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Committee on Trade and Environment

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THE RELATIONSHIP BETWEEN TRADE MEASURES PURSUANT TO MEAs AND THE WTO AGREEMENT

Proposal by Japan

I. PURPOSE OF JAPAN'S PROPOSAL

1. The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, especially those pursuant to Multilateral Environmental Agreements (MEAs) is, among the agenda of the CTE, the most fundamental issue in an attempt to make an interface between rules of trade and rules of environment.
2. This paper makes the case for a non-binding interpretative guideline* to make trade measures pursuant to MEAs compatible with the WTO Agreement. It also calls for the permanent status as well as the addition of the terms of reference of the CTE in its future work beyond the Singapore Ministerial Conference to promote coordination and dialogue between the WTO and MEAs.
3. The guideline is not meant to give prejudice to the legitimacy of existing MEAs, nor to dictate the negotiations on future MEAs.

II. BACKGROUND

4. In order to tackle global environmental problems, it has been recognized that non-trade measures, including improving access to finance and promoting technology transfer, are preferable. Such positive measure has proved in a number of cases very effective in achieving environmental objectives. However, certain number of MEAs with trade measures such as the Montreal Protocol on Substances that Deplete the Ozone Layer indicates that there are certain cases where trade measures are considered to be necessary and effective means for achieving the environmental objectives.
5. The extraterritorial use of trade measures could raise the concern of arbitrary and discriminatory implementation. Especially unilateral trade measures should be avoided since they seriously undermine the multilateral trading system.
6. Therefore, when a trade measure is to be applied, there is the need to ensure that such measure should be not used (1) in disguise of protectionism, and (2) nor in an arbitrary manner.

*The possibility of developing this guideline into a binding one with appropriate modifications as necessary should be fully explored.

7. From such a viewpoint, and for ensuring that trade and environmental policies are mutually supportive, it is essential to develop an international consensus on the relationship between the trade measures pursuant to MEAs and the WTO Agreement.

III. POSSIBLE OPTIONS TO ACCOMMODATE TRADE MEASURES PURSUANT TO MEAs UNDER THE DISCIPLINES OF THE WTO AGREEMENT

8. Amendment of Article XX of GATT 1994 to open an "environmental window" has been suggested by some Members at the CTE. Although this option would be the most transparent one as regard the status of "environment" in the context of the WTO Agreement, it would be difficult to define "environment" in a way applicable to all cases.

9. On the other hand, some Members have expressed their strong preference to *status quo*. The "*status quo*" approach claims to protect the multilateral trading system. However, without any rules concerning "environment" in the framework of the WTO, this approach cannot clarify the status of MEAs in the multilateral trading system and may result in allowing unilateral measures in the name of environmental protection.

10. The proposed guideline could bridge the two confronting suggestions stated above. The guideline provides a reference to the negotiators of future MEAs. It is also expected to give a guidance in considering the compatibility of the implementation of a trade measure pursuant to existing MEAs with the WTO Agreement.

IV. THE GUIDELINE ON TRADE MEASURES PURSUANT TO MEAs

11. Based on the above consideration, Japan suggests the following criteria for the guideline. It concerns the compatibility of an MEA as well as the compatibility of the use of trade measures pursuant to an MEA with the WTO Agreement in the light of Article XX of GATT 1994.

1.a. (i) An MEA is open to any country sharing the environmental objective of the agreement.

(ii) An MEA reflects, through adequate participation, the interests of major parties concerned, such as parties with substantial trade interests, actual and potential major producers and consumers of materials concerned.

(iii) An MEA specifically mandates the use of trade measures, the content of which is clearly defined, and the procedure and the conditions for applying the measures are transparent and clearly defined.

(iv) The trade measures pursuant to the MEA may not be applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or disguised restriction on international trade. (the preamble of Article XX).

1.b. (i) An MEA has an environmental objective of protecting an irreplaceable part of the natural system of the earth.

(ii) The trade measures pursuant to the MEA to achieve its environmental objective are scientifically based, have no other effective alternative and have the minimum trade restrictive or distorting effects.

(iii) The trade measures pursuant to the MEA may be applied only to the minimum trade restrictive or distorting effect and only when there is no other effective alternative, to achieve the environmental objective.

2. With respect to 1.b. mentioned above, decisions made by a relevant MEA Convention of Parties should be taken into sufficient account on the condition that the MEA meets the criteria of 1.a.

V. ENHANCING DIALOGUE AND COORDINATION BETWEEN WTO AND MEAs

12. In order to achieve the objective of making trade and environmental policies mutually supportive, the cooperation and coordination between trade officials and environment officials in respective capitals are very important. However, it is often the case that the communications between the two sides are not sufficient. Therefore, the terms of reference of the CTE should be expanded to promote dialogue and coordination between the WTO and MEAs.

13. With the extended mandate, the CTE should be able to invite a particular MEA Secretariat to a CTE meeting for a briefing on its trade measures in general. The CTE should also have an opportunity to obtain necessary information and express its views when the provisions of trade measures are contemplated in the course of negotiating a new MEA, or, when existing MEAs are amended.

14. The CTE should, upon request from MEA Secretariats and negotiators, hold briefings or provide necessary information on the operation of WTO provisions relevant to the use of trade measures taken pursuant to MEAs.

15. UNEP could play an important role in the proposed framework of dialogue by providing the WTO with its expertise from the viewpoint of MEAs.

16. Lastly, the extended mandate of the CTE as suggested above will also contribute to enhancing the transparency of the CTE.