

**Strengthening Research and Policy-Making Capacity
on Trade and Environment in Developing Countries**

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**Mainstreaming environment in the WTO:
Possible implications for
developing countries**

Discussion paper

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I. INTRODUCTION

In the closing session of the first workshop organized by the project “Strengthening Research and Policy-Making Capacity on Trade and Environment in Developing Countries” (Geneva, 24-25 June 1999), experts from the 10 participating developing countries listed “mainstreaming environment in the WTO” as one of the themes requiring further analysis. This issues note has been prepared in response to this concern.

A. Background

In the context of preparations for the third Session of the WTO Ministerial Conference in Seattle (30 November to 3 December), several developed countries have suggested to “mainstream” environmental considerations in the new trade negotiations. According to these suggestions, environmental considerations would be factored into the negotiations across the board in different negotiating bodies. Some of its proponents have argued that mainstreaming provides an opportunity to make progress on specific issues. Several developing countries, however, have expressed concern that mainstreaming could affect the balance in the WTO work programme, as established by the Marrakesh Ministerial Declaration on Trade and Environment. More recently attention has shifted to the role of the Committee on Trade and Environment (CTE) in the new negotiations. At the time of drafting the debate was focusing on a possible advisory role of the CTE to ensure that the future negotiations reflect the objectives of sustainable development and protection of the environment contained in the Preamble of the Agreement Establishing the WTO.

This note examines the possible implications of mainstreaming for developing countries. It also examines the relationship, if any, between mainstreaming and certain environmental considerations may come up in the context of the WTO built-in agenda of already mandated negotiations and planned review. Finally, it analyses whether mainstreaming would have implications for the relatively large number of developing countries’ proposals on issues that have been discussed in the CTE.

B. Proposals on mainstreaming

1. Concepts

The term “mainstreaming” was introduced by the European Community (EC). In a note presented in the context of preparations for the WTO High Level Symposium in March 1999, the EC proposed that WTO Members should examine “the scope for and need to factor environmental concerns into the WTO across the board (mainstreaming)”.¹ Other

¹ See: Communication from the European Communities, “High Level Trade and Environment Meeting” (WT/L/273), July 1998.

developed countries, such as Canada, Iceland and Norway have also made suggestions concerning mainstreaming. However, there may be differences of views between these WTO Members on what exactly would be the scope of mainstreaming and how it would be implemented. For example, none of the proposals state clearly how far each committee would go in negotiating trade and environment issues.

2. Proposals

The **EC** proposal submitted to the WTO Council does not explicitly mention mainstreaming. However, the EC proposes that the overall objective of sustainable development should be reaffirmed as a central benchmark for the proposed round. Environmental considerations should be borne in mind throughout the negotiations with a view to achieving by the end of the round an overall outcome where environmentally friendly consequences can be identified in the relevant parts of the final package.²

While not mentioning the term “mainstreaming”, the US proposal on trade and environment appears relevant in the context of this paper. The United States proposes that “Ministers call upon the Committee on Trade and Environment, acting within its mandate, to serve as a forum for the identification and discussion of links between elements of the negotiating agenda and the environment and public health”. However, the United States is of the view that “negotiations on these issues would be the responsibility of the relevant negotiating groups”.³

In its proposal on trade and environment to the WTO Council, **Canada** proposes that “the CTE should serve as a focal point for the integration of environmental considerations in the WTO negotiations without coming to conclusions or negotiating the issues”. Canada explicitly uses the term mainstreaming, as follows: “each negotiating group should take environmental issues into consideration to make certain that liberalized trade is consistent with, and supportive of, the achievement of sustainable development (i.e. “mainstreaming”).”⁴

3. Possible implications

Some of the proposals mentioned above may be ambiguous. For example, it is not clear what is meant by making sustainable development a “central benchmark” in the new negotiations” (as proposed by the **EC**). It is also not clear why this would imply that priority should be attached to “environmental considerations” rather than economic development, the diffusion of technology or other aspects of human development. In addition, “environmentally friendly consequences” of the final package may be difficult to measure at a

² European Community’, “EC Approach to Trade and Environment in the New WTO round”, WT/GC/W/194, 1 June 1999

³ Trade and Sustainable Development, Communication from the United States, WT/GC/W/304, 6 August 1999.³

⁴ Canadian Approach to Trade and Environment in the New WTO Round WT/GC/W/358, 12 October 1999.

multilateral level and need not be uniform across countries.

