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COOPERATION WITH RELEVANT INTERNATIONAL ORGANIZATIONS

World Trade Organization

Note by the secretariat

CONTENTS

|   | <u>Paragraphs</u> | <u>Page</u> |
|---|-------------------|-------------|
| I. INTRODUCTION.....  | 1 – 4             | 2           |
| A. Mandate.....   | 1 – 2             | 2           |
| B. Scope of the note.....   | 3                 | 2           |
| C. Possible action by the SBSTA.....  | 4                 | 2           |
| II. BACKGROUND.....   | 5 – 6             | 2           |
| III. OVERVIEW OF CURRENT NEGOTIATIONS.....  | 7 – 18            | 3           |
| A. Mutual supportiveness.....   | 7 – 9             | 3           |
| B. Proposals in the negotiations on specific trade obligations in multilateral environmental agreements and existing WTO rules..... | 10 – 11           | 3           |
| C. Relations between the UNFCCC secretariat and WTO.....  | 12 – 15           | 4           |
| D. Other issues.....  | 16 – 18           | 5           |

Annex

|   |   |
|---|---|
| Proposals by members of the World Trade Organization being discussed by the Committee on Trade and Environment Special Session: references to the United Nations Framework Convention on Climate Change and its Kyoto Protocol..... | 6 |
|---|---|

## I. INTRODUCTION

### A. Mandate

1. The relationship between environment, trade and sustainable development is an emerging issue. The Doha Declaration, adopted at the Ministerial Conference of the World Trade Organization (WTO) at its fourth session, states that:

“With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudicing their outcome, on the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements. The negotiations shall be limited in scope to the applicability of existing WTO rules as among parties to the agreement in question and shall not prejudice the WTO rights of any member that is not a party to the agreement”.<sup>1</sup>

These negotiations are being undertaken by the WTO Committee on Trade and Environment Special Session and are expected to conclude by 1 January 2005.

2. The Johannesburg Plan of Implementation,<sup>2</sup> adopted at the World Summit on Sustainable Development, reiterates the importance of enhancing the mutual supportiveness of trade, environment and sustainable development, and recognizes trade as a means of implementation of Agenda 21.<sup>3</sup> In paragraph 98 of the Plan, Governments agree 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.

### B. Scope of the note

3. The present note provides an overview of the earlier discussion in the Committee on Trade and Environment on the relationship between environment and trade, a summary of those elements of the Doha mandate that relate to the relationship between specific trade obligations set out in multilateral environmental agreements and existing WTO rules, and information on procedures for exchange of information and observer status with WTO. It also indicates other issues in the negotiations that may have implications for the United Nations Framework Convention on Climate Change and its Kyoto Protocol.

### C. Possible action by the SBSTA

4. The SBSTA may wish to take note of the information provided in the present document and provide guidance in that regard.

## II. BACKGROUND

5. There is a consensus within WTO on the following elements in relation to the issue of addressing trade provisions in multilateral environmental agreements:

(a) Support for multilateral solutions to global environmental problems, avoiding unilateral actions;

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<sup>1</sup> World Trade Organization, WT/MIN(01)/DEC/1, para. 31 (i).

<sup>2</sup> *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August–4 September 2002* (United Nations publication, Sales No. E.03.II.A.1), chap. I, resolution 2, annex.

<sup>3</sup> *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992, vol. I, Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), annex II.

(b) Few multilateral environmental agreements contain trade provisions and no problem has arisen over the use of trade measures applied pursuant to such agreements; problems are unlikely to arise in WTO over trade measures agreed and applied among parties to a multilateral environmental agreement, although care should be taken as to how trade measures may be applied to non-parties to the agreement;

(c) Trade restrictions are not the only or necessarily the most effective policy instruments to use in multilateral environmental agreements but, in certain cases, they can play an important role; WTO provides broad and valuable scope for trade measures to be applied pursuant to such agreements in a manner consistent with WTO rules;

(d) Better policy coordination can help prevent disputes.

6. The above conclusions contained in the report of the Committee on Trade and Environment to the first Ministerial Conference of WTO, held in Singapore in 1996,<sup>4</sup> are distinct from the mandate for the current negotiations.

### III. OVERVIEW OF CURRENT NEGOTIATIONS

#### A. Mutual supportiveness

7. Issues related to sustainable development, and to the environment and trade interface more generally, have been addressed for a number of years at WTO, within the limits of its competence over trade and trade-related aspects of environmental protection. One of the issues discussed in the Committee on Trade and Environment has been the relationship between WTO rules and multilateral environmental agreements. It is recognized that WTO does not itself create environmental standards; the expertise and technical knowledge for this lies in the multilateral environmental agreements. In this context, a key issue under debate is how best to reconcile the competing demands of economic growth and environmental protection in achieving sustainable development.

