

A COMMENT ON ATTEMPTED LINKAGES BETWEEN TRADE AND NON-TRADE ISSUES IN THE WTO

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1. INTRODUCTION

There is a distinct trend, starting with the Uruguay Round, to introduce and inject "new issues" and yet another round of more "new issues" into the GATT and the WTO system.

This was initially done through the argument that the particular issue is "trade related." Thus, in the Uruguay Round, negotiations were undertaken and later Agreements were completed on "trade related intellectual property rights" and "trade related investment measures." The prefix "trade related" was carefully attached to the new issue to symbolise that it was somehow legitimate to bring under the ambit of the WTO and its principles and rules.

This need of justification by proponents of linking more new issues to the WTO has even recently been reduced, as evidenced by the dropping of the "trade related" prefix to the issues. Thus, we now have only the simple word "and" that is used in attempts to link one new issue after another in the WTO: "trade and environment", "trade and labour standards", "trade and investment", "trade and competition policy". In the case of government procurement, it is simply "government procurement."

Of course a justification can always be made that this or that issue is linked in some way to "trade." But that does not mean that it is justified to link the issue to the WTO and its system. For an issue to be linked to the WTO system in an integral way, it must be made to meet a strict test with clear criteria, and moreover there should be a framework that helps specify in which way the particular issue should be integrated in the WTO. Issues chosen should be for the benefit of Members, especially the developing countries that form the majority, and should be treated in a manner that leads to equitable results.

At present there is no such framework determining whether and how "new issues" should enter the WTO system, nor a way to determine the likely benefits and costs and their distribution among the WTO membership.

Yet there are very strong pressures, emanating from the developed countries, to add more and more items onto the WTO agenda. There is now a clear danger that this could lead to very negative consequences: (a) an overload of the WTO system, making it impossible for developing countries to cope with negotiations and implementation; (b) a distortion of the WTO system, where fairness in the process of trade operations is replaced by protectionism; (c) a failure of credibility as citizens in developing countries perceive the

WTO as an instrument by the developed countries to impose unfair and inappropriate rules and policies that are disadvantageous to the developing countries. Moreover it is also unlikely that the intended objectives of the proponents of the new issues will be met.

In the light of the already onerous obligations undertaken by developing countries in the existing WTO Agreements, the immense problems of implementation, and the possible serious economic and social dislocation that will result in many countries, it is most inappropriate for the continuing and intensifying pressures to place more new issues onto the WTO.

2. WHY THE PRESSURES FOR LINKAGES TO THE WTO?

Despite the oft-repeated claim that the WTO is a democratic organisation that caters to the interests of all Members who have equitable participation in decision-making, in reality the WTO is essentially a power-based organisation where countries with trade strength and greater economic and political power have an overwhelming influence. This does not mean that developing countries do not have bargaining power; but most of them are understaffed, as a result they lack the capacity to be adequately prepared in negotiations. Even though many (or even most) of the developing countries may be opposed to the entry of certain new issues, they find it difficult to resist. Eventually even if they agree, it is not because all of them fully understand, appreciate or are in favour of negotiations or Agreements in new areas. Many of them were, and are, just unable to withstand the tremendous pressures exerted on them not to stand in the way of negotiations or Agreements on new issues.

Such was the case with the negotiations and Agreement on TRIPS. Intellectual property rights is not about trade liberalisation, but has the reverse effect in that TRIPS will hinder technology transfer and is likely to maintain and increase monopolisation of technology. It is in fact a protectionist device that hinders technological development. Yet it entered the WTO system, even though many developing countries tried to resist its introduction into the GATT system, and tried for many years of the Uruguay Round to limit its scope.

On investment, another "new issue", there were strong pressures during the Uruguay Round by developed countries to have an investment agreement with a wide scope covering investment per se (right to establishment, national treatment, etc). Developing countries were able to narrow the scope of TRIMS to the trade-related measures. But the door called "investment" had been opened, and as could be predicted there are now very strong pressures to pull the whole investment issue per se back onto the WTO agenda. This time the "trade related" prefix has been dropped for the simple (and more wide-ranging) "trade and investment." As a result of strong opposition from several developing countries, the developed countries were unable to get the Singapore Ministerial 1996 to endorse negotiations for an investment agreement. The Ministerial decided only on establishing a working group to study the trade and investment relationship. But now there are pressures again to have the Seattle Ministerial launch negotiations for an investment agreement.