The **EC** proposal, as contained in its communication to the WTO High Level Symposium, would appear to have two major implications:

- Environment would be dealt with in practically **all relevant WTO committees** (and not, as is currently the case, one body, i.e. the CTE);
- The committees would, if necessary, enter into **negotiations** on environmental issues (i.e. move beyond discussions aim at clarifying issues). As mentioned above, however, none of the proposals state clearly how far each committee would go in negotiating trade and environment issues.

This would have far-reaching implications on the WTO work on trade and environment. It is to be noted that the Marrakesh Declaration identified the CTE as the sole body mandated to make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required. Also, recommendations emanating from the work of the CTE were to be reported to ministerial meetings.⁵ Some developing countries have noted that the EC proposal would significantly reduce the role of the CTE in several respects.

The **US** proposal on trade and environment provides a slightly larger role to the CTE than envisaged in the EC suggestion. According to the United States, the CTE should "look systematically and transparently at all the various areas of negotiation, on a rolling basis".

There may be benefits, including for developing countries, in discussing links between elements of the negotiating agenda and the environment first in the CTE (rather than initiating discussions on trade and environment links in negotiating groups without prior consideration in the CTE). However, the United States clearly expresses the view that "the CTE would identify and discuss issues, but not try to reach conclusions or negotiate these issues in the CTE itself. Rather it would provide a report of its discussions to Members and the relevant negotiating groups".

In the WTO Council, the United States has claimed that its proposal seeks to strengthen, not weaken the CTE. Some have argued, however, that in certain respects the US proposal would nevertheless reduce the role of the CTE provided by the Marrakesh Ministerial Declaration. This is because many consider that the role of the CTE goes beyond clarifying the complex relationships between trade and environment and includes reaching a clear convergence of views between WTO Members before an attempt can be made to

⁵The Marrakesh Declaration instructed the CTE "to report to the first biennial meeting of the Ministerial Conference after the entry into force of the WTO when the work and terms of reference of the Committee will be reviewed, in the light of recommendations of the Committee". The Singapore Ministerial Conference simply renewed this mandate.

move to the stage of negotiations.⁶ In addition, the Marrakesh Declaration provides that the CTE should report to the Ministerial Conference, not to other committees. This will be further elaborated below in the section on the role of the CTE.

Canada proposes that the CTE should apply the understanding gained during its discussions by serving as a focal point for the integration of environmental considerations in the WTO negotiations. Having the CTE serve as a “focal point” on sustainable development issues during the negotiations may be useful. However, the proposal does not explain what would be covered under “environmental considerations” to be integrated into the WTO negotiations. It is to be noted that at the time of drafting WTO Members had not agreed whether and how environment and sustainable development should be reflected under the “principles governing the negotiations”. Thus, it is not clear to what extent the proposal would imply that environmental issues not included in the Ministerial Declaration could again be proposed after Seattle. The proposal also does not mention how the CTE would implement its role as focal point and to whom it would report.

The idea that the CTE would play its proposed role as focal point “without coming to conclusions or negotiating the issues” requires clarification. As mentioned above, the mandate of the CTE is to seek a convergence of views before negotiations on modifications of trade provisions can be implemented.

Summary

Some WTO members wish to keep their options open for the future inclusion of certain trade and environment issues in the WTO negotiations, even though such issues are not explicitly referred to in the Ministerial Conference and the agenda for negotiations. It is to be noted, however, that the current mandate of the CTE already provides such an option. What needs to be examined is how mainstreaming may alter the conditions under which negotiations on trade and environment can be initiated, in particular with regard to balance, consensus and the possibility of developing to participate effectively in the decision-making process.

From the above it follows that mainstreaming would have the following implications:

- Trade and environment deliberations would no longer be centralised in one single body, i.e. the CTE, but may arise in practically all WTO committees.
- Mainstreaming would have implications for the role of the CTE. It would also have implications for the nature of trade and environment discussions in the WTO and could affect the balance in the package of trade and environment issues identified for consideration in the CTE.

While any formal change in the role of the CTE could be made only by consensus, it

⁶ Magda Shahin, Trade and Environment: Seattle and Beyond. Paper presented in ESCWA Seminar on Trade and Environment. Beirut, 2-4 November 1999.

is also important to examine what would be the implications of CTE discussions and reports on “links between elements of the negotiating agenda and the environment” on the negotiating process itself. For example, it is important to examine whether there would be increased pressure to accommodate environmental considerations into different WTO Agreements without a specific mandate to do so.

