

**Committee on Trade and Environment
Special Session**

**COMPILATION OF SUBMISSIONS UNDER PARAGRAPH 31(i)
OF THE DOHA DECLARATION**

Note by the Secretariat¹

Revision

1. This document has been prepared by the Secretariat at the request of Members in the CTE Special Session.² It provides a compilation of proposals submitted to the CTE Special Session under paragraph 31(i) of the Doha Declaration. This paragraph reads as follows:

"With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudging their outcome, on: (i) the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question."

2. Section I of the document provides the list of proposals submitted by Members under paragraph 31(i). Sections II-VIII are organized under the following headings:

- Section II: Process;
- Section III: Multilateral Environmental Agreements (MEAs);
- Section IV: Specific Trade Obligations (STOs);
- Section V: Relationship Between WTO Rules and Specific Trade Obligations in MEAs;
- Section VI: Party/Non-Party Issues;
- Section VII: Outcome; and
- Section VIII: MEAs Referred to in the Proposals.

3. Each section makes reference to the relevant paragraphs of the submissions and quotes the appropriate text. Sections II-VII list Members' positions in alphabetical order. Section VIII outlines Members' positions in reference to the respective provisions of the MEAs.

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

² TN/TE/R/3, "Summary Report on the Third Meeting of the Committee on Trade and Environment Special Session, 10-11 October 2002", Note by the Secretariat.

4. This document should be considered as a working document aimed at facilitating the discussions in the CTE Special Session under paragraph 31(i) of the Doha Declaration. It will be revised, as appropriate, in light of future proposals submitted in the CTE Special Session.³

³ As requested by Members at the meeting on 12-13 February 2003 (See TN/TE/R/5, "Summary Report on the Fifth Meeting of the Committee on Trade and Environment in Special Session, 12-13 February 2003", Note by the Secretariat).

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I. LIST OF SUBMISSIONS UNDER PARAGRAPH 31(i)

Member	Document	Date
Argentina	TN/TE/W/2	23 May 2002
Australia	TN/TE/W/7	7 June 2002
Canada	TN/TE/W/22	10 February 2003
Chinese Taipei	TN/TE/W/11	3 October 2002
European Communities	TN/TE/W/1	21 March 2002
Hong Kong, China	TN/TE/W/24	20 February 2003
India	TN/TE/W/23	20 February 2003
Japan	TN/TE/W/10	3 October 2002
Korea	TN/TE/W/13	8 October 2002
New Zealand	TN/TE/W/12	3 October 2002
Norway	TN/TE/W/25	20 February 2003
Saudi Arabia (Observer)	TN/TE/W/9	23 September 2002
Switzerland	TN/TE/W/4	6 June 2002
Switzerland	TN/TE/W/16	6 November 2002
Switzerland	TN/TE/W/21	10 February 2003
United States	TN/TE/W/20	10 February 2003

Total Number of Submissions: 16

II. PROCESS

Proposal	Position
<p>Australia TN/TE/W/7 paras. 3-11</p>	<p>"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.</p> <p><i>Phase One</i></p> <p>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.</p> <p>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.</p> <p>6. Bearing in mind the important distinction between these two terms, an efficient way to proceed would be examine the range of MEA trade measures summarized</p>

Proposal	Position
	<p>in the document prepared by the CTE Secretariat, ‘<i>Matrix of Trade Measures Pursuant to MEAs</i>’ (WT/CTE/W/160/Rev.1) in order to identify which of these measures are “specific trade obligations”.⁴</p> <p>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.</p> <p>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.</p> <p><u>Phase Two</u></p> <p>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”.</p> <p>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.</p> <p><u>Phase Three</u></p> <p>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.”</p>
<p>Canada TN/TE/W/22 paras. 1-3</p>	<p>"1. At the CTESS meetings in October and November 2002, Members agreed to examine specific trade obligations (STOs) set out in certain multilateral environmental agreements (MEAs) as the next step in the analytical stage of the negotiations. Members agreed that a conceptual analysis could complement that review. We believe that both approaches are essential if we are to reach a common understanding.</p>

⁴ The Matrix summarizes trade-related measures in fourteen multilateral instruments.