Some developed country Members are also strongly pushing for trade and competition policy, and for government procurement (firstly an interim agreement on transparency and eventually a full agreement incorporating national treatment).

The pressures for the linkages between WTO and IPRs, investment, competition policy and procurement are generated by the large corporations of the developed countries, whose governments then push for Agreements in the WTO to open up market and investment access for these corporations to the developing world. In the case of IPRs, the WTO was used as a means to protect the technology monopoly of the companies, and to make it difficult for local companies in developing countries to emerge with the technology to rival the established big corporations.

I believe that the WTO was chosen as the venue or forum for the introduction and injection of the above new issues for these reasons:

- (a) The dispute settlement system (especially since it is "integrated" to facilitate cross-sectoral retaliation) makes the WTO an institution that can effectively enforce rules (through the mechanism of trade sanctions) and thus the WTO is an ideal institution for creating binding and enforceable rules that can disciplining countries in a certain framework of global governance;
- (b) It is argued by the proponents of the new issues that the core principles of the WTO are trade liberalisation, national treatment and MFN. Thus, issues like investment, competition and procurement are likely to be treated in a certain way, that favours market access for the big corporations, should these issues be discussed or negotiated within the WTO. In contrast, should the issues be the subject of discussion or agreements or codes in for a such as the United Nations, the issues are likely to be treated differently, in a more balanced way, in which the development dimension and interests of developing countries are given higher priority and where the perspective will be more balanced in incorporating the social and development dimensions.
- (c) The proponents of the above linkages are developed countries which by and large have overwhelming influence in the WTO, particularly in negotiations on new issues and in formulating of legal texts. As stated above, developing countries as a whole and individually still lack the capacity to match the developed countries in negotiations. It can thus be predicted that the manner in which a new issue is interpreted and integrated or absorbed into the WTO will be determined by the stronger developed countries. Thus, in the battle of interpretations, the developed countries' perspective is likely to win out. This is why the WTO is a better venue than for example the United Nations, from the viewpoint of the proponents of linkages.

There is another set of "new issues" that are knocking on the door to enter the WTO system. These are issues that are advocated not so much by the corporations of the developed countries for market-access reasons, but by social organisations (mainly of the

North but also including some in the South) that are seeking (in their view) ways to protect or promote their interests. The environment and labour are presently the key issues in this category of linkages. There may be attempts in future to introduce other issues, such as human rights, gender equity, etc. Indeed, if environment and labour were to enter the WTO system as subjects for agreements, it would be conceptually difficult to argue why other social and cultural issues should also not enter.

The objectives of the social organisations in linking their particular causes to trade measures are different from the aims of corporations who seek linkages (in investment, procurement) to gain greater market access and market share, or (in IPRs) to protect their domination and hinder potential new rivals. The social organisations are looking for more effective ways to protect their interests and believe that the instruments of trade measures or trade sanctions can be very effective. They believe that their causes (to defend animal rights and life and conserve the environment, or to protect jobs and promote higher social standards) can be most effectively promoted if governments of countries that have "low environment and social standards" are faced with the potential threat of trade measures and sanctions on products that are produced using the low standards.

In this, the social organisations concerned are seeking methods similar to the corporations, in that they are pressuring their governments and negotiators to make use of a strong enforcement mechanism (unilateral trade measures, or the dispute settlement mechanism of the WTO backed up with the possibility of trade sanctions).

Thus, trade measures have become methods of choice, and the WTO has become a vehicle of choice, for big corporations and some social organisations in promoting their interests.

3. TRADE AND ENVIRONMENT

That are links between trade and environment cannot and should not be denied. Trade can contribute to environmentally harmful activities. Ecological damage, by making production unsustainable, can also have negative effects on long-term production and trade prospects. In some circumstances trade (for example, trade in environmentally sound technology products) can assist in improving the environment.

What is of concern or relevance in looking at "linkages" is the advocacy of the use of trade measures and sanctions on environmental grounds. Some environment groups and animal rights groups believe that national governments should be given the right to unilaterally impose import bans on products on the grounds that the process of production is destructive to animal life, and that WTO rules should be amended to enable these unilateral actions.

