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MEAS: INFORMATION EXCHANGE AND OBSERVER STATUS

Submission by the European Communities

Paragraph 31(ii)

INTRODUCTION

As stated in paragraph 5 of the first EC contribution (TN/TE/W/1) on the Trade and Environment (T&E) elements of the DDA, the EC considers paragraph 31 (ii) an important part of the mandate and seeks to reach a positive outcome. We believe that the debate on paragraph 31 (ii) must be organized in a way that allows for timely and full MEAs and UNEP input.

This indeed seems an element of the DDA where it would be reasonable to aim for decisions by the time of the next WTO Ministerial meeting. Since Doha, the World Summit on Sustainable Development has reinforced the development of consensus on the need to “*promote mutual supportiveness between the multilateral trading system and the multilateral environmental agreements, consistent with sustainable development goals, in support of the work programme agreed through WTO, while recognizing the importance of maintaining the integrity of both sets of instruments*”. To turn this consensus into firm WTO decisions at the first opportunity will send a positive and necessary signal to civil society and other observers that the trade and environment linkage is receiving close attention.

In Doha, Ministers have agreed to the following:

With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudging their outcome, on:

(ii) procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status

Paragraph 31 (ii) of the DDA contains two different - however interlinked - elements for the negotiations ahead of us. The first one, related to the procedures for regular information exchange between MEAs Secretariats and the relevant WTO committees should be seen as complementary to the second one, related to the criteria for the granting of observer status, the two aiming at providing MEAs the status and role they deserve in view of the increasing interface between trade and environment and, in particular, between MEAs and WTO rules.

To that effect, the EC welcomes the submission from the United States (TN/TE/W/5), the WTO Secretariat document “*Existing forms of cooperation and information exchange between UNEP/MEAs and the WTO*” (TN/TE/S/2) and UNEP contribution submitted to the June CTE Regular Session (WT/CTE/W/213). The EC also shares the interest expressed by UNEP to launch a reflection on the timeliness and effectiveness of the exchange systems so far in place.

PROCEDURES FOR REGULAR INFORMATION EXCHANGE BETWEEN MEA SECRETARIATS AND THE RELEVANT WTO COMMITTEES

As already mentioned, in the past, the CTE has held several information sessions with the Secretariats of a wide range of selected MEAs mainly in order to inform WTO Members on the trade-related developments of these MEAs and proceed to an exchange of views on such developments. For ease of reference, we will refer to these as "core" MEAs. Several papers have been tabled by these Secretariats and compiled by the WTO Secretariat. While noting that discussions did not a priori allow for concrete and measurable results, these sessions proved nonetheless useful and constructive in allowing for a valuable flow of information on trade-related MEA activities to trade representatives in the WTO context, which was actually the main purpose of such sessions. It should also be seen as a two-way flow as it also helps to raise awareness of WTO issues and concerns among MEA secretariats.

The EC considers that the WTO and MEA interface should go beyond a mere information exchange, without real structure and follow-up. These information exchange sessions should now become a formal feature of WTO work and consequently become officially institutionalized, as meetings of the CTE in regular session. There could also be informal meetings in cases where broader participation of organisations not enjoying observer status is desirable. But otherwise information exchange can become a regular feature of CTE regular work.

Information exchange sessions should continue to act as a two-way information and awareness-raising tool. They should constitute fora to debate issues arising from the DDA, successive WTO work programmes and the implementation of existing WTO Agreements which have a direct impact on MEAs and their objectives. Concerning the DDA, both paragraph 33 (technical assistance and capacity building in the field of trade and environment), or paragraph 37 (transfer of technology) represent good examples as several MEAs do have a very important component of technical assistance and technology transfer (UNFCCC, Basel Convention, Montreal Protocol...). These information exchange sessions should continue to take place in the CTE but other relevant WTO Committees should also be encouraged to convene such information sessions.

As stated in paragraph 6 of the Doha Declaration, the objective of sustainable development is a common overarching commitment of WTO Members. Therefore the transfer of environmentally sound technology deserves special consideration. This issue is also likely to have spillover effect in relation to paragraph 31(iii) dealing with the reduction/elimination of tariff and non-tariff barriers to environmental goods and services. The information exchange sessions should also remain important fora where emerging trade-related issues in the sphere of work of MEAs should be debated.