Proposal	Position
	<p>2. Some Members proposed that the initial discussion should focus on STOs in six MEAs: the <i>Convention on International Trade in Endangered Species of Wild Fauna and Flora</i> (CITES), <i>Montreal Protocol on Substances that Deplete the Ozone Layer</i> (Montreal Protocol); the <i>Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal</i> (Basel Convention), the <i>Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade</i> (PIC), the <i>Cartagena Protocol on Biosafety</i> (Biosafety Protocol), and the <i>Stockholm Convention on Persistent Organic Pollutants</i> (POPs).</p> <p>3. Canada supported this approach. The purpose of this paper is to assist in this discussion by outlining a number of issues for consideration and providing illustrative examples. It is submitted as a non-paper and without prejudice. An in-depth examination of provisions in these six MEAs can provide Members with useful information to inform our negotiations. Canada's support for the examination of specific provisions in these six MEAs does not mean that we view them as the definitive list of all MEAs which contain STOs but we believe that examination of these six can provide significant insights. Although the PIC and POPs Conventions and the Biosafety Protocol are not yet in force, each of them has a significant number of signatories, 73, 151 and 100 respectively (WT/CTE/W/160/Rev.1), indicating broad participation by the global community in the negotiations of the MEA. Hence, it is appropriate that these should be included in our analysis at this time."</p>
<p>Chinese Taipei TN/TE/W/11 para. 3</p>	<p>"3. With respect to procedural approaches for the negotiations under the Doha mandate, the government acting on behalf of the separate customs territory of Taiwan, Penghu, Kinmen and Matsu joins with a group of Members⁵ in support of the three-phased approach proposed by Australia.⁶ In addition, if certain concepts, other than those identified in Australia's submission, contained in the mandate could be further refined, it would definitely facilitate the negotiations in this Special Session. ..."</p>
<p>European Communities TN/TE/W/1 para. 30</p>	<p>"30. The EU is seeking to further constructive dialogue among all WTO Members on the relationship between WTO rules and MEAs. The EU believes that such dialogue could usefully be orientated towards seeking consensus on the following points:</p> <ul style="list-style-type: none"> • WTO Members should agree on principles that should govern the relationship between WTO rules and MEAs; • the extent to which "specific trade obligations" should be considered to be automatically in conformity with WTO; • the fact that we are currently only considering the applicability of WTO rules as among Parties to MEAs does not mean that MEAs should not be an important element of interpretation of WTO law in

⁵ Members who extended their support were: the Philippines, Singapore, Brazil, Thailand, Indonesia, Malaysia, Mexico, Chile, New Zealand, Canada, India, Hong Kong, China, Peru, Cuba, Egypt, Kenya, Uruguay, Bolivia, Korea, Pakistan, and Colombia, paragraph 59, TN/TE/R/2.

⁶ See TN/TE/W/7.

Proposal	Position
	disputes involving non-Parties."
<p>Hong Kong, China TN/TE/W/24 paras. 2-10</p>	<p>"2. Hong Kong, China shares Members' views that the CTESS had conducted useful exchanges of views on a host of issues on paragraph 31(i) of the Doha Declaration last year. Members should by now have a better understanding of the issues in question. ...</p> <p>3. Hong Kong, China fully endorses the views of previous speakers that the CTESS has entered into a new stage of work. In particular, we very much share the views of the United States that: "the existence of the compilation in WT/CTE/W/160/Rev.1 makes it unnecessary to debate in the abstract the meaning of such terms as "MEA", "obligation", "trade", etc. The sense of delegations regarding these terms will come to the surface through a concrete review of the examples they identify in the document".⁷ Hong Kong, China strongly believes that it would bring us nowhere if we were to continue to dwell on those definitional issues. Time has come for us to proceed with discussions on paragraph 31(i) in a "more concrete, analytical manner", a phrase used by the United States. We support starting practical and pragmatic discussions now.</p> <p>4. The last informal consultation agreed that we should "focus on STOs in relevant MEAs, without precluding Members from addressing definitional or other issues". In its paper (TN/TE/W/20), the United States has made a few useful suggestions to take forward the discussions. Hong Kong, China supports this approach, especially the idea of identifying concrete examples of STOs, and experience sharing of the negotiation and implementation of these STOs. As a further suggestion to make our discussions more structured and focused, Hong Kong, China proposes that Members may start examining the MEAs identified in the Secretariat Matrix and the STOs therein one by one, perhaps beginning with those MEAs which have entered into force, with a more universal membership and global application. We believe Members would benefit more if we are to examine those MEAs which have been in existence for a longer time. It should however be emphasized that we are not suggesting a new modality of discussion. Our suggestion is meant to facilitate the discussions and help Members better understand the STOs in individual MEA through a concrete review of actual examples and experience. Our suggestion is based on a few considerations.</p> <p>5. First, it is a more structured approach as Members could make reference to the Secretariat Matrix which usefully provides a snapshot of pertinent information such as MEA status, membership, trade-related measures, provisions for disputes and non-parties, etc. It is also a more efficient approach to facilitate Members' deliberations and helps make the discussions more focused. This is particularly the case for small delegations which do not necessarily have the resources to undertake their own analysis of individual MEA provisions and come up with examples of STOs identified.</p>

⁷ TN/TE/W/20, 10 February 2003, Submission by the United States, Paragraph 31(i).

