



WTO Ministerial, Cancún, 2003

Trade and Environment Issues of the Doha 'Development' Round

BirdLife International is focusing on key environment and trade issues of significance to the 5th Ministerial Session of the WTO in Cancún, Mexico, September 2003.

Summary position:

BirdLife believes that mutually reinforcing and supportive multilateral systems for international trade and environmental protection are essential to sustainable development and well-being. The Doha 'Development' Round must deliver a multilateral trade system that:

- Reflects the concerns of civil society and works for the common good - people and the environment.
- Supports poverty eradication and has sustainable development at its heart.
- Concentrates not on pursuing trade liberalisation as an end in itself but instead on how to *manage* trade for human and environmental benefit.

*There **must** be positive outcomes for **both** the **environment** and **developing countries** if the so-called Doha 'Development' Round is to meet its stated mandate of sustainable development.*

The 'trade and environment' agenda forms a crucial element of the Doha 'Development' Round. This brief provides a summary of the BirdLife position on key environmental issues¹ within the **Draft Cancún Ministerial Text (18 July 2003)**.

Trade Issue

Preamble re-affirmations

Environmental concern and key BirdLife position

The preamble to the Doha Declaration provides important confirmation of WTO commitment to objectives of sustainable development, including that acting for the protection of the environment, the promotion of sustainable development and multilateral trade must be mutually supportive. It also provides welcome support for the WTO's continued cooperation with UNEP and other inter-governmental environmental organisations. The WTO needs to be held to account regarding these commitments.

Agriculture negotiations

The WTO Agreement on Agriculture needs to strike a balance between providing fair and transparent terms of trade, and ensuring that governments can intervene in the market to correct its failure to provide public goods. Alternative policies to deliver secure supplies of food through sustainable agriculture need to be developed during this round of negotiations.

Non-Agricultural Market access (NAMA) negotiations

A commitment to negotiate reductions or elimination of tariff and non-tariff barriers to trade in non-agricultural products must consider non-trade concerns, especially the environment. Non-agricultural products include those from forests, which means that forests are currently treated like any other industrial product in the WTO, despite their critical environmental and social importance. Agriculture negotiations have a commitment to address 'non-trade concerns'; this should be extended to non-agricultural negotiations.

¹ This briefing has not covered all trade issues with implication for the environment, but those of particular relevance and interest to BirdLife. Many are further addressed in detailed policy briefings, specifically: Agriculture; Eco-labelling; MEAs; TRIPS and biodiversity; Environmental goods and services; and Sustainable Development and Sustainability Impact Assessment.

Services negotiations

Liberalisation of services threatens national control over sectors of vital economic, social and environmental importance, for example, water collection and distribution. Privatisation raises critical development issues, including the cost and accessibility of basic services. It is the responsibility of the international community, particularly governments; to safeguard universal access to basic services. Trade rules must not undermine any governments' ability to legislate in the public interest and as part of this, ensure environmental protection. Governments should have the power to decide if and how to liberalize essential service sectors. They should also have the option of subsidising infant sectors that risk being overwhelmed by the competitive advantage of foreign and particularly powerful multinational firms.

TRADE AND ENVIRONMENT (Doha Ministerial Declaration - Paragraphs 31-33 inc.)

Environment negotiations

Paragraph 31(i) of the Doha Declaration (WTO rules and Specific Trade Obligations (STOs) in Multilateral Environmental Agreements (MEAs):

(Paragraph 31)

- a) WTO members should formally agree a legal interpretation of WTO rules clarifying that the use of trade-related measures in MEAs are consistent with WTO rules.
- b) The WTO does not have the core competencies to decide the compatibility of trade measures in MEAs with its own rules and should not do so alone
- c) The WTO should work in an open and transparent manner with MEA secretariats and international environmental institutions (including UNEP) to effectively address trade and environment relationships.
- d) The scope of current negotiations ignores two key but difficult issues, notably measures taken against non-parties to an MEA, and trade-related measures that are permitted but not specified in MEAs. These issues need to be addressed in partnership with MEAs and international environmental organisations.

Paragraph 31(ii) of the Doha Declaration (MEA and WTO relationship):

- a) MEA Secretariats and UNEP should be offered an active and participatory role in WTO decision-making. This should be not only in the WTO's Trade and Environment Committee, but also in other Committees, such as Trade and Development, Trade-Related Aspects of Intellectual Property Rights (TRIPS), Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT).
- b) Discussions largely focus on areas of conflict particularly between MEAs and the WTO; they should also address positive synergies and areas of mutual support, such as technology transfer and capacity building, which are integral to most MEAs.

