

Appendix II

Key Trade and Environment Issues, Problems, and Possible Solutions

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Table II.1. The trade and environment agenda

<i>Problem</i>	<i>Solution</i>	
	<i>WTO</i>	<i>Outside WTO</i>
The trade and environment debate lacks balance and does not pay adequate attention to concerns of developing countries	<p>The CTE should continue to discuss all relevant issues and further strengthen the development dimension in its deliberation.</p> <p>CTE should pay particular attention to issues of interest to developing countries.</p> <p>Seattle Ministerial Declaration should go beyond UNCED commitments and formulate the rights and obligations of WTO members in view of these commitments.</p>	<p>Strengthen the role of UNCTAD, UNEP, and other international and regional organizations in trade and environment issues.</p> <p>Developing countries should seek to strengthen the development dimension, in particular at UNCTAD X and the 8th session of the Commission on Sustainable Development (which will consider the cross-sectoral theme Financial Resources/ Trade and Investment and / Economic Growth).</p> <p>Develop a broad programme of capacity-building on trade and sustainable development.</p>
There is continued pressure to accommodate the extra-territorial use of unilateral trade measures on environmental grounds.	Ministerial Declaration should firmly reject extra-territorial use of unilateral trade.	<p>Reiterate the Rio Declaration (in particular Principle 12) and Agenda 21.</p> <p>Promote bilateral and multilateral cooperation.</p>
Pressures for a modification or interpretation of GATT Article XX to provide further accommodation of discriminatory trade measures pursuant to multilateral environmental agreements (MEAs) pose a risk to developing countries.	<p>The CTE should continue to discuss the relationship between the trade provisions in MEAs and the provisions of the multilateral trading system (see table II.5 below).</p> <p>Issues such as the definition of MEAs, the necessity and effectiveness of trade measures, and the role of supportive measures should receive further attention at the CTE.</p>	<p>Strengthened policy coordination at the national level.</p> <p>Cooperation between the secretariats of WTO, UNEP, MEAs, and UNCTAD.</p>

Table II.1. The trade and environment agenda (*continued*)

<i>Problem</i>	<i>Solution</i>	
	<i>WTO</i>	<i>Outside WTO</i>
There is pressure to accommodate certain trade measures based on non-product-related processes and production methods (PPMs) in the multilateral trading system. This would have potentially adverse implications for developing countries.	WTO should assess what would be the "risk of non-fulfilment" of environmental objectives in these cases.	International cooperation, supportive measures, and multi-stakeholder approaches are the preferred ways to support the use of environmentally friendly PPMs in developing countries. Developing countries may wish to engage in the development of a set of criteria on eco-labelling in terms of transparency and the avoidance of trade barrier effects.
There are differing views on whether and in which cases the WTO should provide greater scope for the use of the precautionary principle . There is a need to prevent the abuse of the precautionary principle for protectionist purposes.	There is a need to consider the extent to which a combination of the precautionary principle and the concept of proportionality could address environment and trade concerns. There should be greater attention to the appropriate use of the precautionary principle to address possible risks of trade in genetically modified organisms (GMOs).	Develop criteria for the appropriate use of the precautionary principle.
Clarifying issues on the basis of the development of case-law (through the dispute settlement mechanism) may fail to meet a broad-based consensus.	The CTE should continue to seek to build consensus of views, including through cooperation with MEA secretariats. Through the review process of the Dispute Settlement Understanding, developing countries should seek clarification of the scope and terms of reference of the Appellate Body and its rulings.	Build consensus on principles and approaches aimed at preventing environment-related conflicts. Include the concept of proportionality of trade measures while deciding on the package of measures to be used by MEAs.

