

**REFLECTING SUSTAINABLE DEVELOPMENT
IN THE DOHA TRADE NEGOTIATIONS:
IMPLEMENTING PARAGRAPH 51
OF THE DOHA MINISTERIAL DECLARATION**

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I. INTRODUCTION

1. Paragraph 51 of the 2001 Doha Ministerial Declaration provides a unique but ambiguous mandate for the WTO's Committees on Trade and Development (CTD) and on Trade and Environment (CTE). It requires that these two bodies "within their respective mandates, each 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 mandate attempts to implement WTO Members' desire to ensure that the Doha Round trade negotiations promote the objective of sustainable development.
2. This objective is deeply embedded in the WTO framework. Explicit references to it can be found in the WTO's constitutional legal instrument – the Marrakesh Agreement to Establish the World Trade Organisation – and in subsequent WTO legal texts, such as the 1994 Ministerial Decisions on Trade and Environment and on Trade in Services and the Environment, and the 1996 and 2001 WTO Ministerial Declarations. The WTO Appellate Body in the *US – Shrimps-Turtle* dispute also stated that the objective of sustainable development recognised in the WTO Agreement's preamble "informs" all of the covered agreements.
3. The proper and effective implementation of the Paragraph 51 mandate could be the key to ensuring that the Doha trade negotiations result in a final outcome that

promotes the sustainable development needs and priorities of developing countries and is consistent with the earth's long-term ecological carrying capacity from the local to the global level.

II. IMPLEMENTING THE MANDATE

A. NGO Suggestions

4. Some NGOs, such as the Center for International Sustainable Development Law and the Institute for International Sustainable Development, have suggested that the mandate can be carried out through conducting an assessment of the likely impacts of the negotiations using a methodology that integrates both environmental and developmental considerations. This could be done either by the Members themselves at the national level or by the CTE and the CTD, which should be equipped with the power to make recommendations to the different negotiating bodies for the purpose of ensuring that the results of the Paragraph 51 discussions in these committees are given effect.
5. The institutional set-up for carrying out the Paragraph 51 mandate has also given rise to some NGO suggestions, such as having the CTE and CTD hold joint meetings as the WTO's 'Committee on Trade and Sustainable Development' with input from other relevant stakeholders; or for the CTE and CTD to act as the fora in which the results of any national-level assessment of the environmental and developmental implications of the negotiations could be discussed. In terms of actual activities to implement the Paragraph 51 mandate outside the CTE/CTD institutional context, some civil society organisations have proposed the creation of an independent advisory group on sustainable development.

B. Current Approaches in the CTE and CTD

6. These NGO suggestions notwithstanding, both committees have had difficulty in determining what approach to take. Even if Paragraph 51 has figured as a standing agenda item in their respective meetings, discussions in the CTD and the CTE have so far not yielded a clear understanding on how to implement the mandate.
7. In March 2002, the CTE started intensive discussion on how to structure the debate. Some Members suggested joint meetings of, or co-operation between, the CTE and CTD, while others proposed that the CTE focus on specific issues, areas, or scenarios within the context of the negotiations that could allow it to provide input to the negotiating bodies on how the sustainable development objectives can be met in the negotiations. By October 2002, the CTE had agreed as a preliminary step and as the basis for further discussions to invite WTO Secretariat staff to

- brief the CTE on what was going on in the other negotiating committees or groups.
8. To date, four such briefings have been held, covering the agriculture, services, market access (environmental goods), and WTO rules negotiations. On the basis of this input, substantive but still inconclusive discussions took place among Members. This approach as a first step towards implementing Paragraph 51 should be continued by the CTE. Unfortunately, however, the first draft of the CTE report to the Cancun Ministerial Conference does not contain any information on how it intends to carry forward the Paragraph 51 mandate after Cancun.
 9. The Committee on Trade and Development has also discussed how to implement its own Paragraph 51 mandate, with suggestions from Members including the following:
 - preparation of an overview paper by the WTO Secretariat that would be regularly updated and would show what was going on with respect to ‘development’ issues in other WTO bodies such as the Integrated Framework, technical assistance, special and differential treatment, and the Doha working groups on trade and technology transfer and on trade, debt and finance, as well as the CTD special session on small economies);
 - have the Chairs of the CTE and CTD regular sessions keep each other informed of progress in their respective fora regarding the implementation of Paragraph 51; and
 - request the WTO Secretariat to provide the CTD with information on what the different negotiating groups are doing in relation to the development agenda, and use such input as the basis for future CTD discussions relating to the Paragraph 51 mandate.
 10. To date, however, unlike in the CTE, there has not been much clarity nor agreement on the approach that the CTD will take to implement Paragraph 51.

