The WTO Committee on Trade and Environment: Is it making a Difference?

Richard G. Tarasofsky

I. Introduction

The decision to create the WTO Committee on Trade and Environment (CTE) was taken by the ministers who met in Marrakesh to sign the Final Act of the Uruguay Round on 15 April 1994.[1] It followed from the decision taken in 1993 by the Trade Negotiations Committee that a program of work on trade and environment be developed along with recommendations on an institutional structure for its execution.

The CTE was established by the WTO General Council, acting under article IV para.7 of the Agreement Establishing the World Trade Organization, and its mandate has been renewed at successive meetings of the Ministerial Conference.

One of the objectives of the CTE, as envisaged by the Trade Negotiations Committee included making

> "appropriate 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 ..."[2]

---

1 GATT Doc. MTN/TNC/45(MIN).

2 Trade Negotiating Committee Decision of 15 December 1993.

The programme of work agreed in 1994 included seven items.[3] The Sub-Committee on Trade and Environment, established to prepare for the commencement of work by the CTE pending the entry into force of the Uruguay Round Agreements, extended this list to ten.[4] At its first meeting in 1995, the program of work was expanded to a total of ten items. These include: multilateral environmental agreements, environmental measures with trade effects, charges, taxes and other product standards, transparency of environmental measures, dispute settlement, market access, domestically prohibited goods, intellectual property rights, services and relationships with inter- and non-governmental organisations.

The CTE was not the first effort of the world trading system to address environmental issues. In 1971, a Group on Environmental Measures and International Trade (EMIT) was created under the General Agreement on Tariffs and Trade (GATT). Such a body was ostensibly considered useful given the heightened concern at that time with environmental issues and uncertainty how measures taken to deal with pollution issues might impact on international trade. However, in reality this Committee did not meet for almost 20 years, when after request of the European Free Trade Agreement countries in December 1990 it was finally convened in October 1991.[5] By this time, a GATT dispute settlement panel had decided the now-notorious Tuna-Dolphin case, which aroused widespread public concern that the GATT was a significant obstacle to achieving environmental protection. The EMIT Group met frequently from 1991–1994. The discussions were mainly exploratory, but they did serve to help shape the work of the CTE.

Since it began meeting in 1995, the CTE has been one of the WTO's most active committees. The main output of the CTE's work to date has been the issuance of its 1996 report to the Ministerial Conference.[6] Prior to that report, many proposals were tabled by delegations on a variety of issues. The text of the 1996 report was subject to considerable

---

3 Ibid.

4 See, e.g. GATT (ed.), *Trade and Environment – News and Views from the General Agreement on Tariffs and Trade*, GATT Doc. TE 011 of 6 January 1995.

5 See Group on Environmental Measures and International Trade, *Interim Report by the Chairman*, 3 December 1992, annexed to GATT Doc. TE 001 of 1 April 1993.

6 Report (1996) of the Committee on Trade and Environment, WTO Doc. WT/CTE/W/1 of 12 November 1996.

negotiation amongst WTO members, although it ultimately contained very few concrete recommendations. Indeed, some observers were so disappointed in the outcomes of the CTE process by then that some NGOs called for disbanding the CTE at the 1996 WTO Ministerial Conference in Singapore. Since 1996, expectations as to the CTE's ability to actually resolve controversies in the near future have been lowered.

II. A Review of the substantive Discussion in the CTE

The following section surveys the substantive discussion within the CTE since its inception.[7]

Item 1
The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements

Item 1 has been the focus of considerable discussion in the CTE, some of it rather interesting, although to date the main issues remain unresolved. The amount of attention paid to this topic is perhaps not surprising, since one of the major fears of the environmental community was that the international trade regime would undermine hard-won gains achieved through multilateral environmental agreements (MEAs).

