

**WTO NEGOTIATIONS ON ENVIRONMENTAL GOODS AND SERVICES: ADDRESSING
THE DEVELOPMENT DIMENSION FOR A "TRIPLE-WIN" OUTCOME**

Communication from China and India

The following communication, dated 13 April 2011, from the delegations of China and India is being circulated to the Committee on Trade and Environment in Special Session.

1. Doha Mandate

1. The proponents of this paper begin by recapitulating some of the basic elements of the Doha Ministerial Declaration (DMD) that have a bearing on the discussions on Environmental Goods and Services:

- Paragraph 31(iii) calls for negotiations on "the reduction or, as appropriate, elimination of tariff and non-tariff barriers (NTBs) to environmental goods and services (EGS)."
- Paragraph 32 states that particular attention is to be given to the effect of environmental measures on market access of developing and least-developed country Members. This paragraph also emphasizes upon the need to have a "triple-win" outcome by specifically recording that the elimination or reduction of trade restrictions and distortions shall benefit *trade, environment and development*. (emphasis added)
- Paragraph 38 underscores technical cooperation and capacity building as core elements of the development dimension of the multilateral trading system.
- Paragraph 44 reaffirms the provisions for special and differential treatment as an integral part of the WTO Agreements.
- Paragraph 50 emphasizes that the Work Programme shall take fully into account the principle of special and differential treatment for developing and least-developed country Members.

2. The Hong Kong Ministerial Declaration reiterates the "central importance of the development dimension in every aspect of the Doha Work Programme."

2. Negotiations on Proposals at EGS Negotiations

3. In the on-going negotiations however, the focus on the development dimension has been highly limited. The thrust of the discussions has been primarily on trade in goods, or what is referred to as the "List" approach.¹ The main problems in the List Approach are its sole focus on trade in

¹ JOB(07)/54; TN/TE/W/57; TN/TE/W/57Corr.1; TN/TE/W/56; TN/TE/W/52; TN/TE/W/50; TN/TE/W/49; TN/TE/W/49/Rev.1; TN/TE/W/49/Rev.2; TN/TE/W/48; TN/TE/W/47; TN/TE/W/47/Add.1;

goods, its silence on environmental services, and the fact that the lists of goods proposed have predominantly been goods with multiple non-environmental uses. India had proposed an alternative in the form of the "Project Approach".² Argentina merged elements of the Project and List approaches with its proposal for an "Integrated Approach",³ which was further developed in a joint submission with India.⁴ Brazil's Request and Offer methodology⁵ is the other proposal on the table.

4. There has however not been much headway on the approaches being negotiated. It is the view of the proponents of this paper that without a common understanding on the objectives and modalities of negotiations, any further discussions would not be very fruitful. The purpose of this paper is to highlight the underlying principles of the Doha Declaration and emphasize the elements of the *development dimension* which would need to be woven as an integral component of the negotiations. The proponents also believe that principles that focus on a win for development along with a win for trade and a win for environment will in themselves ensure clarity in the approaches that can be adopted in the EGS discussions.

5. The development dimension in the EGS discussions was sought to be given central focus in a recent submission on "special and differential treatment" (S&DT) by Brazil and Argentina.⁶ This communication is in furtherance to that submission, and seeks to elaborate on some of the other elements of the development dimension, in addition to the S&DT elements.

3. Development Dimension in the EGS Discussions

6. Addressing the development dimension would require ensuring access to and availability of environmentally sound technology (EST) in order to address developmental needs of developing and least-developed country Members. As pointed out in the United Nations Social and Economic Survey in 2009, developing countries need financial resources, technological know-how and capacity building in order to adhere to a path of environmentally sustainable development.

7. In the context of the EGS discussions, the three main elements to address the development dimension can be categorized as follows:

- (a) Mechanisms to ensure the development and transfer of environmentally sound technology (EST);
- (b) A financial mechanism to ensure access to and development of EST, investments in environmental projects and capacity development for production of environmental goods; and
- (c) Special and Differential Treatment for developing and least-developed country Members.

TN/TE/W/46; TN/TE/W/44; TN/TE/W/44/Corr.1; TN/TE/W/38; TN/TE/W/34; TN/TE/W/19; TN/TE/W/19/Corr.1; TN/TE/W/8; TN/TE/W/6, TN/TE/W75.

² TN/TE/W/67; TN/TE/W/60; TN/TE/W/54; TN/TE/W/51.

³ TN/TE/W/62.

⁴ JOB(07)/77.

⁵ JOB/(07)/146.

⁶ TN/TE/W/76.

