

**The First Meeting of the Third Phase
China Council for International Cooperation
on Environment and Development**

**CHINA AND THE WORLD TRADE ORGANIZATION: A
SUSTAINABLE DEVELOPMENT PERSPECTIVE**

An Issues Paper

by

Task Force on WTO and Environment

November 23-35, 2002

Table of Contents

1. CHINA'S ACCESSION TO THE WTO: ENVIRONMENTAL ISSUES	1
1.1. WHY IS WTO ACCESSION SIGNIFICANT FROM AN ENVIRONMENTAL PERSPECTIVE?	1
1.2. SECTORS TO MONITOR.....	2
1.3. THE DEVELOPMENT OF INTEGRATED ENVIRONMENTAL ASSESSMENT OF TRADE AGREEMENTS ..	6
2. ENVIRONMENT AND SUSTAINABLE DEVELOPMENT IN THE DOHA ROUND.....	7
2.1 ENVIRONMENTAL ISSUES FOR NEGOTIATION (PARA. 31).....	7
2.2. ITEMS THAT ARE BEING CONSIDERED FOR NEGOTIATIONS (PARA. 32)	10
2.3. OTHER NEGOTIATION ISSUES THAT ARE SIGNIFICANT FOR ENVIRONMENT AND SUSTAINABLE DEVELOPMENT.....	12
2.4. SUSTAINABLE DEVELOPMENT DIMENSIONS OF NEW ISSUES.....	14
2.5. NEED FOR TECHNICAL ASSISTANCE AND CAPACITY BUILDING (PARA 33)	21
3. ...THE IMPORTANCE OF A "SUSTAINABLE DEVELOPMENT AGENDA" FOR THE WTO	22
3.1. ELEMENTS OF A SUSTAINABLE DEVELOPMENT AGENDA.....	22
3.2. CURRENT NEGOTIATIONS AND POSITIONS OF WTO MEMBERS ON TRADE AND ENVIRONMENT. ..	24
3.3. CO-OPERATING TO DEVELOP THE AGENDA: CHINA'S INTEREST AND ROLE.....	27

CHINA AND THE WORLD TRADE ORGANIZATION: A SUSTAINABLE DEVELOPMENT PERSPECTIVE

An Issues Paper

1. China's Accession to the WTO: Environmental Issues

China's accession to the World Trade Organization (WTO) is a major step both for China and for the WTO. It is widely expected that WTO accession, specifically the bilateral agreements between China and many WTO members that preceded accession and the adjustment of the Chinese economy to the requirements of the WTO agreements, will have a significant impact on the Chinese economy. This impact is expected to manifest itself both in growth and in structural economic change. Certain sectors of the Chinese economy are projected to grow rapidly while others will either contract or need to change their mode of operation fundamentally. While the economic growth effect is expected to dominate, the adjustments to the structural changes are expected to be demanding—and will in turn have notable social consequences. This process is expected to last many years as the agreements are phased in and initial response is followed by further adaptation as additional agreements are concluded within the WTO. Because China will be in the adjustment process for several years additional obligations need to be carefully weighed since they will take effect on top of a continuing substantial change process.

1.1. Why is WTO Accession Significant from an Environmental Perspective?

Environmental policy measures create structural economic change as certain kinds of environmentally less damaging economic activities are advantaged while environmentally harmful activities are rendered economically less attractive. This can be achieved by command and control measures that limit the use of certain substances, control discharges, or impose operational requirements. Economic incentives can be used to promote certain activities or to render others more costly. At the same time an entirely new source of economic growth—environmental goods and services—is being created. Many years of analysis have shown that environmental policy measures reduce neither economic growth nor employment but that they do lead to structural economic change.

Conversely, structural economic change that is caused by other factors such as innovation or trade liberalization measures usually has environmental consequences, depending on the environmental impacts of economic activities that are growing and contracting. Rapid growth of environmentally damaging activities involves the threat of serious environmental harm—unless appropriate measures are taken to limit it. Similarly contraction of these activities lessens environmental pressures. It is consequently well established that a changing economy requires continuous adjustment of environmental policy to benefit from new opportunities and to limit changing threats. This is a complex process, and the outcome is determined by the ability to recognise positive developments and to avert environmental threats in a timely

manner. Economic growth certainly facilitates the necessary adjustments since it ensures that resources are available to take necessary measures. However, competition for these additional resources remains fierce, in particular in a country with large unmet needs for social improvements and infrastructure investment. Only vigorous public policies will ensure that resources from economic growth are used to mitigate environmental problems associated with that growth.

Since WTO accession is expected to result in dramatic structural change of the Chinese economy it also represents both an opportunity and a challenge to environmental policy-makers. This will require continuous monitoring of the changes that will occur to ensure that needed environmental measures can be put in place in a timely manner. Some of the environmental impacts are quite predictable and policy-makers should act now to avoid problems later. Other environmental impacts may prove unexpected and policy-makers should be ready to act quickly once they become evident.

1.2. Sectors to Monitor

Most economic activities involve some degree of environmental threat. Even service sectors that are widely considered environmentally benign frequently involve products that require the use of toxic substances, demand large amounts of paper and packaging, or generate rapid growth in transportation needs with the attendant environmental consequences. Most sectors of the economy are associated with identifiable environmental threats that are by now well known. While the environmental consequences of economic growth in general are diffuse and almost impossible to predict, it is possible to identify the environmental threats associated with certain sectors fairly accurately. In many instances, effective measures exist to limit these threats—but they must be adopted before irreversible effects can occur.

A substantial number of studies have been undertaken to assess the likely areas of growth and contraction in the Chinese economy. These studies permit the identification of several sectors that will require particularly close monitoring.

1.2.1. Agriculture. No other human activity changes the environment as fundamentally and as permanently as agriculture. The environmental impacts of agriculture have been difficult to manage in most countries, precisely because they are so widespread and so intimately linked with actual production of crops that provide for human food, clothing, and shelter. Among the issues that can arise are soil erosion and soil fertility loss, pollution by pesticides and fertilisers, the introduction of plastic foils into the natural environment, water use and salinization through irrigation, water runoff and retention, impacts on wildlife and biodiversity including the introduction of alien species. This list of issues underlines how important it will be to monitor changes in agriculture attributable to WTO accession.

“Agriculture” is a complex phenomenon that can be broken down regionally or by crop. For some crops—cotton for example—regional differences are significant, reflecting environmental conditions and cultivation practices, so that differentiation is necessary both by region and crop. Moreover, WTO accession can be expected to impact different regions differently, for example on account of availability and cost of transport. Regions close to the

coast, with efficient ocean transport, will be exposed more quickly and more directly to world market prices than interior regions.

For many years, China has pursued a food self-sufficiency policy. This inevitably involves the acceptance of higher than world market prices in return for independence from imports. This policy is liable to be modified step by step as the consequences of WTO accession become effective. The result is expected to be a restructuring of the agriculture sector, together with notable gains in welfare for urban populations that obtain access to agricultural products at lower prices.

In general, WTO accession is expected to favour labour-intensive crops such as livestock husbandry, tree crops, or vegetables and to put pressure on crops where mechanization is advanced and other technology-based inputs are important, such as cotton, wheat, corn, canola, or soy. In areas where China enjoys comparative advantage, this frequently also manifests itself in relation to developing countries, which are seeking to enter the same markets.

Rice represents a special case because it is closely integrated with rural diets. An unknown quantity remains in the subsistence economy, never reaching any market where competing foreign products may be available.

Most countries have experienced significant levels of rural-urban migration as part of modernization of agriculture and manufacturing. Stability of the rural population is of particular importance in China on account of the number of persons who continue to live in the rural environment. Any significant level of rural-urban migration will also have major environmental impacts as the rural environment adjusts to reduced population pressure combined with increased production pressure and the urban environment is impacted by high rates of population growth, with consequences for water demand, water pollution, air pollution, housing and transport.