In the run-up to the 1996 Singapore Ministerial Conference, several proposals were made on reconciling MEAs with the WTO. But it is important to preface any description of these proposals with the observation that not all delegations were of the view that any changes to the *status quo ante* were necessary. Indeed, some developing countries were of the view that the current regime can sufficiently accommodate legitimate trade-related environmental measures.

The proposals made can generally be grouped into those which were "*ex ante*", "*ex post*", or a combination of the two. As regards the stron-

---

7 This section draws on several descriptions of the CTE's work: K. Ewing/R. Tarasofsky (eds), *The "Trade and Environment" Agenda: Survey of Major Issues and Proposals – From Marrakesh to Singapore*, IUCN, 1997; R. Tarasofsky/F. Weiss, "Report on the World Trade Organization", *Yearbook of International Environmental Law* 8 (1997), 582 et seq. and the regular Trade and Environment Bulletins of the WTO (under the Press/TE series).

gest type of "*ex ante*" actions, namely amendment of the GATT, only Switzerland proposed changing article X of the WTO Agreement in order to create a "coherence clause" which would apply across all WTO Agreements. This clause would provide that in case of conflict between WTO rules and a specific trade provision of a listed MEA, the WTO dispute settlement process would assume both the legitimacy and the necessity of the provision, and would only test it against the chapeau of article XX.

Most of the other proposals put forth by delegations concerned developing a non-binding understanding on the interpretation of GATT article XX, which would assist WTO dispute resolution panels in dealing with cases involving MEAs. These proposals could be divided into two categories: those which proposed criteria for MEAs to be accommodated by the WTO, and those which proposed criteria for specific trade measures contained in MEAs to be accommodated by the WTO. Regarding the former, criteria included clearly specified environmental objectives, scientific evidence of the environmental problem, open and transparent negotiating process, and openness of membership to all states sharing the environmental problem. As regards the latter, criteria included specificity of the trade measures in the MEA text, necessity, least-trade restrictiveness, effectiveness, and proportionality.

New Zealand proposed a gradation of testing by WTO dispute settlement procedures. At one end, measures taken against MEA parties, which were specifically mandated and notified, would be exempt, while at the other end, no special protection from a WTO challenge would be granted for a non-specified measure taken against a non-party to an MEA. In between, measures taken pursuant to but not specifically mandated by an MEA, or specifically-mandated measures taken against non-members of an MEA, would be subject to specific tests under the WTO dispute settlement procedures. Korea too put forth a proposal with a sliding scale of disciplines, depending on the specificity of the mandate in the MEA for the trade measure.

Several developing countries favoured *ex post* options, which related to the grant of specific waivers for MEAs. ASEAN and Hong Kong proposed guidelines for granting such waivers. The ASEAN proposal was based on a "*quid pro quo*", whereby the grant of a waiver was accompanied by a commitment not to resort to non-specific measures pursuant to the MEA.

The European Community's proposal combined *ex post* with *ex ante* approaches. It involved either adding a para.(k) to GATT article XX or adding "environment" to article XX lit.(b), which would have the effect

of allowing measures to be taken pursuant to MEAs complying with a separate Understanding that would set criteria for qualifying MEAs. Dispute settlement panels would only test a trade measure meeting the terms of the Understanding against the chapeau of article XX.

The recommendations contained in the 1996 CTE report to the Singapore Ministerial Conference reveal that there has been some movement on these issues. For example, the report states

> "... Trade measures based on specifically agreed-upon provisions can also be needed in certain cases to achieve the environmental objectives of an MEA, particularly where trade is related directly to the source of an environmental problem."[8]

The report further states

> "A range of provisions in the WTO can accommodate the use of trade-related measures needed for environmental purposes, including measures taken pursuant to MEAs. That includes the defined scope provided by the relevant criteria of the "General Exceptions" provisions of GATT article XX. This accommodation is valuable and it is important that it be preserved by all."[9]

However, one should not overestimate the value of the statements made in the 1996 Report, since a condition for its acceptance was that the Chairman read a statement prior to the report's adoption that indicated that nothing in the report affected the balance of rights and obligations of members under WTO rules.[10]

Most recently, Canada asserted that it was unlikely that any formal accommodation between the WTO and MEAs was feasible in the medium-term, and proposed that a "soft" approach be taken in the form of a statement on the interaction between MEAs and the WTO.

