.

#### TRADE AND ENVIRONMENT

31. With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudging their outcome, on:

- (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.

We note that fisheries subsidies form part of the negotiations provided for in paragraph 28.

32. We instruct the Committee on Trade and Environment, in pursuing work on all items on its agenda within its current terms of reference, to give particular attention to:

- (i) the effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development;
- (ii) the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights; and
- (iii) labelling requirements for environmental purposes.

Work on these issues should include the identification of any need to clarify relevant WTO rules. The Committee shall report to the Fifth Session of the Ministerial Conference, and make recommendations, where appropriate, with respect to future action, including the desirability of negotiations. The outcome of this work as well as the negotiations carried out under paragraph 31(i) and (ii) shall be compatible with the open and non-discriminatory nature of the multilateral trading system, shall not add to or diminish the rights and obligations of Members under existing WTO agreements, in particular the Agreement on the Application of Sanitary and Phytosanitary Measures, nor alter the balance of these rights and obligations, and will take into account the needs of developing and least-developed countries.

33. We recognize the importance of technical assistance and capacity building in the field of trade and environment to developing countries, in particular the least-developed among them. We also encourage that expertise and experience be shared with Members wishing to perform environmental reviews at the national level. A report shall be prepared on these activities for the Fifth Session.

51. 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 developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected.



## **Annex II**

### **UNITED NATIONS ENVIRONMENT PROGRAMME**

#### **TWENTY-FIRST SESSION OF THE GOVERNING COUNCIL GLOBAL MINISTERIAL ENVIRONMENT FORUM**

#### **DECISIONS ADOPTED BY THE GOVERNING COUNCIL AT ITS TWENTY-FIRST SESSION**

<http://www.unep.org/GC/GC21/>

**9 February 2001**

#### **Decision 21/14 Trade and environment**

#### **The Governing Council,**

Recalling chapter 2 of Agenda 21, its decision 20/29 of 4 February 1999 and the Malmö Ministerial Declaration,

Recalling also paragraph 9 of the Malmö Ministerial Declaration and the recommendation contained therein, to encourage a balanced and integrated approach to trade and environmental policies in pursuit of sustainable development, in accordance with the decision of the Commission on Sustainable Development at its eighth session,

Recalling in particular paragraph 5 of decision 8/6 of the Commission on Sustainable Development on economic growth, trade and investment, which identified priority areas for future work to include the following:

Promoting sustainable development through trade and economic growth;

Making trade and environmental policies mutually supportive;

Promoting sustainable development through investment;

Strengthening institutional cooperation, capacity-building and promoting partnerships.

Taking note of the actions taken by the Executive Director in the field of trade and environment, including the ongoing collaboration between the United Nations Environment Programme, the World Trade Organization and the United Nations Conference on Trade and Development,

Having considered the report of the Executive Director (UNEP/GC.21/2),

1. Reiterates the need for a balanced and integrated approach to trade and environmental policies in pursuit of sustainable development in accordance with relevant United Nations resolutions and decisions;

2. Stresses that it is necessary that the environmental perspective should be taken into account in both the design and the assessment of macro-economic policy-making, as well as practices of government and multilateral lending and credit institutions such as export credit agencies, as highlighted in the Malmö Ministerial Declaration;

3. Requests the Executive Director to further strengthen the secretariat in order for it to assist countries, particularly developing countries and countries with economies in transition to enhance their capacities to develop and implement mutually supportive trade and environmental policies. Such assistance should be geared to reflect the socio-economic and development priorities, as well as the needs and capacities of individual countries;

4. Agrees that the Executive Director should pursue further actions, as appropriate, related to trade and environment, in close cooperation with the World Trade Organization and the United Nations Conference on Trade and Development, including the following:

To develop national capacities to assess the environmental effects of trade;

To study the effectiveness of market-based incentives in achieving the objectives of multilateral environmental agreements including those agreements for which the United Nations Environment Programme provides the secretariat;

To continue to promote understanding, dialogue and the dissemination of information about multilateral environmental agreements, including any trade measures, inter alia, to develop capacity to ensure that trade and environmental policies are mutually supportive;

5. Requests also the Executive Director to further promote, including through international cooperation, the national development and application of environmental impact assessment, environmental valuation, methodologies for natural resource accounting and relevant economic instruments in accordance with the socio-economic and development priorities of individual countries;

6. Requests the Executive Director, to continue to collaborate with the private sector including the financial services sector, with a view to enhancing their contribution to the achievement of sustainable development through the development of cleaner and more resource-efficient technologies for a life cycle economy and efforts to facilitate the transfer of environmentally sound technologies to developing countries;

7. Requests the Executive Director to periodically consult and brief Governments, including through the Committee of Permanent Representatives, on the United Nations Environment Programme's work identified in this decision and report to the next session of the Governing Council in this regard.