8. Translating a policy objective into a measure that affects trade can be a source of friction. WTO rules allow members to take measures to protect human, animal or plant life, health or relating to the conservation of exhaustible natural resources. Many countries share the concern that protection of the environment could be used, for trade protectionist purposes, to restrict exports. Striking the appropriate balance between safeguarding market access and protecting the environment is one of the issues being discussed at WTO.

9. Advances in understanding the complex linkages show that there are positive synergies between trade disciplines and environmental objectives. This points to the growing need for coherence, cooperation and coordination among relevant ministries within national governments and among WTO, the multilateral environmental agreements, the United Nations Environment Programme and the Commission on Sustainable Development.

#### B. Proposals in the negotiations on specific trade obligations in multilateral environmental agreements and existing rules of the WTO

10. The discussions of the Committee on Trade and Environment Special Session have focused on how to define a specific trade obligation set out in relevant multilateral environmental agreements. Several delegations drew a distinction between agreement provisions containing explicit trade obligations and those allowing a measure of discretion as to the selection of the measures to be taken. Some delegations confined their analysis to existing multilateral environmental agreements, while others

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<sup>4</sup> World Trade Organization, "Report (1996) of the Committee on Trade and Environment", WT/CTE/1.

also considered those that had not yet entered into force. To the extent that certain decisions taken by conferences of the parties to the multilateral environmental agreements might include trade measures, reference was made to the question of the relevance and legal status of such decisions. In this connection, attention was drawn to the need for a better understanding of the decision-making and general operating mechanisms of the various multilateral environmental agreements.<sup>5</sup>

11. Certain proposals submitted by members of WTO to the Committee on Trade and Environment Special Session refer specifically to UNFCCC and its Kyoto Protocol. Comments on specific provisions of the Convention and the Protocol are given in the annex to the present note.

### **C. Relations between the UNFCCC secretariat and WTO**

12. The current negotiations cover the issue of procedures for the regular exchange of information between the secretariats of multilateral environmental agreements and relevant WTO committees, as well as criteria for granting the secretariats observer status in WTO committees. The UNFCCC secretariat has observer status in the WTO Committee on Trade and Environment (CTE), established in 1995. While the UNFCCC secretariat does not have observer status for the Special Session of the Committee on Trade and Environment, it has been invited to participate on an ad hoc basis, along with other multilateral environmental agreements.

13. At the Special Session of the Committee on Trade and Environment held on 12 November 2002, the Executive Secretary of the UNFCCC was invited to make a presentation. In her statement, the Executive Secretary emphasized four points: Article 3.5 of the Framework Convention, which states that measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade; the interaction between WTO rules and measures arising from national implementation of commitments, which has not been the subject of policy-oriented work of the subsidiary bodies of the Convention; the essential need for a two-way flow of information between WTO and the UNFCCC secretariat; and, with regard to the granting of observer status, the practice within the United Nations system of the automatic granting of such status to intergovernmental organizations on request.

14. With regard to the exchange of information, the UNFCCC secretariat has advised WTO that it could provide information of a general nature, based on existing provisions of the Convention or decisions of the Conference of the Parties. If the issue were to concern the relationship between the regimes, or was a question of interpretation of a provision, the matter would be referred to the Conference of the Parties before the secretariat provided response. This aspect of the negotiations may have an impact on the relationship between the UNFCCC secretariat and WTO.

15. The secretariat will be requesting observer status in the Special Session of the Committee on Trade and Environment, as well as in the General Council of WTO and in its relevant committees, when matters of interest to UNFCCC are considered.

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<sup>5</sup> World Trade Organization, "Report by the Chairperson of the Special Session of the Committee on Trade and Environment to the Trade Negotiations Committee", TN/TE/5, 28 February 2003.

#### **D. Other issues**

16. Apart from the above negotiations, the Committee on Trade and Environment Special Session is also considering trade liberalization of environmental goods and services. A working group, established under the Doha mandate, is examining the relationship between trade and the transfer of technology. The Committee on Trade and Environment is discussing, as a part of its regular work programme, the effects of environmental measures on market access and the situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, environment and development; labelling for environmental purposes; and the relevant provisions of the Agreement on Trade Related Aspects of Intellectual Property Rights. The outcome of discussions on these issues may have implications for UNFCCC and the Kyoto Protocol.