Some groups, and some developed country Members of WTO, go further and have advocated a set of concepts linking trade measures in the WTO to the environment.

These concepts are processes and production methods (PPMs), internalisation of environmental costs, and eco-dumping. The three concepts are inter-related. When discussed in the WTO context, the implication is that if a country has lower environmental standards in an industry or sector, the cost of that country's product is not internalised and the prices are thus too low (being unfairly subsidised by the low standard) and thus that country is practising "eco-dumping." As a result, an importing country would have the right to impose trade penalties, such as levying countervailing duties, on the goods.

This set of ideas poses complex questions relating to concepts, estimations and practical application, particularly as they relate to the international setting and to the WTO. Developing countries are likely to find themselves at a great disadvantage within the negotiating context of the WTO should the subject (which has already been discussed in the Committee on Trade and Environment) come up for negotiations. One of the main issues is whether all countries should be expected to adhere to the same standard, or whether standards should be allowed to correspond to the different levels of development.

The application of a single standard would be inequitable as poorer countries that cannot afford high standards would have their products made uncompetitive. The global burden of adjustment to a more ecological world would be skewed inequitably towards the developing countries. This is counter to the principle of "common but differentiated responsibility" of the UNCED or Earth Summit in which it was agreed that the developed countries, which take the greater share of blame for the ecological crisis and have more means to counter it, should correspondingly bear the greater responsibility for the global costs of adjustment. Given the unequal bargaining strengths of North and South in the WTO, the complex issues relating to PPMs, cost internalisation, trade related environment measures etc. should not be negotiated within the WTO but if at all discussed, the venue should be the United Nations (for example in the framework of the Commission on Sustainable Development) in which the broader perspective of environment and development and of the UNCED can be brought to bear.

Unilateral trade measures taken by an importing country against a product on grounds of its production method or process are also fraught with dangers of protectionism and the penalising of developing countries. However tempting the route of unilateral import bans may be for the environmental cause, it is an inappropriate route as it will lead to many consequences and could eventually even be counter-productive.

Policies and measures to resolve environmental problems (and there are many genuine such problems that have reached the crisis stage) should be negotiated in international environmental fora and agreements. These measures can include (and have included) trade measures.

The relationship between the WTO and its rules and the MEAs is the subject of debate in the WTO. On one hand there is the fear (of developing countries) that a system of blanket and automatic approval by the WTO of trade measures adopted by a "MEA" (for example by an amendment to Article XX to enable ex-ante approval of MEA measures)

could lead to abuse and protectionism. A sticking point here is what constitutes a "multilateral environment agreement" as it may include not only truly international agreements convened by the UN and open to all members and enjoying near-universal consensus, but also agreements drafted by a few countries which then invite others to join (and would then also enjoy exemption under the proposed amended WTO rules). The fear of protectionist abuse explains the reluctance of developing countries to amend Article XX, which in their opinion is already flexible enough to enable exceptions to accommodate environmental objectives.

On the other hand there is the genuine fear of environmental groups (and also developing country and some developed country Members of WTO) that negotiations in new MEAs can be (and are being) undermined by the proposition of some countries that WTO rules prohibit trade measures for environmental purposes, or that WTO "free-trade principles" must take precedence over environmental objectives. Such arguments were for example used by a few countries in the so-far failed negotiations for an International Biosafety Protocol. Such arguments are false, as the WTO allows for trade measures agreed to in MEAs through the present Article XX (although not in the ex-ante manner proposed by some countries). The use of the WTO name by a few countries to turn away the proposals by the overwhelming majority of delegations to establish checks on the trade in genetically modified organisms and products (through a prior informed consent procedure) gave the impression that commercial interests were placed before global ecological and safety concerns and understandably generated outrage among most delegations as well as environmental and social organisations. Negative actions like this that blatantly use the slogan of "free trade" to undermine vital health and environmental concerns are the reasons for the erosion of public confidence in "free trade" and the WTO system. Thus governments must be careful not to wrongly make use of "free trade" or "WTO rules" to counter international agreements that deal with genuine environmental problems, otherwise the credibility of the trading system itself will be eroded even further.

