Joint Working Party on Trade and Environment

REPORT ON THE NGO CONSULTATION

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The consultation was designed with the aim of providing civil society organisations with the opportunity to exchange views with delegates of the OECD Joint Working Party on Trade and Environment (JWPTE) and to provide input into the formulation of the latter's work programme. The following civil society groups were represented at the meeting: Les Amis de la Terre (France), Both Ends (The Netherlands), BIAC, and the ICC. The meeting was chaired by the Co-Chairs of the JWPTE: Ms. Harriët Lapidaire (The Netherlands) and Mr. Philip Callaghan (UK).

The Secretariat provided a brief overview on the recent work by the JWPTE. The discussions then focused on current key questions in the area of trade and environment and on elements of the JWPTE’s 2005-6 work programme that have been identified as high priority. This includes work on environmental goods and services, regional trade agreements and the development dimensions of trade and environment. The consultation ended with a discussion of possible future work emerging from the Hong Kong Ministerial.

JWPTE’s 2005-6 Programme of Work

Environmental goods and services

Background

The JWPTE will continue to undertake analyses in support of the DDA mandate, paragraph 31(iii) of which calls for “the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.” Currently, the JWPTE is finalising a study that attempts to identify the synergies between liberalisation of environmental goods and liberalisation of environmental services.

Since 2002, the WTO’s Committee on Trade and Environment (meeting in Special Session) and the Non-Agricultural Market Access negotiating group have been considering ways to implement the DDA’s paragraph 31(iii) mandate. Various lists of candidate goods have been circulated to the two groups, including ones developed before the negotiations started (by the OECD and APEC). Much of the debate is centred on the definition of “environmental goods” which the proponents of this negotiating mandate generally understand to be goods or services that are beneficial for the environment or provide environmental protection — e.g., equipment for air-pollution control, recycling, incineration, and measuring and monitoring. However, some developing countries feel that these lists (and the ones subsequently circulated by Japan and Chinese Taipei) reflect a bias towards goods exported by developed countries, and would like the WTO to develop a list of products of export interest to developing countries. Others have raised concerns related to intellectual property rights (IPRs) and the cost of obtaining licenses to use technologies produced by developed countries.

Discussions in the Council for Trade in Services on liberalising trade in environmental services are proceeding slowly. There is much controversy over liberalisation of trade in services that rely on fixed infrastructure, such as distribution of water. Yet the category also includes several environmental services that rely much less on fixed infrastructure: solid waste management services; sanitation and similar services (i.e., street and beach cleaning, and snow removal); and other environmental services (air-
pollution control and monitoring; noise and vibration abatement services; nature and landscape protection services; remediation and clean-up of soil, surface water and groundwater; and environmental protection services not elsewhere classified).

The OECD itself has tried to emphasise the benefits for developing countries in liberalising trade in EGS. These benefits include meeting environmental goals and improving the welfare of their own populations at lower cost; increasing exports of EG&S, especially to other developing countries; and attracting inward investment.

Discussion

Participants were invited to suggest ways of moving negotiations forward in this area. Questions they were asked to consider were: Have they suggestions of particular goods that should be covered by the 31(iii) mandate? What objections do they have (if any) to encouraging developing countries to open up their trade in environmental services? How important do they see maintaining coherence between the outcomes on environmental goods and on environmental services? How important are non-tariff barriers to trade in environmental goods, and how should the WTO fulfil the mandate on TBTs? What should “special and differential treatment” mean in the context of the EGS negotiations?

One participant maintained that the issue of elimination of tariffs on environmental products cannot be discussed in isolation but has to be linked to the overall discussion on tariff reduction; therefore, the discussions need to be coupled with those in the NAMA. On this point, one participant pointed to the reticence of developing countries to take a sectoral approach, and another one felt that accelerating liberalisation was not suitable for all goods.

