

Committee on Trade and Environment

ENVIRONMENTAL (SUSTAINABILITY) ASSESSMENTS OF TRADE LIBERALIZATION AGREEMENTS AT THE NATIONAL LEVEL

Item 2 of the work programme

Note by the Secretariat

1. This Note has been prepared in response to a request made by the Committee on Trade and Environment (CTE) at its meeting on 5-6 July 2000 for a factual compilation of the various approaches to environmental assessments at the national level prepared to date. As requested, this note is limited to assessments undertaken by WTO Member Governments at the national level with regard to multilateral trade liberalization in the GATT/WTO context.¹ The Note is an initial attempt to compile information on this topic, and it can be expanded upon as further assessments are undertaken.²

2. Based on the variety of approaches to environmental assessments, this Note takes into account the following general considerations: (i) WHY does a country choose to undertake an assessment, i.e. what is its purpose and policy relevance? (ii) WHAT is subject to assessment, i.e. which effects are to be looked at? And (iii) HOW is the link established between the effects of trade liberalization and environmental impacts, i.e. how can the effects of the trade agreement be isolated from other influences on the environment?

3. This Note is divided into three sections: Section I provides an explanation of commonly used terms and topics arising from these general considerations and framing the debate. Section II utilises these terms to describe national experiences to date. Section III contains the references of national assessments compiled in this document.

I. FRAMING THE DEBATE – KEY TERMS AND TOPICS

A. WHY DOES A COUNTRY UNDERTAKE AN ASSESSMENT?

4. To date, there are two major types of reasons underlying national assessments of trade liberalization in the GATT/WTO context: An assessment can attempt to consider the effects of a trade agreement prior to and/or throughout its negotiation. This is called an *ex ante* assessment. It is meant to feed into the negotiation process to shape the final outcomes in such a way as to reinforce potential positive or prevent potential negative environmental effects. It can also be used to begin broad deliberations on possible complementary measures at an early stage. An assessment can also be undertaken after the conclusion of a trade agreement at some stage during its implementation. In this case it is called an *ex post* assessment. It examines the results of the negotiation process to see whether they might have consequences for national environmental policies or whether there might be

¹ The Note does not include regional trade liberalization initiatives, e.g. reviews undertaken by the US and Canada on NAFTA, or by the EC on the Single Market, nor national reviews of domestic restructuring programmes of which trade liberalization is but one part, e.g. in the framework of Structural Adjustment Programmes (SAPs) under the auspices of the World Bank.

² The Secretariat takes full responsibility for any omissions or errors that the document may contain and is prepared to revise the information in light of further developments.

a need for additional complementary measures to enhance positive or mitigate negative environmental impacts. *Ex ante* assessments can contribute to identifying a country's priorities, taking certain preventive action and possibly modifying original negotiation positions. However, as such assessments depend on predictions on what might be negotiated, their results can be uncertain. *Ex post* assessments are based on concrete negotiation results, rather than merely projected ones. They might evaluate and deal with environmental impacts already being observed during the implementation of a trade agreement. *Ex post* assessments, similar to *ex ante* assessments, still face the analytical challenge to isolate the effects of a trade agreement on the environment. Countries may use the insights gained through *ex post* assessments as a basis for subsequent *ex ante* assessments in future negotiations or vice versa. Thus, *ex ante* and *ex post* assessments can constitute separate parts of the same process rather than separate processes altogether.

B. WHAT IS SUBJECT TO AN ASSESSMENT?

5. There are two major categories of effects that can be examined in an assessment: legal effects and economic effects. In the first case, the assessment looks at whether obligations implicit in a particular trade agreement prevent or entail changes to certain domestic regulations. Such regulatory effects of the trade agreement might, in turn, have consequences for the environment. From an economic perspective, changes in trade flows and general economic activity as a consequence of the trade agreement are examined. These economic effects could have direct impacts on the environment. Not all measures of a trade agreement might be likely to have an impact on the environment. In a so-called "scoping / screening" process it can be tried to assert which of the negotiated trade measures can be excluded from the analysis and which deserve more detailed attention. It might be the case that some trade measures are likely to have a larger environmental impact compared to others or have an impact onto an area already under stress. Investigated impacts have been mainly environmental, but more recently there have been considerations to include other elements of sustainability.