For many NGOs (especially of the South) as well as developing country WTO members, an important "trade and environment" issue is the effect of the TRIPS Agreement in hindering access to environmentally sound technologies and products. There can be "synergy" between liberalisation, environment and development objectives if TRIPS is amended to enable exemptions for environmentally sound technology. Also, Article 27.3b of TRIPS opens the road to patenting of life forms. Adverse effects include facilitation of the appropriation of traditional knowledge on the use of biological resources by corporations who claim to meet the patent test; promotion of environmentally harmful technologies; and promotion of technologies that are against the interests of small farmers (such as the "terminator technology" or "suicide seeds" or seeds engineered not to reproduce themselves so that farmers are prevented from saving seeds). These are examples of some issues that can and should be taken up in trade and environment reviews of various Agreements.

In short, discussions within the WTO entailing the environmental effects of WTO rules can be beneficial, provided the environment is viewed within the context of sustainable development and the critical component of development is given adequate weightage.

The Committee on Trade and Environment should orientate its work to the more complex but appropriate concept and principles of sustainable development. But there should not be any move to initiate an "environment agreement" in the WTO that involves concepts such as PPMs and eco-dumping.

4. TRADE AND LABOUR STANDARDS

The push for incorporating labour standards with trade measures in the WTO has come from labour unions in the North and international trade unions which also have affiliations in developing countries. Some trade unions in some developing countries are however opposed to including labour standards in WTO. The issue of labour standards is also linked to the concept of "social clause" (which is broader than labour standards and could include the rights of various groups in society) and supported by some political parties in developed countries.

There may be various strands in the objectives of the advocates. Many trade unions believe that transnational corporations are relocating from countries with higher labour standards to those with lower standards, and that this trend acts to depress labour standards by reducing bargaining power of workers. They also believe that by linking the threat of trade sanctions to labour standards, there will be pressure to upgrade the level of standards in developing countries. They are careful to include only internationally-recognised core labour standards and to exclude the issue of wage levels in the demands for linkage to trade and WTO.

Other advocates believe that the linking of social issues (including but not exclusively labour standards) to the WTO and its sanctions system of enforcement is an effective way of countering the adverse social effects of free-trade free-investment globalisation, by forcing corporations and governments to observe socially responsible policies.

Developing countries fear that the objectives of the Northern and international trade unions, and of developed country governments that back the social clause demand, are mainly protectionist in nature, i.e. to protect jobs in the North by reducing the low-cost incentive that attracts TNCs to developing countries. They argue that low labour costs in their countries are a function not of deliberate exploitation of workers but of the general low standard of living and the lower level of development, and that the low cost is a legitimate comparative advantage. They therefore have opposed the inclusion of labour standards in the WTO, and argued successfully (as reference the Singapore Ministerial Declaration) that the issue belongs in the ILO.

There is of course justification for public interest groups to be concerned about the social consequences of globalisation and liberalisation and to campaign to change the nature and

effects of the present globalisation trends. However the issue is whether labour standards and social clauses in trade agreements is or even an appropriate route. There is merit in the argument that labour standards or the "social clause" should not be introduced in the WTO. This is because:

- (a) Such an issue when placed in the WTO context would be linked to the dispute settlement system and the remedy of trade penalties and sanctions. In other venues, there is the option (which many would argue is more appropriate) of linking the improving of labour standards to positive incentives rather than punitive measures.
- (b) Even though most advocates only demand minimum labour standards such as the right of association for workers, there is no certainty that the issue will be so confined in the future. Once the concept of social issues and rights enters the WTO system, it can in future be expanded within the particular issue (eg an extension to social security and wage levels within the issue of labour standards) and extended to other issues (such as the rights of children, women, disabled, human rights in general, the right to education, health, nutrition, etc).
- (c) It is possible or even likely that once rights and social issues enters WTO, the GATT concepts of dumping and subsidies, and the relief of countervailing duties, will bsought to be applied. Thus, countries with low social standards would be deemed to be practising "social dumping" (or unfairly subsidising its products by avoiding to meet social costs) and importing countries could be enabled to impose countervailing duties.
- (d) Developing countries are likely to bear the costs of loss of competitiveness. The low social conditions in the poorer countries are largely related to the low level of development and the lack of resources (although the wastage and mismanagement of resources also do contribute significantly). Lower social standards are thus linked to (though not entirely cuaed by) lower levels of development. It is very possible that the operationalising of linkage between social standards and trade measures in the WTO system would lead to additional pressures being placed on developing countries and that many of their products would become higher cost and uncompetitive or face trade penalties or both.
- (e) It is possible that the firms and products eventually affected are not confined to those involving trade and exports but also the firms (most of them small and locally owned) that cater to the local market. By not being able to remain competitive, some may close.
- (f) It is also possible that the erosion of competitiveness and the higher costs (perhaps beyond what would normally prevail in countries at the existing stage of development) would cause loss of jobs, closure of firms and farms and reduced investment; or movement of some workers to more poorly paid jobs.