Item 2
The relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system

The discussions in the CTE key under this item have been largely exploratory. Topics raised include: pollution havens, green countervailing

---

8 Para.173.

9 Para.174(ii).

10 W. Lang, "Trade and Environment: Progress in the World Trade Organization?", *Environmental Policy and Law* 27 (1997), 275 et seq., (278).

duties, take back and recycled content obligations, along with more general issues. No concrete proposals have been made.

To some extent, the CTE also addressed the more general issues about how the international trade rules impact upon environmental policies. Questions aired included

- should the principle of non-discrimination, which anchors the international trading regime, be modified in light of environmental principles such as the polluter pays principle or the precautionary approach?
- should the WTO establish common understandings on how concepts such as "necessity", "effectiveness", "least trade-restrictiveness" and "proportionality" apply to environmental policies?
- whether trade rules permit a sufficiently wide range of policy options to address environmental concerns, e.g., cost internalization and instruments relating to processing and production methods?
- whether trade rules contribute to non-sustainable production and consumption patterns?
- should the Agreement on Subsidies be modified so as to address environmentally detrimental energy or agricultural subsidies?

The United States proposed that the WTO endorse the notion of environmental reviews of trade agreements by member governments. Indeed, the United States submitted such a review in 1997, which was met with praise by other members, although not unanimity as to how such reviews can best be used in the WTO context.

Item 3
The relationship between the provisions of the multilateral trading system and: (a) charges and taxes for environmental purposes (and): (b) requirements for environmental purposes related to products, including standards and technical regulations, packaging, labelling and recycling

The discussion on charges and taxes centred on the rules relating to border tax adjustments. In particular, the debate revolved around whether border tax adjustments can be applied to non-product-related production and processing methods. While some members argued that border tax adjustment rules only apply to taxes levied on products or product-related Process and Production Methods (PPMs), others claimed that the rules were less certain in that environmental taxes and charges may be "tax occultes". Members have also been divided about whether there was a need to clarify the rules, with some members ar-

guing that discussions on non-product-related PPMs are not relevant. Furthermore, some members pointed out that additional difficulties exist in relation to the potential for double taxation, the lack of a common approach for defining and dealing with environmental charges and taxes , and that the value of environmental damage is often uncertain. Despite the observation by several members that taxes were useful incentive measures, as compared to command-and-control measures, a proposal for increasing coordination on eco-taxation in appropriate international fora did not attract consensus.

The discussion on item 3 (b) focused mainly on the issue of ecolabelling, and in particular whether the Code of Good Practice for the Preparation, Adoption and Application of Standards, of the Agreement on Technical Barriers to Trade (TBT Agreement), applied to voluntary ecolabelling schemes. That Agreement is silent on its applicability to ecolabelling, although it is clear that voluntary standards for products and "related processes and production methods" are covered. Canada presented a draft decision based on the view that mandatory ecolabelling measures, voluntary ecolabelling measures, and ecolabelling compliance procedures, both governmental and non-governmental, are within the scope of the TBT Agreement and its Code of Good Practice.[11] It went on to propose that standardising bodies which develop ecolabelling programmes should accept the Code of Good Practice. The draft decision suggested that the CTE and the WTO Committee on Technical Barriers to Trade should jointly analyse the impact of developing international standards based on life-cycle approaches. It noted, however, that its proposal is without prejudice to whether eco-labels based on non-product-related PPMs are within the scope of the TBT Agreement, although it was of the view, that they were so long, as they are based on ecolabelling guidelines that are multilaterally agreed, based on scientific criteria, and are transparent, consensual and non-discriminatory. The United States and the European Community presented proposals aimed at enhancing transparency in the development and implementation of ecolabelling programmes, with the European Community proposing the adoption of an *ad hoc* instrument for ecolabelling based on the TBT Agreement. Colombia tabled a paper describing its negative experience with ecolabelling in the flower-growing industry as part of its argument that eco-labels should indeed be cov-

