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STATEMENT BY COLOMBIA ON THE RELATIONSHIP BETWEEN EXISTING WTO RULES AND SPECIFIC TRADE OBLIGATIONS (STOs) SET OUT IN MULTILATERAL ENVIRONMENTAL AGREEMENTS (MEAs)

Statement by Colombia in the Committee on Trade and Environment Special Session
at its Meeting of 22 June 2004

Paragraph 31(i)

The following communication is being circulated at the request of the delegation of Colombia.

1. Having considered the main proposals from Members' submissions on paragraph 31(i) of the Doha Ministerial Declaration, Colombia would like to present its position on various aspects of the mandate under that paragraph.

I. MULTILATERAL ENVIRONMENTAL AGREEMENTS

2. Colombia could support the following criteria for determining what should constitute an "MEA" in the context of paragraph 31(i):

- **An MEA should be multilateral:** It should have been signed by a considerable number of countries, as an indication of a general interest in the environmental objective of the MEA, and it should have been negotiated under the auspices of the United Nations or its specialized agencies.
- **It should be in force:** Although certain proposals (such as that submitted by the United States in TN/TE/W/20) indicate that the important factor is whether any specific trade obligations warrant inclusion in the analysis being carried out by the Committee on Trade and Environment (CTE) irrespective of whether or not the MEA in question is in force, it is clear to Colombia that review of any conflicts or incompatibilities between STOs in MEAs and existing WTO rules will be possible only where the MEA is in force.

Review of STOs will involve an information exchange between the CTE Special Session and the relevant MEA Secretariats, which will likewise be possible only for MEAs that are in force. Furthermore, Secretariats taking part in such CTE Special Session proceedings must receive directions from the Parties to the MEAs on the purposes of their participation as observers and the information exchanges.

- **It should be open:** The MEA should be open to accession by States that did not participate in its negotiation and should preferably have a considerable number of parties that are Members of the WTO as well.

3. Another important factor to take into account is that an MEA's annexes and any amendments to its original text are an integral part of the agreement, according to the provisions of the 1969 Vienna Convention on the Law of Treaties. Therefore, any STOs identified in MEA annexes and amendments on the basis of the criteria eventually set by the CTE Special Session would also form part of the analysis exercise.

II. SPECIFIC TRADE OBLIGATIONS

4. As the proposals and approaches submitted to date have shown, defining the term "STO" may involve consideration of many factors and a wide variety of options, ranging from STOs that are expressly set out in an MEA to those that a State party may deem necessary to achieving the agreement's objectives.

5. Colombia considers well-founded the comments submitted by Argentina (TN/TE/W/2) and India (TN/TE/W/23) to the effect that the Doha mandate refers explicitly to STOs that are mandatory and are expressly set out in the text of the MEA, *in other words, provisions that do not involve mandatory action by a Party to an MEA or that allow the Party to use the measures it deems necessary to achieve the objectives of the MEA, would not have STO status.*

6. Nevertheless, as Canada affirms in its proposal (TN/TE/W/22) "*an examination of trade related provisions ... reveals that an obligation may be contained in one specific article or a combination of several articles that taken together could constitute a specific trade obligation*" and "*trade related provisions in MEAs may also include processes with a discretionary element which further complicates the analysis of STOs*", which indicates that STOs can be spread over a series of MEA provisions, under which States Parties are required in specific circumstances to adopt certain measures in order to achieve the MEA's objective, and that they can definitely have a strong bearing on the rules of the international trading system.

7. Let us reconsider the example set forth in Article 4.2(d) of the Basel Convention, which calls on each Party to take the appropriate measures to "*ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement*". In this case, the measure is mandatory, and transboundary movement may be qualified as international trade.

8. The exercise of identifying STOs could be limited to a rigid interpretation of the Doha mandate and refer exclusively to STOs expressly mentioned in the texts of MEAs, but this would limit the objectives set out in the Doha mandate and the Johannesburg Plan of Implementation of the World Summit on Sustainable Development, in which reference is made to strengthening the mutually supportive relationship between trade and the environment.

9. All the above affords grounds for considering that, in addressing the Doha mandate on the relationship between the STOs in MEAs and existing WTO rules, the CTE Special Session should adopt a progressive and phased approach, in other words, it should ordinarily limit itself to those

MEAs which, primarily, are of the greatest interest to WTO Members and which, in addition, are in force, i.e.:

- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- The Montreal Protocol on Substances that Deplete the Ozone Layer;
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;
- Convention on Biological Diversity.

10. Work should thus continue with a view to identifying in the aforementioned MEAs such STOs as are expressly mentioned in the text and are mandatory.

11. Thereafter, the process should go on to establish the relationship of those STOs with existing WTO rules.

12. As to whether decisions of the Parties to an MEA generate STOs other than those set forth in the text of the agreement that ought likewise to be considered in the light of existing WTO rules, this question could be taken up later, which need not preclude scheduling such decisions for discussion as a source of STOs in any work timetable that may be drawn up.