C. The role of the Committee on Trade and Environment

1. Background

From the previous section it follows that in assessing the implications of mainstreaming it is important to review the history of the incorporation of environmental considerations into the WTO work programme as well as the creation and existing mandate of the CTE.

Trade and environment was proposed as a theme to be discussed in the GATT/WTO in 1990 by the Members of the European Free Trade Association (EFTA).⁷ Developing countries had legitimate apprehensions about engaging in such discussions, but eventually agreed to the reconvening of a working group and subsequently to the creation of the CTE. While the theme has thus already been on the multilateral trade agenda for some time, work has so far focused on discussions aimed at clarifying trade and environment issues, not on negotiations. Many developing countries emphasize that the process of clarifying trade and environment links is still ongoing .

It should be mentioned at the outset that there is very broad support for the work of the CTE. In the WTO Council, many developing countries have stated that they want to continue the role of the CTE, with its present mandate and balanced agenda.

2. Mandate

The CTE was established at the first meeting of the General Council of the WTO, in accordance with the Uruguay Round Ministerial Decision on Trade and Environment. The mandate of the CTE is:

- (a) to identify the relationship between trade measures and environmental measures to promote sustainable development; and
- (b) to make recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system.

Recommendations emanating from the work of the CTE were to be adopted by

⁷ The EFTA countries (at the time, Austria, Finland, Iceland, Liechtenstein, Norway, Sweden and Switzerland) made the proposal On the occasion of the unsuccessful attempt to conclude the Uruguay Round negotiations in December 1990.

consensus and reported to ministerial meetings, which according to the WTO Agreement was to be held once every two years.

3. Some characteristics of the CTE work programme

The work programme of the CTE has been programmed to take account of:

- the limitations in the WTO's role expressed in Marrakesh, in particular that "the competence of the multilateral trading system is limited to trade policies and those trade-related aspects of environmental policies which may result in significant trade effects for its members".
- the growing consensus that the CTE's task is to promote trade liberalization in a way that contributes to sustainable development.

D. Advisory roles for the CTE and the Committee on Trade and Development (CTD)?

1. Proposals.

More recently, it has been suggested to provide both the CTE and the Committee on Trade and Development (CTD) with "advisory" roles. A draft ministerial text dated 19 October 1999 proposes that the CTE and CTD could each provide a forum to identify and debate the developmental and environmental aspects of the negotiations, including synergies between trade liberalization, economic development and environmental protection. The work of the two bodies would be complementary and would help to ensure that the negotiations reflect the preamble of the Agreement establishing the WTO and the objectives sustainable development, while responding to the needs of developing countries, in particular the LDCs. With regard to question to whom the CTE should report, the text states that deliberations in the CTE and the CTD would provide useful inputs for national authorities.

2. Issues requiring clarification.

Several issues require clarification. For example, it is necessary to examine the implications of providing similar roles to the CTE and the CTD, which are quite different in nature. It should be noted that the CTD is already mandated by GATT/WTO to provide an advisory role concerning the development aspects of all negotiations. The CTD's advisory role, however, has been relatively limited as most recommendations have been in the nature of "best endeavour" clauses, without any sanction for non-compliance. For example, failure to provide Special and Differential (S&D) treatment is not judiciable. It should be noted that remedies to environmental problems could be sought through the use of trade measures,

whereas remedies to development problems have never been sought through the use of trade measures.

Second, it would be necessary to examine the implications for the balance in the WTO work programme on trade and environment. If a dual structure were created, there may be some pressure to transfer development-related trade and environment issues, such as transfer of technology, DPGs and market access to the CTD, leaving the CTE to deal only with issues related to the use of trade measures for environmental purposes. Such a distinction would upset the balance in the agenda of the CTE.

Third, an important question is whether the results of any such discussions in the CTE should be reported to the relevant negotiating groups, or only provide inputs to individual WTO Members, who can then use the arguments exposed during the analytical process of the CTE in whatever negotiating forum they deem appropriate. This latter view has been expressed, for example, by Malaysia.

It is also important to establish the extent to which reports on the CTE discussions should require consensus, or reflect different views expressed by WTO Members.⁸

Finally, it is important to examine whether and to what extent the CTE will be able to conduct a “cross checking” of the development, during the forthcoming negotiations, of issues being considered in different committees that have environmental consequences.