6. It is also important to know which procedures a country has in place to identify those trade measures and potential impacts that might be of concern and ultimately be subject to an assessment. Furthermore, a country has to decide whether the assessment of impacts should be confined to the national territory or include impacts in other countries.

C. HOW IS THE LINK BETWEEN TRADE MEASURES AND EFFECTS ESTABLISHED?

7. Concerning legal effects, it is examined whether specific provisions of the trade agreement influence the government's ability to regulate or legislate in areas which are assumed to have environmental implications. Economic effects are subdivided into scale, structural, product and technology effects: scale effects relate to trade-induced growth and the effects associated with increased economic activity and financial gains; structural effects occur through changes in the relative importance of certain economic sectors as a consequence of trade liberalization and reflect the changed pattern of more as compared to less polluting economic activities; technology effects are brought about by changes in the production methods stimulated or enabled through trade liberalization which can result in, for example, differing pollution levels per unit of output; and product effects are associated with changes in trade flows in individual products with certain environmental characteristics.³

8. It is important to isolate the effects of the trade agreement from other variables in play that might have an impact on the environment. The task is to establish a causality/correlation between a trade measure, its specific regulatory or economic effect and ultimately environmental impact. It might be useful to consider other contextual factors (e.g. economic growth, inflation, fiscal and monetary policies and exchange rates) which can have effects even in the absence of the trade

³ See WTO, *Special Study No. 4: Trade and Environment*, Geneva, 1999: p. 29, also for further references on economic effects.

agreement and cannot be attributed to it. Some contextual factors (e.g. industry concentration, labour market dynamics or infrastructural elements) might influence and condition how a trade measure gets translated into economic activity and ultimately environmental impact. In order to measure impacts, a series of core indicators can be used. Several indicators might sometimes be necessary to describe a particular environmental impact, e.g. on air quality. Sometimes, a country might not be able to choose the indicator which most closely tracks an environmental impact, but might select indicators on practical grounds, such as data availability or statistical simplicity.

II. ENVIRONMENTAL ASSESSMENTS AT THE NATIONAL LEVEL

A. CANADA

9. Canada's national experiences include an Environmental Review of the Uruguay Round in 1994 and a Strategic Environmental Assessment (SEA)⁴ of a potential new round of WTO trade negotiations. It outlines procedures for future environmental assessments and builds on previous experience; the first phase of the SEA was a retrospective analysis of the 1994 Review. Following its release, work began on the environmental assessment framework for WTO negotiations.

10. "Why?": Canada's 1994 Review was conducted after the conclusion of the Uruguay Round, i.e. *ex post*. Its principal purpose was to identify the extent to which the results of the Uruguay Round would have an effect on Canada's ability to regulate for environmental protection. The SEA, initiated in 1999, follows the same purpose. Additionally, it is meant to ensure that environmental issues and concerns are taken into consideration at the earliest stage by Canadian negotiators in the negotiation of trade agreements, i.e. *ex ante*.⁵ Its purpose is also to communicate to stakeholders that environmental factors are being considered in the course of trade negotiations. An SEA comprises environmental assessments at different stages before, during and at the conclusion of negotiations. It is expected that an SEA leads to more open decision-making within the federal government by engaging representatives from other levels of government, the public, the private sector, and non-governmental organizations (NGOs) in the process, and that it improves overall policy coherence at the national level. The final report of the SEA is intended to be used in any future *ex post* review of an agreement.

