

STRUCTURAL DIMENSIONS OF THE ENVIRONMENTAL PROJECT APPROACH

Submission by India

Paragraph 31 (iii)

The following communication, dated 4 July 2005, is being circulated at the request of the Delegation of India.

I. BACKGROUND

1. This submission is a follow up to our earlier submission¹ in which we had discussed an alternative approach for Paragraph 31(iii) negotiations of the Doha Ministerial Declaration (DMD). This submission deals with four principal aspects of the “Environmental Project Approach” (EPA) – 1) the EPA and environment and sustainable development, 2) the EPA and multi-lateral trading system, 3) the EPA and transfer of technology, and 4) the functioning of the Designated National Authority (DNA) under EPA. All of these clarify the feasibility and the potential for the operational success of this approach.

II. THE EPA AND ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

2. It is significant that the original task of the CTE is to address trade and environment for sustainable development, and to make recommendations on whether any modification in the provisions of the multilateral trading system is required. It must also look at the environmental benefits of removing trade restrictions and distortions. **The mandate of Paragraph 31(iii) is essentially environmental-benefit oriented, and market access is a means to that objective; not the objective itself.**

3. Paragraph 31(iii) mandates the elimination of tariff and non-tariff barriers to trade in environmental goods and services. The World Summit on Sustainable Development supports the “voluntary WTO compatible market-based initiatives for the creation and expansion of domestic and international markets for environmentally friendly goods and services, including organic products, which maximise environmental and developmental benefits through inter alia, capacity building and technical assistance to developing countries”. Both the DMD and the Johannesburg Plan of Implementation (JPOI) of the World Summit on Sustainable Development seek to promote sustainable development through trade, and in that sense there is an essential convergence of objectives; their approaches are, however, different. While the DMD focuses on removal of market access barriers, the JPOI largely focuses on the creation of market-based initiatives for environmentally friendly goods and services through capacity building and technical assistance to the

¹ TN/TE/W/51.

developing countries.² These two mandates are not exclusive of each other. Not only do they share the same objective but the implementation of each, to a certain extent, is contingent upon the other. For instance, tariff/non-tariff barriers could reduce the effectiveness of market-based initiatives in expanding the market for environmental goods and services, resulting in a failure of Paragraph 31(iii) negotiations to produce credible results, if they are not supported by policies “*aimed at creating additional demand and increasing the capacities of developing countries supply capacities*”.³ There is, therefore, an urgent need to synergise the JPOI mandate with that of the DMD in order to effectively achieve the goal of sustainable development. **In this sense the EPA substantially deepens and enriches the mandate of DMD to not only include market access but also to provide scope for developing countries to develop capacities and achieve national priorities.**

III THE EPA AND THE MULTILATERAL TRADING SYSTEM

4. The multilateral trading system under the WTO is based on the principles of transparency, predictability and non-discrimination. It is a rules-based organisation that is supported by a strong dispute settlement mechanism. The EPA also envisages a transparent and rules-based mode of functioning that is aligned with that of the functioning of the WTO. There are several reasons supportive of this contention.

5. First, it is the CTESS that would formulate the criteria to be applied by the Designated National Authority (DNA) in determining if an Environmental Project qualifies for tariff concessions on environmental goods and services. The DNA’s role would be that of examining applications in light of those criteria and other declared special and differential criteria such as transfer of technology, environmental goals mandated by the MEAs that the Member is a party to, and other environmental concerns that may be unique to a particular country. It is thus akin to the approach put forward by a Member country which calls for developing broad guiding principles as criteria for inclusion of environmental goods (and in this case, also services).

6. Second, the commitments to be made by Members on tariff reductions on goods or concessions in services to be given for approved environment projects would be negotiated with due regard to the principles of special and differential treatment, and less than full reciprocity.

7. Third, the fact that the criteria for projects are being discussed and determined based on environmental and sustainable development concerns, independently of NAMA considerations, is itself a guarantee that the EPA has transparency and predictability. An exporter would have the assurance that if the goods or services are part of a project that falls under the agreed criteria, his/her application would be given due regard. This too would ensure predictability and transparency.

8. Fourth, the concessions granted in terms of project specific tariff reductions in environmental goods and services would subsist for the time period of the project. The concessions granted are, therefore, entirely project driven. On the issue of dual use, it cannot be assumed that the assets created during the life of the project would cease to have relevance after the project ends. In all probability, these would continue to be used. Even in cases where the goods cease to have relevance once the project is complete, it is more than likely that the bulk of the productive life has been utilised for furthering the environmental objective. Thus dual use, if any, would be secondary and minor.

9. Finally, the CTESS will play a crucial role in determining the definitional boundaries of the word “project” in terms of the size and nature of the venture requiring the environmental goods and services as inputs in the production process. The “project” could range from large commercial

² Concept Note on “Environmentally preferable goods and services: Opportunities and Challenges for Caribbean countries” UNEP-UNCTAD Capacity Building Task Force on Trade Environment and Development; November 2003.