4. Technology Development and Transfer

8. Effective development and transfer of EST would require concrete commitments from Members to ensure such development and transfer in an effective manner. Specific commitments and work programmes would need to be evolved which focus on obligations from developed country Members to ensure transfer of technology, including ensuring financing commitments to enable access to technologies protected by Intellectual Property Rights (IPRs) and those that are not (this aspect is discussed in greater detail below in the section on Financial Mechanism).

9. Adequate commitments are also required in order to ensure that IPRs in themselves do not become a barrier for transfer of technology. In this regard, provisions need to be evolved in order to ensure that private sector players within a Member's jurisdiction do not abuse their proprietary hold over technology to deny access, and also that the terms of access are reasonable. To give effect to this commitment especially in the context of critical EST required by a WTO Member, innovative mechanisms would need to be conceptualized to allow for compulsory licensing for export of such technology to another Member. The Doha Declaration on Public Health could provide the basis of one such innovative mechanism.

10. Cooperative research and development of EST, sharing of IPRs from such development, enhancing capacities of developing and least-developed country Members to develop and implement such technology, and ensuring effective transfer and implementation of such technology, are also objectives that need to be clearly made operational within the EGS framework.

11. An important aspect to highlight in this regard is that "Transfer of Technology" comprises flows of *know-how*, *experience* and *equipment* to different stakeholders such as governments, private sector entities, financial institutions, non-governmental organizations (NGOs) and research/educational institutions.⁷ Since *know-how* is a critical component of technology, technical assistance and capacity building for recipients of technology transfer are also elements that would need to be addressed as part of the component on technology development and transfer.

12. In view of the fact that most ESTs are in the hands of private entities, innovative ways in which effective implementation of transfer of technology can occur would need to be explored and implemented. In this regard, ideas from, and linkages with, the Climate Technology Centre and Network (CTC&N) which is being conceptualized under the United Nations Framework Convention on Climate Change could also be explored as one of the means to implement commitments for technology transfer.

5. Financial Mechanism

13. Technology development and transfer and a sound funding mechanism are closely linked since such development and transfer will require adequate financial support. The commitment of financial resources to ensure access to EST in order to enable developing and least-developed country Members to implement measures to promote development in an environmentally sound manner, is an inherent component of the development dimension. Increased public and private investment in EST development and transfer and in environmental projects along with the means to achieve this are critical components which will need to be addressed.

⁷ This is a definition in the context of transfer of clean technology as a means to mitigate the impact of climate change, used by the Inter-governmental Panel on Climate Change: *Methodological and Technological Issues in Technology Transfer* (2000), (Part 1.4). The elements of the definition would be applicable in the context of transfer of any complex technologies.

14. Several studies have borne out that EST, whether or not protected by IPRs, typically comes with a high price tag which makes access to it prohibitive. A sound financial mechanism is therefore of key importance in ensuring transfer and effective implementation of EST.

15. To achieve the financial aspect of the development dimension, Members should consider creation of a Trade and Environment Fund with objectives, such as:

- (a) Facilitating transfer of ESTs at reasonable prices by funding the incremental costs of sourcing both proprietary and non-proprietary EST through licensing and other mechanisms;
- (b) Providing grants to developing country Members that intend to import specific ESTs;
- (c) Financing the cost of change of production practices in existing manufacturing facilities in developing countries by adopting and implementing EST;
- (d) Financing of R&D activities, including joint research, development and demonstration;
- (e) Financing appropriate environmental technical assistance and capacity building programmes;
- (f) Establishment of technology transfer centers/exchanges/mechanisms in consultation and cooperation with the relevant MEA Secretariats.

6. Special and Differential Treatment

16. As highlighted in the introductory part of this submission, S&DT elements would need to be integral to any discussion on EGS. This would involve providing differential and more favourable treatment to developing country and least-developed country Members and take into account their special development, financial and trade needs. The guidelines and principles for addressing special and differential treatment as part of the EGS negotiations have been identified in Argentina and Brazil's submission⁸, and this submission seeks to elaborate and supplement some of the elements highlighted in that submission.

17. Effective implementation of S&DT would require less than full reciprocity in any commitments made by developing and least-developed country Members including in the forms of a lower preference margin and exclusions for certain number of items. Any elimination of tariffs should be commensurate with the level of economic development, national objectives and needs of developing country Members. Adequate transition periods should also be built in for allowing phased implementation of obligations for developing and least-developed country Members.

18. A mechanism would need to be evolved whereby the Committee on Trade and Environment (CTE) would need to be notified about the technology transfer and technical/financial assistance programmes being implemented by developed country Members. Implementation by developing country and least-developed country Members of their commitments under the EGS framework should be linked to the effective technology transfer and aid/assistance to them.

⁸ TN/TE/W/76.