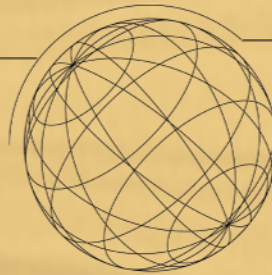


Trade and Environment at the WTO



WORLD TRADE
ORGANIZATION

The Effects of Trade Liberalization on the Environment

THE ENVIRONMENTAL BENEFITS OF REMOVING TRADE DISTORTIONS: THE WIN-WIN-WIN SITUATIONS

Marrakesh Declaration - Item 6 - (Second Part)¹⁸

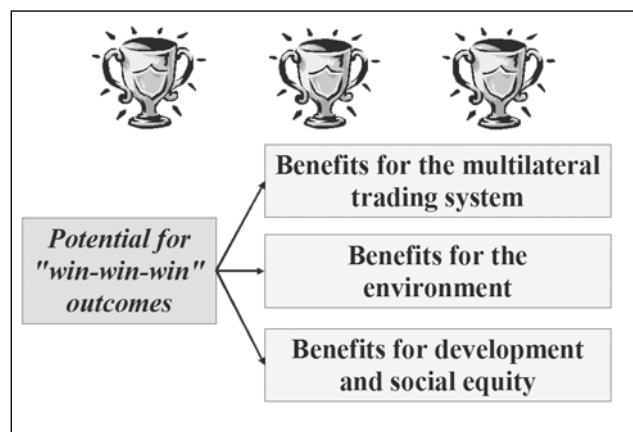
The environmental benefits of removing trade restrictions and distortions.

Doha Declaration - Paragraph 32(i) - (Second Part)

Those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development.

In the 1996 Singapore Report of the CTE, Members expressed an interest in undertaking further work to broaden the analysis of the potential environmental benefits of removing trade restrictions and distortions in specific sectors. It is considered that trade liberalization in certain sectors has the potential to yield benefits for both the multilateral trading system and the environment.

A background note prepared by the Secretariat¹⁹ observes that, to a great extent, trade liberalization is not the primary cause of environmental degradation, nor are trade instruments the first-best policy for addressing environmental problems. The environmental benefits of removing trade restrictions and



¹⁸ For the first part of item 6 and paragraph 32(i) see page 14.

¹⁹ WT/CTE/W/67, 7 November 1997, "Environmental Benefits of Removing Trade Restrictions and Distortions", Note by the Secretariat.



distortions are likely to be indirect and not readily identifiable in general terms. This is particularly the case for trade policies as they are but one of several areas of policy-making that have an effect on economic activity.

However, the study prepared by the Secretariat points towards a positive relationship between the removal of trade restrictions and distortions and improved environmental quality, through:

- (a) more efficient factor-use and consumption patterns through enhanced competition;
- (b) poverty reduction through trade expansion and encouragement of a sustainable rate of natural resource exploitation;
- (c) an increase in the availability of environment-related goods and services through market liberalization; and
- (d) better conditions for international cooperation through a continuing process of multilateral negotiations.

For developing countries, trade is an important means for securing resources needed for environmental protection. The political promises made at UNCED in 1992 of large financial and technology transfers to developing countries, to help them meet their economic development and environmental protection needs, have not been fulfilled. As a result, trade liberalization in favour of products of export interest to developing countries is fundamental to help them achieve sustainable development, and developing countries have stressed this fact in the CTE.

Agriculture

On this issue, there are two distinct arguments. One group of Members considers that agricultural trade reform offers "win-win-win" opportunities for the environment, trade and development. Trade- and production-distorting agricultural subsidies have a negative effect not only in the countries that apply such policies (incentive for intensive farming practices), but also on the environment of other countries, particularly developing countries. Such subsidies increase the instability of the international price of agricultural commodities, which reduces returns from agriculture in developing countries, thus discouraging production and investment. Lower agriculture returns are linked to poverty - a major cause of environmental degradation. Conversely, increased returns from agriculture would lead to higher incomes for developing country producers, improving their financial capacity to maintain and pursue sustainable farming practices.