In order to maximize the utility of these sessions and to make them as concrete as possible, each session could be devoted to (i) one or more topics which have been clearly defined in advance (such as technology transfer, technical assistance, dispute settlement and compliance, optimum use of economic instruments, special and differentiated treatment for LDCs) proposed by the WTO Secretariat, after consultation with MEAs Secretariats and UNEP, and (ii) any WTO-related issue within the terms of reference of the CTE with an impact on MEAs. Any issue related to trade which has come up in the context of the work of an MEA should be addressed in these sessions (for instance notification to the TBT Committee). WTO Members could provide the Chair with input allowing the maintenance of a list of topical issues. Oral presentations could be made by WTO members, MEA Secretariats, the WTO Secretariat and UNEP. Institutions and NGOs with expertise in the field under debate could also be invited to give presentations. Summary reports of each session should be prepared by the WTO Secretariat under its own responsibility and transmitted to other relevant WTO Committees. Such sessions should take place twice a year.

An important element of this information exchange process should be that, in line with past practice, Secretariats of MEAs that have not yet entered into force should also be invited.

During sessions of Conferences of the Parties (COP) of MEAs, the WTO should be more visible and side events should be systematically organized in the margins of the COP to allow for an exchange of views on current work programmes and issues of mutual interest. The secretariat should assess the resource implications of carrying out such a mandate effectively and inform members.

WTO regional seminars on trade and environment could represent an attractive complement to the more formal Geneva meetings. Other IGOs, such as UNDP, UNIDO, UNCTAD should also be invited. Some MEA secretariats have been invited, together with UNEP¹, to the last such WTO regional seminar (St. Lucia), which was very well received and clearly helped to build bridges between the trade and environment communities at national and regional levels. The EC should therefore strongly encourage the WTO to invite them more systematically.

Another important feature of this information exchange process could be to maintain an electronic database as part of the WTO website, where relevant T&E documents (not only those of the WTO) could be downloaded and identifying links with other relevant websites, in particular those of UNEP and MEAs.

OBSERVER STATUS

The purpose of this paper is not to address the more general issue of observer status either in WTO bodies or in the negotiating bodies stemming from the DDA, which is currently addressed by the General Council and the Trade Negotiating Committee. However, the EC notes that DDA paragraph 31 (ii) provides a specific mandate to WTO Members to address the case of observer status of MEAs in the WTO. Without prejudice to the final solution in this regard, the EC supports the idea that, pending a definitive decision to grant observer status, the CTE SS should in the interim make an ad-hoc invitation to UNEP and the MEAs Secretariats which had previously participated in the MEA Information Sessions to attend CTE normal and special sessions.

"*Enhancing the mutual supportiveness of trade and environment*" is a strategic objective which should deserve a high political ambition. Mechanisms will have to be put in place, if we want to replace words by deeds. The EC considers that if Ministers instructed us to elaborate criteria for the granting of observer status to MEAs Secretariats in relevant WTO committees, it is explicit that MEAs Secretariats should be considered *prima facie* differently than other IGOs.

Alinea 1 of Annex 3 to the Rules of Procedures for Sessions of the Ministerial Conference and Meetings of the General Council (WT/L/161) states that "*the purpose of observer status for IGOs in the WTO is to enable these organisations to follow discussions therein on matters of direct interest to them.*" Alinea 2 of the same Annex 3 also states that "*requests for observer status shall accordingly be considered from organisations which have competence and a direct interest in trade policy matters, or which, ... have responsibilities related to those of the WTO.*"

If we consider on the one hand the legitimate objective to enhance the mutual supportiveness of trade and environment, and on the other hand what is the current situation as described in Annex 3 to the Rules of Procedures, the EC considers that, in light of the contribution they can bring to fulfilling the mandate of the CTE, MEAs Secretariats should be granted observer status in both the Regular and Special Sessions.

We have to look at the current situation regarding the participation of MEAs Secretariats in relevant WTO committees. Information can be found in document WT/CTE/W/41/Rev.8. In the CTE, four MEAs Secretariats and UNEP enjoy the status of observer: the Convention on Biological Diversity (CBD), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the

¹ UNEP is always invited and actually present, as a result of the cooperation arrangement between UNEP and the WTO signed in Seattle.

