
COMMENTS ON CTESS CHAIR'S REPORT (TN/TE/20, 21 APRIL 2011)

On Paragraphs 31(i) and 31(ii)

1. The report sets out in Annex I a draft Ministerial Decision on Trade and Environment in relation to paragraphs 31(i) and 31(ii) of the Doha Ministerial Declaration (DMD). The draft has preambular language and five (5) operational paragraphs.
2. The preambular paragraphs essentially show different perspectives from WTO members in terms of the legal relationship of specific trade obligations (STOs) in Multilateral Environmental Agreements (MEAs) and World Trade Organization (WTO) rules, and the effect of such STOs in relation to the application of WTO rules.
3. The operational paragraphs are as follows:
 - a. Paragraph 1 encourages members to engage in domestic coordination when negotiating and implementing STOs and WTO rules, and experience sharing activities at the Committee on Trade and Environment (CTE). These generally have not been controversial vis-à-vis developing countries;
 - b. Paragraph 2 requires the WTO Secretariat to cooperate with and enhance access of MEA secretariats to WTO documents. These generally have not been controversial vis-à-vis developing countries;
 - c. Paragraph 3 sets out some conditions under which MEAs secretariats may be granted observer status in the CTE. These generally have not been controversial vis-à-vis developing countries. The members generally opposing the grant of observer status to MEAs secretariats have been the US and Australia, particularly in relation to the Convention of Biological Diversity (CBD) in the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Council and the CTE regular session because of the link between the CBD's work on genetic resources and TRIPS;
 - d. Paragraph 4 mandates the CTE to grant observer status to some MEAs. The box contains the following MEAs: Basel Convention, ITTO, Montreal Protocol, and Rotterdam PIC. These generally have not been controversial vis-à-vis developing countries
 - e. Paragraph 5 specifies some other functions that the CTE is supposed to undertake, including:
 - i. Serving as a forum for experience sharing among members;
 - ii. Holding information exchanges with MEA secretariats;

- iii. Oversee the development of technical assistance and capacity building (TACB) activities by the WTO Secretariat on the implementation of STOs in MEAs;
- iv. Establishment of a group of experts to be elected by the CTE to be made available to LDCs and developing countries. This is based on proposals coming from the African and ACP Groups. More detail is provided in Annex I.A of the draft ministerial decision;
- v. Providing for a non-adjudicatory and conciliatory procedure to allow members to settle differences regarding the relationship between STOs in MEAs and WTO rules. This is based on a proposal from Switzerland, with more details provided in Annex I.B of the report.

These proposals generally have not been among developing countries.

On Paragraph 31(iii)

4. Annex II of the CTESS Chair's report lays out the Chair's assessment of the state of the negotiations in environmental goods under paragraph 31(iii) of the DMD.
5. While the report itself, substantively, provides a good overview of the various proposals that have been made by members, both developed and developing countries, in the paragraph 31(iii) negotiations, the overall structure and presentation of the report itself creates that impression that members have been focusing their discussions on essentially having a list-based outcome in relation to environmental goods. Such an outcome has, by and large, not been favoured by developing countries.
6. The Chair's report also pays very little attention to the proposals from developing countries on the need to have a development-oriented aspect to the negotiations. Instead, Annex II.A of the report provides a "reference universe of environmental goods" based on the submissions of environmental goods made by members (mostly developed countries). In doing so, it creates the impression that such list is the definitive list of environmental goods. In fact, the report in Annex II.A DOES NOT make any disclaimer that the list in itself is not an agreed or consensus "reference universe" of environmental goods.
7. Annex II.B goes farther by setting out a "sample core list of environmental goods" and states that it is "a starting point for discussion in the CTESS towards a credible core list of environmental goods, without prejudice to the final outcome." This list is drawn from a submission of members which have been, since the start,

among those who have generally favoured a list-based approach along the lines of what had been earlier proposed by the EU and the US and other developed countries. Annex II.B takes as a given that the starting point will be a list-based approach, something that developing countries generally have not agreed to and have many reservations about because of the great potential that the list would focus primarily on goods of interest to developed countries – this is because most of the listed items would be high-value added manufactured products generally produced by developed countries and imported by developing countries.

8. Also, paragraph 17 of the Chair's report highlights that all of the options for the treatment modalities (i.e. the extent of tariff reduction to be undertaken for the listed products) "include a reduction of tariffs to zero for some products or a reduction including 0 for X and a 50 per cent cut after formula application and elimination of tariffs by certain set periods of time." However, what the report does NOT say is that these proposals all come from mostly developed countries who favour the list-based approach. Such proposals have generally not been viewed positively by most developing countries, with many expressing concern that such proposals would result in developing countries providing more non-reciprocal market access to developed countries.
9. The Chair's report provides lip service to the need to eliminate non-tariff barriers (NTBs) and to provide for special and differential treatment in relation to environmental goods, based on submissions by developing countries. However, it does not provide the same amount of detail as to what these are as the report does provide to the zero-tariff proposals of developed countries.
10. Finally, while the Chair's report in paragraph 21 makes a bare reference to the submissions made by various developing countries in relation to environmental technologies, it does not, however, provide any detail as to what these submissions propose in relation to the need for technology transfer, IP flexibilities, and other aspects. These are important issues that need to be included as part of the outcome.
11. Overall, in terms of how it structured its discussion vis-à-vis paragraph 31(iii), the Chair's report focuses on the list-based approach, showcasing detailed lists of environmental goods generally coming from developed countries, and providing very little space to development issues raised by developing countries such as NTB elimination, special and differential treatment, technology transfer.