3. Views of WTO Members

Supporters of granting an advisory role to the CTE and the CTD include the European Community, the United States and Norway. In Geneva, developing countries such as Argentina, Brazil, Costa Rica, Egypt, India, Malaysia, Mexico and Pakistan have opposed the proposal.

II. HOW COULD TRADE AND ENVIRONMENT ISSUES BE RAISED IN THE NEGOTIATIONS?

Mainstreaming” environmental issues in different WTO agreements could take place either in the context of a possible new round of trade negotiations context of in the context of mandated negotiations and already planned reviews of specific agreements

A. Trade and environment issues in the built-in agenda.

Even without an explicit mandate on trade and environment, it is always possible that

⁸ Some have noted that there would be little value in transmitting divergent views in the CTE to negotiating committees. Magda Shahin, *op. cit.*

environmental considerations arise in negotiating groups. It is to be noted that explicit references to the environment were included in six Uruguay Round Agreements⁹, even though environment was not included in the Punta del Este mandate. It is therefore important to examine, how environment issues could come up, for example in the built-in agenda of mandates negotiations and planned reviews of WTO Agreements.

The built-in agenda already includes important trade and environment issues that have been discussed in the CTE. For example, issues such as pursuing “win-win” results are likely to come up in the context of the already mandated negotiations on agriculture and services. Also, issues related to trade in genetically modified organisms (GMOs) have already been raised and may be included in the negotiations on agriculture. Biodiversity-related aspects of the TRIPs agreement play a key role in the already planned review of that agreement. In the context of the Agreement on Subsidies and Countervailing Measures, WTO Members will have to take decisions on the future of non-actionable subsidies for environmental compliance purposes. Finally, under the Agreement on Agriculture, decisions are due on the future of “green box” policies, which *inter alia* include domestic support measures under environmental programmes.

In the working paper circulated by the Chairman subsequent to the 19th October draft ministerial text there are several references to environment. While specific references to environmental principles cannot be found in the text, the preambular paragraph outlines the need to promote sustainable development through the negotiations.

Further in outlining the role of the CTE, there is a slight modification in the working draft by comparison to the October 19 draft. According to this paper the reporting structure would be such that the CTE would report directly to the Trade Negotiating Body (which this draft proposes should be set up) which may then provide direction to different negotiating groups. Thus fears of developing countries that they may be unable to follow discussions may be partially abated by this enhanced role of the CTE.

However, in addition to the role of the CTE, references to environment and sustainable development appear throughout the text. Thus in a sense environment already appears to be mainstreamed in the working draft. The hierarchy between the CTE and these negotiating groups is not clearly established. For example, it is proposed that a Negotiating Group on Forestry and Fishery be established with a view to examining in a comprehensive manner all legitimate policy objectives including environmental protection and sustainable utilization and proper management of renewable but exhaustible natural resources. It is not clear whether this group will receive direction from the CTE or provide direction to the CTE.

Further, in the text on Subsidies and Countervailing Measures (SCM) reference has

⁹ The Agreements on Technical Barriers to Trade (TBT); Sanitary and Phyto-Sanitary Measures (SPS); Agriculture (AoA); the Agreement on Trade Related Intellectual Property Rights (TRIPS); Subsidies and Countervailing Measures (SCM); and the General Agreement on Trade in Services (GATS).

been made to subsidies which lead to overfishing in the proposed work programme. This issue has been considered under item 6 of the CTE's work programme. While some convergence of views has emerged, consensus is yet to be achieved. Therefore, it is necessary to clarify why this should be included in the work programme of SCM. The issue of hierarchy between the CTE and the SCM is again important.

Similarly in the TBT Agreement reference is made to environmental concerns in relation to Article 2.2. In recommending further work on investment it is also proposed that the relationship between the host country's treatment of foreign direct investment and the need to regulate for public purposes, including the environment, should be studied. It is also proposed that environmental policy choices faced by WTO members in adjusting to globalization be studied in a possible new Working Group on Globalization. Thus on the whole the new text proposes both to include environmental issues in the work of several committees and working groups on new issues, while at the same time recommending that CTE be continued. The new working draft of the Chairman thus proposes both to expand the scope of environmental issues and to strengthen the CTE. Unless clear hierarchy can be established between the CTE and the negotiating groups this structure could lead to some confusion and developing countries may find it difficult to service so many different groups on environmental issues.