Another group of Members is of the view that a certain level of domestic support is necessary to maintain various environmental benefits arising from agricultural production. These benefits include the maintenance of cultural landscapes, land conservation, management of water resources and the preservation of biodiversity.

Energy

Some Members are of the view that the energy sector presents a potential "win-win-win" situation for environment, trade and development. They argue that existing taxation and subsidy schemes in OECD countries are generally biased and discriminatory vis-à-vis petroleum products. There are negligible taxes on coal and gas, and, in addition, coal products in many OECD countries are subsidized. It is suggested by these Members that subsidies be removed and that fuel taxation be restructured to reflect carbon content - this would ensure that polluting sources (with higher carbon content) are penalized, not favoured. Other Members consider that the CTE is not the appropriate forum to discuss the impact of measures taken to mitigate climate change, as this is being dealt with adequately in the UNFCCC and the Kyoto Protocol.

Fisheries

Paragraph 28 of the Doha Ministerial Declaration instructs Members "to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries". Discussion on this issue is taking place in the context of the Agreement on Subsidies and Countervailing Measures (SCM) in the Negotiating Group on Rules. However, fisheries subsidies have been discussed at length in the CTE under item 6 of its work programme.

There is a general recognition of the importance of achieving the objective of sustainable development in the fisheries sector. A few Members maintain that poor fisheries management - taking place under open-access fisheries - coupled with increasing world demand for fishery products are at the root of declining world fisheries resources resulting from over-exploitation and illegal, unreported and unregulated fishing. In these Members' view subsidies could be an effective instrument to reduce capacity, for example through vessel buy-back programmes.



Other Members consider that over-capacity, and, consequently, a significant part of over-exploitation of fisheries, is caused by subsidies. Even when apparently sound management regimes are in place, subsidies could destabilize fisheries management and impede the objective of reducing over-capacity. In this regard, trade liberalization, in concert with sustainable resource management, could stimulate more efficient production with more long-term environmental benefits.

Forestry

The WSSD Plan of Implementation gives considerable importance to the concept of sustainable forest management. It points out that as forests provide multiple benefits, such as the mitigation of global warming and the conservation of biological diversity, the issue needs to be dealt with in a cross-sectoral manner which includes a discussion of elements relevant to trade. While Members agree on the importance of achieving the objective of sustainable development, some stress that there are different ways of achieving sustainable forest management. There is a need to look at measures which ensure conservation without reducing countries' ability to benefit economically from their forestry resources. This is particularly important for many developing countries.

Several Members share the concern that international trade of illegally harvested forest products could undermine conservation efforts in source countries, as well as other environmental, economic, and social goals. The importance of appropriate domestic regulation, and the capacity to implement, monitor and enforce such regulation, has been emphasized. In addition, more attention needs to be given to the fact that poverty is at the root of the problem because it fuels the illegal exploitation of forestry resources.

Some have emphasized that while domestic measures taken to combat illegal logging are needed, it is also important to examine possible international approaches from a trade perspective, taking into account discussions in other international fora. Others are of the view that the issue is being appropriately dealt with elsewhere and question the usefulness of debating it in the WTO.