17. In the discussions of the Committee on Trade and Environment under market access related to the energy sector, some members have argued that, in developed countries, coal products are subsidized and taxation schemes biased against petroleum products. It has been suggested that subsidies be removed and that fuel taxation be restructured to reflect carbon content, thus ensuring that polluting sources (with higher carbon content) are penalized, not favoured.<sup>6</sup> Other members consider that the Committee on Trade and Environment is not the appropriate forum to discuss the impact of measures taken to mitigate climate change, and that the issue is being dealt with adequately under UNFCCC and the Kyoto Protocol.<sup>7</sup>

18. At Doha, ministers mandated the Committee on Trade and Environment and the Committee on Trade and Development to monitor the overall developmental and environmental aspects of the negotiations in order to help achieve the objective of sustainable development.

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<sup>6</sup> World Trade Organization, Submission by Saudi Arabia on energy taxation, subsidies and incentives in countries/members of the Organization for Economic Cooperation and Development and their economic and trade implications for developing countries, in particular developing oil-producing and exporting countries (WT/CTE/W/215–TN/TE/W/9).

<sup>7</sup> World Trade Organization, “Committee on Trade and Environment (CTE Regular): First draft report to the fifth session of the WTO Ministerial Conference”, JOB(03)/73, 10 April 2003, page 5.

Annex

**PROPOSALS BY MEMBERS OF THE WORLD TRADE ORGANIZATION BEING  
DISCUSSED BY THE COMMITTEE ON TRADE AND ENVIRONMENT  
SPECIAL SESSION\***

**REFERENCES TO THE UNITED NATIONS FRAMEWORK CONVENTION  
ON CLIMATE CHANGE AND ITS KYOTO PROTOCOL**

**I. United Nations Framework Convention on Climate Change**

| <b>Provision</b> | <b>Proposal</b>   | <b>Comments**</b>   |
|------------------|---|---|
| <b>General</b>   | <b>Canada</b><br>TN/TE/W/22<br>para. 16                     | "16. Some Members have also suggested that the <i>United Nations Framework Convention on Climate Change</i> (UNFCCC) and its <i>Kyoto Protocol</i> should be included in our examination of MEAs containing STOs. Our preliminary analysis indicates that there is nothing in the UNFCCC or the Kyoto Protocol that could be considered an STO. Therefore, at this stage, we do not believe that any issues raised by the UNFCCC and the Kyoto Protocol are within the mandate of paragraph 31(i) of the Doha Declaration."   |
|                  | <b>Saudi Arabia (Observer)</b><br>TN/TE/W/9<br>paras. 8, 11 | "8. ... [I]t should be noted that the development and policing of trade-related environmental policies is not part of the WTO's remit. Such a task falls under the jurisdiction of other multilateral frameworks, such as the United Nations Framework Convention on Climate Change (UNFCCC). ..."<br><br>"11. The UNFCCC is considered as the most relevant MEA to this paper [on Energy Taxation, Subsidies And Incentives in OECD Countries and Their Economic and Trade Implications on Developing Countries, in Particular Developing Oil Producing and Exporting Countries] and reference is made to direct trade-related impacts upon developing energy producers and exporters such as Saudi Arabia where necessary." |
| <b>4.2 (a)</b>   | <b>Korea</b><br>TN/TE/W/13<br>para. 10                      | Not an STO: "Allows for Parties' discretion regarding implementation measures, with a broadly stated requirement to adopt national policies and corresponding measures."  |
|                  | <b>United States</b><br>TN/TE/W/20<br>para. 13              | Not an STO: Article 4.2(a) contains a general, rather than a specific obligation "that accord[s] discretion to the parties regarding implementation".   |

Source: "Compilation of submissions under paragraph 31(i) of the Doha Declaration, note by the secretariat", (TN/TE/S/3/Rev.1), pp. 75–77.

\* The texts of these proposals are reproduced as received and without formal editing.

\*\* Comments are based on the proposals submitted and may not necessarily reflect the current position of WTO members.