B. Examination by key CTE items

In the negotiations, any WTO Member may bring up any issue, be it environment or any other aspect, in a negotiating group under "other business". In this case environment would have to be weighed against all other issues, namely technology or other issues in order to be entered into the negotiating agenda. Thus, the inclusion of environment in the negotiating agenda would not be automatic. It is nevertheless useful to examine how different trade and environment issues that have been discussed in the CTE relate to specific WTO Committees.

1. Multilateral environmental agreements (items 1 and 5)

A key issue in the trade and environment debate is the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements.¹⁰

None of the WTO committees responsible for existing UR Agreement would have a specific responsibility in this area.¹¹ Thus, the issue is unlikely to be raised in the context of review processes of existing UR Agreements. If there were consensus to initiate negotiations, for example on an interpretation of Article XX, the WTO Council or the CTE

¹⁰ Including the relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements (CTE item 5)

¹¹ Some observers, however, have proposed to initiate a new side agreement on MEAs. This would involve the negotiation of a new WTO Agreement.

itself could conduct such negotiations.

2. The relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the MTS (item 2)

Environmental reviews: the European Community, the United States, Canada, Norway and some other developed countries have announced that they will carry out “sustainability impact studies” of forthcoming trade negotiations. This issue has been discussed in the CTE under item 2. Environmental reviews can be a useful tool at the national level and WTO Members are free to carry out national reviews. Developing countries consider that multilateral processes (including proposals to consider environmental reviews in the context of WTO Trade Policy Reviews) may pose a risk. None of the WTO committees responsible for existing UR Agreement would have a specific responsibility in this area.

Principles and concepts to be applied to environmental policies: in the CTE, developing countries (for example India) have proposed that certain principles and concepts could be developed to help ensure that environmental measures do not have unnecessary adverse impacts on developing country exports. If there were consensus on such proposals they could be followed up in the SPS and TBT committees.

3. Environmental requirements for products, including eco-labelling (item 3b)

Eco-labelling has already been discussed in several WTO committees: the CTE and the TBT Committees, including in joint sessions. In principle, the WTO compatibility of voluntary labelling could be raised in the TBT Committee.

However, as there is no consensus on the WTO compatibility of non-product-related processes and production methods (PPMs), which is the central issue on eco-labelling, it may be difficult to initiate negotiations in the context of a review process.¹² There may be a need to clarify whether a committee with the technical expertise to deal with a particular issue would have a mandate to initiate negotiations, for example in the context of a review process, without a recommendation of the CTE (through the appropriate channels) to do so.

4. Environmental benefits of removing trade restrictions and distortions (item 6b)

The issue of pursuing “win-win” results in sectors agriculture and services can already be pursued in the context of the built-in agenda.¹³ Win-win results in other sectors

¹² However, if there were consensus in the CTE to recommend that eco-labelling should be considered or made WTO compatible, the details of the necessary conditions could be negotiated in the TBT Committee, which has the responsibility for the TBT Agreement and its Code of Good Conduct.

¹³ However, fisheries is not included in the Agreement on Agriculture. It has been proposed to create a

can be pursued in the context of negotiations on tariffs and non-tariff obstacles to trade.

5. The issue of exports of domestically prohibited goods (item 7)

DPGs are already covered by a Ministerial Declaration, which has never been revoked. Thus, Members can pursue the effective implementation of the notification provisions contained in the Ministerial Declaration without the need for a new mandate.

6. Trade related intellectual property rights (item 8)

There is some debate about whether Article 27.3(b) provides for the review of the implementation of the provisions therein, or for the review of the substantive provisions of the Article itself. Some, mainly developed countries, see it only as a review of the extent to which the provisions have been implemented. Others, mainly developing countries see it as a review of the provisions themselves that could lead to revision of the text. The African Group, for example, emphasizes that the wording of the last sentence of Article 27.3(b) makes it clear that the mandate of the Council is to review the substantive provisions of this Article, and that the mandated review cannot be meant to be confined to the implementation of the subparagraph.

Developing countries have made a range of proposals aimed at strengthening the consistency of the Convention on Biological Diversity and the WTO TRIPS Agreement.

III. POSSIBLE IMPLICATIONS FOR DEVELOPING COUNTRIES

The analysis presented in this paper suggests that mainstreaming could have several implications for developing countries.