Table II.2. Mainstreaming environment in WTO Agreements

<i>Problem</i>	<i>Solution</i>	
	<i>WTO</i>	<i>Outside WTO</i>
The risks and opportunities for developing countries of “mainstreaming” environment in several WTO Agreements are not well understood.	Developing countries should seek to strengthen the role of the CTE in enhancing understanding of trade and environment linkages and participate effectively in its deliberations. Developing countries should also engage in more intensive discussions on issues of their interest.	Technical cooperation for capacity-building.
Mainstreaming environment into several WTO committees could make it more complicated for developing countries to participate effectively in WTO deliberations on trade and environment issues.	Maintain a key role for the CTE.	Technical cooperation for capacity-building.
Diffusing the environmental agenda to several WTO committees could erode the balance in the WTO work programme on trade and environment, as established in the CTE.	Maintain a key role for the CTE.	Improve implementation of supportive measures such as capacity-building, finance, and access to and transfer of technology.

Table II.3. Market access issues

<i>Problem</i>	<i>Solution</i>	
	<i>WTO</i>	<i>Outside WTO</i>
Compliance with environmental requirements and sanitary and phytosanitary (SPS) measures may pose certain problems to developing country producers, particularly small and medium enterprises (SMEs).	<p>Developing countries, particularly the LDCs, should take full advantage of possibilities to request technical assistance to comply with SPS measures, standards, and regulations.</p> <p>Improve provisions on special and differential treatment (S&D).</p> <p>Examine the role of sound science and risk of "non-fulfilment" of these objectives.</p> <p>Examine the necessity and effectiveness of such measures, especially when they relate to PPMs.</p>	<p>Improve awareness and channels of information.</p> <p>Strengthen infrastructure, especially testing facilities in developing countries to comply with SPS measures and environmental requirements.</p> <p>Regional cooperation on standards.</p> <p>Enhanced participation of developing countries in the work of the ISO and other organizations for standardization, including through regional cooperation and representation.</p>
SMEs may have special difficulties in responding to environmental challenges.	The implications for SMEs in the context of the Agreement on Trade-related Investment Measures (TRIMS) and in the Subsidies Agreement should be examined.	The above-mentioned measures should pay special attention to the needs of SMEs. SMEs should seek alliances with other SMEs and with large firms to strengthen their capacity to respond to environmental challenges and to maintain or increase competitiveness.
There is insufficient WTO discipline for certain environmental measures, with a potential impact on exports from developing countries.	<p>Devise a mechanism under existing Code of Good Practices to avoid the use of trade discriminatory measures based on PPM-related requirements.</p> <p>Consider the scope for applying greater WTO discipline to those policies of local governments that may have a potentially significant adverse</p>	Promote cooperation and develop supportive measures to address environmental problems and to promote sustainable development.

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Table II.3. Market access issues (*continued*)

<i>Problem</i>	<i>Solution</i>	
	<i>WTO</i>	<i>Outside WTO</i>
There is a need to streamline trading opportunities for environmentally preferable products (EPPs).	<p>impact on developing country exports (such as bans on the use of tropical timber imposed by several municipalities), for example in the context of the Plurilateral Agreement on Public Procurement.</p> <p>Examine systemic factors that may create certain obstacles to developing country efforts to take full advantage of trading opportunities for EPPs (for example with regard to providing protection for intellectual property rights (IPRs)).</p> <p>Examine how the multilateral trading system can provide incentives for trade in “environmentally friendly” products from developing countries without creating new forms of conditionality.</p>	<p>Strengthen infrastructure.</p> <p>Regional cooperation.</p> <p>Umbrella certification.</p> <p>Development of trademarks.</p> <p>Business partnerships.</p>

Table II.4. “Win–win” scenarios

<i>Problem</i>	<i>Solution</i>	
	<i>WTO</i>	<i>Outside WTO</i>
<p>“Win–win”: trade liberalization, including the elimination of export subsidies provided by developed countries, may result in new trading opportunities for developing countries. In some sectors, however, the extent to which the elimination of trade restrictions and distortions in developed countries will result in economic benefits for the developing countries is uncertain.</p>	<p>The WTO should promote the reduction or elimination of subsidies that are clearly environmentally harmful, particularly those that may result in trade benefits for developing countries. Due attention should be paid to possible adverse short-term economic effects on certain developing countries.</p>	<p>Research on the implications of the elimination of trade restrictions and distortions for developing countries.</p> <p>Anticipate possible short-term negative economic effects on certain developing countries that may arise from the elimination of certain subsidies, and, where appropriate, explore ways to provide compensation or other forms of assistance.</p>

