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WTO NEGOTIATIONS ON ENVIRONMENTAL GOODS: SELECTED TECHNICAL ISSUES

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I. INTRODUCTION

The food crisis, the energy crisis and finally the financial crisis, with international trade being one key victim, have all but eclipsed the Doha Round of the WTO negotiations. Now that recovery is underway, a long impasse in the Doha Round may well be over. Although even before the crises, the events of mid-2006—the suspension of negotiations, and the deadlines of mid-2007—the expiration of trade promotion authority in the United States, set the WTO system up for some hard choices.

The debates have largely shifted to the academic domain and "zoomed-out" of the more technical issues to highlight problems in the way the WTO conducts its intergovernmental business.[1] Admittedly, these problems go beyond the trade and environment agenda, stipulated in paragraph 31(iii) of the Doha Ministerial Declaration. However, this agenda may well be the best testing ground for trade officials as they consider the choice of subjects for the negotiations, the set of principles the WTO employs when negotiating, and, last but not least, the implementation of the agreements.

Indeed, the last-minute inclusion of paragraph 31 (iii) is a good example of a case-by-case approach to identifying *win-win* situations through linkages and trade-offs in the particular bargaining context of the time. The WTO Committee on Trade and Environment, in Special Sessions (CTESS), has spent years trying to post-rationalize the mandate and promote substantive link between the mandate and the negotiating process, with some delegations reading too much—and the others reading too little—into the Doha language.

The political momentum was not strong enough for the discourse in the CTESS to follow through on the various negotiating approaches. Although inconclusive, it did serve their main purpose—to remind the delegations that the environment and, in broader terms, sustainable development, should be the most important part of the complex scale by which achievement in market access will be measured.

Should the signs of a new dynamic emerging on other, admittedly more important fronts prove true, the timing of what can be done with respect to the negotiations in the CTESS will be affected greatly. Particularly since the negotiations on environmental goods still lag behind in terms of maturity. Once having an elaborate negotiation is no longer an option, can the WTO Members settle for something focused and concrete, while preserving their chances for "triple-win"?

The new submissions in the CTESS concern mainly *technical issues* relating to the product coverage and special and differential (*S&D*) treatment. One can reasonably expect specific proposals with respect to *non-tariff barriers* (NTBs) in order for the negotiations to make progress on this aspect of the mandate. As far as the NTBs part of the mandate is concerned, it appears that Members are still in an educational phase in respect of some options, and are making progress in deepening their understanding of the various proposals and their implications. All these concerns—*techhical issues relating to the product coverage, NTBs, development-related issues and S&D treatment*—were articulated by the developing Members that have taken special interest and active part in the negotiations.

For those on the technical track, time will be a factor, and there may simply not be enough of it to work through the issues that have been plaguing the negotiations from the outset. How big is the actual interface between the environmental industry and international trade? Can *ex-outs* really help "drill down" to single—environmental—use? What would be an outcome of an agreement based on listing environmental goods? Which approaches and modalities can the negotiators use to deal with non-tariff issues? Now that the Members start testing the various "what ifs", we thought it might be useful to bring these and other relevant questions into focus.

[1] The Multilateral Trade Regime: Which Way Forward? The report of the first Warwick Commission, University of Warwick, 2007.

II. ENVIRONMENTAL MARKETS AND INTERNATIONAL TRADE: HOW BIG IS THE INTERFACE?

While environmental markets display a diversity of conditions, restrictions and regulatory strategies across sectors, there is certain logic to their development as they go through several phases, centred on environmental media.

Air is normally the first priority, with most of the attention focused on big cities and mostly on automobiles. As a result, there are changes in the fleet and fuel used. Factories are also targeted, with some being closed or moved. However, all in all, the contribution to the growth of the environmental industry is marginal.

A second phase usually focuses on *water*, and large equipment vendors and international engineering firms come in to service municipal contracts.

A third phase focuses more on *waste*. Vendors set up collection networks and disposal sites. New waste reduction laws come in emphasizing the 3Rs of *reduce*, *reuse* and *recycle* and eventually waste avoidance. Capacity becomes the main issue as needs for infrastructure are many and the facilities are few.

The *fourth* phase is about remediation as well as the site assessments, analysis, design engineering and compliance issues that precede remediation. Regulations are being put in place, although enforcement activity may be minimal. However, what is really driving the remediation business are transactions: property development, brownfield investment and corporate mergers and acquisitions. Lots of former industrial sites are going to commercial development. Remediation related to mergers and acquisitions is mostly multinationals buying companies or facilities and cleaning up to avoid liability or industrial companies cleaning up before selling, or just front-end analysis of sites to determine likely cleanup costs or potential liability to account for in the transaction value.

