

**THE EFFECTS OF ENVIRONMENTAL MEASURES ON MARKET ACCESS,
ESPECIALLY IN RELATION TO DEVELOPING COUNTRIES, IN
PARTICULAR THE LEAST-DEVELOPED AMONG THEM**

Submission from India
on Paragraph 32(i) of the Doha Ministerial Declaration

1. The Doha Ministerial Declaration in para 32 provides that:

“32. We instruct the Committee on Trade and Environment, in pursuing work on all items on its agenda within its current terms of reference, to give particular attention to:

- (i) the effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development;

Work on these issues should include the identification of any need to clarify relevant WTO rules. The Committee shall report to the Fifth Session of the Ministerial Conference, and make recommendations, where appropriate, with respect to future action, including the desirability of negotiations. [...]

2. The above issue is already being discussed in the CTE as item 6 of its agenda. Various countries have expressed their views on this issue, as has India, which had earlier made submissions as well.

I. THE EFFECT OF ENVIRONMENTAL MEASURES ON MARKET ACCESS

3. The Preamble to the Marrakesh Agreement Establishing the WTO set out several objectives of the WTO: raising the standards of living, ensuring full employment, increasing income and expanding the production of, and trade in, goods and services, in accordance with the objective of sustainable development. Greater market access for products from developing countries is key to meeting these objectives.

4. Environmental requirements cover a broad spectrum and include, *inter alia*, charges and taxes for environmental purposes; requirements relating to products, including standards and technical regulations; and eco-labelling, packaging and recycling requirements for achieving environmental objectives. Various countries, including India, have in their submissions cited examples of environmental measures affecting their market access by increasing the costs of compliance. This fact also has been brought out in various case studies. It has been noted that environmental measures affect market access of foreign suppliers, particularly those from developing countries. The effect, in particular, is more on the small and medium-sized enterprises (SMEs) in developing countries. Developing countries are also more vulnerable to the adverse effects of environmental measures on market access and competitiveness because of:

- (a) lack of infrastructure - both human and physical - and monitoring facilities;
- (b) limited technology choices and inadequate access to technology;
- (c) inadequate access to (and relatively more expensive) environmentally-friendly raw materials;
- (d) inadequate access to information;
- (e) environmental requirements are highest in the sectors of export interest to developing countries and where they have comparative advantage, such as textiles and clothing, leather and leather products, footwear, forestry products and food products;
- (f) the small size of enterprises, which limit their capacity to bring additional capital, managerial and technological constraints and higher costs of compliance.

5. Thus, the environmental measures in accordance with the objective of sustainable development in fact work against the objective of sustainable development by reducing market access. There is a need for granting developing and least-developed countries a longer time frame to achieve standards of sustainable development. Market access during this period should not be denied to products from developing and least-developed countries since economic growth and employment in such countries are dependent to a great measure on the ease with which they can export.

6. Trade measures are not the first best option for meeting global environmental objectives. Sustainable development is a larger issue encompassing the efficient allocation of the world's resources, domestic environmental imperatives based on the extent of the contribution to national and global environmental degradation, poverty alleviation, creation of additional wealth for environmental protection in developing countries, and so on. Thus, the relationship between trade and sustainable development depends on macro-economic and environmental policies. Even so, an increase in trade increases financial resources, which can make a positive contribution to sustainable development. An individual country might achieve sustainable development by safeguarding and enhancing existing market access. Scarce revenues preserved in this way might then be requisitioned through domestic policies for environmental protection purposes.

II. THE WAY FORWARD FOR DEVELOPING COUNTRIES

7. India, in its paper WT/CTE/W/177, stated that emerging environmental policies and environmental requirements can, and increasingly will, adversely affect developing countries' market access significantly. While it is for the government and industry in the developing countries to take advantage of the comparative advantage of their products, particularly, environmentally-friendly products, to increase their share in environmentally conscious markets, it is as important to safeguard their existing market access against unjustified environmental requirements. Developing countries need to identify sector specific examples of environmental requirements impacting export performance. Having identified sectors and products, positive measures, such as capacity building, technology transfer and technical assistance could be strengthened nationally, bilaterally and multilaterally. The cost of compliance for SMEs needs special consideration, including collective initiatives for cost effective solutions. Infrastructural investments required to mitigate pressing environmental problems are also much needed. Efforts should also be made for information dissemination about new environmental requirements to the exporting units as well as for participation in the standard setting activities in the export markets to safeguard developing country interests.

III. THE PROMOTION OF ENVIRONMENTALLY-FRIENDLY PRODUCTS FROM DEVELOPING COUNTRIES

8. Environmental requirements are applied to address local as well as global environmental problems. With respect to global environmental problems, the regulations should be internationally agreed through multilateral environment agreements, such as for example requirements under Montreal Protocol.

9. In the case of local environmental problems, it is necessary to incorporate in the standards the uniqueness of the environmental conditions in each country. Rio *Principle 11* states that “Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.” Therefore, there is a need to acknowledge that while certain environmental measure are prescribed to achieve the environmental objectives in the importing country, similar or greater environmental objectives could be achieved by some other measures in the exporting country. Such products which though not conforming to the environmental requirements of the importing country and achieving similar or greater environmental objectives in the exporting country should not be subjected to the environmental requirements in the importing country. The importing countries need to factor this flexibility into the design of environmental measures. Exceptions could be provided, for example, to the environmental standards in the exporting countries, which are equivalent in effect with the environmental standards in importing country, though the standards themselves may be different. Exceptions from the importing country’s environmental requirements should also be provided for environmentally-friendly products. The effect would be to achieve the environmental objectives, as well as mitigate the negative effects on the market access of exporting countries and promote environmentally-friendly products.