11. "What?": The 1994 Review examined several Uruguay Round Agreements. Economic effects were not investigated; the Canadian government confined itself to an analysis of the relation between multilateral trade "rules" and domestic regulations. The retrospective analysis of the 1994 Review (the first phase of the current SEA) undertaken in 1999 mirrors this approach. It determines which regulatory effects of the Uruguay Round actually occurred between 1994 and 1999. It compares its findings to the conclusions of the 1994 Review to confirm that Canada maintained its right to regulate for environmental protection.

12. The draft environmental assessment framework, which was also developed as part of the current SEA, specifies that the level and scope of analysis will depend on the nature of the individual agreement to be negotiated and the significance of its potential environmental impacts. The results of these agreement-by-agreement analyses would then be consolidated and assessed in an integrated manner before the conclusion of a new round of WTO negotiations. The framework foresees to not only analyse regulatory effects as in the 1994 Review and its retrospective analysis. It also proposes to look at changes in trade flows (product and technology effects) and economic activity (scale and structural effects) as well as at special local or regional impacts other than the ability to regulate.

⁴ An SEA is defined by Canada as a systematic process of identifying and evaluating likely and significant environmental impacts of an initiative.

⁵ A consideration of environmental factors for policy and regulatory proposals, including in relation to WTO negotiations, is a requirement of the 1999 Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals.

13. The 1994 Review was and the SEA is being carried out by an environmental assessment committee composed of representatives from all relevant government departments and coordinated by the Department of Foreign Affairs and International Trade. While in the 1994 Review, there were no formal public consultations, the identification of potential policy and regulatory effects was guided by looking at the range of environmental concerns that had been raised by governmental and NGOs over the course of the negotiations. These views were gathered through either direct contact with NGOs or by an examination of published sources and letters received from members of the public. The draft environmental assessment framework was itself developed with extensive public input. It foresees that throughout the assessment process, transparency will be fostered by the timely publication of discussion documents and reports on the web and public notices. Public participation will take place through existing mechanisms, such as regular advisory groups, on-line venues and other means.

14. The 1994 Environmental Review and the 1999 Retrospective Analysis only focused on effects for Canada. The draft environmental assessment framework for future assessments acknowledges that many environmental issues should be examined in the global context, but that in view of limited data and resources, sovereignty issues and practicality the primary focus should, at this time, be on assessing the most likely and significant environmental impacts of trade negotiations in relation to Canada. Transboundary, regional, and global environmental impacts are to be considered if they have a direct impact on the Canadian environment.

15. "How?": The 1994 Environmental Review studied the regulatory effects of nine agreements concluded during the Uruguay Round that were considered to potentially have an environmental effect. It focused on those provisions that committed or entitled governments to pursue certain policies. Certain assumptions and expectations were implicit about how such policies would affect the environment. In the Retrospective Analysis, two types of questions were asked: first, how the implementation of new multilateral obligations has translated into national policies and what the environmental effects have been; and second, whether national environmental policies were affected by certain WTO provisions or whether these had been challenged by other WTO Members under one of the reviewed Agreements. It was also analysed whether dispute settlement practice had revealed new insights into how relevant provisions in the covered Agreements could be interpreted with regard to environmental issues.

16. Canada's draft framework is an initial attempt to outline a step-by-step process for undertaking environmental assessments of future trade negotiations. It is not meant to be prescriptive or to provide a "one-size fits all" approach, but is to be adapted and applied on a case-by-case basis according to the nature of the agreement to be negotiated. A process in four stages is suggested in conducting the analysis: In a first stage, the coverage of the potential agreement and its overall economic relevance in the Canadian context would be determined. This can include identifying sectors likely to be affected, changes in consumption of specific products, exports of natural resources or effects on standards and on subsidy disciplines. In a second stage, different forms of environmental impacts of such economic changes are considered; economic changes could, for example, impact on Canada's commitments under MEAs, on the transfer of environmentally-sound technologies, on environmental goods and services sectors, or on projects in Canada subject to project-level environmental impact assessments (EIAs). In stage three, the significance of likely environmental impacts will be assessed, inquiring, for example, into the frequency and duration of impact, the geographical scope or an established high level of risk or potential irreversibility of the impact. Attention is also paid to cumulative impacts. In a final stage, mitigation and enhancement measures are devised. These might include new policy programmes or modifications to existing ones or cooperative efforts with other countries or organizations. In addition, it might be recommended that negotiation positions be modified.