1.2.2. Automobiles. The automobile industry has a dual environmental impact—through the location of its production facilities and through the use that is made of its products. China's automobile production is extremely fragmented and not as innovative as automobile manufacturing in many other countries, in particular developed countries. It is expected that automobile manufacturing will be consolidated in a limited number of production facilities, optimally sited to serve the major markets around Beijing and Shanghai and in the Southwest of the country. Most of these facilities will be linked to internationally established brands. It is anticipated that the current production facilities will be devoted primarily to service and repair activities.

The explosive growth of the automobile park in China makes the adoption of the most advanced fuel efficiency and pollution control standards a necessity. This growth is expected to be driven by economic growth, which will enable more Chinese consumers to afford automobiles, and the restructuring of the automobile industry which will generate efficiency gains leading to reduced prices. It is important that China remains in close touch with the most advanced developments in the automobile sector.

China has generally been quite successful at removing older vehicles from the roads, certainly in highly polluted urban areas. The replacement of older vehicles by new ones that are more fuel efficient and less polluting represents one of the most important aspects of any attempt to improve air quality in a rapidly growing domestic economy.

1.2.3. Textiles. Even as cotton production is expected to decline because imported cotton is less expensive, the textile industry is expected to expand rapidly. China is already the largest textile exporter in the world. Expansion of the textile industry poses several environmental challenges, many of which are well understood but all of which require careful policy attention. These are measures that must be adopted in close co-operation between local and provincial authorities, and frequently also with the affected enterprises.

The various phases of textile manufacture—ginning, spinning, weaving, sizing, dyeing, and production of the end product—pose notable environmental problems, in particular of water pollution control. Extreme levels of surface water pollution can result unless the necessary infrastructure exists and is operated reliably.

Some of the highest value markets, into which China will be exporting, notably in Europe, are increasingly demanding in terms of the environmental aspects of production. This includes changes in dyes and other chemicals that are employed and the need to show the existence of an environmental management system, for example through ISO 14 000 certification. These requirements create pressures on Chinese producers. Those that can adjust and comply may gain access to particularly attractive markets, but those who cannot or do not adjust will find it increasingly difficult to compete in high value markets. The changes that are involved can be difficult to undertake, not unlike the need to adjust to liberalized conditions of trade. The outcome can also be very desirable as manufacturers impose fewer burdens on the environment in China and are able to pass any resulting costs on to consumers in the importing countries. Nevertheless careful monitoring of regulatory changes in key markets is vital. WTO membership will significantly enhance the ability of China to undertake such monitoring since it will benefit from the rules governing transparency as well as the provisions of the relevant agreements, in particular the Agreement on technical Barriers to Trade (TBT) and the Agreement on Sanitary and Phytosanitary Standards (SPS).

Textile markets in developed countries remain difficult to access. The Agreement on Textiles that was part of the Uruguay Round Agreements established a ten year process of opening these markets but the commitments were “back-loaded” that is the most important opening measures were delayed towards the end of that period, which runs until 2005. Effective compliance with the commitments undertaken in the Textile Agreement will be a major touchstone of the implementation process of the Uruguay Round, and a critical factor in determining the success of negotiations following the Doha Ministerial Declaration.

Even after textile markets have been more effectively opened, competition between developing countries for these markets is likely to be fierce. The global adjustment process in this sector has only just begun.

1.2.4. Forestry. The forestry sector in China has experienced significant changes in the past few years as deforestation has been recognized as an important threat to environmental security. The emphasis has shifted away from the supply of forest products towards reforestation. This meshes closely with the prospects of WTO accession as China will turn increasingly to other countries to supply its forest products. This process poses environmental challenges that are particularly difficult to assess, since the benefits of reforestation will be felt in China while the risks of increased deforestation will occur in other countries, primarily of South East Asia.

It is expected that the increase in forest cover will bring significant environmental benefits to China. The assessment of the environmental consequences of a shift in supply to meet China's demand depends critically on the nature of the forests that are being harvested, the forest management practices that are followed, and the manner in which harvesting occurs. It is conceivable that the forest products imported by China from South East Asia are sustainably produced. It is virtually certain that some of them will not be sustainably produced. In this manner China will need to confront the dilemmas associated with any attempt to obtain more information about process and production methods of products being imported. Even if no attempt is made to influence these methods any attempt to properly assess the environmental consequences of changes in domestic forestry policy in connection with WTO accession requires this kind of information.

The challenges that China faces in ensuring that its domestic measures to promote reforestation do not result in serious environmental damage elsewhere are an indicator of how pervasive the issue of "process and production methods" (PPMs) is. Once viewed as primarily a matter of concern to wealthy developed countries it is likely that further development of the trade and sustainable development agenda will reveal how widespread the need to address PPMs really is.

1.2.5. Energy. If agriculture has the greatest environmental overall impact, current practices in the energy sector cause the most serious environmental damage. China's economy has been growing faster than energy consumption, implying that its relative energy efficiency has improved. Yet the increases in efficiency have not kept pace with overall economic growth, that is energy demand in China has also been growing. Older energy facilities offer quite dramatic opportunities for improving energy efficiency, indeed many such measures are economically attractive.

Domestic energy resources are dominated by coal, in many ways the most problematic of the fossil fuels. Its combustion can contribute not only to global warming but also to local and long range pollution by sulphur compounds that are precursors of acid rain, and by various trace elements that are typically present in coal. WTO accession should improve China's access to fossil fuels other than coal, that is oil and gas, as well as to technologies that can reduce the environmental impacts of coal. Local and long-range pollution is largely controllable by technological means.

The emission of carbon dioxide is all but unavoidable in connection with coal use and represents a continuing challenge to move to renewable energies. The overlap between the

climate regime and the trade regime appears to be a matter of time, in particular if investment negotiations are launched. As climate change takes hold, pressure on developed countries to act will continue to mount, but so will pressure on developing countries, making for a very difficult constellation.

In many instances the technologies to reduce environmental impacts of energy production and use are well known—or at least there are numerous technologies that offer significant scope for improvement.

1.3. The Development of Integrated Environmental Assessment of Trade Agreements

As the complex relationships between trade and environment became more obvious, policy makers sought tools to permit a more systematic analysis of the issues. The relationships are multi-dimensional, involving many aspects of trade policy and most environmental media and including both positive and negative impacts in both directions. There are trade impacts that improve environmental quality by increased efficiency and by the resources that become available through economic growth and there are trade impacts that are negative, by overwhelming environmental management structures or by undermining them. There are environmental policy impacts on trade that are positive, most often by creating entirely new markets for sustainably produced goods and for goods and services related to environmental management, and there are environmental measures that create barriers to trade or are captured by protectionist interests.

From the earliest stages of the trade and environment debate, certainly since the NAFTA negotiation in North America, attempts have been undertaken to develop integrated environmental assessments of trade agreements. This remains an important area of policy-related research but the task has proven much harder than anticipated. Trade policy uses powerful modelling tools to project its economic impacts. While the models never have predictive force they have come to enjoy widespread credence, even though they tend to model only those areas where comparative advantage leads to economic growth in one country (through increased exports) and increased welfare in another (through falling prices). Even trade in services has not been reliably modelled, and no models exist for such new issues as investment or competition policy. Environmental policy has long known the tool of environmental assessment, which was originally developed in relation to specific projects to identify environmental issues that required policy attention. The environmental assessment tools have been extended to assess policies and programs but the methodological problems grow very rapidly as the issues are less precisely defined in relation to a specific environment and the likely outcomes of policies and programs are less easy to identify.