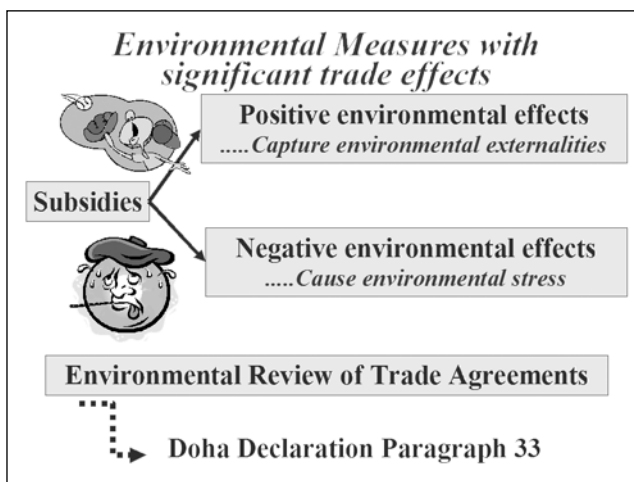
ENVIRONMENTAL POLICIES

Marrakesh Declaration - Item 2

The relationship between environmental policies relevant to trade and environmental measures with significant trade effects, and the provisions of the multilateral trading system.

The main issue examined under item 2 has been the treatment of environmental subsidies in the WTO. Other issues raised have included the environmental review of trade agreements.

Trade-Related Environmental Policies: Subsidies



Subsidies have the potential to contribute either positively or negatively to the environment. They may contribute positively when they capture positive environmental externalities. On the other hand, they may contribute negatively if they cause environmental stress (by, for instance, encouraging the overuse of certain natural resources). In the areas of agriculture and energy, subsidies are widely viewed as being trade distorting, and, in some instances, as being the cause of environmental degradation. Environmentalists have suggested that multilateral trade rules should incorporate greater flexibility for providing subsidies to encourage activities or technologies which have a beneficial impact on the environment.

During the Uruguay Round both the positive and negative contributions which subsidies may make to the environment were considered, and a number of new disciplines, as well as exemptions, were included in the Agreement on Agriculture and the SCM Agreement (although Article 8.2(c) of the SCM Agreement has expired). Under the Agreement on Agriculture, environmental subsidies may be exempt from domestic support reductions when certain conditions are met.



In the CTE, energy subsidies have also been addressed. Attention has focused on the revised rules for export subsidies provided in the SCM Agreement, whereby taxes on energy used to produce exports can be refunded without such refunds being treated as an export subsidy. Annexes 1 and 2 of the Agreement specify that exemption or remission of taxes on "inputs that are consumed in the production of the exported product" do not amount to a subsidy on exports. The exemption applies for physically incorporated inputs and "energy, fuels and oil used in the production process and catalysts which are consumed in the course of their use to obtain the exported product."

Certain Members have argued that this provision encourages the greater use of energy intensive technologies for exports. No definitive conclusions on subsidies were reached by the CTE. It was agreed that further examination and analysis of policies of this nature would be required in future. Subsidies have also been considered under another item of the CTE's work programme (item 6, see above page 22). However, there they have been considered in relation to their specific trade distorting and environmentally damaging effect in certain sectors, such as agriculture and fisheries. The discussion of subsidies under item 2, therefore, is a more generic discussion.

The Environmental Review of Trade Agreements

In recent years, several governments have come under increasing pressure from NGOs to carry out environmental reviews of trade agreements. The United States and Canada, for instance, have prepared reviews of the North American Free Trade Agreement and of the Uruguay Round Agreements. Under item 2, the United States has recommended the use of environmental reviews of trade agreements by governments at the national level. The CTE has devoted greater attention to the issue in recent years, and the Doha Ministerial Declaration contains a paragraph relevant to this issue (Paragraph 33) which encourages Members to share their experience and expertise with others on how national environmental reviews can be performed. The importance of environmental reviews in WTO trade negotiations has also been confirmed in paragraph 6 of the Doha Declaration and, subsequently, in the WSSD Plan of Implementation. Paragraph 6 of the Doha Declaration reads: "We take note of the efforts by Members to conduct national environmental assessments of trade policies on a voluntary basis".



In the discussion held under paragraph 33, Members have emphasized the usefulness of an exchange of information on methods of environmental reviews, but also on the constraints facing developing countries in this regard. Some Members have stressed the fact that environmental reviews at the national level, besides being voluntary, need to be consistent with a country's priorities and the task of developing countries should not be made more onerous by imposing harmonized review procedures.