B. EUROPEAN COMMUNITIES

17. In 1999, the European Commission contracted out a sustainability impact assessment (SIA) of a potential new WTO round of multilateral trade negotiations to an independent team from the University of Manchester. In a first phase from mid-July to mid-September 1999, case-study and literature reviews were undertaken in order to develop an SIA methodology for use in phase two. This second phase, which lasted from mid-September to mid-November 1999, involved a preliminary assessment applying the methodology developed in phase one. Work on phase three, which will include more detailed sectoral assessments as well as a refinement of the assessment methodology, is currently being prepared.

18. "Why?": The main objective of phases one and two of the SIA were to develop a methodology encompassing all three – economic, environmental and social – aspects of sustainable development. This was then to be applied to a range of measures which might be included in the agenda of a New Round. The purpose of this *ex ante* assessment was to make some preliminary and broad qualitative assessments of likely impacts on sustainable development and to identify possible complementary measures. Phase three, although a new round has not been launched, will maintain the character of an *ex ante* assessment; it will be conducted in parallel to negotiations and comprise at least the mandated negotiations in the agriculture and services sectors, if not other areas that may also be negotiated.

19. "What?": The SIA looked at direct economic effects of changes in trade flows as opposed to regulatory effects. It drew on various economic, environmental and social appraisal methodologies that already exist at the project level. The SIA study aimed at integrating them and transposing them from the project to the policy level. In a screening and scoping exercise, it was tried to identify those WTO agreements and other trade-related areas, such as trade facilitation, that should be examined in view of the likelihood and significance of effects on sustainability. Liberalization scenarios with varying degrees regarding changes to trade measures were developed. The economic effects were then analysed and linked to a set of sustainability indicators. Finally, by way of mitigation and enhancement analysis, improvements for the overall impact on sustainability were proposed, including domestic regulatory measures.

20. Findings at various stages of the assessment, e.g. the study team's results of the screening process, were repeatedly submitted to the public and the European Commission for comments. This took place in the context of informal contacts and meetings with NGOs, the wider public and Commission representatives and through placing the findings of the phase one report and the list of measures to be subject to SIA on the contractors' web-site. The methodology will be refined for phase three by integrating other relevant studies in progress and incorporating comments made by stakeholders on the preliminary assessment. Impacts were analysed on the basis of three country groupings: the European Union, developing / least-developed countries and the world as a whole.

21. "How?": Methodologically, the pre-Seattle SIA is seen to be the first of its kind. In view of its high level of ambition and breadth of scope, and not least given the limited data availability and absence of an agreed agenda for negotiations, it was intended to be only a preliminary, qualitative assessment. The SIA will go into more detail in phase three, which will include a refinement of methodology in order to resolve some of the limitations that naturally occurred in view of time limitations.

22. The assessment started with a screening exercise to see which of the initially listed trade agreements / areas for investigation could be excluded on the grounds that they were unlikely to give rise to significant impacts. None of these were, in fact, excluded as a result of this exercise. In the subsequent scoping stage, a closer look was taken at components within these agreements / areas for further exclusions from the assessment. The scoping process was not clearly set apart from the ensuing preliminary assessment. Both stages involved the identification of cause-effect routes and

were undertaken for each of the country groups and for each of three – baseline, intermediate and liberalization - scenarios in order to record any differences in likely impacts between them. The baseline scenario implied that no new agreement (besides implementation of the Uruguay Round commitments) would be reached on the measure concerned. The intermediate scenario reflected the EC's initial negotiating position and the liberalization scenario assumed greater and faster liberalization and very limited changes to existing mitigating measures for adverse environmental and social impacts. The preliminary assessment was an extension to scoping in that it dealt with uncertainties concerning lesser or greater significance. It was also attempted to assess combined impacts by taking into account additional indirect, feedback and cumulative impacts which result from interactions among trade measures.

