

Trade and Environment Negotiations: Paragraph 31

National Consultative
Conference

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Paragraph 31 – Doha Ministerial Declaration

“With a view to enhancing the mutual supportiveness of the trade and environment, we agree to negotiations, without prejudging their outcome, on:

- (i) the relationship between existing WTO rules and specific trade obligations set out in multilateral environment agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question;
- (ii) procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status;
- (iii) the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.”

Par.31(iii) The Mandate – Environmental Goods and Services

“With a view to enhancing the mutual supportiveness of the trade and environment, we agree to negotiations, without prejudging their outcome, on:

- ...
- *(iii) the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.”*

Par.31(iii) - Background

- Since 2005, the CTE-SS has focused its efforts on this sub-paragraph
- Environmental services in CTS
- Initially, two approaches emerged:
 - List approach
 - Project approach

Par.31(iii) - List approach

- Developed countries are proponents
- Developing countries (DCs) rejected list approach
 - Dual use
 - Developed country export interest
 - No technology transfer provisions
 - Ambition commercial, not environmental
 - List too long to be credible
 - Technical issue: how would HS distinguish

Par.31(iii) – Project/Integ. approach

- Proposed by India/Argentina
- Initially supported by DCs but ...
 - No def. of an Env.-project
 - Creates loophole for non-Env. goods
 - Would provide mfn treatment for Gov. Proc.
 - Control of goods after importation problematic

Par.31(iii) – New proposals

- Brazil proposes R-O approach in Oct. 2007
 - also that bio-fuels be considered Env.-goods
- Peru's paper supports Brazil and suggests that majority of DCs cannot benefit if agricultural goods are not considered environmental
- US-EC proposal in Dec 2007 – two tiers
 - Tariffs & NTB's relating to CC EGS eliminated immediately
 - After Round negotiate EGS agreement, eliminating a broader list of tariffs & NTB's

Par.31(iii) – SA Position

Brazil proposal seems best

- familiar with R-O negotiations
- can commit according to own view of EGS definition
- flexibility to shield sensitive prods. and make request on prods. of exp. int. to DCs

Paragraph 31(i)

“With a view to enhancing the mutual supportiveness of the trade and environment, we agree to negotiations, without prejudging their outcome, on:

- (i) the relationship between existing WTO rules and specific trade obligations set out in multilateral environment agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question;*

Paragraph 31(i) cont.

- European Union Proposal (June 2006)
 - Format of a Ministerial Decision
 - Legal principles: Mutual Supportiveness, No subordination, Deference, and Transparency.
 - WTO Committees and Panels to defer to relevant MEA expertise on matters with “environmental content”

Paragraph 31(i) cont.

- Response to European Union
 - Doesn't respect Mandate
 - Vaguely drafted from legal perspective
 - Re-affirms no subordination but undermines deference
 - Amounts to amending Chapeau of Art. XX of GATT 1994 through back door
 - “Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries...or a disguised restriction on international trade...”

Paragraph 31(i) cont.

- Argentine/Australian proposal (May 2007)
 - Report to Ministers
 - Four conclusions
 - (i) Need to continue work to enhance mutually supportive relationship
 - (ii) Relationship is essentially working well
 - (iii) Importance of national co-ordination
 - (iv) Value of experience sharing

Paragraph 31(i) cont.

- Current State of Play
- Under previous Chair, initiative to identify common elements
- No shift in Members' positions so no common ground
- Controversial issue of dispute settlement
- New Chair February 2008

Paragraph 31(i) cont.

- South Africa's position
 - Work undertaken in NEDLAC Task Team
 - Consultant's Report, Workshop 13 March 08
- Emerging View of Task Team
 - Outcome should not affect rights and obligations of Members
 - Reaffirm legal principles
- Government's View
 - Broad outcome, putting into place measures to strengthen the relationship
 - Emphasise role of technical assistance

Paragraph 31(ii)

“With a view to enhancing the mutual supportiveness of the trade and environment, we agree to negotiations, without prejudging their outcome, on:...

(ii) procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status;”

Paragraph 31(ii) cont.

- Chair's "Draft Elements" (July 2007)
- Generally considered a basis for future work
- But some areas of contention:
 - Whether or not to mention other International Governmental Organisations like UNEP, and especially UNCTAD
 - Granting automatic observer status to some "core MEAs"

Paragraph 31(ii) cont.

- Position as discussed in NEDLAC Task Team
 - Will contribute to outcome under Paragraph 31(i)
 - “WTO committees” should be taken to mean “WTO bodies”

Thank you