

Committee on Trade and Environment
Special Session

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SUGGESTED PROCEDURE FOR THE NEGOTIATIONS UNDER PARAGRAPH 31(i) OF THE DOHA DECLARATION

Submission by Australia¹

Paragraph 31 (i)

1. Paragraph 31(i) of the Doha Declaration provides for negotiations on the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). Ministers agreed that the negotiations shall be limited in scope to the applicability of such existing WTO rules as among the parties to the MEA in question, and shall not prejudice the WTO rights of any Member that is not a party to the MEA in question.

2. At the CTE Special Session on 22 March 2002, Australia proposed that discussions should begin by (a) identifying the most relevant MEAs with specific trade obligations; (b) examining the nature of those specific trade obligations and (c) identifying the relevant WTO rules that apply. This paper sets out a procedural approach for the negotiations consistent with the mandate provided in the Doha Declaration.

I. SUGGESTED PROCEDURE

3. Australia proposes a three-phase process. It should be up to Members to decide the appropriate time that the CTESS should spend on each phase.

Phase One

4. During the first phase, the CTESS should identify (a) the “**specific trade obligations in multilateral environmental agreements**” that are to be discussed, and (b) the **WTO rules** that are relevant to these obligations.

5. Previous CTE discussion on the relationship between WTO rules and MEA provisions has focused on “trade measures” for environmental purposes. However, as highlighted in the recent submission made by Argentina (TN/TE/W/2), the term “trade measures” is different from the phrase agreed by Ministers – “specific trade obligations” – in the Doha Declaration.

6. Bearing in mind the important distinction between these two terms, an efficient way to proceed would be to examine the range of MEA trade measures summarized in the document prepared by the CTE Secretariat, “*Matrix of Trade Measures Pursuant to MEAs*” (WT/CTE/W/160/Rev.1) in order to identify which of these measures are “specific trade obligations”.²

¹ This submission is without prejudice to Australia’s rights and obligations under the WTO Agreement.

² The Matrix summarizes trade-related measures in fourteen multilateral instruments.

7. Once these specific trade obligations have been identified, the CTESS should identify any relevant WTO rules that have to be considered in relation to any action that might be taken by WTO Members pursuant to each obligation.

8. Early identification of the specific trade obligations and WTO rules covered by the mandate will ensure Members are able to focus discussion in subsequent phases, consistently with the mandate, on the applicability of WTO rules as among WTO Members that are parties to a MEA. By discussing particular specific trade obligations and particular WTO rules these negotiations can help ensure that the balance of rights and obligations under existing WTO agreements is maintained, including for WTO Members that are not parties to a particular MEA.

Phase Two

9. Once WTO Members have identified the specific trade obligations and the particular WTO rules at issue, information sessions with relevant MEA Secretariats can be used to seek information from these secretariats, and from WTO Members' own experiences, concerning these provisions. This process can be used to determine whether there have been particular implementation issues with these "specific trade obligations".

10. It will be important in this phase to identify any real issues being dealt with by those Members implementing their obligations under the relevant MEA and the WTO, as opposed to discussing theoretical or hypothetical scenarios.

Phase Three

11. The third phase would involve discussion of matters arising from the work undertaken in phases one and two, and focus on the outcome of the negotiations.

12. Ministers have made clear the context for the negotiations under paragraph 31 – that they are being undertaken to enhance the mutual supportiveness of trade and environment. Ministers have expressly provided in paragraph 32 that the outcome of the negotiations carried out under paragraph 31(i) shall be compatible with the open and non-discriminatory nature of the multilateral trading system, shall not add to or diminish the rights and obligations of Members under existing WTO agreements, in particular the Agreement on the Application of Sanitary and Phytosanitary Measures, nor alter the balance of these rights and obligations.

II. SUMMARY

13. WTO rules currently provide for Members to pursue environmental objectives, just as they provide for Members to pursue other public policy goals. In the context of trade and environment, these rules enable Members to pursue their policy objectives while taking account of their obligations to avoid or minimize any resulting trade distortions. This is an appropriate balance.

14. In order to genuinely understand any concerns in this area, and to deliver a mutually supportive outcome in line with the mandate agreed by Ministers, WTO Members will need to proceed carefully with these negotiations. The procedural approach outlined above provides a balanced and practical structure that will ensure that Members are able to engage in a constructive negotiation within the bounds of the agreed mandate.