These problems have proven more difficult to solve than anticipated. No integrated assessments of specific trade agreements have been undertaken in a manner to actually inform policy-making. At the same time there has been considerable progress in methodological development, supported in particular by numerous countries, the OECD and UNEP. A large number of sectoral assessments have been undertaken because a sectoral approach reduces the number of variables that need to be considered. Some of these studies have shown quite striking results. Thus a number of studies of economic liberalization and

the environment undertaken for UNEP have indicated that the entire economic gains from liberalization can be dissipated by increased environmental costs if appropriate measures are not taken. It appears that this conclusion is true in particular for developing countries that have an insufficiently developed environmental policy-making structure in place before liberalization occurs.

It remains important to increase the chances for anticipating environmental issues arising from trade liberalization. In recent years there is evidence that the necessary expertise is rapidly evolving in developing countries. Since China expects to experience some of the most dramatic economic and social changes arising from WTO accession, this is an area of great significance for the Chinese government.

2. Environment and Sustainable Development in the Doha Round

The environment has become an integral part of the Doha Round. China will need to address the full range of environmental issues identified in the Doha Ministerial Declaration. As with most issues on the WTO agenda, successful negotiations will depend on forging alliances between developed and developing countries around a common agenda. China can play an important role in this area. It is an opportunity to strengthen environmental protection and to promote sustainable development. It is important to keep in mind that some of the most important negotiations from the perspective of environment and sustainable development will occur in areas that have not been explicitly identified as forming part of the environmental agenda.

2.1 Environmental Issues for Negotiation (Para. 31)

There are several mentions of the environment in the negotiating agenda of the Ministerial Declaration; some concern issues for negotiation, and some the negotiation process itself. The negotiation items form part of the “single undertaking,” that is nothing will be considered finalized in the negotiations unless everything has been agreed, including the environmental items.

2.1.1 Multilateral Environmental Agreements (MEAs). The most specific negotiating mandate on trade and environment in the Doha Ministerial Declaration concerns the relationship between the multilateral trading regime and MEAs. It includes two elements: negotiations to clarify the relationship between “existing WTO rules and specific trade obligations set out in MEAs...” and “procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for granting observer status.”

The first part of this mandate is closely limited to exclude the problem of countries that are members of the WTO but not of the MEAs, most significantly the United States. It contains a clause protective of US rights under the WTO in relation to the action of MEAs. There exists a significant risk that such negotiations will actually limit the scope of current interpretation

of WTO rules, following the Appellate Body report on the shrimp/turtle dispute. On the basis of this report it could be assumed that actions based on the decisions of parties to MEAs will enjoy the protections of GATT Art XX (that provides exceptions to the principle of non-discrimination), and thus can be applied to WTO members who are not party to the MEA in question.

Since the ability to create both positive and negative economic incentives for non-parties to join or to at least respect MEAs can be an important part of their effectiveness, such negotiations give rise to some environmental concerns if they are not properly balanced. China will need to ensure that the WTO does not release members from their joint and differentiated responsibility for international environmental issues.

The section on the establishment of information exchange is both welcome and intriguing. It can be interpreted as suggesting that the relevant WTO committees may find it appropriate to develop rules of procedure that are specific to the trade and environment interface and thus without prejudice to the remaining WTO committees. Such an interpretation may permit the development of pragmatic and appropriate procedures without having to engage in wholesale change of WTO procedures.

2.1.2. Environmental Goods and Services. Paragraph 31 of the Doha Declaration also envisages negotiations on “the reduction or, as appropriate elimination of tariff and non-tariff barriers to environmental goods and services.” This goal is the result of searching for “win-win” solutions for trade and for the environment. It seems like a natural goal but it is worth underlining that no group of products and services has been thus singled out before. It remains to be seen whether any significant commercial interests in some countries are affected negatively and thus may attempt to derail this process. In terms of the negotiation itself—and its impact on China—the most important decisions will occur in determining what are in fact “environmental goods and services.” Many such goods and services are closely integrated with other goods and services in ways that may make it difficult to develop sufficiently precise distinctions that can be broken down in the customs classification system. There will probably be a debate about whether products that have been produced in an environmentally sound or sustainable manner qualify under the mandate.

2.1.3. Fisheries. The Doha Ministerial Conference saw the emergence of novel alliances within the WTO trading system. The landmark decision on TRIPS and public health was initially promoted by an alliance of southern governments and northern nongovernmental organizations, an alliance that proved able to overcome the strong resistance to such a decision from many pharmaceutical companies and the countries where they are domiciled. Similarly the inclusion of fisheries subsidies as a subject for negotiation can be seen as the result of an alliance between a group of developed and developing countries and some large northern environmental organizations. Like the decision on environmental goods and services it represents the fruit of a search for “win-win” solutions, where trade measures would both contribute to liberalization (by removing distorting subsidies) and to environmental conservation (by protecting fish stocks, including some endangered species). The fisheries negotiations will be of concern to countries that have large fish stocks or that fish in regions with severely depleted fish stocks. China is affected from both points of view.

Negotiations on fisheries subsidies are mentioned in paragraph 31, but the actual mandate is lodged in the section on Rules. It is widely assumed that the negotiations on fisheries subsidies will not occur in the negotiating committees established to address the environmental issues but rather in the Rules segment. This links them to some of the most controversial aspects of the Doha negotiations, namely the application of anti-dumping rules. It suggests that success or failure of the fisheries negotiations will be closely linked to success or failure on other Rules issues that have the potential to become the focus of the final stages of negotiation at high level.

2.1.4. TRIPS Art 27.3(b) and the Convention on Biodiversity. (CBD). For several years, concern about the relationship between TRIPS and CBD has been an important part of the environmental agenda of developing countries. The inclusion of this item on the Doha agenda (as part of the TRIPS negotiations rather than within the environment section) represents a success for developing countries and illustrates that the concern for trade and environment is no longer just a northern issue.

At issue is the need to ensure that plant varieties essential for the maintenance of biodiversity and traditional knowledge associated with plants that have commercially useful properties are appropriately protected within the TRIPS system. The difficulty lies in the fact that such plants and knowledge is typically to be found in developing countries while the ability to commercialize them is often to be found in developed countries.

The resulting rules have the potential to be of particular significance for systems of medicine, such a traditional Chinese medicine, that rely on plant and animal parts and socially evolved knowledge concerning their most effective uses for purposes of human health.

2.1.5. Process Issues. In addition to identifying the particular needs to ensure communication between MEA Secretariats and the appropriate WTO committees, the Doha Declaration includes some striking provisions concerning the role of the Committee on Trade and Environment (CTE) and the Committee on Trade and Development (CTD). The penultimate paragraph (51) of the Declaration specifies that the CTE and the CTD are to “act as a forum to identify and debate developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected.” This is a procedure without precedent so it is impossible to predict its impact. In principle CTE and CTD are being given a mandate to review the entire negotiation, without any limit, so as to ensure that the result reflects the objective of sustainable development. This unusual provision is justified by the fact that sustainable development is included in the Marrakesh Agreement establishing the WTO as the only substantive criterion for the work of the organization. Its impact is of course mitigated by the fact that the CTE and the CTD, like virtually all other organs of the WTO, are only committees of the whole of the General Council. It assumes that the members will be able to review their own work critically through this mechanism. Nevertheless it expresses an unusually clear commitment to sustainable development as an underlying principle of the negotiations, giving practical substance to the otherwise declaratory language on sustainable development in the opening sections of the Declaration. The existence of such implementing

provisions lends additional weight to the preambular language. Moreover the special role of the CTE gives greater significance to the provisions in paragraph 31 concerning communication with Secretariats of MEAs.

It is worth underlining that this innovative option exists only when the CTE and the CTD are able to work together. It puts a premium on focussing on sustainable development rather than just environment (or development) and creates interesting options for developed and developing countries alike.

2.2. *Items that Are Being Considered for Negotiations (Para. 32)*

In addition to identifying a number of issues that are to become part of the single undertaking, the Doha Ministerial Declaration also listed further issues of environmental concern that call for additional consideration to determine whether the basis for productive negotiations exists.