## II. Kyoto Protocol

| Provision      | Proposal                                    | Comments  |
|----------------|---|---|
| <b>General</b> | <b>Canada</b><br>TN/TE/W/22<br>para. 16     | "16. Some Members have also suggested that the <i>United Nations Framework Convention on Climate Change</i> (UNFCCC) and its <i>Kyoto Protocol</i> should be included in our examination of MEAs containing STOs. Our preliminary analysis indicates that there is nothing in the UNFCCC or the Kyoto Protocol that could be considered an STO. Therefore, at this stage, we do not believe that any issues raised by the UNFCCC and the Kyoto Protocol are within the mandate of paragraph 31(I) of the Doha Declaration."   |
|                | <b>Switzerland</b><br>TN/TE/W/16<br>para. 6 | <p>"6. ... Switzerland considers that the following <b>two categories</b> come under the heading of "specific trade obligations":</p> <p><b>2. Other measures that are relevant and necessary to achieve an MEA objective</b></p> <p>These encompass the different categories of measures and policies adopted in pursuit of a specific objective such as that of the Kyoto Protocol, which is to reduce emissions of greenhouse gases. Such measures may relate to a number of spheres – taxation, rules and standards, and so forth (Article 2.1 of the Protocol). Let us take Member A, which is listed in Annex I to the Protocol along with the other countries that have undertaken greenhouse gas reduction commitments. If Member A prohibits the importation and use of emission filters for industry on the grounds that they do not meet national standards in terms of retention of substances that adversely affect the concentration of greenhouse gases, such a measure should be regarded as a specific trade obligation covered by the solution negotiated among the WTO Members under paragraph 31(i). Indeed, it contributes to the implementation and achievement of the object of the Protocol, which provides for an "<i>obligation de résultat</i>" (obligation to achieve results)."</p>  |
|                | <b>Switzerland</b><br>TN/TE/W/21            | <p>The Kyoto Protocol is covered by the second category of STOs identified by Switzerland, which comprises "all MEAs setting out types of measures and policies that can and must be adopted in pursuit of a specific objective negotiated by the contracting parties. These MEAs give contracting parties some latitude with regard to the trade-related measure to be adopted. ... the Kyoto Protocol ... has as its objective to reduce emissions of greenhouse gases. The measures to be taken to that end may relate to a number of spheres – taxation, rules and standards, and so forth (Article 2.1 of the Protocol). Let us take Member A, which is listed in Annex I to the Protocol along with the other countries that have undertaken greenhouse gas reduction commitments. If Member A prohibits the importation and use of emission filters for industry on the grounds that they do not meet national standards in terms of retention of substances that adversely affect the concentration of greenhouse gases, such a measure should be regarded as a specific trade obligation covered by the solution negotiated among WTO Members under paragraph 31(i). Indeed, it contributes to the implementation and achievement of the object of the Protocol, which provides for an "<i>obligation de résultat</i>" (obligation to achieve results)."</p> |

| Provision | Proposal   | Comments   |
|-----------|--|--|
| 2         | <b>Saudi Arabia (Observer)</b><br>TN/TE/W/9<br>para. 30  | "30. Policy areas for existing and proposed policies and measures to mitigate for example, climate change, are given under Article 2 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC)."   |
| 2.1       | <b>Korea</b><br>TN/TE/W/13<br>para. 10                   | Not an STO: "Allow[s] for Parties' discretion regarding implementation measures for quantified emission limitation and reduction commitment."  |
| 2.3       | <b>Korea</b><br>TN/TE/W/13<br>para. 10                   | Not an STO: "[A]llows for Parties' discretion regarding implementation measures for quantified emission limitation and reduction commitment."  |
| 6, 12, 17 | <b>Korea</b><br>TN/TE/W/13<br>paras. 10, 14              | 10. It is unclear whether Articles 6, 12 and 17 are STOs: They "[p]rovide general principles of the Flexibility Mechanisms. Detailed elements of the Mechanisms are provided in the Marrakesh Accord, which future COP will adopt (See Paragraph 14)."<br><br>"14. Among COP decisions, the Marrakesh Accord is a unique case. Articles 6, 12 and 17 on the Flexibility Mechanisms in the Kyoto Protocol to the UNFCCC do not stipulate any specific obligations. Specific elements of the Mechanisms are provided in the Marrakesh Accord, which future COP is expected to adopt. It seems that the Accord is not mandatory in legal point of view, but in participating in the Flexibility Mechanisms, the Parties to the Kyoto Protocol cannot avoid abiding by the specific trade obligations set out therein. Then, the question arises whether such "de facto" obligations stipulated in the Accord are STOs." |
| Annex B   | <b>Saudi Arabia (Observer)</b><br>TN/TE/W/9<br>paras. 18 | "18. Most Annex B Parties also provide some form of incentive - either as investment credits or tax offset - for petroleum exploration and development. ..."   |

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