23. On a preliminary basis, the study selected nine "core sustainability indicators", such as average real income, gender inequalities and air quality, which were combined with "significance criteria", e.g. extent of existing stress, or nature, order of magnitude, geographic extent and duration of change. The degree of significance was then determined by presuming that the likelihood of a significant impact increases as the combined set of core indicator values moves in specified directions in view of a certain combination of these criteria. The ultimate result of this exercise was an ordinal, five-point scale to rate trade measures according to positive and negative impacts of lesser and greater significance or no significance at all. The potential impacts were described in broad terms, as suggested by the literature review.

C. UNITED STATES OF AMERICA

24. The United States (US) prepared an environmental review at the national level of the Uruguay Round Agreements. This review was issued in August 1994. Following the November 1999 Executive Order 13141 by the President, which commits the US to careful assessment and consideration of the environmental impacts of future trade agreements, including written reviews of certain major trade agreements, draft guidelines to implement the Order were developed and released for public comment in July 2000. The final guidelines are expected before the end of 2000 and may differ from the draft described here.

1. The US Review "GATT Uruguay Round Agreements: Report on Environmental Issues"

25. "Why?": The review discusses how environmental considerations were taken into account in the negotiation of the Uruguay Round Agreements and in the results of those negotiations, and tries to assess the likely effects of the Agreements on various environmental issues. It was used as an information tool for the public and Congress on the environmental issues raised in the course of negotiations and on the Government's deliberations regarding potential effects on the environment. Not all sections are devoted to assessing environmental impacts. The relevant three sections offer an *ex post* review of what the US negotiated and what these results might imply for the environment.

26. "What?": To illustrate how environmental considerations were taken into consideration in the negotiations, the 1994 Report on Environmental Issues contains a section that reviews a number of environment-related provisions in the Dunkel text and provides a comparison to the final text of the Uruguay Round Agreements. Negotiating stances taken by the US are described and the environment-related concerns, which made the US push for a certain change in the negotiation of the text, are briefly explained. Various provisions of individual Uruguay Round Agreements that could have an impact on US environmental laws and regulations are discussed. Economic effects from trade-induced economic growth and shifts in trade and investment that are likely to result from the Uruguay Round Agreements are analysed as well. A distinction is made between general economic and specific sectoral effects and their respective environmental impacts.

27. The Uruguay Round report was prepared by an inter-agency task force, coordinated by the Office of the US Trade Representative (USTR) and composed of all relevant governmental departments and offices, the Environmental Protection Agency, the Council of Economic Advisers and the Council on Environmental Quality (CEQ). Input from the public was sought regarding environmental concerns raised by the Uruguay Round. Comments were included in the report and responded to. The report almost exclusively focuses on effects in the United States, with one major exception being a review of liberalization effects in environmental technology and services in key regional markets.

28. How?: With regard to potential regulatory effects, the 1994 Report on Environmental Issues individually reviews a selection of the Uruguay Round Agreements. Provisions that could bear some relevance for environmental protection are highlighted and the compatibility with various forms of domestic regulation is explained. An important methodological element is the response to claims by critics that some provisions would circumscribe certain action by domestic regulatory agencies. It is explained how the US negotiated a wording that would safeguard the right to regulate, or that certain conditions would have to be met in a potential dispute in order for a specific domestic measure to be considered inconsistent with a WTO Agreement. On several occasions, examples are given of domestic regulations being consistent with the requirements of a WTO Agreement.

29. The 1994 Report on Environmental Issues also examined potential economic effects and their impact on the environment, possible alternative scenarios and options for addressing potential adverse environmental impacts. In the absence of reliable economic data, a quantitative assessment of environmental impacts was not attempted. Instead, some general hypotheses about linkages between general economic effects and environmental impacts were reviewed and their applicability to the implementation of the results of the Uruguay Round in the US was discussed. The report proceeds in a similar fashion for the following subsection on sectoral effects in agriculture, environmental technology and services, transportation, energy, minerals, wildlife and fisheries and forest resources.