10. Eco-packaging requirement are being imposed in a number of developed countries to reduce packaging or to make existing packaging more environmentally sound. These include changes to the packaging materials being used, recycled content provisions, deposit refund systems and take-back obligations. These requirements are being imposed to reduce packaging waste. Jute is a common packaging material in India and South Asia. Jute, being biodegradable, is one of the most environmentally-sound packaging materials. It also provides employment to large populations in India and Bangladesh who are employed in farming and processing of jute. However, exports with jute packaging are not able to meet the packaging requirements in developed countries because these requirements are not designed keeping jute as the packaging material in mind. Jute despite being an environmentally-sustainable product fails to comply with developed country environmental requirements. The requirements of recycling and take-back obligations should not be applied for jute packaging, which is biodegradable and is not produced from the cutting of forests.

11. There are a number of environmental requirements in developed countries relating to restrictions on the use of tropical timber because of concerns about deforestation. These requirements include regulations for cardboard boxes having a certain recycled content. Packaging materials made from wood taken from sustainable forestry or plantations, despite not having a recycled content, could be considered to be equally environmentally-friendly, and should be exempt from such requirements.

12. The decline in the population of marine turtles in the recent past has been a cause of global concern, necessitating coastal nations to implement sound management measures for the conservation of endangered turtle species. The major threats which marine turtles have been facing globally, in general, are change in habitat, particularly through littoral drifts; coastal development and other land-based activities; incidental catch and mortalities in fisheries; predation of eggs and hatchlings by wild animals and birds; pollution and mortality due to collisions with commercial vessels. India and several other countries faced unilateral trade restrictions on imports of shrimps harvested without the use of turtle-excluder devices (TEDs).

13. A number of measures are being used in coastal areas in these countries to increase turtle populations. For the conservation and management of marine turtle populations in India, a number of short-term and long-term management measures are being taken which can be broadly categorized as: habitat preservation of the critical nesting areas including peoples' movements to save turtle eggs from predatory animals; use of TEDs by trawlers in critical areas and during critical periods; enforcement of prevalent laws and regulations for the conservation of turtle species; and increasing awareness, training programmes and research in the frontier areas of marine turtle biology and ecology. There is a need to take into account such efforts in assessing the measures being taken for conservation and management of marine turtle populations.

14. Traditional farming practices, which rely on rain-fed irrigation or dry-land farming without using chemical fertilizers and pesticides, are quite common amongst small, resource-poor farmers in large under-developed parts of India, as well as other developing countries. Such food products, made with traditional practices, however, find it difficult to get organically-produced certification or meet the high standards in developed countries because of requirements for documentation, certification, traceability, etc. Food products produced by resource-poor farmers through traditional, sustainable practices fail to find market access in developed countries due to the multiple requirements of conformity assessment. There is a need to recognize local certification, which can certify farmers using traditional practices, without imposing onerous conditions on them.

15. Environmental requirements, to truly achieve the objective of sustainable development, should be flexible to accommodate products from other countries, which although equally environmentally-friendly, are unable to satisfy the environmental requirements of the importing country for various reasons. The WTO could consider undertaking studies to explore all these possibilities.

IV. PROPOSAL

16. Trade and environment policies should be mutually supportive in order to achieve the objective of sustainable development. Environmental requirements should be developed and applied in such a manner so as to minimize the adverse effects on market access for developing countries, while still achieving the objectives of environmental policies. In this regard, it is the responsibility of importing countries when developing and applying environmental measures to ensure that:

- (a) Members shall, in the preparation and application of environmental measures, take account of the special development, financial and trade needs of developing country Members, with a view to ensure that such measures do not affect the market access of developing countries.
- (b) Environmental measures should be based on the criteria of sound science, transparency and equity. They must be compatible with the open, equitable and non-discriminatory nature of the multilateral trading system and conform to its basic provisions and disciplines.
- (c) Trade effects can be mitigated if foreign producers are given the opportunity to participate at an early stage in the design of environmental requirements and have adequate time to adjust to new requirements. While developing environmental measures, participation of developing countries needs to be ensured. Members shall promote suitable mechanisms for information dissemination systems to ensure that changes in environmental measures and standards can be accessed by industries in developing and least-developed countries.
- (d) Longer time frames for compliance shall be accorded to products of interest to developing country Members so as to maintain opportunities for their exports.

- (e) Exceptions should be provided to environmental measures in exporting countries, which are equivalent in effect with environmental measures in the importing country, though the measures themselves may be different.
- (f) It also has to be ensured that when environmental measures affect the market access of developing countries, they should be assisted by way of bilateral technical and financial assistance for compliance. Such technical assistance and transfer of technology shall be provided and/or facilitated on concessional and preferential terms.
- (g) The negative effects of environmental measures on market access should be mitigated or eliminated altogether by providing additional market access to developing countries in these products.

17. The CTE needs to further debate the ways in which the negative effects of environmental measures on the market access of developing countries can be mitigated so as to achieve the objective of sustainable development in a manner consistent with the principle of common but differentiated responsibilities.