2.2.1. Environmental Measures and Market Access. Market access is the most important outcome of trade liberalization for countries that have comparative advantage for certain goods and services (for countries that provide market access, the outcome is an increase in welfare by increasing the purchasing power of consumers). For developing countries in particular, the relationship of environment and market access has been of vital concern as there was continuing fear of protectionist capture of the environmental agenda, in which case market access would be limited rather than enhanced. The resulting debate has been vigorous and rendered more difficult by three factors.

Distinguishing legitimate environmental measures from protectionist ones is very difficult. This requires a degree of environmental expertise combined with specific trade expertise that is not generally available. Experience with a number of important WTO disputes, notably shrimp/turtle and asbestos, indicates how difficult these questions are.

Equally important is the difficulty in assessing the full economic impact of legitimate environmental measures. These result in structural economic change, as does trade liberalization, so it can prove difficult to identify the effect of either policy area on the other. Moreover environmental measures can shift the balance of comparative advantage not only between countries but also within countries. In other words some exporting firms may be disadvantaged but other exporting firms may benefit and situations may exist where there are net gains yet the disadvantaged firms may make it difficult to recognize these.

Finally the economic concerns with environmental measures may have more to do with the ability to recover additional costs from markets rather than just with market access. Changes in environmental measures may be desirable if the importing country markets provide the necessary resources to protect the environment of the exporting country. In that case there is both economic and welfare gain in the exporting country. On the other hand if costs rise but markets do not provide the necessary resources there will be welfare loss.

The stakes are particularly high for developing countries that depend on the export of commodities. Commodity markets exhibit fewer rents than markets for specialty products, for example those protected by intellectual property rights. Producers must be concerned about any measures that increase production costs without offsetting price increases. On the other hand if solutions can be found that permit funding environmental protection expenditures connected to commodity production without changing relative market position, the potential gains for developing countries would be significant.

These questions are difficult to address and appear not to be sufficiently understood to permit actual negotiations to take place. Because of their potential significance it is just as important not to make mistakes through the outcome of negotiations as it is to negotiate to change current rules.

2.2.2. Other TRIPs Issues. In addition to its affirmative language on negotiations concerning TRIPs and CBD, paragraph 32 of the Doha Declaration instructs the CTE to give special attention to “the relevant provisions of the Agreement on Trade-Related Property Rights (TRIPs).” The CTE considered this issue on the basis of a working paper prepared by the Secretariat in 1995. It appears unlikely that this topic will be ready for active consideration in the negotiations.

2.2.3. Labelling. The issue of labelling has been one of the most difficult facing the Committee on Trade and Environment. Labels—or “eco-labels”—provide product information to the user who unpacks them. Labels are not able to convey complex analytical information but must respect a highly formalized presentation to ensure that a maximum of information is imparted—and to avoid labels that can give rise to misunderstandings. Labels are typically designed to provide information on hazards associated with a product and with basic information relating to the product’s consumption, for example the kinds of fibre employed in manufacture or the nutrients contained in food.

“Eco-labels” are designed to provide environmental information to consumers. They have been controversial because the information they can include is inevitably partial relative to complex environmental considerations. Life cycle analysis of a product can involve hundreds of factors. A description of the environmental conditions of production can be no less complex. Yet labels attempt to encapsulate all this information in a few synthetic values and expressions—and how these are selected can have dramatic impacts on the competitiveness of products. It is possible to have an ecolabel for paper that emphasizes the raw materials that have been used (for example virgin or recycled), the energy that was used (for example fossil fuels or renewables), or the bleaching process (with or without chlorine). These factors are quite diverse and it is not possible to express them in a single product designation. Yet labels that contain too much information are known to confuse consumers. There is consequently a significant level of conflict surrounding the formulation and use of eco-labels.

Within the WTO the questions begin with consideration of which WTO Agreement applies. Several developed country delegations have argued that the TBT and its relatively permissive procedural requirements apply. Those are designed to deal with more technical matters and are not certain to be sufficiently open and flexible to cover the needs of eco-labelling.

Developing countries have been concerned about the openness and cost of certification required for some eco-labels.

This is an issue that is unlikely to go away. If there are no negotiations on it within the Doha framework it is likely that there will be negotiations when the next round of trade talks are launched.

2.3. Other Negotiation Issues that are Significant for Environment and Sustainable Development

Some of the most important sustainable development issues will arise in relation to negotiations that have not explicitly been identified as “environmental.”

2.3.1. Agriculture. It is hard to overstate the importance of agriculture for sustainable development. But it is also increasingly hard to overstate the importance of environment and sustainable development for agriculture negotiations. The stark reality is that agriculture is not possible in many developed countries without subsidies, and that the opposite of over-supply induced by subsidies is famine caused by market fluctuation. These two realities have long made agricultural trade negotiations different from any others.

There is no doubt any more that the subsidies that have been put in place by the wealthiest countries, the United States and the European Union in particular, cause enormous damage to the people and economies of many developing countries. These subsidies, in particular export subsidies of all kinds, have to be changed. Yet the need for some subsidies remains very strong in many developed countries. Thus the debate is slowly shifting away from an attempt to eliminate all subsidies to a debate about which subsidies are most harmful. In this context, subsidies designed to support conservation in the rural environment, and subsidies that stabilize rural populations and communities, in other words subsidies for sustainable rural development, are emerging as one area where important social objectives can be achieved even while stabilizing international agricultural markets.

China is bound to become a key actor in the agriculture negotiations. As discussed above, some of the most important impacts from WTO accession are expected in agricultural markets. As production intensifies, China will confront the same issues of rural conservation that had to be addressed in developed countries. And China has an overriding interest in sustainable development of rural communities as an alternative to uncontrolled urban expansion. In these respects China’s interests are different from but not necessarily contrary to those of the European Union or developed countries in Asia.

The Uruguay Round Agreements included the Agreement on Agriculture (AoA), which for the first time brought agriculture under the GATT rules. The preceding years had been dominated by the debate about the need to include agriculture in the GATT. Since the end of the Uruguay Round, the WTO debate has focussed on the need to eliminate subsidies, and the Doha Declaration contains language that for the first time envisages “reductions of, with

a view to phasing out, all forms of export subsidies.” It is likely that the debate will increasingly shift to the equally difficult and complex subjects identified as the long-term objective of the AoA, namely “to establish a fair and market-oriented trading system through a programme of fundamental reform encompassing strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets.” This is a task that will take many years to accomplish, one that is of central concern from the perspective of sustainable development, and one in which China has a very large stake.

2.3.2. General Agreement on Trade in Services. The General Agreement on Trade in Services (GATS) was also one of the major achievements of the Uruguay Round. The GATS is constructed as a “bottom up” agreement, that is only those services are covered country by country that countries have specifically listed as included. This renders any general statements about the relationship of the GATS to sustainable development very problematic.

There is no doubt that many services are of crucial significance for sustainable development, including but not limited to banking and insurance, transport, tourism, and environmental services. As always, liberalization can be expected to have complex environmental and sustainability consequences. While closed or otherwise distorted services markets are unlikely to contribute to sustainable development it is not obvious either that liberalization will bring only benefits. These are matters that need a good deal of further analysis.

GATS negotiators have been addressing issues related to the regulation of services, that is training, certification, and licensing. These are areas that provide fairly obvious opportunities for the creation of a variety of barriers to market entry so the concern for these regulations is understandable. Yet any negotiations that seek to establish general principles for domestic regulation are potentially significant from the perspective of sustainable development.

The distributional effects of liberalizing services are not well understood. While the principle of comparative advantage applies to services, market position is often determined by factors other than price. Moreover many service industries require training, certification, and licensing, all of which can impact on the distribution of benefits that may be generated by liberalization. Indeed, thus far it has not been possible to model the growth impetus from services liberalization in the same manner as has occurred for trade in goods.