Proposal	Position
	<p>6. Second, a sequential examination of MEAs will allow Members to share their implementation experience of the STOs therein in a more structured and efficient manner. It also helps identify and isolate current problems associated with their implementation. A more structured way of discussion may also provide some insights on possible means to address potential conflicts between WTO rules and MEA provisions, if any. In this respect, we note that quite a number of Members have already commented that given the diversity of approaches to tackle environment concerns in MEAs, it might not be feasible, and indeed dangerous, to find a one-size-fits-all solution to the question of WTO/MEA relationship. Hong Kong, China fully subscribes to this view. Canada for example raises a number of valid and soul-searching questions in its paper (TN/TE/W/22). We believe Members would not be able to find answers to those questions without examining and discussing respective MEAs one by one in detail.</p> <p>7. Third, Members would be able to better involve respective MEA Secretariats and tap their expertise if the discussion is conducted sequentially one MEA by another. In this respect, we support the Chair's suggestion of inviting MEA Secretariats to participate in relevant discussion of the CTESS on an <i>ad hoc</i>, meeting-by-meeting basis. We consider it a pragmatic suggestion, without prejudice to the outcome of the horizontal discussion of the observership issue at the General Council.</p> <p>8. The Secretariat has identified 14 MEAs with trade-related measures. According to the compilation of Members' submissions prepared by the Secretariat (TN/TE/S/3), the same 14 MEAs are also referred to in Members' submissions so far. The United States mentions in its paper that STOs are set out in only six MEAs listed in the Secretariat Matrix. Since the number is not prohibitive, without prejudice to the number of MEAs Members may wish to examine, a sequential examination starting with the more representative ones may appear to be a manageable way forward.</p> <p>9. In deliberating the sequence of examination of MEAs and the STOs therein, Members may wish to make reference to aspects like the status of implementation, membership and scope of application, etc. We note that the US paper has listed STOs in the six MEAs identified. Of the six MEAs identified, we note that only three have entered into force, i.e. the CITES, Montreal Protocol and Basel Convention. On membership of these MEAs, Members may wish to note that according to the Secretariat Matrix, there are at present 154 parties to the CITES and 10 WTO Members are not parties. The corresponding numbers for the Montreal Protocol and Basel Convention are 175/3 and 146/22. On products affected by these MEAs, Members may agree that the products in question are relatively easier to identify cross borders, e.g. endangered species in the CITES</p>

