

**PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE**

Responsibility of Members *vis-à-vis* Measures Taken by State-Level,  
Regional or Local Governments or Authorities within their Territories

Proposal under Paragraph 9(a)(i) of the Ministerial Declaration

*Communication from Malaysia on behalf of ASEAN Members*

The following communication, dated 19 May 1999, has been received from the Permanent Mission of Malaysia.

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**Background**

1. Article XVI:4 of the WTO Agreement establishes the basic obligation of each Member to ensure the conformity of its laws, regulations and administrative procedures with its WTO obligations.
2. However, under Article 22:9 of the DSU, it would seem that the obligation of a Member in respect of measures taken by regional or local governments or authorities within its territory is confined to the taking of "such reasonable measures as may be available to it". Unless otherwise specifically provided, this is therefore applicable to all of the agreements forming part of the WTO Agreement.
3. The obligation to take reasonable measures is not the same as the obligation to ensure.
4. Article 22:9 of the DSU does provide that the relevant provisions on compensation and suspension of concessions or other obligations are applicable in cases where it has not been possible to secure such observance. However, compensation is voluntary, and suspension of concessions or other obligations is not necessarily a feasible remedy for many Members, particularly developing-country Members.
5. The basic concern remains to be compliance, rather than the availability of sanctions.

**Proposal**

6. It is proposed that Ministers confirm their understanding to the effect that it is always the basic and residual obligation of each Member to ensure that laws, regulations and administrative procedures within its territory, regardless of the level of promulgation, are in conformity with its WTO obligations, notwithstanding the "taking of reasonable measures available to it" and the availability of compensation and suspension of concessions or other obligations as possible sanctions.
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