---

11 Communication from Canada, *Draft Decision on Eco-Labelling Programmes*, WTO Doc. WT/CTE/W/38 and G/TBT/W/30 of 24 July 1996.

ered by the Code of Good Practice.[12] Meanwhile, India, concerned about the potentially adverse impact of ecolabelling on developing countries access to markets, suggested that special and differential treatment be applied to developing countries within the meaning of article 12 of the TBT Agreement. To date, consensus on any of these proposals has not been achieved.

Item 4
The provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects

The discussion on item 4 has focused on the technical aspects of notification procedures for national and international environmental measures. Hong Kong proposed clarification of the existing notification procedures, which are currently subject to differing interpretations among WTO members. It further proposed establishing national enquiry points, a suggestion which was further refined by Brazil, which proposed that measures not covered by the enquiry points under the TBT Agreement and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) be covered by national enquiry points. The European Community suggested that rather than creating new notification requirements, the WTO could establish and update a list of notification measures and other information submitted under already existing notification obligations. Indeed, the CTE included in 1996 that no modifications to WTO rules were necessary to ensure adequate transparency for environmental measures, and discussions since then have focused on the establishment of the database.

Item 5
The relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements

Item 5 discussions have been grouped together with those connected with item 1, although in fact the main focus has been the dispute settle-

---

[12] Document from Colombia,Environmental Labels and Market Access: Case Study on the Colombian Flower-Growing Industry, WTO Doc. WT/CTE/W/76, G/TBT/W/60 of 9 March 1998.

ment mechanism of WTO, rather than those in MEAs. This is perhaps understandable, given the experience in MEAs with dispute settlement is very limited. As indicated, some of the proposals for reconciling MEAs with WTO, involved providing guidance to the WTO dispute settlement mechanism. Nonetheless, the CTE's 1996 report may reveal a slight preference for environmental disputes to be settled within MEA frameworks

> "While WTO Members have the right to bring disputes to the WTO dispute settlement mechanism, if a dispute arises between WTO Members, Parties to an MEA, over the use of trade measures they are applying between themselves pursuant to the MEA, they should consider trying to resolve it through the dispute settlement mechanisms available under the MEA. Improved compliance mechanisms and dispute settlement mechanisms available in MEAs would encourage resolution of any such disputes within the MEA."[13]

According to one commentator, this carefully crafted text reveals a certain priority for MEA procedures over those in the GATT/WTO.[14] As regards the way environmental disputes are handled within the WTO, the CTE noted that article 13 and Appendix 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes provide a means for a WTO dispute resolution panel "to seek information and technical advice from any individual or body, which it deems appropriate", and to consult experts, including by establishing expert review groups.

In 1998, the CTE also considered the Appellate Body Report on U.S. Import Prohibition of Certain Shrimp and Shrimp Products (Shrimp-Turtle). Several members asserted that this decision made an important contribution to WTO jurisprudence, and particularly the interpretation of GATT article XX. Reference was made to the confirmation in that decision that a key consideration in determining the existence of unjustifiable discrimination under article XX was whether cooperative multilateral approaches had been pursued to address environmental problems to which the trade measure in issue related. In addition, the European Community appeared pleased with the Appellate Body's broad interpretation of "exhaustible natural resources" in article XX lit.(g), which could accommodate a wide range of environmental issues. The United States also expressed support for the ruling by the Appellate Body that unsolicited material provided to panels by private

---

13 Para.178.

14 Lang, see note 10, at 278.

parties may be relied on. However, other members were uncomfortable with discussing that decision in the CTE, especially as it had yet to be discussed in the Dispute Settlement Body. This raises issues still to be resolved in the WTO, namely how the CTE relates to similar work being done in other WTO bodies.