THE EXPORTS OF DOMESTICALLY PROHIBITED GOODS

Marrakesh Declaration - Item 7

The issue of exports of domestically prohibited goods

This issue covers products which are exported even though their sale and use are banned or severely restricted domestically on the grounds that they present a danger to the environment or to the life or health of humans, animals or plants. It is of particular concern to many developing and least-developed countries, which often lack the capacity or resources to deal with such products.

The GATT has examined the issue of the export of DPGs as early as 1982. Concern was raised by a number of developing countries, Parties to GATT, about the fact that goods were being exported to them, when their domestic sale in exporting countries had been either prohibited or severely restricted on health and environmental grounds. This raised ethical concerns which, from the point of view of these countries, needed to be addressed within the bounds of the multilateral trading system.

At the 1982 Ministerial Meeting of GATT Contracting Parties, it was agreed that the GATT examine the issue, and that all Parties notify the GATT of any goods produced and exported by them which were banned by their national authorities for sale in their domestic markets for health or environmental reasons. A notification system was set up following this Decision, but Parties tended to notify DPGs whose export had also been prohibited, rather than the ones which they continued to export. The notification system was not successful, therefore, and no notifications were received after 1990 (despite the fact that the 1982 Decision remains in force).



In 1989, a Working Group on the Export of DPGs was established in GATT. The Working Group met 15 times between 1989 and 1991, when its mandate expired, but failed to resolve the issue. At the 1994 Marrakesh Ministerial Conference, it was agreed to incorporate DPGs into the terms of reference of the CTE.

While numerous international instruments already address the export of DPGs (such as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal), these instruments principally address chemicals, pharmaceuticals, and hazardous wastes and not the issue of consumer products, which has been identified as a gap by most WTO studies. Certain delegations have argued that while other instruments exist a number of them are only voluntary in nature; they have expressed their wish to see quicker and better progress on the issue in the WTO.

Collectively, the CTE has stated that while there is a need to concentrate on the role which the WTO can play on this issue, it is important neither to duplicate nor to deflect attention from the work of other specialized inter-governmental fora. It also recognized the important role that technical assistance and transfer of technology related to DPGs can play in both tackling environmental problems at their source and in helping avoid unnecessary additional trade restrictions on the products involved. It stated that WTO Members should be encouraged to provide technical assistance to other Members, especially developing and least-developed countries, either bilaterally or through inter-governmental organizations. This would assist these countries in strengthening their technical capacity to monitor and, where necessary, control the import of DPGs.

Based on a Secretariat note prepared on the information available in the WTO on the export of DPGs,²⁰ some delegations requested that the DPG notification system that had been in existence between 1982 and 1990 be revived, particularly as the Decision taken to establish it remains in force today. The system has not yet been revived. In recent years, the issue has not been raised in the CTE.

²⁰ See document WT/CTE/W/43, 22 April 1997.



SERVICES AND THE ENVIRONMENT

Marrakesh Declaration - Item 9

The work programme envisaged in the Decision on Trade in Services and the Environment.

The Decision on Trade in Services and the Environment

The work programme in the "*Decision on Trade in Services and the Environment*" notes that "since measures necessary to protect the environment typically have as their objective the protection of human, animal or plant life or health, it is not clear that there is a need to provide for more than is contained in paragraph (b) of Article XIV". In order to determine whether any modification of GATS Article XIV is required to take account of such measures, the Decision requested the CTE to examine and report, with recommendations, if any, on the relationship between services trade and the environment, including the issue of sustainable development. The Decision also asked the CTE to examine the relevance of inter-governmental agreements on the environment and their relationship to the GATS.