2. Draft Guidelines for Implementation of Executive Order 13141: Environmental Review of Trade Agreements Notice of Public Hearing

30. "Why?": This recent Executive Order has institutionalized environmental reviews of trade agreements in the US. These reviews are to be initiated early enough to inform negotiating positions, i.e. *ex ante*, but shall not be a condition for the timely tabling of particular negotiating proposals. Environmental reviews are also used to communicate with the public; they are to be made available in draft form for public comment, where practicable, and made available to the public in final form.

31. "What?": Both legal and economic effects are to be examined. Regulatory effects are described as potential effects on US environmental regulations, statutes and other binding commitments. A list of various economic effects are suggested for examination, such as scale, structural and technology changes that affect products, processes or sectors, the distribution of products, volumes and modes of transportation, etc. In a scoping process significant issues are to be identified and prioritised for in-depth analysis. Issues which are not significant or have been covered by prior reviews are eliminated from detailed study. Issue identification and prioritisation is an iterative process, with negotiating positions likely to undergo continual adjustment. The relative importance placed on any particular issue by governmental agencies, the informed public and/or advisory committees, the availability of analytical tools for environmental impact assessments and the existence of synergies with work performed elsewhere in the inter-agency process are to be taken into account in defining priorities. Environmental reviews could be amended if negotiations led to a trade agreement with environmental implications that are substantially different from those analysed initially.

32. When initiating an environmental review project, public comment and information on the scope of the review are solicited. Environmental reviews are conducted by the USTR through the

Trade Policy Staff Committee (TPSC) as the basic inter-agency decision-making mechanism on US trade policy. At the working level, environmental agencies will be asked to conduct analyses on subjects within their purview. These ultimately can result in instructions to negotiators on specific issues relevant to a given trade agreement upon clearance by the government agencies. Where significant (positive or negative) environmental impacts have been identified, response options could include changes to negotiating positions and measures outside the trade agreement. The environmental review group under the TPSC may also actively seek consultations with academic and other institutions and interested groups that have relevant technical and modelling experience. Public comments on a draft review document are to be included in summary format in the final document.

33. A focus of reviews would be on domestic impacts in the US as a primary concern. An assessment of global and transboundary impacts is subject to certain considerations, such as the scope and magnitude of reasonably foreseeable environmental impacts, the implications for US international commitments and programmes for international cooperation, the availability of relevant data and analytic tools, diplomatic considerations and the availability of government resources.

34. "How?": Each review is likely to incorporate uniquely tailored qualitative and quantitative analytical approaches. Limitations in the analysis due to certain assumptions and uncertainty in the data and methodologies are to be documented. However, despite variations in approaches, consistency is to be achieved in the review process through a consistent documentation format and content. Environmental reviews are to include both an analysis of the regulatory environmental impacts and the environmental impacts that might flow from direct economic changes estimated to result from the trade agreement. For the latter endeavour, modelling and other similar techniques are deemed important albeit not sufficient in and by themselves. The problem of aggregate analysis of broad economic trends and more localized analysis of environmental impacts is thereby recognized. Baseline scenarios for comparisons of the likely environmental impacts with and without the trade agreement are to take into account changes that might occur in the economy and the environment even in the absence of the proposed trade agreement.

35. The draft guidelines call for consideration not only of the broad and intuitive environmental impacts commonly associated with certain changes in economic effects. Changes in level, intensity, geographical distribution and temporal scope of variables used to measure the affected environment are to be compared to base values in order to determine the interaction of trade impacts with other impacts on the relevant environmental media. Sources of data and analytical methodologies available within and outside the US are to be considered by agencies responsible for the environmental review; a list of such sources is to be made available to the public for comments and is to be updated accordingly.

III. REFERENCES

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