In light of the numerous uncertainties that continue to exist in the area of trade in services it is difficult to identify the interests of China and developing countries. In general, developed countries have been making a transition towards economies, in which services have become a vital source of growth and wealth creation. The economies of many developed countries are by now dominated by service industries. No developing country has made a comparable transition, so it must be assumed that developed countries will be exporters of services and developing countries importers. The advantages to exporters of services are fairly obvious. Yet the welfare gains by developing countries are not as clear-cut. On the one hand many of the services that are exported are fundamental to the development of an internationally competitive economy so that access to these services is almost a condition of development. On the other hand the provision of these services gives a significant measure of influence, not

to say control, over the domestic economic affairs of the country concerned. It is consequently essential to ensure that service providers also act in the interests of their hosts.

It has often been remarked that it is difficult for developing countries to assess the advantages and disadvantages of complex trade negotiations. This observation is particularly true for services where the stakes are high yet analytical support for particular negotiating positions can be difficult to come by. It is critical to ensure that the GATS negotiations reflect an appropriate balance between the interests of service providers and host countries.

2.3.3. Trade Related Intellectual Property Rights (Implementation and Geographical Designations). Intellectual property rights are important wherever innovation represents a significant factor of development, and where it is important to protect goods that incorporate social investments, such as certain wines or traditional knowledge. The TRIPS Agreement represented an initial compromise between the countries that were contracting parties to the GATT at the time of the Uruguay Round. New members of the WTO have accepted this compromise as a condition of membership. Nevertheless the balance between benefits and costs of an international intellectual property regime is bound to be dynamic and may shift in light of experience with the existing TRIPS Agreement. The Declaration on the TRIPS Agreement and Public Health, adopted at the Doha Ministerial Conference, is an example of this learning process. It also illustrates the manner in which the TRIPS Agreement can become entwined with the pursuit of major policy objectives, such as public health—or sustainable development.

2.4. Sustainable Development Dimensions of New Issues

Ministers in Doha agreed that negotiations will take place on several issues on the basis of a decision to be taken at the Fifth Session of the Ministerial Conference. The status of these issues within the negotiations initiated at Doha remains ambiguous. The language used to describe the prospect of negotiations is identical for all four issues: “Recognizing the case for a multilateral framework [for investment, competition, government procurement, trade facilitation] , and the need for enhanced technical assistance and capacity-building in this area . . . , we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations.” On the face of it this language agrees to negotiations but leaves the definition of modalities to the next Ministerial. Yet different interpretations abound, ranging from insistence that nothing has been decided to insistence that nothing remains to be decided.

All four issues can be of great importance to achieving sustainable development.

2.4.1. Investment. The stakes in an investment agreement are very high.. The future of every economy depends on investment. Only through investment will it be possible to move from a less sustainable to a more sustainable economy. Many developing countries depend on foreign investment to augment an inadequate domestic stock of capital. At the same time foreign investors may exert undue influence on these countries or may not contribute

adequately to their domestic development priorities. The prospect of negotiations on investment presents both risks and opportunities from the perspective of development.

Investment agreements have become increasingly controversial in developed countries. The interests of individual developing countries vary widely, depending largely on their existing ability to attract foreign direct investment (FDI).

The Uruguay Round set out some initial markers for an investment agreement in the WTO through the investment provisions of the General Agreement on Trade in Services (GATS) and the Agreement on Trade Related Investment Measures (TRIMS). Following conclusion of the Uruguay Round, negotiations were launched within the OECD for a Multilateral Agreement on Investment (MAI). The MAI was modelled on the investment provisions of the North American Free Trade Agreement (NAFTA)—at that time the most recent and most highly developed multilateral investment agreement.

The MAI included provisions designed to ensure non-discrimination (most favoured nation treatment and national treatment), prohibitions against certain “performance requirements,” rules on minimum international standards of treatment and expropriation, and an investor-state dispute settlement procedure that utilized existing commercial arbitration institutions (ICSID and UNCITRAL). The MAI attracted unexpected attention, triggered by environmental concerns. As public unease increased so did the realization among negotiators that the stakes were higher than anticipated. The number of exceptions grew very large. The MAI negotiations were abandoned when France withdrew, largely because of its desire to shield its cultural institutions.

All the above agreements and processes focused on the rights of the foreign investor and the obligations of the host state. There have also been attempts to develop international agreement on the obligations of foreign investors, but these have not been linked to the investment agreements in a binding way. The UN Centre on Transnational Corporations (UNCTNC) spent several years negotiating a Code for transnational corporations but had to abandon the effort in light of unremitting opposition from developed country enterprises. The OECD has a set of Guidelines for Multinational Enterprises that were recently revised.

Since the collapse of the MAI negotiations there has been some uncertainty just how to proceed, with most advocates of a multilateral agreement assuming that the WTO was the appropriate forum for negotiations on investment. Resistance to such negotiations has come from a small group of developing countries.

It remains unclear what a WTO agreement on investment would look like. Working this out is the primary task of the Working Group on the Relationship Between Trade and Investment. Issues for the Working Group to consider include:

- the definition of an investment and an investor -- the Doha text speaks of “long term” investments, implicitly excluding the portfolio investment that would have been covered by the MAI, but this issue has not yet been finally settled;
- transparency of government activity and minimum standards of treatment for foreign investors;
- non-discrimination;
- market access for investment;
- special provisions for developing countries;
- exceptions and balance-of-payments safeguards;
- consultation and the settlement of disputes between Members.

This listing appears to exclude some of the more controversial elements of the NAFTA/MAI approach, most notably the inclusion of portfolio investment and the investor-state dispute settlement process. Yet there is no guarantee that the process of negotiation will not lead right back into the quagmires of the MAI and NAFTA. For example, one would anticipate rules on expropriation to be included, as they are in almost all other investment agreements, even though this is not expressly stated. It is widely assumed that the lessons from the MAI failure and the ongoing NAFTA controversies will be learned—but what the lessons are still depends on whom you talk to.

There has not been much discussion about the purposes of an investment agreement. It is assumed that a non-discriminatory regime will lead to the better allocation of scarce capital and that a reduction of political risks will permit investment at lower rates of return. But there is little empirical evidence that the existing investment agreements have made any difference, let alone promoted more efficient use of capital. The available evidence supports the prohibition of performance requirements as economically inefficient instruments, but not much more.

Yet the consequences of an effective investment agreement are potentially enormous. They differ dramatically between developed and developing countries. An international agreement must interact with domestic institutions to balance investor rights and public goods. In most developed countries these institutions involve highly developed procedures for the administrative review of projects and for regulatory or policy decisions impacting investments, followed by several layers of judicial review in cases of disputes. If an international regime is to involve itself in these sensitive matters, it will require more sophisticated international institutions than have been envisaged in most investment agreements. In developing countries the task is to develop the institutional capability to properly assess, regulate and work constructively with investment projects in light of the public interest and the protected private rights. Ideally an international agreement should promote the development of domestic capability not preempt it.

Investment negotiations in the WTO are still at an early stage but the decisions that are taken in the coming months to frame those negotiations will largely determine the direction that

they will take in the future. An investment regime that promotes sustainable development would be very welcome—but one that fails to do so can give rise to significant levels of conflict.

Because the issues for an investment agreement have not been clearly articulated many developing countries have not been able to consider what is in their best interests. Many have tended to respond to the expression of interest, in particular on the part of the European Union, rather than determine their own approach to these matters.

2.4.2. Competition Policy. The Doha Agenda proposes further trade and investment liberalization, with a continued process for reducing non-tariff barriers to trade and opening domestic markets to foreign investment and service providers. The continued trend towards liberalization places increased pressures on monitoring and preventing anti-competitive practices that distort and may even reverse the intended benefits of liberalization.

The competition dossier looks remarkably like the investment one: it requires extraordinarily sophisticated domestic institutions and appropriate international cooperation. Replacing these by an international regime makes little sense—except for those specific cases where the markets that are being cartelized are international in nature. But even then, perhaps the response should be cooperation between competition authorities rather than a new WTO agreement.