Item 6
The effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions

Market access has been the theme in the CTE mandate to be of greatest addressed to developing countries. Indeed, the 1996 CTE report balances "the importance of market access opportunities in assisting developing countries [to] obtained the resources to implement adequate developmental and environmental policies determined at the national level... At the same time, however, the CTE underlines that implementing appropriate environmental policies determined at the national level as part of sustainable development strategies is needed in order to ensure that these benefits are realized and that trade-induced growth will be sustainable."

Prior to 1996 discussion on this item involved either general principles, mainly based on the Rio Declaration on Environment and Development, or the environmental effects of agricultural subsidies. Australia proposed providing assistance to low-income, commodity-dependent countries to diversify and expand their export opportunities. India suggested that guidelines might be developed to counter abuses that might arise from relaxing trade disciplines in a manner which endangers the market access of developing countries. Somewhat radically, Norway proposed modifying trade rules so that they accommodate only incentives for the production and use of environmentally friendly products.

More recently the CTE has engaged in a somewhat technical examination of several sectors, including: agriculture, energy, fisheries, forestry, non-ferrous metals, textiles and closing, and leather. The discussion on agriculture has been the most intensive, and the most divisive, as members dispute the environmental impacts of subsidies. There was more agreement that trade liberalisation does not *per se* lead to environmental improvement, in that governments must still ensure that appropriate environmental policies are in place, but that trade liberalisation can correct policy failures that interfere with environmental man-

agement. Members seem increasingly keen on identifying "win-win" situations, where trade liberalisation and environmental policy objectives are compatible.[15]

Interestingly, the discussion on this item appears to tread on matters discussed in other WTO committees, e.g. agricultural subsidies which are dealt with by the Committee on Agriculture, and eco-labels, raised in the context of forests, which are also being dealt with under the TBT Committee.

Item 7
The issue of exports of domestically prohibited goods

This issue was heavily discussed in the GATT, without resolution. The 1991 draft decision of the GATT Working Group on Domestically Prohibited Goods and Hazardous Substances was drawn on for Nigeria's proposed decision on this item. This proposal included an obligation of exporting countries to notify other WTO members of domestically prohibited goods unless this notification would occur under another international instrument.[16] In addition to dissention on the substance of this proposal, there was concern about a lack of precise definition of "domestically prohibited goods" and no consensus on the determination of risks.

Item 8
The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

The discussion on this item has focused on several themes: transfer of technology, patenting of life forms and the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD). Various proposals, most notably from India, were made to amend the TRIPS Agreement. No resolution on any of these issues has yet been reached in the CTE, largely reflecting differing views about intellectual property rights.

As regards the transfer of technology, India proposed in 1996 that arts 31 (compulsory licensing) and 33 (term of protection) of the TRIPS

---

15 See, e.g. Submission by New Zealand, *Item 6: The Fisheries Sector*, WTO Doc. WT/CTE/W/52 of 21 May 1997.

16 Proposal by Nigeria, *Domestically Prohibited Goods*, WTO Doc. WT/CTE/W/32 of 30 May 1996.

Agreement be made to ensure the transfer of environmentally sound technologies. It was further proposed that the TRIPS Agreement stipulates that owners of intellectual property be required to sell such products on "fair and equitable conditions", by which the use of such products is mandated by national and international law. This proposal also envisaged financial compensation from a financial mechanism for owners of intellectual property rights who suffer consequential losses. However, other members resisted proposals to amend the TRIPS Agreement, arguing that the current rules are the best arrangement for inducing the development and transfer of environmentally sound technology. Korea proposed a middle ground position, urging that no amendment be made to the TRIPS Agreement, but that article 31 be interpreted such that any alternative technology required under any multilateral environmental agreement be considered as falling within its scope.

