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CONTRIBUTION OF THE UNITED STATES ON PARAGRAPH 31(ii) OF THE DOHA MINISTERIAL DECLARATION

Paragraph 31(ii)

I. THE CASE FOR IMPROVEMENT IN WTO-MEA COOPERATION UNDER PARAGRAPH 31(II)

1. Since the very inception of the WTO, largely through work in the Committee on Trade and Environment (CTE), Members have sought to identify means by which cooperation between secretariats of multilateral environment agreements (MEAs) and the WTO could be improved. Much progress has been made during this period to increase dialogue among secretariats, formalize relations through observer status and contribute to the mutual supportiveness of trade and environment in intergovernmental organizations (IOs). This progress has increased awareness of how international trade rules under the WTO already accommodate actions taken under a variety of MEAs and has contributed to better coordination by trade and environment officials at international and, critically, national levels. Whereas, at the conclusion of negotiations in the Uruguay Round, many constituencies expressed concerns that WTO and MEA provisions would inevitably generate conflicts, improved communication and greater awareness on the part of trade and environment officials, at national and international levels, have helped to ensure that the two sets of international obligations are compatible and mutually supportive.

2. Paragraph 31(ii) of the Doha Declaration provides for negotiations on “procedures for regular information exchange between MEA secretariats and the relevant WTO committees, and the criteria for the granting of observer status.” Procedurally, cooperation and coordination between MEA bodies and WTO bodies have increased in recent years and contributed to better mutual understanding. While this may have taken place primarily through contacts between and among secretariats, it has encouraged more frequent and direct contacts between trade and environment officials at national levels, which is the most important means for ensuring continued compatibility between WTO agreements and those negotiated in other fora. The United States believes that efforts to enhance information exchange at the multilateral level -- both through continuation of existing mechanisms and through exploration of additional means pursuant to paragraph 31(ii) -- will provide incentives for trade and environment officials to increase coordination of policy development at the national level, and for some countries, to initiate this kind of coordination.

3. Trade and environment officials represent the same government in any one country and have a mutual responsibility to ensure that positions presented in a variety of international fora are internally consistent and reinforcing. These same officials have responsibility for implementing relevant obligations negotiated in international fora and ensuring that implementation is accomplished in a way that is consistent with other international obligations. Further efforts to increase communication and coordination between trade and environment officials can only enhance coherence in policy-making at national levels in ways that promote the mutual supportiveness of negotiation and implementation of trade and environment policies at the international level.

4. For example, coordination between trade and environment officials at national levels have provided opportunities in recent MEA negotiations for addressing the intended environmental objectives in light of built-in flexibility in WTO agreements (e.g., the Stockholm Convention on Persistent Organic Pollutants (POPs) and the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade). Similarly, governments pursuing negotiations under the Doha mandate should ensure that their trade and environment officials coordinate and consult on any environmental implications that may arise.

5. More also can be done to assist developing countries in their efforts to build institutional mechanisms for policy coordination in the area of trade and environment. Already, collaboration between the WTO Secretariat and UNEP has led to increased participation of both trade and environment officials from developing countries in events organized in the last several years (e.g., the recent UNEP workshops on fish subsidies and capacity building). Negotiations under paragraph 31(ii) of the Doha Declaration, coupled with work to be undertaken under paragraph 33 of the Declaration, should generate more opportunities for trade and environment officials from developing countries to work together and with their counterparts in other countries, both developed and developing, in international fora. The results should also facilitate greater coordination and coherence among IOs, particularly the WTO, UNEP, UNCTAD and MEA secretariats, in identifying developing country needs in the area of capacity-building and ensuring delivery of more targeted technical assistance.

6. The United States offers this communication with the objective of identifying preliminarily some concrete actions that could be taken under the mandate in paragraph 31(ii) of the Doha Declaration. In the view of the United States, rapid progress under this mandate to improve cooperation between MEA secretariats and relevant WTO bodies could have positive spillover effects for examining the relationship between existing WTO rules and specific trade obligations in MEAs under paragraph 31(i). The initial suggestions described below cover three areas – information sessions, document exchange and observer status – with the expectation that the results from the negotiations should increase contacts at multiple levels and create more integrated and dynamic relationships overall.

II. INFORMATION SESSIONS

7. Since the CTE organized its first information session involving MEA secretariats in September 1997, six such events have taken place under the auspices of the CTE. As ad hoc events organized to bring together trade and environment officials, they have been quite successful. In particular, these information sessions have provided an opportunity for representatives of MEA secretariats to inform and update WTO delegations regarding developments in their respective agreements.

8. On the basis of experience gained through CTE information sessions over the last five years, it could be relatively simple to create a more regular, institutionalized structure for conducting future information sessions.

- Such a structure could ensure that information sessions take place at least annually and frequently enough that all relevant MEA secretariats have the opportunity to participate.
- Adequate opportunity should be provided for exchanges of information involving national government officials, both trade and environment, MEA secretariats and WTO representatives.

- To ensure that these sessions are not repetitive, they could be organized around specific themes, as was done in 2001 on the issues of compliance and dispute resolution in MEAs.
- Also, more attention could be given to two-way information flow. For example, the CTE and one or more MEA secretariats might explore the potential for jointly sponsoring a meeting on a relevant theme to include government officials and experts familiar with both the WTO and the MEAs involved. Recent UNEP events on fish subsidies and capacity building are examples of further opportunities for informal dialogue among a variety of stakeholders.