Proposal	Position
	<p>appendices, controlled ozone depleting substances under the Montreal Protocol, and hazardous wastes under the Basel Convention. Given the longer time of existence of these MEAs, Members should have more experience on the implementation of the STOs therein, such as import and export bans, restrictions, notifications and licensing, etc. A sequential examination of MEAs may allow a more systematic sharing of experience. In this respect, Hong Kong, China notes that Canada has already attempted to examine some STOs in these MEAs in its paper. To help structure and focus our discussions, Hong Kong, China proposes that Members should, as a start, conduct detailed examination of these three MEAs sequentially.</p> <p>10. Some might argue that a horizontal approach of discussing STOs in relevant MEAs might be more efficient as some STOs are similar. Hong Kong, China does not believe it is easy to generalize a set of common criteria from the MEAs. Nor do we think it is feasible to find a one-size-fits-all solution. Some Members have mentioned that we might need to categorize the STOs identified in the MEAs in a few baskets at some stage with a view to finding tailor-made solutions to only those which Members accept as STOs in the end. Hong Kong, China considers it a sensible way forward. We strongly think that a sequential examination of individual MEA is prudent and would help thrash out all the implications of the STOs therein through sharing of actual implementation experience. Meanwhile, it does not preclude some generalization at a later stage if some sort of commonalities could be drawn through in-depth examination and discussions of the MEAs sequentially."</p>
<p>India TN/TE/W/23 paras. 1, 17-18</p>	<p>"1. Several submissions have been made in the Committee on Trade and Environment Special Session (CTESS) attempting to understand and clarify the mandate contained in paragraph 31(i) of the Doha Ministerial Declaration (DMD). The submissions have underlined the need to clarify the terms that form the cornerstone of the mandate under paragraph 31(i) of the Doha Declaration."</p> <p>"17. India sees benefit in furtherance of the negotiations in identifying the STOs set out in MEAs prior to discussing its outcome, since it would help appreciate the likely consequences as well as strengthening the logic behind any of the suggested outcomes. In this regard, it is hoped that the "Table of Trade Measures" will help the delegations in identifying STOs set out in MEAs.</p> <p>18. India believes that the mandate given under paragraph 31(i) of the Doha Declaration refers only to the trade measures that are mandatory and specific in their entirety. In cases where specificity and obligation depend on other related factors or decisions, work must be undertaken to clarify the exact nature of such provisions. Further it proposes sharing of information and examination by the WTO and MEA Secretariats of the precise legal nature of various COP instruments to help understand their implications for the Doha Mandate as contained in paragraph 31(i)."</p>
<p>Korea TN/TE/W/13 para. 1</p>	<p>"1. At the second meeting of the Special Session of the Committee on Trade and Environment (CTESS) held from 11-12 June 2002, a number of Members expressed their support for the proposal by Australia that CTESS divide its work under Paragraph 31(i) into three phases, starting from identifying the specific trade obligations (STOs) in MEAs and WTO rules relevant to those obligations. Korea</p>

Proposal	Position
	also supports the Australian approach. In particular, identifying specific trade obligations and the relevant WTO rules will help Members develop a perspective for the scope and orientation of discussion."
<p>Norway TN/TE/W/25 paras. 2, 8</p>	<p>"2. Several members have brought forward proposed definitions of central parts of the mandate. We agree with Switzerland that our focus should be on the interpretation given by Members of the concept of STO."</p> <p>"II. GENERAL COMMENTS</p> <p>8. It is clear that it is not an easy task to draw an exact line between those provisions that contain obvious STOs and those that fall outside the mandate. We have a "grey area" of provisions that some Members believe are STOs while others disagree. Also, as pointed out by Peru, identifying STO by STO would imply individual interpretation only, and will not bring us any closer to fulfilling our mandate. This illustrates the importance of developing some sort of a definition rather than going through the various trade measures one after the other and decide whether they can be considered STOs."</p>
<p>Switzerland TN/TE/W/16 paras. 4-5</p>	<p>"I. ORGANIZATION OF THE DISCUSSIONS</p> <p>4. Not in three phases: At the latest Special Session of this Committee, it emerged from the discussions on paragraph 31(i) that several delegations would prefer to adopt a step-by-step approach. The first step would be to identify and clarify the meaning of the different terms of the Doha mandate, the second would involve seeking and proposing solutions, and the third would be to examine the solutions put forward. Switzerland believes that the Doha ministerial declaration does not compel the Special Session to divide the work into the three phases suggested by Australia in its submission of 7 June 2002 (TN/TE/W/7), to which Chinese Taipei refers.</p> <p>5. In parallel: Switzerland considers that it may indeed be necessary to clarify the terms in the Doha Ministerial Declaration but that this would not prevent the Special Session from conducting a <i>parallel</i> examination of the principles governing the relationship between the WTO rules and MEAs, and of the various categories of options proposed before the Doha Ministerial Conference (as set forth in note TN/TE/S/1 by the Secretariat). Such an approach would make it possible to move ahead within the framework of the negotiation mandate. Indeed, it is important not to get lost in an analysis of the mandate but to advance in the search for solutions, for this is how we understand the term "negotiations". The goal is to find solutions, with an eye to the long as well as the short term. Switzerland does not object, however, to the use of existing information on MEAs as a means of clarifying the debate and therefore welcomes New Zealand's very useful submission, which at this stage constitutes an excellent working document."</p>
<p>Switzerland TN/TE/W/21</p>	<p>"We agreed at the last meeting to turn our attention [...] to the question of "specific trade obligations" set out in MEAs. As we emphasized in our previous submissions (TN/TE/W/4 and TN/TE/W/16), Switzerland considers that the terms contained in the Doha Ministerial Declaration need to be clarified in order to establish a link with so-called conceptual issues.</p> <p>In the most recent deliberations, various categories were identified and discussed</p>