- (g) The inclusion of labour standards would open the door to a much wider range of issues relating to social standards, social rights and human rights. Many new "conditionalities" would be introduced not only on trade at the border but production, investment, etc within the domestic economy. The issues will be so complex and complicated that they will tie the WTO system up in knots, and occupy the time and energy of diplomats and policy makers, not to mention the NGOs and social organisations, in an enterprise that is fraught with controversies, dangers and with no clear benefits guaranteed.
- (h) Finally, the efforts of NGOs and social organisations could be directed towards the sources of the social problems within and outside the WTO. For example, to offset problems caused by the WTO, those concerned about human rights and the right of ordinary people to livelihoods and adequate incomes could examine and campaign for changes to aspects of the existing agreements (such as Agriculture, TRIPs, TRIMS, services) that affect farmers' rights and livelihoods, the viability of small farms, food security, the cost of medicines caused by drug patenting, etc. They could also try to prevent new agreements (such as investment, procurement, industrial tariffs) that would affect the viability of local firms, the livelihood of workers and the people's right to development. And to counter problems whose sources are beyond the WTO, there can be intensified campaigns for debt relief, reforms to the IMF and structural adjustment programmes, a pro-employment macroeconomic policy (rather than priority to restrictive monetary policy), improved human rights and against exploitative child labour and poor working conditions, etc. But the notion that linking social rights to a trade sanctions regime, though tempting at first sight, is likely to be counterproductive in results.

5. CONCLUSION

At present the WTO does not have a systematic way of enabling the assessment, introduction (or rejection), and the appropriate incorporation of new issues. As a result, several new issues have been absorbed during the transition from GATT to the WTO through the Uruguay Round. And many more new issues are in various stages of brewing, with advocates in governments (mainly of developed countries) and in social organisations pushing hard to gain entry for their favourite issues.

A system or procedure for assessing potential or proposed new issues should be established. The criterion should not only be whether an issue is "trade related", because a case can always be made that almost any issue is related in some way with trade. The criterion should be whether the entry of a particular issue would add advantage and benefit to the Members of WTO (especially the majority, ie the developing countries, and to the majority of people in these countries) and to the WTO system, with the ultimate goal of equitable and sustainable development (rather than liberalisation, which is only a means). And given the fact that the WTO is mainly a negotiating body, with the mandate and task of formulating and monitoring the implementation of Agreements, issues should not be allowed to easily enter the system, even for a "study process" in a working group.

Discussions on potential new issues should take place in appropriate fora outside the WTO, in a setting more conducive to perspectives broader than the more narrow framework of trade relations. In such discussions the role of trade relations can be placed in the broader context of equitable and sustainable development, and the specific role of the WTO (if any) can be demarcated. Until the discussion is sufficiently "brewed" or "matured" in the appropriate fora, the issue should not be brought into the WTO system, either for discussion in working groups and certainly not for negotiations for new Agreements.

Unless the trend for putting more and more issues into the WTO basket is reversed, the trade system will become overloaded and over-bloated. It will not be able to carry out the tasks which it was originally intended to do, because it would have taken on other tasks it is ill suited to perform, as well as grappling with a host of new and complicated issues which will tie up its Members, diplomats and policy makers with knots too difficult to disentangle from.

The Seattle Ministerial Conference can either decide to limit the WTO to the tasks it is supposed to do, and to review its rules and system to put it back on the right track, or it can decide to throw more issues and complications into the system, with unknown and probably dire consequences.

(Paper written in July 1999.)