III. RECOMMENDATIONS

11. Fully implementing the Paragraph 51 mandate requires both the CTE and the CTD to address two issues: (i) how the identification and debate of the environmental and developmental aspects of the Doha trade negotiations are to be done by these committees within their respective mandates; and (ii) how any outcomes of such identification and debate can be input into and reflected in the main negotiating areas.

A. Identification and Debate of Sustainable Development Impacts

12. The requirement that both committees address Paragraph 51 “within their respective mandates”, implies that the focus of actions are limited to those that the CTE and the CTD, primarily through the Members’ representatives participating in these committees in Geneva, can undertake as part of their core work programmes.
13. The identification of the environmental and developmental aspects of the negotiations by Members’ representatives in the CTE and the CTD will, therefore, necessarily involve at least a multi-step process that would:
 - (i) require both bodies to first obtain relevant basic information regarding the progress of each negotiating area; then
 - (ii) create an assessment tool for identifying environmental and development aspects in each negotiating area; and finally
 - (iii) undertake a prioritisation exercise with respect to each negotiating area to allow Members to conduct the debate in a structured and organised manner.
14. After obtaining relevant basic information regarding the progress of each negotiating area from either the WTO Secretariat or the various Chairs of each negotiating body, the CTE and CTD can then proceed to identifying the environmental and developmental impacts of the negotiations.
15. This could be in the form of creating a checklist-type assessment tool that Members’ representatives in Geneva, as well as their capital-based trade, environment, and economic development officials, could use for purposes of determining, or at least obtaining a good picture of, the potential developmental and environmental impacts of possible outcomes in each specific negotiating area, especially with respect to such impacts for developing countries.
16. Paragraph 51 seeks to ensure that the objective of sustainable development is appropriately reflected in the Doha trade negotiations. This objective needs to be linked to various sustainable development-related international instruments such as the 1992 Rio Declaration which recognise that giving special priority to the development needs and concerns of developing countries is a major principle in achieving sustainable development. Hence, the assessment tool should look at the potential impacts of the Doha trade negotiations on developing countries with respect to, among others:
 - poverty reduction and human and economic development in developing countries;
 - the effective operationalisation and implementation of the trade principle of special and differential treatment and the environmental principle of common

- both differentiated responsibilities in relation to developing countries' international economic and environmental obligations; and
- environmental resource use, consumption, management, and conservation needs of developing countries.
17. This assessment tool could be developed with support from UNEP (for the environmental impacts of trade liberalisation, especially on developing countries) and UNCTAD (for the developmental impacts of trade liberalisation, especially on developing countries), based on these UN agencies' extensive technical experience in these areas. The development of such an assessment tool should also benefit from Members' contributions such as the sharing of their experiences with national-level sustainability and environmental impact assessments under Paragraph 33 of the Doha Ministerial Declaration. The input of civil society organisations should also be sought with respect to both the design and use of the assessment tool.
18. Once the assessment tool is established (including familiarising Members with its use) and used by Members individually (preferably through close collaboration between representatives in Geneva and their capital-based trade, environment, and economic development officials), the results could be collated by the CTE and CTD. Negotiating areas where the assessment shows relatively high negative environmental and/or developmental impacts could then be prioritised for debate by these committees.
19. The debate on how to address such impacts should be targeted at the objective of the exercise – i.e. that of ensuring that the objective of sustainable development is appropriately reflected in the negotiations. Hence, the focus of the debate should be on how to ensure that environmental and developmental considerations are taken into account and reflected in each negotiating area. This necessarily indicates that the outcome of the debate to be conducted in the CTE and the CTD has to be clear enough to be implemented by Members' representatives in the course of the negotiations.

B. Ensuring Effective Outcomes

20. Assuming the CTE and CTD embark on the assessment process described above, the form of the outcome of the debate is important for purposes of fully giving effect to the Paragraph 51 mandate for the entire duration of the Doha trade negotiations.
21. Such form should be clear and capable of quick translation by even resource-constrained developing country missions and governments for purposes of integrating the substantive outcomes of the debate into specific and concrete actions in the negotiating context.

22. Hence, the final outcomes of the debate could take the form of:

- (i) clear and explicit guidelines or criteria that other negotiating bodies can use to integrate environmental and developmental considerations deemed necessary into the negotiations; and
- (ii) an overall sustainable development assessment report to be issued jointly by the CTE and the CTD both mid-term and at the conclusion of the Doha negotiations.

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