Proposal	Position
	<p>by a number of delegations. ... Switzerland considers that the purpose of this exercise should not be to analyse the consistency of MEAs, and the measures for which they provide, with WTO rules. On the other hand, we expect this discussion to result in greater transparency with regard to the interpretation given by Members of the concept of "specific trade obligations", as referred to in the Doha mandate."</p>
<p>United States TN/TE/W/20 paras. 1, 10, 14</p>	<p>"1. During the course of 2002, the CTE in Special Session conducted a useful exchange of views on the scope of the mandate in sub-paragraph 31(i) of the Doha Declaration and provided an opportunity for delegations to communicate how they would like to see the negotiations proceed. It is now embarking on a phase of negotiation that will be increasingly concerned with discussion of specific examples of provisions in MEAs that are within the terms of the mandate. The United States (U.S.) welcomes this development and is prepared to engage in more in-depth analysis of the relationship between specific trade obligations set out in MEAs and WTO rules. The purpose of this U.S. submission is to contribute to the commencement of this phase of work in order to promote the development of a firm factual and analytical foundation for any eventual results under the 31(i) mandate. This phase should include efforts to understand the experience of individual Members in negotiating specific trade obligations in MEAs and implementing them."</p> <p>"V. IDENTIFICATION OF EXAMPLES OF SPECIFIC TRADE OBLIGATIONS COVERED UNDER THE MANDATE</p> <p>10. In reviewing the compilation of agreements in WT/CTE/W/160/Rev.1, the United States has not limited its consideration to MEAs that are already in force. In the U.S. view, the important factor is whether there is a specific trade obligation that warrants analysis, rather than whether the MEA in question is in force. Further, some of the MEAs that are not yet in force could enter into force during the course of these negotiations. The United States also believes that the existence of the compilation in WT/CTE/W/160/Rev.1 makes it unnecessary to debate in the abstract the meaning of such terms as "MEA", "obligation", "trade", etc. The sense of delegations regarding these terms will come to the surface through a concrete review of the examples they identify in the document."</p> <p>"VI. THE WAY FORWARD</p> <p>14. The United States believes that the CTE in Special Session is now well positioned to proceed under sub-paragraph 31(i) in a more concrete, analytical manner. This phase in the work should begin to build a factual foundation that can subsequently permit the Committee to examine the relationship between these two distinct sets of international obligations. To further this effort, the United States suggests that:</p> <p>(1) Other delegations also identify examples of specific trade obligations in the agreements listed in WT/CTE/W/160/Rev.1;</p> <p>(2) the CTE in Special Session focus on those on which there appears to be a consensus that they are specific trade obligations without precluding discussion on other provisions raised by delegations; and</p>

Proposal	Position
	(3) on this basis, the CTE in Special Session could invite individual delegations to provide information on their experiences with respect to negotiation and implementation of these specific trade obligations in light of WTO rules."

III. MULTILATERAL ENVIRONMENTAL AGREEMENTS

Proposal	Position
<p>Argentina TN/TE/W/2 paras.13, 17 (c)</p>	<p>"13. In addition to categorizing specific trade obligations, Members will have to agree upon the kind of agreements to be covered by the expression '<i>multilateral environmental agreements</i>'. We are of the opinion that such agreements should meet the following guidelines:</p> <ul style="list-style-type: none"> • <i>in force</i>: the review should be restricted to agreements which are currently in force. Failure to do so would impair the Doha mandate, given that the negotiations cover only "<i>specific trade obligations</i>". <u>No international obligation may be based on an agreement which is not in force</u>; • <i>multilateral</i>: the agreement should have been negotiated by more than two parties and under the aegis of the United Nations, its specialized agencies or the United Nations Environment Programme (UNEP), and have attained a certain degree of universality; • <i>open</i>: countries which did not participate in the negotiations should subsequently be able to accede." <p>"VII. SUMMARY</p> <p>17. ... (c) The expression "multilateral environmental agreements" (MEAs) should cover only agreements which are currently in force, have been negotiated and signed under the aegis of the United Nations, its specialized agencies or the United Nations Environment Programme (UNEP), have attained a certain degree of universality and are open."</p>
<p>Canada TN/TE/W/22 paras. 2-3</p>	<p>"2. Some Members proposed that the initial discussion should focus on STOs in six MEAs: the <i>Convention on International Trade in Endangered Species of Wild Fauna and Flora</i> (CITES), <i>Montreal Protocol on Substances that Deplete the Ozone Layer</i> (Montreal Protocol); the <i>Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal</i> (Basel Convention), the <i>Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade</i> (PIC), the <i>Cartagena Protocol on Biosafety</i> (Biosafety Protocol), and the <i>Stockholm Convention on Persistent Organic Pollutants</i> (POPs).</p> <p>3. ... Although the PIC and POPs Conventions and the Biosafety Protocol are not yet in force, each of them has a significant number of signatories, 73, 151 and 100 respectively (WT/CTE/W/160/Rev.1), indicating broad participation by the global community in the negotiations of the MEA. Hence, it is appropriate that these should be included in our analysis at this time."</p>
<p>Chinese Taipei TN/TE/W/11 para. 8</p>	<p>"8. '<i>[M]ultilateral environmental agreements (MEAs)</i>': The points made by the EU in section III of its submission⁸ in this regard are appropriate. However, currently there could be WTO Members which are not able to participate the MEAs.</p>

