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**Committee on Trade and Environment
Special Session**

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CONTINUED WORK UNDER PARAGRAPH 31(II) OF THE DOHA MINISTERIAL DECLARATION

Communication from the United States

Paragraph 31(ii)

The following communication, dated 19 February 2007, is being circulated at the request of the Delegation of the United States.

I. INTRODUCTION

1. The United States reiterates its commitment to the very important objective of enhancing the mutual supportiveness of trade and environment, and its view that the Committee on Trade and Environment Special Session (CTESS) has an opportunity to make concrete progress toward this objective under paragraph 31(ii) of the Doha Ministerial Declaration. Discussions under paragraph 31(ii) have been less intense than under other sub-paragraphs, and much work needs to be done.

2. The United States submitted a paper to the Committee in June 2002 (TN/TE/W/5) setting out ideas to improve cooperation between WTO bodies and Multilateral Environmental Agreement (MEA) secretariats in two main areas: information exchange and observer status. We now welcome renewed discussion of this and other proposals, including those by the European Communities (TN/TE/W/15, TN/TE/W/39 and TN/TE/W/66) and Switzerland (TN/TE/W/30), and the many other views and ideas put forward by Members concerning paragraph 31(ii), which are helpfully compiled in the Secretariat's synthesis document (JOB(07)/2). In this paper, the United States has attempted to elaborate on the ideas set forth in our earlier paper, as well as provide an outline of concrete elements that could form an eventual result under the paragraph 31(ii) mandate (see Annex I).

II. INFORMATION EXCHANGE

3. As proposed in the United States' earlier submission, concrete action can be taken under the mandate of paragraph 31(ii) to improve cooperation between MEA secretariats and relevant WTO bodies in the realm of information exchange.

A. INFORMATION SESSIONS

4. The U.S. delegation, among others, considers that information sessions involving MEA secretariats are important and should become a formal, institutionalized aspect of the CTE meeting in regular session (CTE). The United States also agrees with others that procedures for these sessions do

not need to be overly detailed and should remain flexible. However, it would be useful for Members to agree on a general structure for conducting future information sessions.

5. In an effort to set forth the outlines of a general structure, the United States proposes that MEA information sessions within the CTE take place on a regular basis. Initially, information sessions should be held once a year. After three to five years, Members should take stock of this practice to see whether they are reaping benefits expected from formalizing the information exchange process. During such a stock-taking exercise, Members could consider whether it is desirable to hold information sessions more or less often.

6. These information sessions should involve a two-way flow of information so that the WTO Members and Secretariat learn about trade-related MEA activities and rules while MEA secretariats and delegates become better apprised of a trade-related perspective and issues arising under the WTO Agreement. To this end, officials from Member governments, including those that regularly attend the CTE and any other relevant WTO bodies, MEA secretariats and delegates, and the WTO Secretariat could attend these information sessions. The sessions should be timed strategically, so that as many delegates and relevant MEA secretariats as possible have an opportunity to participate. The timing of information sessions should be coordinated with MEA secretariats and, to the extent practicable, take into account relevant MEA meetings, to facilitate active participation by relevant MEA secretariats and delegates.

7. The United States also recommends that the CTE agree in advance on a topic or mix of themes for the information session. We agree with others that it is important to have sessions that are well organized on topics of broad current interest to Members, with useful, brief background papers prepared and distributed in advance by the WTO and MEA secretariats. For example, in the past, information sessions have focused on cross-cutting issues (such as the 2001 themes of compliance and dispute settlement) that are likely to be of interest to many or all MEAs. Sessions could also cover substantive issues that are particularly oriented toward the subject area of a cluster of MEAs (such as hazardous chemicals with respect to the Basel-PIC-POPs cluster).

8. In addition to formal information sessions, we have proposed that the CTESS also explore other mechanisms for collaboration. The WTO Secretariat is already coordinating its technical assistance activities to allow for participation by relevant MEA secretariats. We agree with others that this should continue, and the WTO Secretariat, along with relevant MEA secretariats, should focus more assistance to help build the capacity of developing country Members to foster their own internal, national trade and environment coordination processes.

B. DOCUMENT EXCHANGE

9. The United States appreciates that an increasing number of WTO documents are submitted and circulated on an unrestricted basis and made accessible to MEA secretariats and the general public through the WTO's public Document Dissemination Facility (DDF). We look forward to continuing improvements in WTO transparency and welcome the recent decision by the General Council to improve document derestriction practices and expand the category of unrestricted documents.