The patenting of life forms was discussed in relation to the planed review in 1999 of article 27 para.3 lit.(b) of the TRIPS Agreement in a very preliminary fashion. No concrete proposals on this were made. In 1996, members were divided as to whether this matter was best left to the TRIPS Council; since then, this issue has scarcely been raised.

The discussion about the relationship between the TRIPS Agreement and the CBD was more concrete. In 1996, India proposed that the TRIPS Agreement be amended so as to incorporate notification requirements relating to the origins of biological material, and that special material transfer agreements be executed by patent applicants involved in international transactions where the convention involves the use of biological material or relies on indigenous or traditional knowledge. In 1998, India and Colombia proposed that the TRIPS Agreement be amended to require that patent applications indicate the origins of genetic samples and reference whether living organisms have been extracted in accordance with the norms of the country of origin. All of these proposals were controversial, with some members arguing strongly that no contradiction existed as between the TRIPS Agreement and the CBD. Other members, were less certain that the TRIPS Agreement dealt adequately with the issues raised by arts 8 lit.(j) and 16 para.(5) of the CBD. There was general agreement that further information on the interaction between the two instruments was desirable.

Item 9
Interactions between trade in services and protection of the environment

Discussion on this item has only been exploratory, in that it has been seen as dependent upon the evolution of the General Agreement on Trade in Services (GATS). In general, members were of the view that liberalisation of the services sector could yield environmental benefits. Some concern was raised about the adequacy of GATS article XIV in dealing with environmental issues — this was seen in part as linked to the interpretation of GATT article XX, although the more practical suggestion was also made that the CTE ensures that GATS working parties take account of environmental considerations. In addition, some members suggested that more work be done on the classification of environmental goods and services, to reflect a more integrated approach to the market. The suggestion was made that the CTE provide input into the work of the Council for Trade in Services on classification and definitional issues, although the United States was doubtful that the CTE could contribute meaningfully.

Item 10
Input to the relevant bodies in respect of appropriate arrangements for relations with Intergovernmental and Non-Governmental Organizations referred to in article V of the WTO Agreement

Although the CTE has not so far elaborated a fully developed policy towards other organisations, its practice in this area has been significant. Firstly, the CTE has taken the General Council's Decisions of 18 July 1996 rather far, in terms of de-restricting most of its documents and encouraging members that have submitted papers and non-papers to do the same. Secondly, the CTE has admitted a host of MEA secretariats and other intergovernmental organizations as observers, although not non-governmental organizations. In 1998, the CTE convened an information session with MEA secretariats and intergovernmental organizations, from which the beginnings of a dialogue can be detected.

For example, UNEP's submission challenged the tendency in the CTE key to characterize trade-related measures in MEAs either as trade measures or positive measures. According to UNEP, this terminology

> "bears almost no resemblance to the actual way in which MEA's are designed, implemented or amended. Indeed, we regard this classifi-

cation as somewhat regressive; it distorts the policy context of MEAs."[17]

UNEP went on to state its concern that the discussion in the CTE on MEAs was not sufficiently "guided by a sufficiently clear scientific and technical understanding of how MEAs are designed and actually function".[18] UNEP concluded by leaving the CTE with several questions on which it sought clarification, including the feasibility of creating a "framework" to clarify the relationship between MEAs and the WTO.

The CBD Secretariat used the opportunity to make several concrete suggestions about potential collaboration between it and the CTE on areas which are tackled in their respective work programmes. These include biosafety, providing expert input into the WTO dispute settlement process, intellectual property rights, and agricultural biodiversity. So far, no decision on how the WTO will respond has been taken.

