

**CONTINUED WORK UNDER PARAGRAPH 31(II)
OF THE DOHA MINISTERIAL DECLARATION**

Submission from Canada and New Zealand

Paragraph 31(ii)

The following communication, dated 30 April 2007, is being circulated at the request of the Delegations of Canada and New Zealand.

1. Paragraph 31(ii) instructs the Committee on Trade and Environment in Special Session (CTESS) to negotiate: "procedures for regular information exchange between MEA secretariats and the relevant WTO committees, and the criteria for the granting of observer status."
2. Canada and New Zealand wish to thank the United States (TN/TE/W/70) and the European Communities (TN/TE/W/66) for their recent contributions reinvigorating discussions on Paragraph 31(ii) of the Doha Ministerial Declaration. These efforts, together with the earlier contribution from Switzerland (TN/TE/W/30), the Secretariat's synthesis document (JOB(07)/2) and the many valuable exchanges with Members in the CTESS suggest that there is broad convergence on the way forward for this item.
3. Drawing upon the valuable contributions to date, including the most recent informal exchanges at the CTESS on 30 March 2007, Canada and New Zealand are submitting this paper with a view to advancing CTESS negotiations. Specifically, this submission suggests that broad agreement has been achieved on the key elements of this important part of the mandate: (i) that procedures for information exchange between MEA secretariats and WTO bodies become a formal, institutionalized feature of WTO work; and (ii) that flexible criteria should be advanced to facilitate granting MEAs observer status in WTO bodies.

I. PROCEDURES FOR INFORMATION EXCHANGE

4. Canada and New Zealand welcome the suggestions put forward by Switzerland, the US and the EC concerning procedures for information exchange between MEA secretariats and the WTO. It is our sense that there is convergence on the need for information exchanges to become a formal, institutionalized feature of the WTO's work.

5. We welcome the suggestion that procedures for information exchanges should not be overly detailed and should remain flexible. We propose therefore that annual meetings - information sessions - form the central feature of regular information exchanges. These information sessions would be organized by the WTO secretariat, and hosted by the Committee on Trade and Environment (CTE), in concert with other WTO bodies according to the subject matter or theme chosen in a given year.

6. We agree that Members should also establish a general structure for conducting future information sessions and we find the suggestions made to date useful and constructive. Information exchanges should promote the mutual supportiveness of trade and the environment and improved coherence nationally and internationally. Bringing together trade officials and environment officials in a coordinated fashion through information exchanges and events will help in developing a more integrated approach at the domestic level. This cannot replace the work being undertaken domestically to improve coherence between these sets of officials, but it can helpfully complement that process. The co-sponsors believe that information sessions should seek to attract the broadest possible representation from within the WTO bodies and among MEAs relevant to the topic identified for the given session. It will also be important to draw upon the expertise within UNEP and other UN agencies involved in trade and environment issues. Taking together the suggestions made by others to date, we would suggest that the following key elements should be included when establishing procedures for information exchanges between the WTO and MEAs:

- (a) Information sessions should be held regularly, perhaps once a year initially, and timed strategically to coincide with MEA or WTO meetings according to the theme of the particular information session.
- (b) Members should take stock of this practice after an appropriate period of time, perhaps after three years, to assess the utility of this formalisation of the information exchange process. During such a stock-taking exercise, Members could consider, *inter alia*, whether it is desirable to hold information sessions more or less often.
- (c) The topics or themes for the information sessions should be identified jointly by relevant WTO bodies and MEAs. Relevant background papers should be prepared and distributed in advance by the WTO and MEA secretariats. Participation in such information sessions should include officials from WTO Member governments, including those that regularly attend the CTE and other relevant WTO bodies, MEA secretariats and MEA delegates, and the WTO Secretariat. Procedures should be flexible enough to allow for participation by other organizations or groups as appropriate and according to the themes or topics to be addressed.
- (d) Annotated agendas and background papers on specific issues should be provided for the meetings.
- (e) Regarding on-going document exchanges, access to de-restricted documents should be facilitated in accordance with the newly approved General Council rules on document de-restriction.
- (f) The use of the Internet as the instrument of choice to enhance information exchange between the WTO, UNEP and MEAs should be encouraged. Sharing of information in this manner can be determined on an ad hoc basis.

- (g) The WTO Secretariat could index documentation it has received from MEAs for the information of WTO Members. For example, the WTO Secretariat could issue a list of MEA-related reports or documentation that it has received on an annual basis. And for its part, an MEA Secretariat could be invited to prepare an index of documents it has received from the WTO Secretariat in order to facilitate access to such documents by MEA delegates and secretariat staff.
- (h) Information sessions and document sharing should be reciprocal, involving a two-way flow of information so that the WTO Members and secretariats learn about MEA activities and rules that may have implications for international trade, while MEA secretariats and delegates become better apprised of a trade perspective and issues arising under the WTO Agreements.
- (i) Other mechanisms for collaboration should be considered and included in the proposed procedures and tested on an on-going basis, including ways and means of incorporating technical assistance activities and capacity building elements for developing country Members to foster their own internal, national trade and environment coordination processes.

II. CRITERIA FOR GRANTING OBSERVER STATUS

7. Canada and New Zealand welcome the suggestions by Switzerland, the US and the EC concerning criteria for granting WTO observer status to multilateral environmental agreements (MEAs). It is the view of the co-sponsors that granting observer status to MEAs in the WTO can encourage cooperation at the international level and complement and facilitate national-level coordination and cooperation between trade officials and environment officials.