During the negotiation of the GATS, several delegations proposed that exceptions be provided to allow for restrictions on services trade to address problems of "the environment", "sustainable development", "the integrity of infrastructure or transportation systems", or "the conservation of exhaustible natural resources". One of the major concerns in this regard was the restrictions that Austria and Switzerland wished to maintain on transit lorry traffic, which they felt was damaging their environment. No agreement was reached before the end of the Uruguay Round to make special reference to these concerns, and the Decision on Trade and Environment reflected the insistence of certain delegations on revisiting the issue.

Discussions in the CTE

In the CTE, one Member has pressed for a broader exceptions clause in the GATS than exists at present, while many other Members feel that since the GATS is still evolving it would be premature to assess the adequacy of Article XIV(b) in dealing with environmental concerns. This issue is linked to the adequacy of Article XX of GATT 1994 in dealing with environmental concerns in the area of trade in goods.²¹

²¹ For an explanation of Article XX, see page 50.



Discussion in the CTE to date on this item has not led to the identification of any measures that Members feel may need to be applied to services trade for environmental purposes, and which would not be covered adequately by GATS provisions, in particular Article XIV(b).

Effects of Services Trade Liberalization on the Environment

In 2002, the WTO Secretariat prepared a study on the effects of services trade liberalization on the environment.²² This paper looks at three selected areas (tourism, land freight transport (inter-urban) and environmental services) and briefly considers the horizontal issue of how to assess environmental effects of services trade liberalization.

Current Context

Members have agreed, *inter alia*, that the direction of the on-going negotiations is one of progressive liberalization. These negotiations are taking place within the existing structure of the GATS and with the existing schedules as the starting point. It is recalled that the existing structure of the GATS allows countries flexibility in terms of the scheduling of commitments, as well as with respect to the conditions that governments choose to impose on foreign suppliers of services. Services trade liberalization is to take place with due respect for national policy objectives, the level of development and the size of economies of individual Members.

Regulatory Adjustment

While liberalization involves the progressive removal of barriers to services supply, this does not necessarily diminish the role of government. On the contrary, liberalization might even sharpen the need for appropriate regulation to achieve certain policy objectives. Environmental policy, for instance, might strive to mitigate negative environmental effects of services trade liberalization or enhance such positive effects, or both. In this sense, the environmental impact of liberalization in any individual sector may ultimately depend on whether or not liberalization proceeds under current regulatory conditions or with regulatory adjustments. If appropriate regulation is in place, and prices reflect the full cost of production (including environmental cost), liberalization should benefit the environment because it leads to more efficient resource use.

²² See document WT/CTE/W/218, Discussion paper on the Environmental Effects of Services Trade Liberalization, Items 6 and 9, Note by the Secretariat.



Ultimately, positive environmental impact will depend on the availability of resources a society is able to invest to protect the environment. In turn, resource availability is determined by the level of development. In other words, there is a positive link between freer trade and economic growth which can lead to reduced poverty and higher standards of living, including a better environment.

Attributing Potential Environmental Effects

It is difficult to distinguish between those environmental effects which may be attributable to services trade, and those which may arise due to other factors. Yet another step in this exercise is estimating the extent to which services trade liberalization can be attributed to liberalization under GATS. The vehicle for liberalization is perhaps not the key issue: it is the environmental effect arising from services trade liberalization, irrespective of its origin, which is of interest.

Link to Goods

While a supplied service is generally intangible, its direct environmental impact could be measured by the effect it has on the consumption of associated goods. In considering the environmental effects of services trade liberalization, effects that arise from the supply and consumption of associated goods need to be kept in mind.

What are Environmental Services?

In the Services Sectoral Classification List developed during the Uruguay Round, and largely based on the United Nations Provisional Central Product Classification (CPC), the environmental services sector includes: sewage services; refuse disposal services; sanitation and similar services; and other environmental services. Although the "other" category does not refer to any CPC item, it presumably includes the remaining elements of the CPC environmental services category, e.g. cleaning of exhaust gases, noise abatement services, nature and landscape protection services, and other environmental protection services not included elsewhere. This List has been used by many Members in their schedules of specific commitments.