10. In this area, as in others, we stress that document exchange between each Member's trade and environment officials should occur, in the first instance, at the domestic level. The best way for Member government environment officials and experts to learn of relevant WTO documents is directly from their own government's trade counterparts, and vice versa, through internal trade and environment coordination procedures at the national level. Each Member can benefit by fostering its

own internal communications links to enable such coordination. While improved information exchange between WTO committees and MEA secretariats is important, it would be a mistake to rely exclusively on the MEA or WTO secretariat as the primary source for such material.

11. In order to complement domestic document-sharing procedures, MEA secretariats could transmit to the WTO Secretariat relevant reports and other documentation prepared by them or submitted by parties to these agreements. Examples could include party reports under Article 10(2) of the Rotterdam Convention (i.e., import responses to proposed exports of chemicals) and reports on certifications received from importing non-parties under the Stockholm (POPs) Convention. The WTO Secretariat could index documentation it has received from MEAs for the information of WTO Members. For example, the WTO Secretariat could issue a list of MEA-related reports or documentation that it has received on an annual basis. And for its part, an MEA Secretariat could be invited to prepare an index of documents it has received from the WTO Secretariat in order to facilitate access to such documents by MEA delegates and secretariat staff.

12. In addition, the United States agrees with other Members that the Internet affords an excellent mechanism to enhance information exchange between the WTO and MEAs. The WTO and its Members should look for ways to utilize the Internet to promote improved information exchange. WTO and MEA secretariats should take full advantage of hyperlinking and other tools to cross-reference, and make readily available online, relevant materials.

III. OBSERVER STATUS

13. As noted on previous occasions, the mandate of paragraph 31(ii) concerning criteria for granting observer status is limited to the question of observer status for relevant MEA secretariats. The mandate does not extend to the more general issue of observer status in the WTO. That responsibility lies exclusively with the WTO General Council. Also, as the United States has previously noted, negotiations pursuant to paragraph 31(ii) take place against the backdrop of the existing Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council (WT/L/161). This specifically includes Annex 3, which addresses Observer Status for International Intergovernmental Organizations in the WTO.

14. Accordingly, Annex 3 can and should provide critical context to inform our discussions and ultimate decision on the criteria used to grant observer status to relevant MEA secretariats. Annex 3 provides for each WTO body to consider, on a case-by-case basis, requests for observer status from organizations that have “competence” and a “direct interest” in trade policy matters. To assist in determining whether an organization meets these requirements, Annex 3 provides an illustrative list of factors that may be taken into account, including:

- the nature of work of the organization requesting observer status;
- the nature of the organization’s membership;
- the number of WTO Members in the organization;
- reciprocity with respect to access to proceedings, documents, and other aspects of observer status; and
- whether the organization has been associated in the past with the work of the Contracting Parties to GATT 1947.

15. The CTESS has been tasked with negotiating “the criteria for the granting of observer status,” that is, specific criteria that could identify relevant MEAs that might be invited to participate as an observer in a WTO body. Contrary to some views expressed, the CTESS has not been tasked, nor does it have the authority, to decide on which particular MEAs should be granted observer status in the CTE regular session or other WTO bodies.

16. The United States is among many Members advocating that criteria be flexible. Such criteria should help facilitate WTO bodies' consideration of whether an MEA requesting observership has "competence" and a "direct interest" in its work. Criteria should not be so inflexible as to make it more difficult for an MEA secretariat to gain observership to a relevant WTO body.

17. Therefore, the United States proposes that the CTESS develop a non-exhaustive list of "indicative questions" to aid WTO bodies in making reasoned decisions on a case-by-case (i.e., WTO body-by-body and MEA-by-MEA) basis regarding MEA observer status. Such indicative questions would use the non-exhaustive list of factors identified as potentially relevant in Annex 3 of the WTO Rules of Procedure as their point of departure. This approach is flexible enough to deal with new MEAs that may apply for observer status in the future.

18. The United States proposes the following indicative questions as a basis for discussion:

- Does the MEA contain specific trade obligations or other trade-related obligations among Parties, and if so, are these specifically relevant to the WTO body's scope of work?
- Is the MEA currently an observer to other WTO bodies, and if so, what is the extent of the MEA's participation in meetings of that body?
- Does the WTO Secretariat participate in the MEA meetings as an observer? If so, does the participation relate to issues addressed by the relevant WTO body?
- Have the WTO Secretariat and the MEA Secretariat worked together on reports or to plan workshops, capacity building events, or seminars?