Table II.5. Multilateral environmental agreements

<i>Problem</i>	<i>Solution</i>	
	<i>WTO</i>	<i>Outside WTO</i>
Efforts to clarify the relationship between certain provisions in multilateral environmental agreements (MEAs) and the provisions of the multilateral trading system focus on only part of the relationship .	Trade measures and supportive measures should be considered in conjunction. Full consideration should be given to the concerns of many developing countries and NGOs about differences in the concepts and regimes in the Convention on Biodiversity (CBD) on the one hand and the WTO TRIPS Agreement on the other.	The CBD should develop clear guidelines and mechanisms on protection of traditional knowledge.
The economic and social implications of certain trade measures for countries at different levels of development are not well understood.	The CTE should continue to examine this issue.	Improve the implementation of supportive measures under MEAs. Promote multi-stakeholder panels at the national level as well as study groups at the international level to identify efficient and development-friendly solutions.

Table II.6. Environmentally sound technologies

<i>Problem</i>	<i>Solution</i>	
	<i>WTO</i>	<i>Outside WTO</i>
Insufficient progress has been made in improving access to and transfer of environmentally sound technologies (ESTs) to developing countries.	Review implementation of Articles 66.2 (in favour of LDCs) and 67 (in favour of developing countries) of the TRIPS Agreement. Also examine how lack of progress could be taken into account in the context of the dispute settlement mechanism.	Enhance implementation of Agenda 21 provisions and recommendations on transfer of technology.
Although it has already been recognized that the international community should promote transfer of ESTs and provide funds for the “incremental costs” of technology-switching to address global environmental problems, there have been problems in implementation.	There is a need to examine the contribution that the multilateral trading system can make to effective implementation of provisions on transfer of ESTs. The relationship between IPR protection and the transfer of specific ESTs required to comply with obligations under MEAs should continue to be examined.	Improve the implementation of transfer of technology provisions in MEAs. Design and implement innovative ways to promote the transfer of ESTs.
Currently, there are no comparable international mechanisms for the facilitation of ESTs that are appropriate for addressing local environmental problems.	The multilateral trading system should encourage transfer of ESTs to developing countries by utilizing existing mechanisms and provisions of the TRIPS Agreement.	Promote the diffusion of ESTs to developing countries, e.g. through “green” credit lines, multilateral and bilateral cooperation, business partnerships, etc.

Table II.7. TRIPS and biodiversity

<i>Problem</i>	<i>Solution</i>	
	<i>WTO</i>	<i>Outside WTO</i>
There may be inconsistencies between certain provisions of the CBD and those of the WTO TRIPS Agreement. Provisions in the CBD may better represent the interests of developing countries.	<p>Priority should be given to further examination of this relationship in the WTO.</p> <p>The CBD should take primacy over the TRIPS Agreement in the areas of biological resources and traditional knowledge systems.</p>	Discussions on benefit-sharing as outlined in the Biodiversity Agreement should take place at the national and, where appropriate, regional levels.
The WTO TRIPS Agreement may provide insufficient room for appropriate protection of the traditional, communal systems of innovation in the developing countries. Consequently, the intellectual property of producers and communities may be denied recognition, and hence protection.	<p>There is a need to consider systems such as FAO 1983 that protects land races and traditional medicinal plants as intellectual property.</p> <p>There is a need for further studies on the options for providing protection to indigenous knowledge.</p>	<p>There is a need to devise suitable <i>sui generis</i> methods for the protection of traditional knowledge at the national and regional levels.</p> <p>There is also a need to develop a database in terms of the geographical appellation of a number of products that are known to originate in a specific country or region.</p>
Patenting of life forms may have adverse economic and social effects in the developing countries.	<p>The review of the TRIPS Agreement should ensure that the rights of sovereign states to exclude all life forms and related knowledge from IPR systems are not eroded.</p> <p>There is a need to study the application of Article 27.2, which can exclude from patentability technologies that can harm the environment.</p>	

Table II.7. TRIPS and biodiversity (*continued*)

<i>Problem</i>	<i>Solution</i>	
	<i>WTO</i>	<i>Outside WTO</i>
The 1999 review of Article 27.3(b) of the TRIPS Agreement may have serious implications for developing countries by narrowing the window on <i>sui generis</i> and other forms of intellectual property protection that are not based on patents.	Developing countries may seek additional time for examining the full implications of Article 27.3(b) as well as for a consideration of different options for implementing <i>sui generis</i> systems. WTO should recognize that patenting of traditional knowledge may be inappropriate for their protection and the protection of associated biodiversity.	It is important to examine issues such as <i>sui generis</i> systems, the patenting of life forms, and the patenting of micro-organisms on a national and regional basis.