1. Balance in the WTO work on trade and environment

In the reconvening of the EMIT Group and later in the creation of the CTE¹⁴ it was essential to find a balance of interests between all WTO Members. This balance could be reduced to the extent that mainstreaming would imply that progress will be sought on only some issues.

Working Group on Fisheries, to identify subsidies which have adverse effects on trade, environment and sustainable development and to elaborate WTO disciplines with respect to fisheries subsidies and commitments regarding their reduction or elimination.

¹⁴ The CTE added a number of that had already been considered in the EMIT group. These included such items as market access, TRIPS and transfer of technology and the issue of exports of DPGs. In addition, items were added which were of common concern to many developed and developing countries, such as the environmental benefits of removing export subsidies

2. What could be the impact of mainstreaming on “developing countries’ issues”?

Developing countries are interested in issues such as additional market access, including through the removal of agricultural subsidies and the reduction of tariffs in developed countries. Such issues can already be pursued in the context of negotiations on agriculture as well as further tariff reductions. Developing countries are also interested in issues stemming from the TRIPS Agreement on Trade Related Intellectual Property Rights (TRIPS) and the review of Article 27.3(b). Here again, several issues of concern to developing countries can already be pursued in the process of the built-in mechanism for review.¹⁵

Thus, many trade and environment issues of interest to developing countries can already be considered in the negotiating bodies in the context of negotiations on agriculture and planned reviews of WTO Agreements. To the extent that mainstreaming implies enlarging the negotiating agenda, by transferring issues from the CTE to the negotiating bodies, this seems to be relevant primarily with regard to issues of interest to developed countries.

3. The consensus-based process

Most observers, particularly in developing countries, believe that progress on trade and environment can be made only on the basis of a broad consensus between WTO Members. The Marrakesh Decision which set up the CTE made it clear that any recommendations stemming from CTE's work would need to command the broad support of the WTO membership. It is important to examine the possible impact of some proposals concerning mainstreaming on the consensus-based process

4. Developing countries’ participation in negotiations with environmental implications

Mainstreaming the environment into several Committees would make it more complicated for developing countries to participate effectively in corresponding WTO deliberations and negotiations. Developing country delegates would find it difficult to give attention to environmental issues as “environment” would be diffused in several committees and meetings. The capacity of developing country delegates with expertise in environmental issues to service numerous Committees in the WTO is relatively limited. Most delegations in Geneva are small and have several meetings to prepare and attend to. Backup support from the capitals would also be lacking in most cases. This also implies that there is an urgent need to build capacity at the national level, a task in which this project could assist.

¹⁵ See also: Veena Jha and Rene Vossenaar, Breaking the Deadlock: A Positive Agenda on Trade, Environment and Development. In United Nations University, *Trade, Environment and the Millennium Round*, forthcoming.

5. The role of the CTE

As mentioned earlier, developing countries have expressed concern that mainstreaming may reduce the role of the CTE. In addition, diffusing the environmental agenda to several committees could introduce imbalances the well-negotiated agenda of the CTE.

IV. CONCLUSIONS AND RECOMMENDATIONS

Calls for mainstreaming environmental considerations in the WTO and the forthcoming negotiations seem to be inspired by two concerns. One is the perceived lack of progress achieved in the CTE. Proponents of mainstreaming argue that transferring specific issues to negotiating bodies may facilitate quicker progress. They also argue that in a process of negotiations, covering a wide range of issues, trade-offs can be identified. The other concern is to ensure that trade liberalization to be achieved in the negotiations should fully enhance its potential contribution to sustainable development.

With regard to the first concern, developing countries argue that the trade and environment agenda requires greater balance if progress has to be made. Developing countries strongly oppose transferring issues from the CTE to negotiating bodies. Concerns of developing countries include the following:

- mainstreaming may affect the balance of interests of developed and developing countries, established in the CTE work programme;
- certain proposals on mainstreaming may affect the consensus-based process;
- mainstreaming would diffuse the WTO work on trade and environment and make it more difficult for developing countries experts with environmental expertise to participate effectively.

With regard to the second concern, both developed and developing countries attach great importance to promoting the integration of trade and environment in the pursuit of sustainable development. This is also an important objective of the project “Strengthening Research and Policy-Making Capacity on Trade and Environment in Developing Countries”, and is particularly important in the process of trade liberalization that is expected to follow the Seattle Ministerial Conference.

