

WORLD TRADE ORGANIZATION

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Committee on Trade and Environment
Special Session

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PROPOSAL FOR AN OUTCOME ON TRADE AND ENVIRONMENT CONCERNING PARAGRAPH 31(I) OF THE DOHA MINISTERIAL DECLARATION

Submission from Australia and Argentina

Paragraph 31(i)

Revision

The following communication is being circulated at the request of the Delegations of Australia and Argentina.

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1. Paragraph 31(i) of the Doha Declaration mandates negotiations on the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations are specifically limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The mandate also provides that the negotiations should not prejudice the WTO rights of any Member that is not a party to the MEA in question.
 2. Australia believes that a practical outcome should be pursued under Paragraph 31(i), one that accurately reflects our discussions and experiences in the CTESS. We suggest that a short but substantive report be prepared highlighting key observations from CTESS discussions, and setting out areas of agreement and recommendations.
 3. In our view, such a report should highlight both the process and content of the CTESS' discussions under Paragraph 31(i). The report would outline the three-phased approach that the CTESS decided to pursue in the negotiations. Specifically, this approach involved firstly, the identification of the "specific trade obligations in multilateral environmental agreements" which were the subject of the mandate. The second phase focused on whether there have been particular implementation issues with these "specific trade obligations", including through sharing of national experiences among Members as well as information sessions with MEA secretariats. The third phase involved discussion of matters arising from the first and second phases.
 4. The report could usefully note that in following this approach, Members have been conscious of the importance Ministers placed on enhancing the mutual supportiveness of trade and environment, in particular the specific direction in Paragraph 32 of the Doha Declaration that the outcome of this work be compatible with the open and non-discriminatory nature of the multilateral trading system, not add to or diminish the rights and obligations of Members under existing WTO agreements, in particular the SPS Agreement, or alter the balance of these rights and obligations, and take into account the needs of developing and least-developed countries.

5. Further, the report could note that in the first phase, the Committee generally agreed that a specific trade obligation (STO) is one that requires an MEA party to take, or refrain from taking, a particular action. Certain obligations in six MEAs have been identified as STOs by many Members. The MEAs are: Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal (Basel Convention), Cartagena Protocol on Biosafety Protocol to the Convention on Biological Diversity (Biosafety Protocol), Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC), and the Stockholm Convention on Persistent Organic Pollutants (POPs). Having identified these MEAs, Members discussed specific provisions which it was widely agreed constituted STOs. This discussion identified a broad variety of STOs addressing complex environmental concerns which were not easily classified into simple categories. Many Members submitted papers on this issue which provided important focus to the discussion.¹

6. In discussing the second phase, the report could refer to the Committee's focus on the role of 'national experiences' in promoting mutual supportiveness in the trade and environment fields. A number of Members submitted papers² outlining their national experiences in negotiating and implementing specific trade obligations in MEAs, while others described their internal processes.

7. Some Members noted key features in the design of STOs during the negotiation and implementation of MEAs that contribute to mutual supportiveness such as: careful tailoring of STOs to meet a specific environmental objective, while taking into account Parties' trade-related rights and obligations; clarity of scope and application of STOs; certain procedures laid out in the MEA that rely on objective criteria and scientific input to make decisions; and other built-in procedures in the MEA for changes to its scope that are inclusive, transparent and appropriately flexible. These features contribute to an MEA's effectiveness and may significantly reduce the likelihood of disagreement among Parties concerning an STO.

8. Concerning internal processes, these national experiences shared by Members provided useful insights into the most effective ways in which Members can work to promote mutually supportive trade and environment policies through well-considered implementation of their respective international obligations. The papers, experiences and subsequent discussions highlighted the mechanisms established by various WTO Members for ensuring coordination between different government bodies; the processes through which conflicting views were reconciled; the way in which stakeholders and the public were consulted; and the development of MEA implementing legislation.

9. The national experiences discussion revealed that national level coordination between different domestic agencies and stakeholders involved with international agreements is key to achieving compatibility between countries' international obligations and domestic implementation. Several Members noted that effective domestic implementation is not only essential but also the most efficient and direct means of fostering mutual compatibility between STOs set out in MEAs and WTO rules - whether in the development of negotiating positions or the subsequent implementation of agreements. Coordination procedures between various governmental bodies in developing negotiating positions and in drafting MEA implementing legislation were considered useful in both averting and reconciling potential issues at the national level. In addition, procedures that offer

¹ TN/TE/W/12 (New Zealand), TN/TE/W/13 (Korea), TN/TE/W/20 (United States), TN/TE/W/22 (Canada), TN/TE/W/23 (India), TN/TE/W/25 (Norway), TN/TE/W/26 (Japan), TN/TE/W/28 (Hong Kong China), TN/TE/W/29 (Malaysia), TN/TE/W/31 (European Communities), TN/TE/W/35 (China), TN/TE/W/36 (Chinese Taipei), TN/TE/W/43 (Colombia).

² TN/TE/W/28 (Hong Kong, China), TN/TE/W/40 (US), TN/TE/W/45 (Australia), TN/TE/W/53 (EC), TN/TE/W/58 (Switzerland).

opportunities for stakeholders and the public to offer their own views and perspectives were also deemed useful to Members in their efforts to enhance mutual supportiveness. Through such inclusive domestic processes, Members can enhance the mutual supportiveness of trade and environment, as called for in the mandate.

10. One important observation is that, at no point during the CTESS' sharing of national experiences or its negotiations under Paragraph 31(i), has any Member identified any evidence to the contrary. Moreover, many delegations consider the relationship between trade and environment to be working well.

11. In light of the above, Australia proposes a report that can set out the central conclusions of Members, such as:

- The importance to trade and the environment of working to ensure the continuation and enhancement of a mutually supportive relationship.
- That the relationship between WTO Agreements and specific trade obligations in MEAs is working well. The Committee did not hear evidence to the contrary. Many Members identified some key features of certain STOs and domestic procedures that contribute to a mutually supportive relationship.
- The importance of coordination at the national level in promoting mutual supportiveness between trade and environment policies. The CTESS appears to have generally agreed it is desirable for WTO Members to undertake national level coordination in the negotiation and implementation of obligations contained in the WTO Agreements and the MEAs to which they are parties.
- The value of exchanging national experiences in the negotiation and implementation of environmental agreements. Many Members have agreed that it would be useful for Members to continue to share national experiences concerning STOs under negotiation in MEAs, and implementation of STOs set out in MEAs.

12. Based on these conclusions, the CTESS might wish to RECOMMEND ways in which Members can build on these observations and conclusions and continue to enhance the mutually supportive relationship. For example, Members may wish to continue to share national experiences related to negotiating and implementing specific trade obligations set out in MEAs through the regular session of the CTE. Members may wish to report on their national coordination processes as well as specific issues which have arisen in their domestic coordination processes.