The gradual introduction of market instruments to complement regulation, with a more differentiated demand for goods in the cleaner technologies and resource management categories—*environmentally preferable products* (EPPs). The shift towards cleaner production is driven mainly by cost-efficiency because of the gap between environmental needs and financial resources available for environmental purposes.

The divergent approaches to, and widely different levels of ambition in, the negotiations find their explanation in market realities, which are far from being uniform.

Some (developing) countries are in the first phases of addressing environmental problems through command and control instruments, which generates demand for a broad spectrum of *environmental goods* used in conjunction with environmental services relating to water, sanitation and energy.

In developed countries, augmenting regulations in some segments creates an incentive for "better than compliance" through partial internalization of environmental costs and tips the balance in the environmental activities in favour of environmental services and EPPs.[2] To the point that some analysts are redefining the environmental markets as the *HP2*—as in *Healthy Products, Healthy Planet*—markets, which may include products as diverse as organic food and fitness equipment, complementary and alternative medicine, ecotourism, water filtration and wind power systems, environmental consulting and waste management, sales of recycled materials and emerging categories like "green building", sustainable timber and hybrid cars. Many *HP2* categories represent just a tiny fraction of their conventional counterparts, indicating a vast potential for growth, which is expected to continue at more than twice the rate of the economy.[3]

[2] The concept of EPPs draws on aspects of the work undertaken by UNCTAD, which defines EPPs as products that cause significantly less environmental harm at some stage of their life-cycle than alternative products serving the same purpose. Less environmental harm according to the following criteria: (a) use of natural resources and energy; (b) amount and hazardousness of waste generated by the product along its life cycle; (c) impact on human and animal health; and (d) preservation of the environment. UNCTAD (1995) Environmental Preferable Products (EPPs) as a Trade Opportunity for Developing Countries, Geneva, UNCTAD (UNCTAD/COM/70).

[3] Environmental Business Journal, Green Products, Volume XVII, Number 7/8, 2004.

More recent, but not much different attempts at redefining the environmental markets have prompted the concept of a *Green Economy*. Consumer products and industrial services are at opposite ends of the *Green Economy*, but its segments converge on the objectives of sustainable development. The value proposition may be health, it may be sustainability, it may be minimizing the footprint of each citizen, but, taken together, these markets represent the early stages of an inexorable trend towards a more sustainable economy and healthier lifestyles.[4]

The various stages in developing the environmental markets, or *HP2* markets—or "greening the economy"—are accompanied by, and managed through, the accumulation of environmental measures and policies: from raising awareness—to articulating policy addressing the various environmental issues—to environmental legislation—to specific standards, technical regulations and rules governing environmental performance. With all these laws, measures and policies in place, a strong and consistently growing environmental market grows and evolves fairly rapidly to a contribution of around 2,5 percent of the nation's GDP. In an optimistic scenario, consistent environmental markets emerge over a course of ten years. And while the commercial activity of companies solving environmental problems is no sure measure of environmental quality, it is a valuable indicator of the impact that various policy instruments are having on environmental expenditures.

As the environmental market grows, so does the national environmental industry. If it doesn't or if it does, but at a lower rate, a deficit in environmental goods and services arises, and imports may come in to fill in the gap.

There is a tendency to equate environmental markets and trade in environmental goods (and services), while the actual interface may not be as big as is commonly presumed. How much of environmental be dealt effectively by businesses themselves? How interested are businesses really in bringing down the tariffs?

There are—and there may be—no precise figures, but the EBI estimates put the share of *tradable* environmental goods and services, i.e. environmental goods and services that enter the international trade flows, at 10 percent.[5]

The goods are traded to a larger extent, with 35 to 45 percent of equipment entering trade flows, mostly related to air pollution control and water management. The tradability of services is lower—15 percent. According to other sources, trade accounts for less than one fifteenth of the global environmental markets.[6] The fact that trade in environmental goods outperforms trade in environmental services is to a large extent due to the fact that environmental goods have multiple uses and are, in reality, industrial goods. Trade in EPPs, if those are included in the calculations, can only magnify the picture.

Although market quantifications are derived from aggregated sets of data or incomplete census of companies, one can safely say that the environmental industry in developing countries is still relatively new and unformed. There is anecdotal evidence that capacity in environmental goods and services is building in certain sectors, mostly from involvement in partnerships with established foreign firms but also from the increased demand in their domestic market. However, there is little data to indicate that any of this capacity is translating into exports.

What about trade liberalization? The respondents to the EBI surveys and questionnaire rate it only *eighth* out of twelve market drivers, well behind regulations, enforcement, global standards of multinationals, overall economic growth and …even media coverage. The observer organizations have tried to reach out to the business community with questionnaires, interviews etc. Judging from these communications