19. These indicative questions, while by no means exhaustive, could help form a basis for a WTO body to determine if a particular MEA has a "direct interest" in matters before that body. Individual WTO bodies could be invited to add to or subtract from this set of indicative questions, as appropriate.

20. The United States also proposes that in the event that a decision cannot be arrived at with respect to a particular, yet relevant, MEA observer request, WTO bodies could be encouraged to invite that relevant MEA to participate as an observer on an ad hoc basis, or for a period to be determined by the WTO body, and subject to extension as circumstances warrant. Such ad hoc observership could facilitate information exchange.

21. In addition to the CTESS undertaking to develop and agree on a set of indicative questions to guide WTO bodies considering observer requests from MEA secretariats, the United States proposes that the CTESS grant permanent observer status for the remainder of the DDA negotiations to the seven MEA secretariats¹ that currently have ad hoc observership.

¹ The Basel Convention, the Convention on Biological Diversity, the Convention on International Trade in Endangered Species, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the Stockholm Convention on Persistent Organic Pollutants, and the United Nations Framework Convention on Climate Change.

IV. SUMMARY AND GENERAL OBSERVATIONS

22. These proposals regarding information exchange and observer status have the potential to enhance mutually supportive relations between the multilateral trading system and MEAs and, in so doing, to further the achievement of sustainable development goals.

23. While this kind of enhanced international coordination is undoubtedly useful and important, it does not take the place of the much more direct and efficient means of *intra*-governmental coordination that should take place on an ongoing basis at the national level between trade and environment officials of each WTO Member. It is the U.S. view that the interests of Members would be best served if they allow improved secretariat-to-secretariat cooperation and information exchange to *supplement*, rather than substitute for, direct communication, information sharing and collaboration within the Member's government. As mentioned by a number of Members, institutional technical assistance and capacity building along these lines could be helpful to governments as they strive to achieve better domestic coordination.

24. The United States believes that, if adopted, these information exchange proposals, together with the development of a flexible set of indicative questions for considering and granting observership would help facilitate MEA secretariats' keeping up to date on relevant WTO work, and enhance the mutual supportiveness of trade and environment.

25. The United States reaffirms the importance of achieving a productive and meaningful outcome to the paragraph 31(ii) negotiations. We appreciate the papers and the many ideas and proposals put forward by other Members under this paragraph, and we hope that these contributions will contribute to a revitalized discussion under paragraph 31(ii) of the Doha mandate.

26. An outline of this paper's proposals is set out in Annex I.

ANNEX I

OUTLINE OF U.S. 31(ii) PROPOSALS

I. INFORMATION EXCHANGE

A. Information Sessions: Agree a general structure for information sessions with MEA secretariats.

- (i) Hold information sessions annually with stock-taking after 3-5 years.
- (ii) Coordinate timing with relevant MEA secretariats to the extent practicable.
- (iii) Agree in advance on a theme/topic for information session.
- (iv) WTO and MEA secretariats prepare brief background papers in advance.

B. Document Exchange

- (i) Reaffirm the need to share documents at the domestic level as first-best way to inform trade and environment officials of WTO and MEA activities.
- (ii) Continue to improve WTO transparency, including through document derestriction practices and expanding the category of unrestricted documents.
- (iii) Improve document indexing practices, including WTO and MEA secretariats posting a list of documentation received from each other on an annual basis.
- (iv) Encourage use of the Internet (including hyperlinking) to promote information exchange.

C. Technical Assistance and Capacity Building

- (i) WTO and MEA Secretariats continue to coordinate technical assistance and capacity building activities.
- (ii) Explore ways to foster better domestic trade and environment coordination processes and information sharing procedures in developing countries.

II. OBSERVER STATUS

A. Reaffirm the following:

- (i) mandate is limited to observer status for relevant MEA secretariats and does not extend to general issue of observer status in WTO;
- (ii) applicability of existing Rules of Procedure (WT/L/161), specifically Annex 3; and
- (iii) observer status is decided on a council or committee basis.

- B. Agree on a flexible set of indicative questions that can assist WTO bodies in considering MEA observer requests [to be developed by CTESS in advance of their use].
 - C. Recommend that in the event that a decision cannot be reached on an MEA observer request, WTO bodies be encouraged to invite that MEA to relevant meetings on an ad hoc basis.
 - D. Agree to grant permanent observer status for the remainder of the DDA negotiations to the seven MEA secretariats that currently have ad hoc observer status.
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