As regards the more general matters of transparency and public participation in the WTO, the debate on this item reveals that differences still remain. Most recently, divisions emerged as regards the ruling by the WTO Appellate Body that dispute panels may accept unsolicited material from private parties.[19] Similarly, while the Singapore Ministerial Declaration recognised the importance of having environmental expertise in dealing with trade and environment issues, it stops short of formalising this input.[20]

III. Assessment

From a purely substantive perspective, the CTE has not yet succeeded in resulting or coming to closure on many of the issues relating to the interface between trade liberalisation and environmental conservation. This may be due to a number of reasons.

The first is a lack of political will to resolve these issues at the global level. Indeed, an examination of the recent work of the WTO leaves the

---

17 Communication from the Secretariat of UNEP, Statement by the United Nations Environment Programme (UNEP) to the WTO Committee on Trade and Environment, WTO Doc. WT/CTE/W/94 of 22 July 1998.

18 Ibid.

19 Report on US Import Prohibition of Certain Shrimp and Shrimp Products, WTO Doc. WT/DS/58/ABR.1998.

20 Para.16, WTO Doc. WT/MIN(96)/DEC of 18 December 1996.

observer with the impression that "trade and environment" occupies less of a politically important position than it did even a few years ago.[21] Indeed, the momentum which existed prior to the Singapore Ministerial Conference was partly assisted by the back-channel diplomacy undertaken by the Consensus Building Institute. [22] That project ended in 1996 and since then no meaningful process for engaging key governmental and non-governmental actors has emerged. The lack of sufficient will, combined with the CTE's more recent inclination to delve into the more technical aspects of the issues, likely means that little resolution can be expected in the near future.

A second reason is that the CTE program of work does not contain the full range of issues arising from the interface between trade liberalisation and environmental conservation. For example, it does not consider the impact of trade liberalisation on environmental conservation, although it does examine the impact of environmental measures on trade objectives. This is more than a matter of perspective; rather it is one of fundamental orientation. This orientation is apparent in the 1996 Singapore Ministerial Declaration, which states that "full implementation of the WTO Agreements will make an important contribution to achieving the objectives of sustainable development".[23] While that statement repeats the 1996 CTE Report, absent from the Declaration is the preceding sentence in the Report, which adds balance

> "These two areas of policy-making (trade and environment) are both important and they should be mutually supportive in order to support sustainable development."[24]

Within the CTE itself, the European Community has expressed its disagreement with the Secretariat's assertion that trade liberalisation is a precondition to sustainable development. According to the European Community, while trade liberalisation has a key role to play, sustainable development must be based on sustainable management practices and

---

21 One concrete indication of this phenomenon is that a proposal made in 1998 for a high-level meeting to take place between trade and environment ministers has been downgraded to a "symposium", which will be held in 1999.

22 See Consensus Building Institute, "The Policy Dialogue on Trade and Environment 1994 – 1996", in: *Background Papers, Summary Reports, Participants List*, February 1997, on file with the author.

23 Para 16.

24 Para.167.

appropriate environmental policies are needed at national level to give effect to the environmental benefits of trade liberalisation.[25]

To some extent, the WTO's orientation on these issues is understandable. After all, its primary mission is to advance trade liberalisation. It is not, and never has claimed to be, an environmental organization. Neither it, nor any of the government missions based in Geneva, has the capacity to deal with complex environmental matters. Furthermore, there is still no international environmental organization of the stature of the WTO with which it can engage in effective dialogue and can develop constructive solutions. In these circumstances, there are real limits to what the WTO alone can achieve. That said, the Preamble to the Agreement Establishing the World Trade Organization does contain a strong commitment to environmental protection and sustainable development. As such, the WTO is bound as an institution to address its mandate in a more balanced manner than it has, perhaps particularly because the overall institutional framework is imperfect.