Varying degrees of competition principles and rules already exist in certain WTO agreements such as the Anti-dumping Agreement, in the North American Free Trade Agreement (NAFTA), and in the Canada- Chile Free Trade Agreement (CCFTA). In addition, the OECD has produced a number of non-binding instruments dealing with hard-core cartels, cooperation and pre-merger notification and reporting of mergers. Competition authorities around the world are increasingly involved in formal and informal cooperation with foreign counterparts to address the impacts of globalization on competition at a global level. International negotiations on anti-competitive behavior would internationalize competition policy enforcement to ensure cooperation among competition authorities and to prevent jurisdictional conflicts.

It is a complex agenda. The Working Group on the Interaction between Trade and Competition Policy set up in Doha will focus on clarifying

“core principles, including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries and least-developed country participants and appropriate flexibility provided to address them.”

The objectives and goals of competition law, like investment, are actually very different from trade law. The competition legal agenda is about protecting open competition processes, not defending wronged individual competitors. Many competition authorities are highly independent, and have the power to directly review, investigate or sue private corporations. As such, rather than negotiating a comprehensive multilateral agreement on competition

policy in the WTO, there is a push for a TRIPS-style agreement, with consensus on core elements or provisions to establish baseline operating conditions. An agreement on anti-trust law (or TRAMS- Trade-related Aspects of Anti-competitive Measures) would probably only contain basic principles and procedural safeguards. For procedures, some countries have also proposed support mechanisms, such as a peer review process (or Competition Review Mechanism modeled on the Trade Policy Review Mechanism), which could provide countries with an objective review of their compliance and enforcement records while also fostering transparency. Some of these mechanisms might be possible without launching an ambitious program of negotiations.

The impact of an international agreement on competition policy on sustainable development remains difficult to assess, since the impacts of economic development on developing countries is also not known. Obviously anti-competitive behaviour causes economic harm and corporations that have acquired excessive market power are presumably more difficult to discipline from the perspective of sustainable development. Yet the restraint of such behaviour does not deliver obvious benefits from the perspective of environment and sustainable development, and enterprises have been quick to argue that they are unable to comply with environmental requirements because of the pressures of competition. In light of these uncertainties few developing countries have strongly articulated positions on the issue of competition policy.

2.4.3. Government Procurement. The Agreement on Government Procurement (1994) (GPA) is the third in a series of agreements in the GATT/WTO dealing with government procurement. Over twenty years, these agreements have developed some ground rules for government procurement, based on three essential characteristics:

- Like the GATT, the core principle of the GPA is non-discrimination, achieved by most favored nation treatment, national treatment, transparency, and dispute settlement, but there are some differences among the formulations of these principles.
- Like the General Agreement on Services (GATS), but unlike the GATT, the GPA applies only to jurisdictions and products explicitly listed by each country in a series of Annexes. Countries can also specify thresholds below which the GPA does not apply.
- Unlike most WTO agreements, the GPA is a “plurilateral” agreement. Members of the WTO do not automatically become members of the GPA.

The GPA contains extensive provisions governing tendering procedures, selection procedures, submission, receipt and opening of tenders and awarding of contracts, as well as negotiating procedures. In this manner it outlines a desirable system of government procurement.

As of late 2001, there were 28 members of the GPA, with seven further applicants to join and 23 observers. China does not currently participate in the GPA process.

Governments have not been environmentally conscious consumers. Even while public

entities typically represent 10-15% of the domestic markets of most countries, there are actually very few instances where government agencies have been path-breaking purchasers of environmentally sound goods and services. This has been the case in particular where there are no domestic suppliers or where suppliers of environmentally friendly goods compete with less environmentally friendly domestic goods. Governments have largely avoided using environmental characteristics to distinguish between suppliers, precisely because this represents an effective screen and entails the risk of a challenge from suppliers who have been implicitly excluded. Moreover the articulation of environmental criteria will sometimes entail the “risk” of favoring non-domestic suppliers over domestic ones.

There is a clear case to be made for governments to articulate strong environmental requirements when purchasing goods and services. The government procurement market is sufficiently large to impact the overall market for certain goods and services. Yet governments are unlikely to engage in the development of environmental standards for their procurement needs—in other words they would need to utilize standards that are already available. Internationally agreed standards would be preferable, since there are obvious chances that voluntary standards developed by domestic suppliers will contain protectionist elements. Even international standards may face questions over legitimacy, given the lack of developing country input in their development.

There are two key questions facing developing countries in relation to the GPA: first, should they accede to the Agreement; and second, are there elements of an Agreement, or policies at the national level, for which they should be pushing even if they do not choose to accede?

On the first question: given that the GPA is a plurilateral, the question whether or not to accede must be answered in large measure by a mercantilist assessment of national interest: will accession benefit domestic producers more than foreign ones? It is likely that the answer for most developing countries is “no,” but the final answer in each case will have to await an assessment that will involve at least some measure of private sector consultation.

Whether signatories to the agreement or not, developing countries’ exports will be affected by it to the extent that they are competing for sales to signatory governments. So they have a stake in ensuring that the rules push for specification of standards that are non-discriminatory. International environmental standards tend to be less suspect on this score than those – such as domestic ecolabel schemes – developed at the national level. In the area of domestic policy, the ability and increasing inclination of OECD governments to include environmental criteria when purchasing gives exporting governments more reason to pursue an industrial strategy that facilitates the export of “greener” products.

2.4.4. Trade Facilitation. Trade facilitation (TF) is defined by the WTO as “the simplification and harmonization of trade procedures, with trade procedures being the

activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade.”

Business groups, several inter-governmental organizations and most developed countries are supportive of such negotiations going forward. Developing countries, while not opposing the concept of trade facilitation, generally oppose the negotiation of legally binding rules subject to dispute resolution in this new area. The issue in WTO terms, therefore, is whether such an agreement will be forthcoming, and what it might look like if it is. The issue in a sustainable development context is whether increased attention to trade facilitation would be supportive of a development and sustainability agenda for trade policy.

Several international organizations have been considering TF issues, some for as long as thirty to forty years. The United Nations Economic Commission for Europe plays a lead role within the UN system on this issue, while UNCTAD, the World Bank, OECD and others are also involved. APEC appears to play a leading role integrating developed and developing country interests in TF into a single, but voluntary process. APEC has identified several principles for focusing capacity building activities and regulatory reform initiatives associated with TF. These include:

- Transparency
- Communications and consultations
- Simplification, Practicability and Efficiency
- Non-discrimination
- Consistency and Predictability (includes integrity)
- Harmonization, Standardization and (Mutual) Recognition (of standards)
- Modernization and use of new technology
- Due process
- Cooperation

The APEC, as well as WTO and UN processes all recognize that implementation of such principles will require both national policy and capacity development as well as international cooperation.

Several developing countries have made submissions to the WTO that support further work on TF. However, developing countries continue to be extremely concerned with the assumption of new legally binding requirements linked to the dispute resolution mechanism when many have been unable to meet existing requirements, and even unable to develop a sound understanding of all their obligations.

In addition, some developing countries remain skeptical about the potential benefits of a broad TF program, especially in the context of their own development priorities. Here, the

link to developed country just-in time production and retail strategies as a motivator for a broad TF agreement raises questions as to the scope of realistic mutual benefits. With the reduction in tariffs, the movement of goods through borders has become a more poignant issue. Mainly UN and WTO studies suggest addressing this issue can boost development opportunities, and it seems intuitive that this would be the case. However, this assessment does not weigh the potential benefits of a focus on trade facilitation strategies as opposed to other development priorities. This need to weigh priorities is intensified if an agreement on TF is made legally binding and subject to dispute settlement with its attendant potential consequences of punitive tariff measures. The extent to which a capacity-building component can override this priority setting question is, at best, unclear.