The following agenda could be proposed:

- strengthen the role of the CTE in clarifying trade and environment linkages, taking into account the need for a balanced and integrated approach as well as the importance of building consensus;

- seek to “mainstream” supportive measures, such as transfer of technology and technical assistance, through effective, binding provisions in several WTO Agreements;
- promote the integration of trade and environment through better policy coordination at the national and international levels and pay greater attention to identifying solutions for trade and environment problems outside the multilateral trading system. This includes capacity building. The project “Strengthening Research and Policy-Making Capacity on Trade and Environment in Developing Countries” can make an important contribution.
- Establish clear hierarchy between the deliberations of the CTE and those of the negotiating groups.

ANNEX: ENVIRONMENTAL CONSIDERATIONS IN THE BUILT-IN AGENDA

A. Mandated negotiations

1. Agriculture

Through the Agreement on Agriculture (AoA), WTO Members have agreed on negotiations for continuing the process of substantial progressive reductions in support and protection (Article XX).

2. Services.

Through the General Agreement on Trade in Services (GATS), WTO Members have agreed to enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement. Thus, new rounds of negotiations on trade in services will be launched with a view to achieving a progressively higher level of liberalization (Article XIX).

B. Planned reviews of other WTO Agreements

1. Agriculture

Article 13 of the Agreement on Agriculture specifies that during the implementation period (i.e. until 1 January 2001) domestic support measures that fully comply with the provisions contained in Annex 2 of the Agreement (support measures with minimal impact on trade, known as “green box” policies) are excluded from reduction commitments. These include expenditures under environmental programmes. These “green box” measures are due to expire by the end of the year 2000, unless they are renewed.

2. The Agreement on Technical Barriers to Trade (TBT)

The TBT Agreement is reviewed every three years: Article 15.4 specifies that the TBT Committee shall review the operation and implementation of this agreement three years after its entry into force (i.e. 1998) and the end of each three-year period thereafter. The TBT Committee shall, where appropriate, submit proposals for amendments to the text of this agreement to the WTO Council for Trade in Goods.

3. The Agreement on Sanitary and Phyto-Sanitary Measures (SPS)

Article 12.7 specifies that the SPS Committee shall review the operation and implementation of this agreement three years after its entry into force (i.e. 1998) and

thereafter as the need arises. Where appropriate, the Committee may submit to the Council for Trade in Goods proposals to amend the text of this agreement.

4. The Agreement on Trade Related Intellectual Property Rights (TRIPS)

Article 27.3(b) states that Members may also exclude from patentability “plants and animals other than micro-organisms and essentially biological processes for the production of plants and animals other than non-biological and microbiological processes. However, members shall provide for the protection of plant varieties either by patents or by *sui generis* systems or any combination thereof”. It further specifies that “The provisions of this subparagraph shall be reviewed four years after the entry into force of the WTO Agreement”, i.e. in 1999.

Article 71 specifies that the Council for TRIPS shall review the implementation of this Agreement at periodic intervals. Such revision will start in the 2000. The Council may also undertake reviews in the light of any relevant new developments which may warrant modification or amendment of this agreement. Of particular relevance is Article 27.2 states that Members may exclude from patentability inventions, whose prevention within their territory is necessary to protect, amongst other objectives, human, animal or plant life or health or to avoid serious prejudice to the environment.

5. The Agreement on Subsidies and Countervailing Measures (SCM)

WTO Members will have to take decisions on non-actionable subsidies for environmental compliance purposes (green light rules)

Article 8.2(c) of the Agreement on Subsidies and Countervailing Measures allows, under certain conditions, for “assistance to promote the adaptation of existing facilities to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on firms”. Article 31, however, stipulates that the provisions of certain Articles, including 8.2(c), shall apply for a period of five years from the entry into force of the WTO and that, not later than 180 days before the end of this period, the Subsidies Committee will review the operation of these provisions “with a view to determining whether to extend their application, either as presently drafted or in a modified form, for a further period.”

C. Dispute settlement

Through their Decision on the Application and Review of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Ministers agreed to “Invite the Ministerial Conference to complete a full review of dispute settlement rules and procedures under the WTO within four years after the entry into force of the Agreement establishing the WTO, and to take a decision on the occasion of the first meeting after the completion of the review, whether to continue, modify or terminate such dispute settlement rules and

procedures”.