

## IDENTIFICATION OF MULTILATERAL ENVIRONMENTAL AGREEMENTS (MEAS) AND SPECIFIC TRADE OBLIGATIONS (STOS)

### Submission by China

#### Paragraph 31(i)

### I. INTRODUCTION

1. China shares the views of many Members that the CTESS has entered into an analytical stage of work. It is very helpful for Members to submit their views and experiences in identifying STOs from MEAs under the Paragraph 31(i) mandate. A consensus among us could be more easily reached through a pragmatic and analytical discussion on Paragraph 31(i).

2. China wishes to contribute through this submission to the analytical work of the CTESS by elaborating criteria for the identification of an MEA and an STO. In Part IV of this paper, we try to categorize the STOs from various perspectives. This categorization is China's technical input for the identification of STOs. It does not intend to prejudice the outcome of future work in these negotiations. The four selected MEAs in the Annex are only used as an example to identify STOs in the provisions of various MEAs.

### II. CRITERIA FOR IDENTIFYING AN MEA

3. MEAs are international treaties designed to protect and improve the ecological environment, and properly exploit environmental resources. The contracting parties of an MEA should implement the obligations stipulated in the MEA. We believe that MEAs referred to in Paragraph 31(i) should be identified in light of the following elements:

- **AUTHORITATIVENESS**

MEAs should have been negotiated under the auspices of the United Nations system. The Agreements should be deposited with Secretary-General of the UN or Director-Generals of the relevant specialized agencies of the UN.

- **UNIVERSALITY**

An MEA in question should have a substantial number of contracting parties which account for a majority of WTO Members.

- **OPENNESS**

The agreement should be open for accession by any WTO Member, which is eligible on the terms applied to the original Members of the agreement.

- **IMPACT ON TRADE**

MEAs should contain explicit trade measures; the implementation of these measures should exert a substantial impact on trade.

- **EFFECTIVENESS**

A selected MEA should be in force.

4. China welcomes the work carried out by the CTE Secretariat and considers that document WT/CTE/W/160/Rev.1, “*Matrix on Trade Measures Pursuant to Selected MEAs*”, provides useful information for WTO Members in the analytical exercise of identifying STOs, although not all of them can be regarded as MEAs under Paragraph 31(i).

### III. CRITERIA FOR IDENTIFYING AN STO

5. MEAs have a wide range of protection targets. However, each MEA has its own speciality that is revealed in the name of the MEA. Among the measures designed to achieve the objective of an MEA, some are trade-related. We believe that only those trade measures that are specific and mandatory can qualify as STOs under Paragraph 31(i). STOs can be identified in the light of the following elements:

- **OBJECTIVE** - The measures are designed to achieve the objective of MEAs, i.e. to protect the ecological environment.
- **TRADE-RELATED** - Measures that we all recognize from the WTO context as being related to import and export, and whose implementation can exert an actual impact on trade.
- **RELEVANCE** - Trade measures stipulated in MEAs that are related to WTO disciplines.
- **MANDATORY** - Trade measures that are explicitly provided for and mandatory in MEAs. In case a trade measure is not explicitly stipulated as mandatory in an MEA, however, some trade measures must be taken to achieve the objective identified in the MEA. Whether these trade measures fall within the scope of STOs, they should be treated differently in consideration of the following situations:
  - (1) In the event that Member countries can take more than one trade measure to achieve the objective, these trade measures should not be considered as STOs.
  - (2) If a trade measure has to be implemented in a specific trade transaction, otherwise the desired outcome cannot be achieved, this trade measure should be qualified as an STO.
  - (3) In case that an MEA has provided a number of optional non-mandatory measures, they cannot be regarded as STOs.
- **SPECIFICITY** - Measures to be implemented must be explicitly provided for and clearly identified in the Agreement. They must not be arbitrarily interpreted or substituted by other measures.