As of April 2003, some 47 Members had undertaken specific commitments in at least one sub-sector of the environmental services sector. Most of them, however, have undertaken specific commitments in several, and for some Members, in all sub-sectors. The number of commitments across sub-sectors



is roughly equal. As compared to other sectors, such as tourism, financial services or telecommunications, liberalization bound under the GATS in environmental services appears rather limited. However, one should remember that Members' policies may be more liberal in practice than is reflected in their schedules.

Environmental services is a sector where most trade takes place through commercial presence (mode 3) with the accompanying presence of natural persons (mode 4). Cross-border trade (mode 1) and consumption abroad (mode 2) are of limited relevance; they may offer an avenue for some supporting services, but appear to be technically unfeasible for a number of relevant activities. These patterns are reflected in specific commitments undertaken by Members.

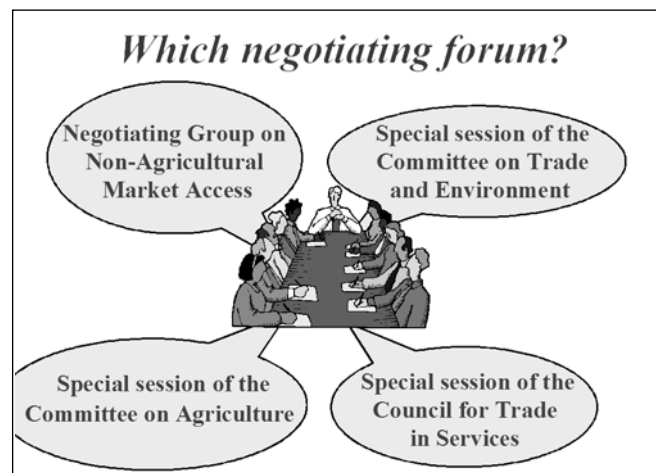
A survey of Members' schedules shows that mode 1 is often unbound, in part because some Members consider it not technically feasible. Commitments under mode 2 are rather liberal, reflecting a general trend across services sectors. Most commitments on environmental services focus on mode 3, while commitments on mode 4 are, as in other services sectors, limited to some particular categories of services providers.

ENVIRONMENTAL GOODS AND SERVICES

Doha Declaration - Paragraph 31(iii)

The reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.

Paragraph 31(iii) of the Doha Ministerial Declaration instructs participants to negotiate on the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services. Members agreed to conduct the negotiations on environmental goods and services in the Negotiating Group on Market Access for Non-Agricultural Products and the Council for Trade in Services in Special Session.



In addition, some Members called on the CTESS to clarify the concept of environmental goods. However, not all Members are in favour of working towards a definition of environmental goods for the purpose of the negotiations. The chairpersons of the three negotiating bodies concerned by this mandate have agreed to coordinate on the progress made in their different Committees on a regular basis.

Various criteria for the definition or identification of environmental goods were debated, and concerns were raised on the following issues:

- How products with multiple end-uses would be classified;
- whether PPMs and end-use criteria would be needed to define environmental goods;
- how the harmonized system would capture those goods; and
- how the relativity of the concept of "environmental friendliness" would be tackled (since some goods considered as environmentally friendly in some countries could be seen as unfriendly in others; also the question of incorporating, in a list of environmental goods, products that would be environmentally preferable, but nonetheless environmentally harmful).

In discussing the concept of environmental goods, several references were made to the OECD and the APEC lists of such goods. Some Members argued for the use of the APEC or OECD list as a basis for the discussions on the identification of environmental goods. However, the point has also been made that the APEC and OECD lists were biased to the interests of certain groups of WTO Members and that the interests of developing countries needed to be taken into account. Given the high technological content of such products, the situation of the real benefits going only to the more developed Members needed to be avoided. In this context, it was argued that a WTO list of environmental goods would have to be developed to include products of export interest to developing countries.

