

STATEMENT BY HONG KONG, CHINA

Statement by Hong Kong, China at the meeting of the Special Session of the
Committee on Trade and Environment of 12-13 February 2003

Paragraph 31(i)

1. The four papers from the United States, Switzerland, Canada and India all, to some extent, discuss how negotiations should proceed. Instead of commenting on the four papers individually, my delegation would like to set out Hong Kong, China's view on how we should organize our work in the next phase.
2. Hong Kong, China shares Members' views that the CTESS had conducted useful exchanges of views on a host of issues on paragraph 31(i) of the Doha Declaration last year. Members should by now have a better understanding of the issues in question. In this connection, I would like, first of all, to join others in thanking the Secretariat for compiling a useful reference on Members' submissions (TN/TE/S/3). The Secretariat paper serves as a handy reference in understanding Members' positions. We support the Secretariat updating the paper regularly to take into account Members' submissions as the negotiation progresses.
3. Hong Kong, China fully endorses the views of previous speakers that the CTESS has entered into a new stage of work. In particular, we very much share the views of the United States that: "the existence of the compilation in WT/CTE/W/160/Rev.1 makes it unnecessary to debate in the abstract the meaning of such terms as "MEA", "obligation", "trade", etc. The sense of delegations regarding these terms will come to the surface through a concrete review of the examples they identify in the document".¹ Hong Kong, China strongly believes that it would bring us nowhere if we were to continue to dwell on those definitional issues. Time has come for us to proceed with discussions on paragraph 31(i) in a "more concrete, analytical manner", a phrase used by the United States. We support starting practical and pragmatic discussions now.
4. The last informal consultation agreed that we should "focus on STOs in relevant MEAs, without precluding Members from addressing definitional or other issues". In its paper (TN/TE/W/20), the United States has made a few useful suggestions to take forward the discussions. Hong Kong, China supports this approach, especially the idea of identifying concrete examples of STOs, and experience sharing of the negotiation and implementation of these STOs. As a further suggestion to make our discussions more structured and focused, Hong Kong, China proposes that Members may start examining the MEAs identified in the Secretariat Matrix and the STOs therein one by one, perhaps beginning with those MEAs which have entered into force, with a more universal membership and global application. We believe Members would benefit more if we are to examine those MEAs which have been in existence for a longer time. It should however be emphasized that we are not suggesting a new modality of discussion. Our suggestion is meant to facilitate the discussions and help Members better understand the STOs in individual MEA through a concrete

¹ TN/TE/W/20, 10 February 2003, Submission by the United States, Paragraph 31(i).

review of actual examples and experience. Our suggestion is based on a few considerations.

5. First, it is a more structured approach as Members could make reference to the Secretariat Matrix which usefully provides a snapshot of pertinent information such as MEA status, membership, trade-related measures, provisions for disputes and non-parties, etc. It is also a more efficient approach to facilitate Members' deliberations and helps make the discussions more focused. This is particularly the case for small delegations which do not necessarily have the resources to undertake their own analysis of individual MEA provisions and come up with examples of STOs identified.

6. Second, a sequential examination of MEAs will allow Members to share their implementation experience of the STOs therein in a more structured and efficient manner. It also helps identify and isolate current problems associated with their implementation. A more structured way of discussion may also provide some insights on possible means to address potential conflicts between WTO rules and MEA provisions, if any. In this respect, we note that quite a number of Members have already commented that given the diversity of approaches to tackle environment concerns in MEAs, it might not be feasible, and indeed dangerous, to find a one-size-fits-all solution to the question of WTO/MEA relationship. Hong Kong, China fully subscribes to this view. Canada for example raises a number of valid and soul-searching questions in its paper (TN/TE/W/22). We believe Members would not be able to find answers to those questions without examining and discussing respective MEAs one by one in detail.

7. Third, Members would be able to better involve respective MEA Secretariats and tap their expertise if the discussion is conducted sequentially one MEA by another. In this respect, we support the Chair's suggestion of inviting MEA Secretariats to participate in relevant discussion of the CTESS on an *ad hoc*, meeting-by-meeting basis. We consider it a pragmatic suggestion, without prejudice to the outcome of the horizontal discussion of the observership issue at the General Council.

8. The Secretariat has identified 14 MEAs with trade-related measures. According to the compilation of Members' submissions prepared by the Secretariat (TN/TE/S/3), the same 14 MEAs are also referred to in Members' submissions so far. The United States mentions in its paper that STOs are set out in only six MEAs listed in the Secretariat Matrix. Since the number is not prohibitive, without prejudice to the number of MEAs Members may wish to examine, a sequential examination starting with the more representative ones may appear to be a manageable way forward.

9. In deliberating the sequence of examination of MEAs and the STOs therein, Members may wish to make reference to aspects like the status of implementation, membership and scope of application, etc. We note that the US paper has listed STOs in the six MEAs identified. Of the six MEAs identified, we note that only three have entered into force, i.e. the CITES, Montreal Protocol and Basel Convention. On membership of these MEAs, Members may wish to note that according to the Secretariat Matrix, there are at present 154 parties to the CITES and 10 WTO Members are not parties. The corresponding numbers for the Montreal Protocol and Basel Convention are 175/3 and 146/22. On products affected by these MEAs, Members may agree that the products in question are relatively easier to identify cross borders, e.g. endangered species in the CITES appendices, controlled ozone depleting substances under the Montreal Protocol, and hazardous wastes under the Basel Convention. Given the longer time of existence of these MEAs, Members should have more experience on the implementation of the STOs therein, such as import and export bans, restrictions, notifications and licensing, etc. A sequential examination of MEAs may allow a more systematic sharing of experience. In this respect, Hong Kong, China notes that Canada has already attempted to examine some STOs in these MEAs in its paper. To help structure and focus our discussions, Hong Kong, China proposes that Members should, as a start, conduct detailed examination of these three MEAs sequentially.

10. Some might argue that a horizontal approach of discussing STOs in relevant MEAs might be more efficient as some STOs are similar. Hong Kong, China does not believe it is easy to generalize a set of common criteria from the MEAs. Nor do we think it is feasible to find a one-size-fits-all solution. Some Members have mentioned that we might need to categorize the STOs identified in the MEAs in a few baskets at some stage with a view to finding tailor-made solutions to only those which Members accept as STOs in the end. Hong Kong, China considers it a sensible way forward. We strongly think that a sequential examination of individual MEA is prudent and would help thrash out all the implications of the STOs therein through sharing of actual implementation experience. Meanwhile, it does not preclude some generalization at a later stage if some sort of commonalities could be drawn through in-depth examination and discussions of the MEAs sequentially.