As regards the identification of environmental goods that are environmentally preferable only under certain circumstances, one participant made a plea to take account of practical feasibility, especially in developing countries: the job of customs officers is considerably complicated by criteria that depend on a determination of what end-use a good is to be put. Many customs officials, especially in developing countries are likely to lack the capacity to identify subtle distinctions between goods. Similar considerations apply to the establishment of new tariff positions.

One participant considered that the drivers for trade in environmental goods, such as environmental regulation, should be strengthened. The need to look at non-tariff measures was also mentioned. The purpose of the negotiations should be to foster international trade in environmental goods, and no new burdens or transaction costs should be created.

It was argued that PPMs should not be used in the definition of environmental goods. This, as one participant pointed out, has also been the view of developing countries, which see PPMs as a possible means to impose additional trade barriers.

Regional Trade Agreements (RTAs)

Background

The JWPTE is beginning new work to gain a better understanding of the ways in which environmental policy goals are reflected in RTAs, of the environmental effects of trade liberalisation under RTAs, and of the effects on trade of environmental provisions in RTAs.
Countries have been entering into RTAs for many years. However, the pace at which new RTAs are forming has recently accelerated, and this tendency seems likely to continue. Since it has been recognised that RTAs have both direct and indirect links to the regional and global environment, it is important to reflect on the ways in which environmental and trade policy objectives can be made as mutually supportive as possible when developing and implementing RTAs.

To date, the OECD has completed several projects related to RTAs and their implications for the environment, most recently in connection with the OECD Trade Committee’s 2002 study on the Relationship between Regional Trade Agreements and the Multilateral Trading System [TD/TC/WP(2002)26/FINAL]. This study included a chapter which compared provisions relating to the environment and sustainable development in WTO agreements with those in selected RTAs. It highlighted similarities and differences in the legal provisions and institutions related to the environment between the WTO agreements and RTAs, but did not go into much detail. In particular, the previous work did not attempt to examine the direct and indirect implications of RTAs for environment or trade, nor did it examine actual experience with the implementation of particular RTAs.

This new work will examine the environmental aspects of key RTAs, and will focus on provisions related to the environment; implications of RTAs for the environment; and implications of environmental provisions of RTAs for regional trade. The report will then summarise experiences with the implementation of existing RTAs, and highlight findings from the above analysis that could be useful for the discussion and implementation of new RTAs.

**Discussion**

Participants were invited to comment on the relevance of this project for the trade and environment debate; suggest areas of analysis which they consider of particular importance for this project; point out which RTAs they consider should be included in the analysis, and provide examples of how environmental considerations have influenced the way in which RTAs are worded and implemented. Participants were also invited to discuss how civil society has been involved in the negotiation and implementation of RTAs, and whether improvements would be necessary.

One participant pointed out that RTAs have advantages in that often it is easier to tackle problems and find appropriate balances at the regional than at the global level. Transparency is very important, and with discussions at the regional level, negotiators can be made more accountable to civil society since it is less easy for them to claim they have been forced into a position by the rest of the world. It was also mentioned that regional trade agreements influence developing countries’ ‘policy space’.

The danger of an environmental “race to the bottom” in regional arrangements to attract investors, and the measures taken by different countries to avoid it, were also discussed. Participants also referred to the need to ensure that all parties involved have sufficient negotiating capacity, and capacity to stand up to their commitments, once the agreement is in force.

Several delegates reported on how they ensure transparency in their negotiations, e.g. via Internet consultations and sustainability impact assessments. Participants cautioned that assessing the impacts of RTAs both on the environment and on trade (e.g. through trade diversion) can be difficult, and that there was a need to continue to develop better tools and methodologies.
The Development Dimensions of Trade and Environment

Background

The JWPTE will follow-up the work it carried out in 2002-4 on the development dimensions of trade and the environment, with a focus on capacity building and technical assistance.