Paragraph 31(iii) of the Doha Declaration (Environmental goods and services):

- a) Any benefits that might arise from liberalisation of environmental goods and services (EGS) are unclear; the outcome will depend crucially on the definition of 'environmental'. The current direction of negotiations threatens to promote environmentally damaging and potentially hazardous activities, a loss of control over essential services, and few, if any, genuine gains for either the environment or the developing world.
- b) Any potential benefit of liberalisation will only be realised if Members agree on a comprehensive and genuinely environmentally sound definition of 'environmental'. This must go beyond the dominant 'end-of-pipe' focus and include goods and services of export interest to developing countries.

Committee on Trade and Environment (CTE) report (Paragraph 32)

Paragraph 32(i) of the Doha Declaration (Market access):

- a) Market access regulation is an important policy tool. Unregulated markets tend not to take into account public goods, which can lead to adverse social and environmental impacts.
- b) Trade distortion is seen in the WTO as an absolute concept to be avoided. Yet, in reality, trade distortion is likely to be relative, to the economic development of the country concerned for example. 'Distorting' trade might be a *good* thing in order to

- promote economic activities that are more socially and environmentally beneficial.
- c) The global trade system should be used as a mechanism to internalise external costs. Those exporting should receive positive incentives for producing more sustainably, and those producing more sustainably should not be undermined by competition with those who 'externalise' environmental costs. Market access is an important policy tool that can help provide these incentives.
 - d) A range of policy tools, including subsidies, tariffs, standards, labelling, and consideration of process and production methods, etc., is needed to reflect the varying abilities of countries to utilise different policy mechanisms for environmental and development needs. Market access regulation is an important policy tool as not all countries can afford subsidies. To support this, a more finely graded system of differential treatment should be sought with policy flexibility based on measures of development (e.g. human development indicators).
 - e) Provisions, including technology transfer and capacity building as well as the involvement of developing countries in the design of environmental measures, are required to ensure that trade distorting policy measures for environmental purposes do not unfairly restrict market access and development for developing countries.

Paragraph 32(ii) of the Doha Declaration (TRIPS):

- a) Intellectual property right (IPR) laws should be designed, *inter alia*, to support conservation, sustainability, equitable benefit sharing and transfer of environmentally sound technologies. To this end, the precautionary principle must be applied in the context of IPRs to minimise risk of environmental harm.
- b) Amendments to TRIPS are essential for its implementation to be harmonious with and mutually supportive of the Convention on Biological Diversity (CBD), its Biosafety Protocol and the Bonn Guidelines. To help achieve this:
 - (i) it must be stated within TRIPS that its provisions are supportive of and do not run counter to the objectives of the CBD and its provisions, and
 - (ii) the CBD Secretariat should be invited to participate in TRIPS negotiations.
- c) TRIPS should be amended to require any patent applicant(s) as a condition of acquiring a patent right to:
 - (i) Disclose evidence of the source and country of origin of the biological resource and of the traditional knowledge used in the invention;
 - (ii) Provide evidence of prior informed consent (PIC) through approval of authorities under the relevant national regime; and
 - (iii) Provide evidence of fair and equitable benefit sharing under the relevant national regime.
- d) Compliance with the TRIPS Agreement is highly onerous for developing countries, thus the transition period should be extended, and further support and capacity building afforded.
- e) Under TRIPS Article 27.3(b), governments, particularly from developing countries, should be further *enabled* to develop *sui generis* systems for plant variety protection that support national priorities and CBD-related objectives.

Paragraph 32(iii) of the Doha Declaration (Labelling):

- a) Eco-labelling schemes are important tools in supporting sustainable development and enabling consumers to make informed choices.
- b) Any negotiations regarding multilateral guidelines on procedures for the development of eco-labels that would apply to national and/or international standards should be carried out in an open and participatory way with appropriate technical assistance for developing countries. The WTO is NOT the right place to achieve this.
- c) Mandatory and voluntary labelling schemes should be efficient, targeted, equitable, non-discriminatory, transparent and affordable. Developed countries must ensure that technical and financial assistance is provided to developing countries to prevent

labelling schemes becoming unfair barriers to trade.

