

**STATE-OF-PLAY IN WTO TRADE AND ENVIRONMENT NEGOTIATIONS
ON PARAGRAPH 31(i) OF THE DOHA DECLARATION**

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I. Doha Mandate

In Paragraph 31(i) of the Doha Ministerial Declaration, WTO Members were instructed to negotiate on “*the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiation shall not prejudice the WTO rights of any Member that is not a party to the MEA in questions.*”

II. Negotiating Approach on Para. 31(i)

Since the launching of the negotiations, delegations have actively engaged in developing a common understanding of the mandate at the WTO Committee on Trade and Environment Special Session (CTESS). That understanding has evolved on the basis of two approaches: the identification of specific trade obligations (STOs) in MEAs, which is also termed as “bottom-up” approach; and a more conceptual discussion on the WTO-MEA relationship, which is a “top-down” analysis approach. *Brazil, Mexico, Thailand, Pakistan, Malaysia, Indonesia, Argentina, Philippines, Korea, and Peru* supported *Hong Kong, China’s* call for examining the STOs in different MEAs in a systematic way. While *Switzerland, Norway and Poland* indicated that they did not favor a listing of STOs, and called for a more conceptual approach to the identification of such measures. *Japan* agreed with the *European Communities* that it would be difficult to reach consensus on a list of STOs. That did not mean it did not consider the experience sharing to be useful, it did, but wanted that work combined with a conceptual debate. *Egypt* agreed with *EC* that the way forward

would need to be based on a mixture of the two approaches. *India* also suggested that the two approaches would be difficult to separate, but called for a more structured approach based on experience sharing, like *Hong Kong, China* had done. The *U.S.* underlined that it was not in fact necessary to reach a definitive consensus on the full range of STOs. The purpose of the collective assessment was simply to provide a foundation for the sharing of views and experiences on the relationship between STOs and WTO rules. *Australia* agreed with the *U.S.* on the need to share STO negotiation and implementation experiences as the way forward.

China believed that the relevant of the CTESS should go on in an analytical and pragmatic way; the identification of STOs in MEAs would be conducive in examining the relationship between international obligations under the MEAs and the relevant WTO rules. It could help consensus building among WTO Members on STOs through a step-by-step analytical approach.

III. On Substance Negotiated under Para. 31(i)

Delegations have examined the different components of the mandate, such as the terms “MEAs”, “STOs”, “set out in MEAs”, “among parties to the MEA in question” and “existing WTO rules”. On the different components of the mandate, the bulk of the discussion has revolved around the terms “MEAs”, “STOs”, and the notion of measures being “set out in MEAs.”

On “MEAs”, while some believe that there is a need to define the concept so as not to overstep the boundaries of the mandate, others do not view this as necessary. *Brazil, New Zealand, Thailand and the Philippines* proposed that focus initially be placed on three MEAs, i.e. the Montreal Protocol, the Basel Convention, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which had entered into force and share their implementation and non-compliance experience with the CTESS. While the *U.S.* proposed that the focus should be placed on six MEAs that could contain STOs, i.e. the Basel Convention, the Convention on Biological Diversity (CBD), the CITES, the International Tropical Timber Organization (ITTO), the Montreal Protocol, and the United Nations

Framework Convention on Climate Change (UNFCCC). The *U.S.* indicated that it was flexible on whether the CTESS started by focusing on the six MEAs, or by the three mentioned by *Brazil*. It noted that there was a considerable degree of common ground among delegations in their analysis of STOs. *Australia* believed that the six MEAs identified by the *US* were likely to be the only agreements to contain STOs. All other agreements were either (1) not multilateral, (2) did not have environmental protection as their main objective, or (3) did not contain STOs. *Canada* indicated that it had no objection to starting work on the three MEAs that had entered into force. While it was willing to examine the six MEAs proposed by the *US*, it was in favor of keep an even broader range of MEAs in mind. *Saudi Arabia* argued that the six MEAs suggested by the *US* would be the minimum number of MEAs to consider, and that discussion ought to include their Conference of Parties (COP) decisions, annexes and protocols.

On “STOs”, several delegations believe that these must be measures that are explicitly provided for and mandatory under MEAs. However, discussion is still taking place on other kinds of trade measures contained in MEAs and whether they can be considered as STOs. Furthermore, some delegations are arguing that the entire operational framework of MEAs needs to be looked at in identifying the STOs that are “set out in MEAs,” suggesting that COP decisions must be addressed. The various forms that COP decisions can take, and their legal status, is being discussed.

IV. China’s Identification of MEAs and STOs under Para. 31(i)

In China’s submission to the WTO CTESS as contained in document TN/TE/W/35/Rev.1, we put forward some general criteria for identifying MEAs and STOs for the purpose of the Committee’s analytical work under Para. 31(i). Based on these criteria, China listed 3 MEAs and the relevant STOs as appeared in the Annex. We believe that the MEAs referred to in Para. 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 relevant parties, which is eligible on the terms applied to the original contracting parties 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 and open for accession.

On “STOs”, we believe that only those trade measures that are specific and mandatory can qualify as STOs under Para. 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 and improve environment and to protect natural resources.
- **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.
- **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.

China thinks that establishing criteria for identifying MEAs and STOs is important since it will facilitate the determination of which MEAs to invite on an ad hoc basis to the CTESS for information exchange and which MEAs should be granted the observer status at the CTESS in the future.

V. Conclusion

It seems clear that the various components of the mandate discussed to date, some of which may merit further discussion, will need to be drawn together at some stage to address “the *relationship* between existing WTO rules and specific trade obligations set out in MEAs”.