To the extent that addressing TF issues in a concerted way would force participants to address corruption related issues, this would also be a positive development benefit.

If addressing TF issues were to have the magnet effect for investments that its proponents suggest, this could help spread investment and improve utilization of resources in a more sustainable way. However, at least two potentially negative relationships may be noted. First, the TF related focus on harmonization of standards should not intrude upon the guarantees for the setting of national standards already set out in the TBT and SPS Agreements. TF should not reduce the scope for appropriate environmental, human health and other public welfare legislation and regulation.

Second, it must be recognized that many multilateral environmental agreements, as well as agreements relating to illicit drugs, organized crime activities and so on rely upon measures at the border to detect and prevent illegal activities. In the environment context, this includes such critical agreement as the Basel Convention on hazardous wastes, the Montreal protocol on ozone depleting substances, and others. TF issues should not become a barrier to the effective implementation and further development of such agreements.

2.5. Need for Technical Assistance and Capacity Building (Para 33)

The need for technical assistance is repeated over and over again in the Doha Ministerial Declaration. In many ways this represents the most tangible development dimension of the Declaration, since all other issues of concern to developing countries and to sustainable development are left to the negotiation process. The term “technical assistance” is used 21 times and the term “capacity building” 18 times.

The concern for technical assistance and capacity building reflect several considerations. Important among them is the realization that the multilateral trading system has become very complex and that a growing number of countries are overwhelmed by the task of meeting its requirements, let alone participating in negotiations to modify them. The lack of capacity has become a threat to the credibility of the system.

There is also growing realization that significant investments in infrastructure and the capacity to operate it efficiently are required if a country is to benefit economically from the process of trade liberalization. This reflects a certain degree of uneasiness with the results of the Uruguay Round and the growing evidence that more developing countries than initially anticipated failed to realize significant benefits from it. It has been argued that the lack of effective institutions has contributed materially to this unwelcome result, so that capacity building is seen as a necessary adjunct to the process of liberalization.

Despite the extraordinary emphasis on technical assistance and capacity building in the Doha Declaration there has not been a vigorous public debate about the goals of this effort and the methods by which these goals may be achieved. The WTO is not an organization that has experience with capacity building, other than providing courses on how to fulfil the requirements of the Agreements and how to better manage the trade process, essentially trade facilitation. In fact technical assistance and capacity building are complex processes, closely linked to the education and training system of a country, and it does not appear likely that anything short of a concerted, long term investment in these activities will generate the kinds of benefits that are sought.

3. The Importance of a “Sustainable Development Agenda” for the WTO

“Sustainable development” is more than “development.” The WTO has embraced the agenda of sustainable development but it is not clear exactly what this will entail. That is not surprising: sustainable development is a remarkably ambitious goal and the task of operationalizing it is one that will require generations rather than just years. Sustainable development clearly includes the macroeconomic policy goals that have been pursued by the Bretton Woods institutions and that have been central to the work of the GATT and now the WTO. As has been emphasized several times in this paper, macroeconomic instability not only does not promote sustainability, it is an obstacle to its achievement. Yet the converse is not true: macroeconomic stability in no way guarantees sustainable development. This difference is at the heart of the WTO environment and sustainable development agenda.

3.1. *Elements of a Sustainable Development Agenda*

3.1.1. The “Development” Round. The negotiations that are to follow the Doha Ministerial declaration have often been called a “Development Round.” This appellation is more an aspiration than a specific set of negotiating objectives. It also recognizes the problems that have been encountered in ensuring that the benefits of trade liberalization are widely spread. Too many developing countries have not benefited sufficiently from the Uruguay Round Agreement. Characterizing the Doha negotiations as a “Development Round” is one way to indicate awareness of this particular issue.

From the perspective of development objectives, achieving growth of GDP in developing countries is the most basic of objectives. The question remains how that growth is distributed,

who benefits and to what extent it is utilized to ensure longer term growth through prudent investment. While these are not matters for negotiation within the WTO they nevertheless are of great significance to the perception of citizens everywhere as to the equity of the outcomes of such negotiations.

Thus far the goal of development is primarily reflected in a massive declaratory commitment to technical assistance and capacity building. While this commitment is certainly a precondition for moving towards the goal of development for the poorest countries it is also unlikely to be a sufficient response. Just as “sustainable development” remains an unclear objective for the WTO, “development” is hard to bring into focus in the kind of process that is characteristic of the organization. It will take the concerted effort of developing countries in alliance with those interests in developed countries that are committed to more development and greater equity to work out practical steps to move the outcome of the Doha negotiations in the direction of development, let alone sustainable development.

3.1.2. Implementation Issues. Implementation issues played an important role in the preparations for the Doha Ministerial. These were issues raised by developing countries in the process of implementing the Uruguay Round Agreements. They included a request for derogations from certain obligations or for extended implementation deadlines. In some instances they also sought the acceleration of implementation on the part of developed countries, in particular in the area of textiles.

These issues were only partly resolved before the Doha Ministerial and are a critical part of the current process at the WTO. The challenge is to rebalance an agreement as complex as the Uruguay Round Agreements. Yet this process is vital in showing that the WTO is capable of learning from past experience and adjusting obligations to achieve greater equity of outcomes.

One of the difficulties that exist in this area, as in relation to the principle of special and differential treatment for developing countries (S&D), concerns the difficulty in determining which changes will actually promote economic growth or greater welfare in developing countries. After all the theoretical basis of the entire WTO process is that liberalization generates economic benefits while limiting liberalization reduces them. Yet both the implementation and the S&D discussions are aimed precisely at agreeing exceptions to rules that are widely viewed as beneficial. The result is a very difficult process of analysis and action that promises to become much more central as the complexity of WTO agreements increases. It is also a matter of great concern with respect to sustainable development, which is after all even more demanding than the traditional processes of trade liberalization.

3.1.3. Institutional Development. One of the more surprising areas of convergence between the traditional WTO agenda and the demands of sustainable development is the need for institutional development. Institutional development is vital both from the perspective of the current and future agreements that are negotiated within the WTO and from the perspective of sustainable development. This applies equally to international and national institutions. In the case of sustainable development the need extends to the local and regional level within many countries. Without adequate institutions it will be equally impossible to implement the

existing WTO Agreements or to identify and implement the steps that are required to shift the economy to a more sustainable pathway.

3.2. Current negotiations and positions of WTO members on trade and environment.

Since the Doha Ministerial Meeting the WTO's Committee on Trade and Environment (CTE) has held three special sessions back to back with its regular meetings. These special sessions are designed to clarify the positions of various countries as the negotiation process has gotten under way. In many respects it is still too early to identify clear positions of individual countries. This process will continue until the next Ministerial Meeting in Cancun when the pattern of negotiations will be much clearer. Like other areas, negotiations on trade and environment have focused on "modalities," that is how an agreement or a negotiating agenda might be structured, which then determines the nature of proposals that can be made. As a result there have been a dozen of proposals submitted by individual countries and groups of countries.¹

3.2.1. *Issues to be negotiated.* The three special sessions of the Committee on Trade and Environment focused on three issues that are slated for negotiations set out in Paragraph 31 (i) to (iii) of the Doha Declaration, including *WTO and MEA*; *Information exchange and criteria for observer status* and *Environmental Goods and Services*.

With respect to the relationship between existing WTO rules and specific trade obligations set out in MEAs, several countries proposed it is essential to clarify the definitions for "MEAs," "specific trade obligations" (STOs)² and the WTO rules that are relevant.³ On MEAs, comments were made on whether the term should include regional environmental agreements or those that have not yet entered into force. On STOs, both narrow and broad interpretations were tabled. Discussions focus on the nature of the trade measures in MEAs stating STOs should meet three criteria – (1) specific; (2) trade related; and (3) an obligation. The discussions in the CTE special sessions show that there is a need to define the different categories of specific trade obligations set out in MEAs. This requires a detailed analysis of these categories to establish the distinction between specific trade obligations and non-specific trade obligations. On the substantive issue (the relationship between the WTO rules

¹ Up to the third Special Sessions on October 10-13, 2002, 15 proposals on three issues to be negotiated and other proposals have been submitted to the Committee on Trade and Environment.