International Commission for the Conservation of Atlantic Tuna (ICCAT) and the United Nations Framework Convention on Climate Change (UNFCCC). The request from the International Tropical Timber Organisation (ITTO) is pending. For other WTO committees, UNEP request is pending for the General Council and the Council for TRIPS, and the CBD request is pending for the Committee on Agriculture and the Council for TRIPS.

As regards the CTE, the EC proposes that all "core" MEAs which have participated in the previous information sessions should be granted observer status in the CTE in both the Regular and Special Sessions. This would represent around 13 MEAs (see TN/TE/S/2 paragraph 11), the Cartagena and the Kyoto Protocols being respectively covered by the CBD and the UNFCCC. All these MEAs do have a trade component, as indicated in the "Matrix" elaborated by the WTO Secretariat (WT/CTE/W/160/Rev.1) and can be considered to have a "competence" and a "direct interest" in trade policy matters.

As regards requests by other MEAs for observer status in the CTE or requests by core MEAs for observer status in other WTO committees, we also propose that there be a strong presumption in favour of prompt positive decisions to grant observer status. We request that the Chair sound out the current "core" MEAs in order to establish an understanding of their interest in other Committees. We suggest an informal session of the CTESS to discuss the results of these consultations in the presence of those MEAs, in December. We envisage that the most relevant committees would include at least bodies such as the TBT Committee, the SPS Committee, the Committee on Trade and Development, the Council for TRIPS, or the Committee on Agriculture.

The decision to grant observer status should formally still be taken by each WTO Committee receiving such a request. The positive presumption should be without prejudice to the state of general WTO rules and practice on observership. If problems arise in implementation, the chairs of the General Council, the CTE and the other committee in question should consult to resolve matters.

A very important element to consider is the participation of UNEP in the WTO relevant committees, as their observer status in the CTE is already in force. UNEP has played and is still playing a very important role in the context of the work of the CTE. The collaboration between WTO and UNEP has been formalized by the cooperation arrangement concluded in Seattle in November 1999. In this context, it is also worth recalling that our Ministers in Doha *"welcomed the WTO's continued cooperation with UNEP and other IGOs"*.

UNEP has organized several meetings, back-to-back to the CTE, on various trade and environment related issues since 1999 and has actively taken part in the regional seminars on Trade and Environment organized by the WTO Secretariat in developing countries and economies in transition.

In light of all these elements, the EC fully supports the observer status of UNEP in a set of those WTO committees UNEP deems "relevant" to its work, and in particular in the Committee on Trade and Development. This reflects the emphasis on trade-environment-development linkages at the WSSD. We request that the Chair consult UNEP to establish an understanding of UNEP's perceived needs.

CONCLUSION

The EC seeks a positive outcome on the negotiations on paragraph 31 (ii) and considers that the goal of enhancing the mutual supportiveness of trade and environment, which has been endorsed by Ministers in Doha, should start with appropriate representation of MEAs in the CTE and relevant WTO committees.

The EC supports that "core" MEAs should have their request for observer status in the CTE granted because we consider that they have a competence and a direct interest in trade policy matters. As regards requests by other MEAs in the CTE or requests by "core" MEAs in other WTO committees, there should be a strong presumption in favour of a prompt decision to grant observer status.

The EC supports the idea that the CTESS should immediately issue an ad hoc invitation to UNEP and the MEAs Secretariats which have previously participated in the MEA Information Sessions to attend CTE normal and special sessions

The EC supports the observer status of UNEP in the WTO committees it deems relevant, along the lines of the cooperation arrangement signed in Seattle.

Information exchange sessions should become a formal feature of WTO work. They should be institutionalized and go beyond a mere information exchange, with real structure and follow-up.

And last but not least, WTO should also be more visible in MEAs' Conferences of the Parties, as both trade and environment negotiators must understand and integrate the constraints, be they positive or negative, imposed by each respective regime on the other, if synergies have to emerge and frictions to be avoided at the interface of WTO and MEAs.
