

**MEETING OF THE SPECIAL SESSION OF THE COMMITTEE ON TRADE
AND ENVIRONMENT, 12-13 FEBRUARY 2003**

Contribution by Switzerland

Paragraph 31(i)

We agreed at the last meeting to turn our attention today to the question of "**specific trade obligations**" set out in MEAs. As we emphasized in our previous submissions (TN/TE/W/4 and TN/TE/W/16), Switzerland considers that the terms contained in the Doha Ministerial Declaration need to be clarified in order to establish a link with so-called conceptual issues.

In the most recent deliberations, various categories were identified and discussed by a number of delegations. Allow me, Madam Chairman, to make some substantive comments and to outline our position as set forth in our submissions:

- Switzerland considers that the purpose of this exercise should not be to analyse the consistency of MEAs, and the measures for which they provide, with WTO rules. On the other hand, we expect this discussion to result in greater transparency with regard to the interpretation given by Members of the concept of "specific trade obligations", as referred to in the Doha mandate.
- In this connection, Switzerland is of the view that **two categories** come under the heading of "specific trade obligations":
 - (i) **Trade measures that are explicitly provided for and mandatory under MEAs:** This first category comprises all MEAs which explicitly mention a trade measure adopted in pursuit of a specific objective. This is the case of the CITES, for example, under which trade in species threatened with extinction – which are or could be affected by trade – is permitted only in exceptional circumstances. To illustrate our point, let us take plant X included in Appendix I to the CITES, which lists the species that are affected by trade and are subject to strict regulation. If Member A prohibits the import of plant X pursuant to Appendix I of the CITES, such a measure should be regarded as a specific trade obligation and would hence be covered by the solution negotiated among the WTO Members under paragraph 31(i). The other MEAs covered by this first category are the following: Stockholm Convention (POPs), Protocol on Biosafety (Cartagena), and the Basel Convention.
 - (ii) Other measures that are appropriate and necessary to achieve an MEA objective: This second category comprises all MEAs setting out types of measures and policies that can and must be adopted in pursuit of a specific objective negotiated by the contracting parties. These MEAs give contracting

parties some latitude with regard to the trade-related measure to be adopted. One example is the Kyoto Protocol which has as its objective to reduce emissions of greenhouse gases. The measures to be taken to that end may relate to a number of spheres – taxation, rules and standards, and so forth (Article 2.1 of the Protocol). (Let us take Member A, which is listed in Annex I to the Protocol along with the other countries that have undertaken greenhouse gas reduction commitments. If Member A prohibits the importation and use of emission filters for industry on the grounds that they do not meet national standards in terms of retention of substances that adversely affect the concentration of greenhouse gases, such a measure should be regarded as a specific trade obligation covered by the solution negotiated among WTO Members under paragraph 31(i). Indeed, it contributes to the implementation and achievement of the object of the Protocol, which provides for an "*obligation de résultat*" (obligation to achieve results). This second category thus encompasses MEAs which specify:

- an obligation to achieve results, and
- the spheres in which a measure may be taken. Measures that may be adopted in order to fulfil the obligation to achieve results are thus not explicitly named but implicitly derive from the sphere in which they should be taken (e.g. the fiscal sphere implies fiscal measures).

Other MEAs covered by this second category are the following: Rotterdam Convention (PIC), Montreal Protocol, ICCAT, CCAMLR, CBD and ITTO.

All the trade-related measures provided for in any of the MEAs referred to above are presumed to be necessary for the protection of the environment. Such **mandatory** trade obligations, as **explicitly** provided for in an MEA, **may be deemed to be consistent** with the WTO rules among the MEA parties. This principle obviously requires Members negotiating an MEA to make sure that the MEA does not include unnecessary, arbitrary, protectionist or unjustifiably discriminatory trade-related measures. It should be noted, however, that the *practical implementation* of trade-related measures might still be challenged where a Member has used its discretion in a manner out of keeping with its WTO obligations.
