

CONTRIBUTION BY NORWAY

Contribution by Norway based on its intervention at the Special Session of the
Committee on Trade and Environment of 12-13 February 2003

Paragraph 31(i)

1. Based on the Doha Ministerial Declaration, paragraph 31(i), Norway submits the following contribution to the discussion of specific trade obligations (STOs) in relevant MEAs.

I. DEFINITIONS

2. Several members have brought forward proposed definitions of central parts of the mandate. We agree with Switzerland that our focus should be on the interpretation given by Members of the concept of STO.

A. STO

3. A *specific trade obligation* needs to fulfil three criteria; it has to be specific, relate to trade and it must be an obligation:

- **SPECIFICITY** criterion; that it has to be clearly and precisely defined in the Agreement what measure to implement; i.e. measures are explicitly provided for and clearly identified in the Agreement.

For illustrative purpose we may refer to CITES, Article 3, according to which the export of any specimens of species included in Appendix 1 shall require the prior grant and presentation of an export permit, and the import of such specimens to require the prior grant and presentation of an import permit and either an export permit or a re-export certificate. Furthermore, the article spells out the conditions for granting said permits.

4. In our view the specificity criterion is not limited to provisions identifying only one single measure. It also applies to provisions providing well-defined, alternative measures.

An example might be the Rotterdam Convention, Article 10, which spells out that a response to the Secretariat concerning the future import of the chemical concerned shall consist of either a final decision ((i) to consent to import/ (ii) not to consent to import/ (iii) to consent to import only subject to specified conditions) or an interim

response (which may include (i) to consent or not consent to imports/
(ii) statement that a final decision is under active consideration...).

5. On the other hand, provisions which allow Parties to adopt stricter domestic measures, without identifying those measures, or measures adopted by Parties to fulfil an objective of the MEA, do not fulfil the specificity criterion and fall outside our mandate.

- **TRADE** criterion; the measure to adopt has to relate to imports and exports; i.e. it should cover those measures that we all recognize from a WTO context, i.e. packaging, labelling, notification, prior informed consent measures, etc.

Examples include the export prohibition of Article 4.1.b-c in the Basel Convention and the export and import licence requirements in CITES Articles III and IV.

- **OBLIGATION** criterion; clearly includes all mandatory provisions in the Agreements. It also covers those cases in which the Parties are required to implement at least one of several well-defined measures provided for in the Agreement while other provisions or requirements of the said Agreement may provide further guidance as to the criteria to be applied.

An example of the latter is the Cartagena Protocol Article 10 on decision procedure, which spells out the different possible options of the Party of import while making it clear (Article 10.1) that any decision taken, shall be in accordance with the risk assessment in Article 15.

6. To sum up, an STO would have to be:

- **Specific**, meaning that measures to be implemented are explicitly provided for and clearly identified in the Agreement, including well-defined alternative measures;
- **Trade related**, meaning measures we all recognize from a WTO context with respect to import and export;
- **Obligation**, meaning all mandatory provisions or a combination of several articles that taken together could constitute a specific trade obligation.

B. "AMONG PARTIES"

7. Our mandate is limited to "among parties to the MEA in question". It is understood that when an agreement allows for reservations to certain provisions in the agreement, a Party having made such a reservation is to be treated as a non-party with respect to this provision.

II. GENERAL COMMENTS

8. It is clear that it is not an easy task to draw an exact line between those provisions that contain obvious STOs and those that fall outside the mandate. We have a "grey area" of provisions that some Members believe are STOs while others disagree. Also, as pointed out by Peru, identifying STO by STO would imply individual interpretation only, and will not bring us any closer fulfilling our mandate. This illustrates the importance of developing some sort of a definition rather than going through the various trade measures one after the other and decide whether they can be considered STOs.

9. The mandate does not include negotiations of the relationship between MEAs and WTO rules as such. MEAs include a number of different measures, some of which could be defined as trade measures, or could otherwise have trade implications. Such measures are, however, not covered by the exercise we are engaged in under the Doha mandate. Consequently, these negotiations should not have any bearing on how a panel is to deal with a potential conflict arising from the applications of measures pursuant to an MEA with no STOs.

10. The mandate determines that the negotiations should not add nor diminish the rights and obligations of members under the existing WTO agreements.

11. In our view, this would imply:

- That the negotiations cannot limit any Members' right to take what is perceived as a breach of WTO rules to a panel – regardless of whether the measure is applied pursuant to or outside the scope of an MEA.
- the negotiations should not have any bearing on measures taken pursuant to an MEA, on the grounds that the measure is not an STO.

12. What is the value added of these negotiations? We agree with Switzerland that this exercise should not be to analyze the consistency of MEAs with WTO rules. Given the limitations in the mandate, we would find it useful if the negotiations could reaffirm the mutual supportiveness between relevant WTO rules and STOs in MEAs, and that there is no hierarchy between them. Also, our aim should be to prevent that the conflicts between Parties to an MEA occur in the WTO. In addition the process would hopefully increase the awareness in the WTO of objectives, provisions and measures negotiated in MEAs and vice versa. This would contribute to national coherence throughout negotiations of both sets of agreements and reduce the potential of conflicts between them.