² Existing multilateral environmental agreements (MEAs) have adopted a variety of trade measures to achieve different objectives of global environmental protection. These include mandatory and voluntary trade measures, as well as trade measure that are not mandated as 'obligations' in MEAs, but are encourage to take or are taken by countries voluntary to implement MEAs. It is not clear which of these trade measures should be viewed as "specific trade obligations."

³ These countries include EC, Argentine, Switzerland, Australia, Japan, Taiwan, New Zealand and Korea.

and STOs in MEAs), Switzerland proposed to adopt an interpretative decision to clarify the relationship between WTO rules and STOs in MEAs, favouring that the relationship between the WTO rules and STOs in MEAs be governed by the general principles of no hierarchy, mutual supportiveness and deference. Developing countries remain primarily concerned to ensure that MEAs do not create unnecessary barriers to trade.

With respect to *Information exchange and criteria for observer status*, two proposals submitted addressing this issue (US and EC). The Secretariat document (TN/TE/S/2) also outlined exiting mechanisms for cooperation and information exchange between UNEP/MEAs and the WTO. The needs to institutionalize and regularize the past cooperation and information exchange practices between UNEP/MEAs and the WTO and to strengthen joint technical assistance activities between the WTO, MEAs and UNEP, were stressed. On the issue of observer status, most members maintain that the criteria should be decided by the Trade Negotiation Committee, but these criteria should be specific and precise.

On *environmental goods and services*, the major issue is the definition of these goods. The proposal submitted by New Zealand reflected the Asia Pacific Economic Cooperation forum's proposal on accelerated tariff liberalization. APEC had used the definition of the environmental industry by the Organization for Economic Cooperation and Development. Most developing countries are seeking a narrow definition that focuses on goods and services that contribute directly to environmental management. Some developed countries have suggested that negotiations should also include goods produced in an environmentally responsible manner but this position has not found favour with developing countries.

3.2.2. *Issues to be considered.* Meanwhile, the CTE's regular meetings focused on three issues that will be considered for negotiations under Paragraph 32 – *environmental measures and market access, other TRIPs issues and labeling for environmental purposes* - with an aim to report to the next Ministerial Meeting as to what action should be taken..

On environmental measures and market access, developed country Members generally hold that the protection of the environmental and the promotion of the sustainable development are a justified course for the world. Environmental considerations increasingly become a market reality. They also realize that developing countries, in particular, the least developed countries, have difficulty in meeting environmental standards in developed countries. These environmental measures may jeopardize developing countries' market access. They maintain that the solution is not to lower standards, but rather to enable developing countries to meet the requirements through technical assistance and capacity building. Many developed countries expressed their willingness to provide technical assistance in this area.⁴

⁴ The WTO Secretariat, *Trade and Environment Bulletin* (Press/TE.038), 4 April 2002.

Developing countries and least developed countries, led by India, noted emerging environmental requirements could, and increasingly would, have significant adverse effects on the market access of developing countries. They stressed the need to maintain market access in the face for increasing environmental related, non-tariff barriers to trade. Ensuring greater market access for exports from developing countries is the key to meeting the objectives set out in the Marrakech Agreement that established the WTO. To safeguard developing country interest, developing countries should be enabled to respond to environmental regulations. Efforts should focus on information dissemination about new environmental requirements and on developing country early participation in the development of standards, and on granting longer time frame to developing countries for compliance with the new standards. In formulating and implementing environmental measures, developed countries should consider developing countries' special needs for development, finance and trade, and ensure not to create trade barriers. Environmental measures should be based on the principles of science, transparency and equity as well as compatible to the open and non-discriminatory multilateral trading system; they should not impose unwarranted economic and social costs to developing countries. Capacity building, technology and financial transfer and technical assistance are essential to reduce the costs of compliance with environmental regulation. Some countries remain that it is vital to focus on the development and environment – sustainable development aspects - of the WTO negotiations.

On the relevant provisions of the Agreement on Trade-Related Intellectual Property Rights (TRIPs), Members pointed out that some related articles under TRIPs have a close relationship with the Convention on Biological Diversity (CBD), and they should be mutually supportive. A number of developing countries (including India, Brazil and Pakistan) proposed to amend the TRIPs to ensure the consistency between both agreements. Many Members expressed their concerns about genetically modified organisms (GMOs), alien species invasion and biodiversity conservation, and wished to continue the discussion on these issues.

With regard to labeling requirements for environmental purposes, Canada proposed to look at the issues from the perspective of implementation of the TBT Agreements. Switzerland proposed that the CTE discuss the definition of 'eco-labeling' and analyze specific trade issues in relation to environmental labeling before the decision was made as to what action to be taken. Some Members maintained that the labeling issue is another form of "process and production method" issue, and needs to be further discussed.

Members also discussed technical assistance, capacity building and environmental reviews pursuant to Paragraph 33; and how to appropriately reflect sustainable development in the negotiations pursuant to Paragraph 51.

3.2.3. *Others.* In addition, in the critical area of agriculture it is still too early to identify the key positions. Recent decisions within the European Union to adjust the Common Agricultural Policy to the needs of an expanding membership have created a situation where internal subsidies are now scheduled to be reduced. This in turn opens up opportunities for accommodation within the WTO context. The overall volume of export subsidies and the rules that will govern “non agricultural issues” in the rural environment remain highly controversial. There is slow recognition that developing countries face essentially the same problems of conservation in the rural environment as developed countries but without being able to make the same resources available to producers. Among developing countries the essential divisions remain between those with agricultural surpluses to export, which wish to see a reduction in subsidies that depress world market prices, and food importing countries that benefit from such subsidies.

Developing countries remain reticent with respect to investment negotiations, even though only India has been adamant in its opposition. Ultimately no country wishes to suggest that it does not want more foreign investment—even though there is no empirical evidence to show that existing international investment agreements have actually contributed to the volume and direction of investment. At a recent meeting, however, several major developing countries—including India and Brazil—submitted a proposal that would have limited the scope of the existing Agreement on Trade Related Investment Measures (TRIMS), let alone envisage entirely new negotiations.

In practice many of the most important environmental issues have been assigned to negotiating bodies other than the CTE, even some that have been mentioned explicitly in the Doha Declaration as being part of the environment agenda. Thus fisheries subsidies are being considered in the Rules Group and the relationship between TRIPS Art. 27.3 and the Convention on Biodiversity in the TRIPS Group.

Although the development aspect of the negotiations has been stressed by some countries, the issues related to development, implementation and institutional development have not yet been coherently addressed so far in the negotiating process.

3.3. *Co-operating to Develop the Agenda: China’s Interest and Role*

China has placed environment and sustainable development as an important matter on its agenda. As the fastest growing economy and the largest developing country in the world, China supports a fair, equitable and rational international economic system that promotes sustainable development. China needs to cooperate with other WTO members to develop the trade and sustainable development agenda. The overall objective for the WTO negotiations should be to obtain a more open, equitable and reciprocal global market in goods and services. Effort should be made to ensure that negotiations address “sustainable

development” issues rather than mere “environment,” making sure that the needs for development in developing countries including China are given adequate consideration and the principle of common and differentiated responsibility with respect to environmental protection is reflected, and ensuring the outcomes of the negotiations are forward-looking and balanced, and support development in developing countries. There is also a need to stress that environmental measures should not be used as disguised trade barriers. It is vital to ensure that transparency, advanced notice and technical assistance already embedded in the WTO agreements be properly implemented.

Exit