### IV. CATEGORIZATION OF STOS

6. STOs set out in MEAs can cover a wide spectrum of possibilities. We have categorized STOs from various perspectives with a view to understanding and implementing STOs adequately and addressing their relationship with WTO disciplines.

7. Categorization According to the Source of STOs

- (1) STOs under preamble of MEAs;
- (2) STOs under provisions of MEAs;
- (3) STOs under annexes of MEAs;
- (4) STOs under amendments of MEAs;
- (5) STOs in the decisions of the Conference of Parties (COP) of MEAs.

8. STOs set out in the provisions and annexes of MEAs are the least disputable. It is reasonable to regard the amendments of MEAs and decisions by the COPs as constituent parts of MEAs. However, given the various situations in which the amendments and decisions were made, it is preferable that STOs contained therein be identified on a case-by-case basis.

### **Categorization according to the impacts of STOs on Trade**

#### **9. Category A: Trade Restrictions or Bans**

- (1) Mandatory trade restrictions on imports;
- (2) Mandatory trade restrictions on exports;
- (3) Mandatory trade bans on imports;
- (4) Mandatory trade bans on exports.

10. Since the four kinds of STOs are explicitly provided for in MEAs and Contracting Parties must implement these key obligations and measures, they are less likely to give rise to debate in the negotiations than other protective measures. Examples can be found in CITES, the Basel Convention, and the Montreal Protocol.

#### **11. Category B: Exporting and Importing Procedures and Measures**

- (1) Exporting procedures that must be complied with by contracting exporters
- (2) Importing procedures that must be complied with by contracting importers
- (3) Measures taken in the course of handling, transportation, packaging and labelling
- (4) Measures taken to facilitate the process of trade

### **V. CONCLUSION**

12. China believes that the CTESS is now making good progress on Paragraph 31(i) in a practical and analytical manner. The identification of STOs in MEAs will be conducive to the work of the CTESS in examining the relationship between these two distinct sets of international obligations. It could help consensus building among WTO Members on STOs through an analytical step-by-step approach. Therefore, we would like to see more Members continue to identify examples of STOs in MEAs.

ANNEX

SELECTED MEAS, AND STOS IN MEAS

Name of MEAs	Information on MEAs/WTO membership		Trade-related measures	STOs	Remarks
	Parties	WTO Members			
1 Convention on International Trade in Endangered Species of Wild Fauna and Flora CITES	161	132	Articles II, III, IV, V, VI, VII, VIII, XIV	Articles II, (iv), III, IV, V, VI, (i, ii, iii, iv, v, vi) VIII (i, iii, iv, vi, vii).	Based on the rarity and degree to which a species is endangered, the treaty stipulates explicitly and precisely the obligations that Parties must comply with in international trade in three appendices on endangered species.
2 Montreal Protocol on Substances that Deplete the Ozone Layer MP	184	143	Article 4	Article 4 (a, b, c).	Rigid trade restrictions on ODS, ODS production, ODS technology, etc., between Parties and non-Parties are specific and mandatory.

Name of MEAs	Information on MEAs/WTO membership		Trade-related measures	STOs	Remarks
	Parties	WTO Members			
3 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal	156	124	Articles 3, 4, 5, 6, 8, 9, 13	Articles 3.1, 3.2, 4.1, 4.2(e), 4.2(f), 4.2(g), 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 5.1, 6.1, 6.2, 6.3, 6.4, 6.5, 6.9, 6.10, 8, 9.2, 13.2, 13.3, 13.4	Specific PIC procedure and mandatory restrictions or bans on imports/exports of dangerous wastes are explicitly provided for.
4 Convention on Biological Diversity CBD	187	140	Articles 8(j), 10(b), 15, 16, 22	No	Neither trade measures nor special measures are mentioned precisely. Only the objective and some principles are prescribed. It is the right of Parties to take necessary measures to achieve the objective.

Source: The Information on MEA/WTO membership is from WT/CTE/W/160/Rev.2, 25 April 2003