9. In addition to dedicated events, such as information sessions, the CTE in Special Session might also explore other mechanisms for collaboration. The WTO Secretariat is already coordinating its technical assistance activities to allow for participation by relevant MEA secretariats. Other practical collaborative projects could include development of mutual data bases and maintenance of joint contact lists, particularly for purposes of targeting specific technical assistance needs.

III. DOCUMENT EXCHANGE

10. An increasing number of WTO documents are submitted and circulated on an unrestricted basis and made accessible to MEA secretariats, as is true for the general public, through the WTO's public Document Dissemination Facility (DDF). We look forward to continuing improvements in WTO transparency and welcome the recent decision by the General Council to improve document derestriction practices and extend the category of unrestricted documents.

11. In the first instance, document exchange between trade and environment officials should occur at the national level. To complement this process, these negotiations could provide for better document exchange between MEA secretariats and relevant WTO bodies.

- In addition to the access to WTO documents that is already available to MEA secretariats that are observers to specific WTO bodies, there could be opportunities for furthering access by addressing situations in which a secretariat is not seeking observer status or in which its request for such status is pending. For these situations, Members might consider providing access to restricted documents to MEA secretariats on the basis of specific requests and on condition of providing equivalent reciprocal access to the WTO secretariat.
- Normally the coverage of this special access should be all official documentation circulated to the WTO membership or observers, although the scope of relevant documentation could be more limited. In any event, provision should be made for ensuring the protection of the restricted status of documentation. Additionally, each secretariat could be expected to index documentation it has obtained from the WTO for the information of its parties and in the interests of promoting improved domestic coordination between environment and trade officials.
- In the same vein, MEA secretariats could transmit to the WTO secretariat relevant reports submitted by parties to these agreements. Examples could include party reports under Article 10(2) of the PIC Convention (i.e., import responses to proposed exports of chemicals) and reports on certifications received from importing non-parties under the POPs Convention. The WTO secretariat could similarly index documentation it has received from MEAs for the information of WTO Members.

12. While these procedures would offer some improvements in existing access to documentation between organizations, document exchange at the international level is not a substitute for the kind of exchange of information that should take place at national levels between trade and environment officials.

IV. OBSERVER STATUS

13. The final phrase of the mandate in paragraph 31(ii) of the Doha Declaration refers to the “criteria for granting observer status.” This mandate is limited to the question of observer status for relevant MEA secretariats and does not extend to the more generic issue of IO observer status in the WTO. This latter responsibility clearly rests with the General Council and is not specific to consideration of the means by which the relationship between trade and the environment can be mutually supportive. Additionally, this paper does not address a more immediate question of observer status in the negotiations provided for in the Doha Declaration, although the United States hopes that this question can be resolved at an early stage of negotiations. While not the subject of this paper, this question is of particular importance for MEA secretariats since the Doha mandate in paragraphs 31(i) and (ii) provides for negotiations of direct interest to them.

14. In considering procedures to improve the granting of observership to MEA secretariats, thereby promoting understanding between trade and environment officials at international and national levels, the present context remains those procedures set forth in Annex 3 of the Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council (WT/L/161). Any supplemental procedures or criteria for considering observer requests from MEA secretariats should be consistent with the objectives and criteria set forth in Annex 3, particularly that decisions on observer status should be made on a case-by-case basis by each WTO body to which requests have been addressed and that they should take account of the nature of the work of the IO concerned and its membership.

15. Within the parameters of Annex 3, it may be possible to specify certain characteristics of MEAs that could constitute a basis for deeming that these organizations have a “direct interest” in matters before particular WTO bodies and creating a presumption that their requests for observer status should be granted.

- On this basis, WTO bodies could be directed to look for certain indicators when examining requests for observer status from MEA secretariats.
- Subject to confirmation that reciprocal observer status will be provided to the WTO Secretariat in the relevant proceedings of a requesting MEA, those requests that contain the relevant indicators would normally be granted observer status. (The WTO Secretariat has not faced significant restrictions to date in its efforts to observe particular MEA sessions, such as relevant conferences of parties (COPs)).
- This approach for streamlining MEA requests would be without prejudice to requests that do not necessarily contain the specified indicators but that otherwise demonstrate a direct interest in the WTO body concerned.

16. The United States suggests that the CTE in Special Session consider whether it may be appropriate to develop specific guidelines that set forth the pertinent characteristics to be taken into account when a request for observer status is under examination. At the present, a number of MEA secretariats already have observer status in the CTE and several have observer status in other WTO bodies. Nevertheless, it could be useful to develop a general approach for MEAs, including those that may be negotiated in the future, to ensure that observer status is a meaningful tool that contributes to greater coordination and communication in the administration of international trade and

environmental obligations. Additionally, the CTE in Special Session might consider other specific roles that relevant MEAs could play in WTO proceedings to ensure that their perspective is available on questions involving potential interplay of WTO and MEA provisions.

V. CONCLUSION

17. As noted at the outset of this communication, the United States is convinced that opening more avenues for information exchange and dialogue between the WTO and MEA secretariats will provide a substantial pay-off in terms of allaying concerns that these bodies of international obligations might ever collide. Practical steps to enhance cooperation and increase mutual understanding have proven effective in the past to avoid potential conflicts. Since the ideas offered in this communication are preliminary, the United States encourages other Members to develop creative approaches for fostering institutional cooperation on trade and environment issues. At the same time, these ideas are offered with the conviction that such approaches will only be successful when the secretariats involved represent the expressed interests of their respective members, and if member governments participate with the full understanding that it is WTO Members and MEA parties who bear responsibility for negotiating and implementing relevant international obligations and for developing authoritative legal interpretations of these instruments.