Table II.8. The issue of exports of domestically prohibited goods

<i>Problem</i>	<i>Solution</i>	
	<i>WTO</i>	<i>Outside WTO</i>
Products that are prohibited for sale or severely restricted in the domestic market of other countries (DPGs) may nevertheless be exported to developing countries, without information being provided of health and environmental risks. Developing countries may lack infrastructure to control imports of DPGs. A number of multilateral agreements and instruments regulate trade in DPGs. These include the Rotterdam Convention on Prior Informed Consent, the proposed Convention on Persistent Organic Pollutants (POPS), and the Basel Convention. However, there may still be gaps, for example in terms of product coverage and membership.	<p>Although duplication of the work of multilateral agreements and instruments is to be avoided, the CTE should further examine whether existing instruments, such as the prior informed consent (PIC) procedures, are sufficient from the perspective of developing countries, in particular with regard to product coverage and procedures.</p> <p>The CTE recommendations on technical assistance should be fully implemented.</p> <p>The DPG notification system that had been in existence between 1982 and 1990 should be revived.</p>	<p>Multilateral agreements and instruments to deal with exports of DPGs should be further improved.</p> <p>Developed countries should strengthen legislation and take further initiatives to mitigate adverse environmental effects of trade in DPGs.</p> <p>Mechanisms should be developed on a regional basis for exchanging information on DPGs.</p> <p>Mechanisms should be developed on a regional basis between customs officers for controlling trade in DPGs.</p>

Table II.9. Environmental impacts of trade policies and agreements

<i>Problem</i>	<i>Solution</i>	
	<i>WTO</i>	<i>Outside WTO</i>
Changes in patterns of production associated with trade liberalization, in the absence of adequate environmental and macro-economic policies, may have adverse environmental and social effects.	<p>This issue needs to be further discussed in the CTE. WTO members may be encouraged to integrate environmental and developmental considerations in economic and trade policies.</p> <p>Promote the diffusion of ESTs to developing countries.</p>	<p>National governments should anticipate these effects and ensure that trade liberalization is accompanied by appropriate environmental and macro-economic policies.</p> <p>Developing countries should promote increased awareness of trade and environment issues across all sectors at the national and regional levels.</p> <p>Developing countries should be assisted in strengthening their capacities to integrate environmental considerations into economic policies.</p> <p>UNEP, in cooperation with UNCTAD, should examine methodologies and develop parameters that could be used at the national level, as well as provide technical assistance for capacity-building.</p> <p>UNEP and UNCTAD should continue to cooperate in the development of pilot projects.</p>
In certain cases calls for environmental impact assessments (EIAs) could be motivated by protectionist purposes.	<p>This issue needs to be further discussed in the CTE.</p>	<p>International cooperation, for example in the areas of capacity-building and transfer of technology, are effective in reducing possible adverse environmental effects associated with increased export production in developing countries as a result of trade liberalization.</p>

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Table II.9. Environmental impacts of trade policies and agreements (*continued*)

<i>Problem</i>	<i>Solution</i>	
	<i>WTO</i>	<i>Outside WTO</i>
Pressures to attach a commitment to carry out EIAs to the launching and conduct of a possible new round of multilateral trade negotiations may add new dynamics to the process.	The WTO may encourage national governments to carry out EIAs, but these should not be “multilateralized” in the WTO.	EIAs should be carried out under the responsibility of the government in the country where major changes in production are likely to occur; technical cooperation may be useful; possible trade-offs between trade and environmental objectives should be resolved at the national level, including through multi-stakeholder approaches.