³ *Supra note 3*

ventures to individual purchases. The “project” need not be differentiated in terms of private, governmental, non-governmental or non-profit ventures so long as it meets the criteria. This would ensure transparency in the system. In this context we would also like to mention that the EPA could be accommodated in Chapter 98 of the HS Code Book of the WCO⁴.

IV THE EPA AND TRANSFER OF TECHNOLOGY

10. The inclusion of the principle of special and differential treatment in the application of the criteria agreed by the CTESS in the developing countries would further the objectives of sustainable development⁵, transfer of technology⁶, national environmental obligations mandated under the MEAs and promotion of country-specific national indigenous environmental priorities would be considered.

11. Agenda 21, while addressing transfer of technology issues in the context of Environmentally Sound Technologies (ESTs), puts forward a holistic definition that rejects ESTs as individual technologies and instead interprets it to be total systems which include know-how procedures, goods and services, equipments, and organizational and managerial procedures. It also states that ESTs should be compatible with nationally determined socio-economic, environmental priorities, obligates developed countries to facilitate access and transfer of technologies. Analogous to this is Paragraph 37 of the DMD that enjoins WTO Member countries to examine the relationship between “trade and transfer of technology, and of any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries”.

12. It has to be realised that the framework for such transfer of technology mechanism has to be co-operative, based on the principles of it being voluntary and mutually beneficial. The net benefit of co-operation via coalition would be more than the sum of stand alone costs of Members, due to cost-complementarities. The CTE provides an appropriate forum for building such coalition and co-operation, and the EPA is an appropriate vehicle for this.

13. The EPA provides an opportunity for the validation and operationalization of the various environmental and development mandates in harmony and conjunction with each other and would provide synergy in the implementation. By allowing policy space to individual Member countries so as to internalise environmental priorities in trade policies, such transfer of ESTs would increase compliance with MEAs, enhance national capacity building in EGS and improve compliance with TBT and SPS requirements and thereby provide more market access.

V FUNCTIONING OF THE DNA

14. The DNA is to be the nodal authority and also the national focal point for overseeing all approvals to be granted for tariff reductions on environmental goods and services related to a specific project that is to be implemented within the country. Its primary role would be to function as an authority that would appraise the project proposals for granting tariff concessions on goods and services. It would issue a notification to the custom authorities in this regard.

15. The composition and structure of the DNA would be determined by individual Member countries. The DNA could invite the participation of stakeholders across the board from the government, non-governmental organisations, etc. It could, therefore, be in the nature of a public-private partnership.

⁴ World Customs Organization.

⁵ Preface to the Agreement Establishing The World Trade Organization.

⁶ Paragraph 37, Trade and Transfer of Technology: “possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries”.

16. We could draw a useful analogy in this context from the structure and functioning of the DNA that has been mandated under the Clean Development Mechanism (CDM) of the Kyoto Protocol. The DNA under the Kyoto Protocol performs a similar task of project clearance of CDM projects on the basis of certain given criteria. It would be useful to draw insights from the experience of developing countries that have set up a DNA under the CDM. Thus for several developing countries the past experience of the setting up of the DNA under the CDM would greatly contribute to their ease and expertise in setting up the DNA under the “environmental project approach”. In fact in many cases, if considered appropriate, the Members can have one authority for both the purposes, or it can be different, based on how Members choose to operationalize it. This approach facilitates the engagement of most developing countries in contributing proactively and achieving their national priorities in a common but differentiated manner.

17. The DNA would streamline the entire process of project approval for environmental goods and services by providing for a single window clearance. This would also contribute in vastly improving trade facilitation by putting it into a fast track and would thus support the “win-win” strategy of negotiations on environmental goods and services.

VI CONCLUSION

18. The “environment project approach”, therefore, essentially envisages a broader and deeper role for the national governments of the Member states in defining, selecting and finally approving environmental goods and services for tariff reduction and concessions. It entails setting up of the DNA by each country at the national level.

19. In this context one also needs to adequately address the concern shown by Members about the progress of the negotiations and the forthcoming Hong Kong Ministerial meeting. It needs to be mentioned that the “list approach” has so far produced results that are below expectations of most of the developing countries, and has failed to garner effective participation from such countries. This is not surprising, since many of the developing countries have clearly expressed their inability to contribute effectively to the debate and have a perception that the “list approach” only succeeds in expanding market access for developed country products without concomitant benefits to developing countries, or even effectively addressing the proposed environmental objectives of Paragraph 31(iii).

20. The EPA is, therefore, India’s attempt to introduce new thinking and engage the attention and participation of all Member countries so as to make the negotiations truly multilateral in functioning, and substantive in content. The objective of the negotiation should not be reduced to a mere exercise of chasing deadlines. **It is crucial that the negotiations produce a result that is both substantive and holds benefits for all the Member countries. The approach is also simple in its content and easy to implement.**

21. We would like to reiterate that the “Project Approach” cannot be complementary to the “List Approach”. It is a stand-alone approach and we would like to invite Member countries to think creatively, and deliberate on both the structural and substantive dimensions of the EPA. We would wish to contribute to further engagement on the approach.