This lack of balance is also evident in the somewhat unsystematic examination by CTE of measures relating to processing and production methods. These measures are at the heart of the environmental agenda,[26] but to date the CTE has not addressed this issue head on. Even the topic of MEAs has been addressed by some members from a trade-defensive position. The proposals establishing "criteria" for MEAs are based on an assumption that WTO rules ought to be protected from some of the trade-distorting effects of MEAs. The implicit assumption here is one of hierarchy of norms, although such an assertion may not be tenable in international law. [27]

A third reason why the CTE has been less effective than it otherwise might have been, is the North-South political divide that exists in the committee. Although somewhat artificial, the result of this dynamic has been that issues relating to multilateral environmental agreements have

---

25 Note from the European Community-, European Community Comments on the Note by the Secretariat of the WTO's Committee on Trade and Environment – *Environmental Benefits of Removing Trade Restrictions and Distortions* (WTO Doc.WT/CTE/W/67), WTO Doc. WT/CTE/W/83, para.6.

26 See, e.g. International Institute for Sustainable Development (ed.), *The WTO and Sustainable Development – An Independent Assessment*, 1996.

27 See, e.g. R. Tarasofsky, "Ensuring Compatibility Between Multilateral Environmental Agreements and GATT/WTO", *Yearbook of International Environmental Law* 7 (1996), 52.

been considered as "Northern" interests, while those relating to market access are seen as "Southern" matters.[28] While it is unclear the extent to which particular issues have been held hostage to this pattern, the recent clustering of items in the program of work under the broad headings of market access and linkages between the multilateral environment and trade agendas may prove constructive. More fundamentally, however, is the wedge between the developed and developing world over the South's perception that the North has failed to implement their part of the "Rio Bargain" – i.e. provisions of financial and technical assistance to developing countries to allow them to meet the incremental costs arising from global environmental issues.[29]

Fourthly, the relative strength of the CTE within the WTO is unclear. Environment is certainly not yet mainstreamed into the overall work of the Organization, although many of the same people who sit in the CTE also sit in other WTO bodies. However, there does seem to be some movement in this direction, in that members are beginning to see the discussions in the CTE are relevant to work be undertaken in other WTO bodies. For example, some documents recently tabled by delegations have been prepared for the CTE and other committees. More directly, some members may have proposals that the CTE examined issues clearly on the agenda of other WTO bodies.[30] While the end result of this might be better integration within the WTO, the outside observer becomes handicapped on account of the fact that the CTE process is relatively more transparent than that of other WTO bodies.[31] As such, the actual effect of the CTE within the overall organization is difficult to measure.

The only WTO body coming to real closure on some trade and environment issues is the Dispute Settlement Body, in that recent panel and Appellate Body decisions have helped clarifying the interpretation of article XX. Certainly, the recent engagement of MEA secretariats and

---

28 On the latter point, see Lang, see note 10, 278.

29 D. Runnalls, "Shall We Dance: What the North Needs to do to fully engage the South in the trade and sustainable development debate", IISD Working Paper, 1996.

30 For example, ASEAN has proposed that the CTE develops definitions of the terms plants, animals, micro-organisms and biological processes, plant varieties and effective *sui generis* systems, all of which are to be dealt with by the TRIPS Council in the 1999 review of article 27 para.3 lit.(b).

31 E.g. the environment components of the WTO Internet site <http://www.wto.org> is much more comprehensive than other subject areas on the site.

UNEP by the CTE is to be seen as positive, although a meaningful dialogue between relevant entities still needs to be constructed.[32] The recent decision by the CBD Conference of the Parties to request the Executive Secretary to apply for observer status at the WTO Committee on Agriculture may be an indication that the CTE is not the only, nor perhaps even the most important, body in the WTO dealing with environmental issues.

At the end of the day, the balancing between trade and environmental objectives will involve difficult choices, which will have economic consequences. Until the CTE becomes more "action-oriented" towards dealing with what are key political choices, it cannot be expected that it will be the forum where these issues are ultimately resolved.

---

32 The need for such a dialogue is evident in the proposal by IUCN and IISD for a Standing Conference on Trade and Environment, which would be a forum to bring together representatives from international organisations and civil society. See IUCN and IISD, *A Standing Conference on Trade and Environment*, undated, on file with the author.