In November 2000, the JWPTE decided to devote increasing attention to the development dimensions of trade and environment, in line with the overall strategic orientations of the Organisation to integrate development into all aspects of its work. This new emphasis was reinforced by adoption in November 2001 of the Doha Development Agenda by WTO Ministers.

The focus of the first stages of the JWPTE’s work was on the effects of environmental requirements (regulations and standards) on the access of developing-country exporters to OECD markets. This resulted in the preparation of 20 case studies, a workshop in New Delhi, India, a study looking into the of the perceived and actual difficulties faced by exporters in developing countries wishing to qualify for certain selected eco-labelling schemes, and a report that draws lessons from the case studies.

Currently, there appears to be considerable interest in sharing national and regional experiences in providing technical assistance (TA) and capacity building (CB) in the area of environmental standards and regulations. TA and CB in this area are not only important for complying with foreign environmental requirements, but also for ensuring that countries’ own regulations and standards are well-designed, monitored and enforced.

Discussion

Participants were invited to discuss examples of TA and CB in the area of trade and environment with which they have been involved, and to comment on how TA and CB in this area could be improved. There was particular interest in hearing participants’ opinions on the respective roles of civil society and governments.

Several delegates provided examples of what measures their government have taken to limit the negative impacts of environmental measures on developing countries exports, e.g. through consultation and information processes, CB and TA programmes. Examples include training through vide conferences, direct information exchanges, and establishing cleaner production centres. Information channels established under WTO, and direct dialogue with trade partners are a further avenue to provide information on new environmental regulations.

The issue of spreading information on new requirements to the producers and exporters which are directly affected was also discussed. One participant mentioned that under the TBT Agreement, developing countries can ask for assistance on matters related to new requirements, but that hardly any country has made use of it, which would indicate that this facility is insufficiently known.

The business sector has taken a number of initiatives that could also be helpful in the area of market access. For example, BIAC has produced guidelines on regulatory impact assessment which include ways of involving stakeholders in development of new regulations and policies. Providing training to independent business associations can also be very useful, as it has a multiplier effect.
**Expected Outcomes of the WTO Ministerial Meeting in Hong Kong**

**Background**

At the end of its meeting in July 2004, the WTO’s General Council called upon all Members to redouble their efforts towards the conclusion of a balanced overall outcome of the Doha Development Agenda in fulfilment of the commitments Ministers took at Doha. The Council agreed to continue the negotiations launched at Doha beyond the timeframe set out in paragraph 45 of the Doha Declaration, leading to the Sixth WTO Ministerial Conference, which will be held in Hong Kong on 13-18 December 2005.

WTO Ministers will meet for the purposes of, they hope, finalising the current round of multilateral trade negotiations. Whether or not the current negotiations are finalised by then, it is likely at least that they will be completed soon thereafter. Meanwhile, by early 2006, the OECD will have to begin planning what issues (if any) it will address in its 2007-08 programme of work on trade and the environment.

**Discussion**

Participants were invited to address themselves to the following questions: What outcomes in the area of trade and environment do they see, or hope to see, emerging from the Hong Kong Ministerial? In which areas do they consider that the OECD — and the JWPTE in particular — can contribute to progress? What outstanding issues do they imagine will remain at the trade and environment interface in three years’ time, and what kind of work (analyses, dialogues, etc.) will be needed to help inform the debates that will likely ensue?

Participants, including delegates, made a number of suggestions and observations. One remarked that trade and environment is seen as a “defensive” topic by developing countries, and that there is an expectation that something “should be given in return”. On topics for future work, there was a suggestion that trade in waste would become increasingly important. Another topic of interest was the 2002 World Summit on Sustainable Development’s Plan of Implementation. Following entry into force of the Kyoto Protocol, the relationship between trade and climate-change policies was also seen as a potential area of future work. Another suggestion was to deepen analysis between sustainable production and consumption on the one hand and trade and environment on the other. It was also considered that the Hong Kong Ministerial should not be seen as the end of the discussions, but just as a further step.