Both paragraphs 31 and 32 are unfairly biased towards WTO trade rules and do not represent a fair, balanced or 'sustainable' approach to decision-making.

Technical assistance and capacity building (Paragraph 33)

- a) Technical assistance and capacity building should be provided to prevent trade-related environmental measures (TREMS) becoming unfair barriers to trade for developing and least developed countries. Special attention should be given to the needs of small and medium sized enterprises (SMEs).
- b) Synergies should be developed between the technology transfer aspects of most MEAs and the WTO. Such collaboration would enhance mutual supportiveness between trade and environment (Paragraph 31); support harmonisation and streamlining between international organisations; and help ensure that goods and services included in technology transfer are environmentally sound.

National environmental reviews (Paragraph 33)

- c) It is imperative that countries understand the social and environmental impacts of current trade commitments and of various future trade scenarios. To this end, national 'environmental reviews' are crucial.
- d) Sustainability Impact Assessments (SIA) are a valuable tool for integrating environmental and developmental concerns into trade negotiations. These should be developed and used as an essential part of WTO decision-making. SIAs must not be tokenistic; they must genuinely shape trade rules and change actual outcomes.
- e) Support and capacity building should be given to developing countries where needed to develop SIAs.

DSU² negotiations

Dispute settlement processes should be carried out in an open and transparent manner. Should any dispute concern trade and environment, the settlement process should involve consultation with relevant MEAs Secretariats and UNEP at all stages.

Investment, Competition, Government Procurement, Trade Facilitation

We support the call for 'NO NEW ISSUES'. The WTO is the wrong forum for global investment talks. Moreover, adding further new ('Singapore') issues to an already crowded agenda will prevent the WTO from undertaking the reforms and rebalancing necessary for a fair and equitable international trading system supporting sustainable development and the needs of developing countries.

Sustainable development (Paragraph 51)

- a) Sustainable development must be central to trade negotiations and operationalised throughout all WTO rules and decision-making processes. Realisation of paragraph 51 could represent a significant first step towards this.
- b) Both WTO and Member capacity and commitment to policy coherence and consistency must be strengthened. This must effectively address power imbalances between the environment and trade / finance, and between developed and least-developed countries.
- c) To fulfill the new mandate conferred by paragraph 51, the WTO must adopt a holistic approach that involves *integrated* consideration of social, environmental and economic impacts, rather than their separate thematic treatment.

Finally, it is essential that all decision-making within the WTO becomes more transparent and participatory. In relation to this, and with concern for democracy, we note that the Cancún draft text has followed the increasing but inappropriate trend of reports and documents within the WTO in being written and submitted 'under the responsibility of the Chair' alone. In support of the Doha Declaration (*Organisation and management of work programme, Paragraphs 49 & 50*), we call for reports to be prepared by all Members and not just the Chair. They should be the outcome of a transparent and inclusive process of meetings, consultation and decision-making.

² Dispute Settlement Understanding (DSU)

For further information, please contact:

Joanna Phillips - Email: Joanna.Phillips@rspb.org.uk

Alexandra González-Calatayud - Email: Alexandra.Gonzalez@rspb.org.uk

The Royal Society for the Protection of Birds (RSPB) Trade and Development Team, Environmental Policy, The Lodge, Sandy, Bedfordshire, SG19 2DL, UK; or visit: www.rspb.org

Muhtari Aminu Kano – Email: aminukano@infoweb.abs.net

Alberto Yanosky – Email: ayanosky@guyra.org.py

BirdLife International, Wellbrook Court, Girton Road, Cambridge, CB3 0NA, UK; or visit: www.birdlife.net

All position papers have been written and produced by the RSPB in consultation with BirdLife International's Secretariat (Cambridge).

BirdLife International is a global Partnership of conservation organisations, working in more than 100 countries worldwide. The BirdLife Partnership strives to conserve birds, habitats and global biodiversity, joining local communities around the world to achieve awareness of our natural resources and how to use them sustainably.

The Royal Society for the Protection of Birds is Europe's largest wildlife conservation organisation with over a million members and the UK partner of BirdLife International. Through research, advocacy and land management, we strive to link national and international policies for sustainability with local concerns in both the South and the North.

We have extensive programmes of work in many policy areas including agriculture, trade, climate change, energy, transport, the marine environment, fisheries, education and capacity building.

The RSPB and BirdLife International are working to ensure that international trade and international trade rules provide a positive contribution towards achieving sustainable development and thus do not adversely affect the natural environment.

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