8. There has also been some discussion regarding a recent proposal to develop "indicative questions" to assist the CTE and other WTO bodies to decide whether observership should be granted to a particular MEA. It is our understanding that this recommendation underscored broad support for a flexible approach to the decision-making process. We view the phrase "indicative questions" as complementary to the concept of "criteria." At the same time, Ministers directed the CTESS to develop *criteria* to grant observership status. The Concise Oxford English Dictionary defines criteria as: "a principle or standard by which something may be judged or decided." Canada and New Zealand agree that a flexible approach is required for granting observer status to MEAs, and that the criteria should not be so inflexible as to make it more difficult than is currently the case for an MEA secretariat to gain observership to a relevant WTO body. This approach should be flexible enough to allow new MEAs to apply for observer status in the future.

9. As the US has noted in its submission, it is also important to underscore that the mandate given to the CTESS under Paragraph 31(ii) of the Doha Declaration is to develop criteria for granting observer status for relevant MEA secretariats in WTO bodies. It does not touch on the more general issue of observer status in the WTO. That responsibility rests exclusively with the WTO General Council.

10. In this context, the co-sponsors would like to emphasize the importance and usefulness of Annex 3 of the Rules of Procedure for the Sessions of the Ministerial Conference and Meetings of the General Council (WT/L/161). These should guide and inform our discussions and the development of criteria to grant observer status to relevant MEA secretariats. Canada and New Zealand recommend

the following non-exhaustive set of criteria (supplemented by indicative questions) to aid WTO bodies in making reasoned decisions on a case-by-case basis (i.e., WTO body-by-body and MEA-by-MEA) regarding MEA observer status, using Annex 3 of the WTO Rules of Procedure as their point of departure:

- (a) **Relevance:** Is the MEA's work relevant to the WTO body's work and vice-versa? Does the MEA contain commitments that have potential implications for international trade? For example, does the MEA contain specific trade obligations, or more general trade-related measures?
- (b) **Observer elsewhere:** Is the MEA currently an observer to other WTO bodies, and if so, what is the extent of the MEA's participation in meetings of that body? For example, has the WTO Secretariat and the MEA Secretariat worked together on reports or to plan workshops, capacity building events, or seminars? For new MEAs applying for observership, is there the potential or intention for it to work with the WTO Secretariat, including, *inter alia*, on workshops, reports, capacity building events, or seminars?
- (c) **Representativeness:** Does the MEA reflect the broad membership of the WTO? For example, does the organization represent a geographical balance of WTO membership?
- (d) **Reciprocity:** Will there be a reciprocal relationship between the MEA and the WTO body with respect to access to proceedings, documents, and other aspects of observer status?

11. These criteria, supplemented by indicative questions are by no means exhaustive, and should be augmented as appropriate by WTO bodies to help determine if a particular MEA has trade relevance in matters before that body.

12. From a procedural perspective, the following elements should be considered:

- (a) The decision to grant observer status should be made on the basis of a written request and on a case-by-case basis for each request.
- (b) Decisions on the granting of observer status to MEAs in relevant WTO committees should fall to the relevant committee.
- (c) Observer status should be granted upon condition of full reciprocity.

Which MEAs?

13. The EC has suggested that 'core' MEAs, namely those that have participated in the previous informal information exchange sessions, should be granted observer status in the CTE. We agree that such MEAs are likely to fulfil the criteria to be accorded observer status. At the same time, however, and in keeping with the general WTO Rules of Procedure, we think that decisions on participation should be made by the body in question, following receipt of a written request from the relevant MEA secretariat that wishes to be granted observer status. We consider that such an approach will help to avoid unnecessary debate on defining which organizations would constitute a 'core' set of MEAs.

In this context, it may be useful to recall that the following have all participated in CTE information sessions as described in TN/TE/S/2 at paragraph 11:

- the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention),
- the Convention on Biological Diversity (CBD),
- the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR),
- the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),
- the International Commission for the Conservation of Atlantic Tunas (ICCAT),
- the Intergovernmental Forum on Forests (IFF),
- the International Tropical Timber Organization (ITTO),
- the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol),
- the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC),
- the Stockholm Convention on Persistent Organic Pollutants (POPs),
- the United Nations Convention on the Law of the Sea (UNCLOS),
- the United Nations Framework Convention on Climate Change (UNFCCC),
- the United Nations Fish Stocks Agreement (UN Fish Stocks), and
- the United Nations Forum on Forests (UNFF).

14. Recognizing that the CBD, CITES, ICCAT, and UNFCCC, together with UNEP, have already been granted observer status in the CTE, this would suggest that there are ten bodies that have worked with the CTE previously that may wish to become observers. As noted above, MEAs seeking observer status will need to put this request in writing to the CTE in due course.

15. With respect to the CTESS, the co-sponsors agree with the suggestion to grant observer status for the remainder of the DDA negotiations to UNEP and the seven MEA secretariats that currently have ad hoc observer status.¹ At the same time, of course, we recognise that this is not the same as "permanent observer status", given that the WTO negotiations will soon conclude.

¹ The Basel Convention, the Convention on Biological Diversity, the Convention on International Trade in Endangered Species, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in

III. CONCLUSION

16. Canada and New Zealand are pleased to submit this paper to help stimulate discussion at the 3-4 May meeting of the CTESS. We are encouraged by the positive discussions to date on this item, and look forward to a fruitful exchange. We recommend that the Chair of the CTESS indicate in his next report to the Trade Negotiations Committee that we are near convergence on this item of our agenda and that we would welcome input from other WTO bodies, as appropriate, on specific points of agreement to date.

17. In closing, we would like to note that recent discussions have also flagged the question of how to put into practice any agreement achieved on this area of the mandate. We would welcome suggestions from Members on this issue and we are prepared to undertake the necessary work in concert with others that may wish to participate to adjust the proposal to meet our collective desire to fulfil this part of our mandate.

International Trade, the Stockholm Convention on Persistent Organic Pollutants, and the United Nations Framework Convention on Climate Change.