⁸ See page 2 of TN/TE/W/1.

Proposal	Position
	<p>If only those MEAs open for "all" WTO Members are MEAs mentioned here, there could be a large proportion of MEAs not being able to acquire such status of MEAs. With this respect, we submit that all MEAS open for formal participation of any non-party to the MEAs should all be considered as MEAs and within the scope of our negotiations."</p>
<p>European Communities TN/TE/W/1 paras. 6-8</p>	<p>"6. The EU considers that an MEA is a legally binding instrument between at least three parties, the main aim of which is to protect the environment and which is open to all countries concerned from the moment negotiations begin. In the context of the WTO, an MEA should also be relevant to the aims set out in sub-paragraphs (b) or (g) and the headnote of GATT Article XX. To avoid lacunae, relevant regional agreements, such as fisheries organizations, should also be covered, provided that countries concerned outside the region are not prevented from participating.</p> <p>7. It should be noted that the WTO would exceed its competence if it were to aim to define an MEA in general. Therefore, the only purpose of seeking within the WTO an agreed definition of an MEA is subsequently to clarify the circumstances under which specific trade obligations set out in an MEA should be given explicit recognition under WTO rules. In this context, the elements mentioned below are in our view of particular relevance:</p> <ul style="list-style-type: none"> (a) The agreement should have been negotiated under the aegis of the UN or one of its agencies or programmes, such as UNEP, or under procedures for negotiation open for participation of all WTO Members; (b) the agreement should be open for accession by any WTO Members on terms which are equitable in relation to those which apply to original Members; (c) if the agreement is regional in nature, the elements above should apply to all countries in the region, i.e. openness in negotiation and accession. Moreover, the agreement should also be "open" to any countries outside the region whose interests may be affected by the agreement. <p>8. The EU believes WTO Members could usefully solicit input on this specific issue from UNEP and MEA secretariats."</p>
<p>Hong Kong, China TN/TE/W/24 para. 9</p>	<p>"9. In deliberating the sequence of examination of MEAs and the STOs therein, Members may wish to make reference to aspects like the status of implementation, membership and scope of application, etc. We note that the US paper has listed STOs in the six MEAs identified. Of the six MEAs identified, we note that only three have entered into force, i.e. the CITES, Montreal Protocol and Basel Convention. On membership of these MEAs, Members may wish to note that according to the Secretariat Matrix, there are at present 154 parties to the CITES and 10 WTO Members are not parties. The corresponding numbers for the Montreal Protocol and Basel Convention are 175/3 and 146/22. On products affected by these MEAs, Members may agree that the products in question are relatively easier to identify cross borders, e.g. endangered species in the CITES appendices, controlled ozone depleting substances under the Montreal Protocol, and hazardous wastes under the Basel Convention. Given the longer time of existence of these MEAs, Members should have more experience on the implementation of the STOs therein, such as import and export bans, restrictions, notifications and licensing, etc...."</p>

Proposal	Position
<p>India TN/TE/W/23 paras. 4-6</p>	<p>"II. TYPES OF MULTILATERAL ENVIRONMENTAL AGREEMENTS</p> <p>4. The debate on what constitutes an MEA is not new, but it acquires a particular meaning in light of the Doha Mandate. India is of the view that the criteria for considering an environmental agreement as an MEA should have the following elements:</p> <p>(i) It should have been negotiated under the aegis of the United Nations or specialized agencies like UNEP;</p> <p>(ii) its procedures should stipulate that participation in the negotiations is open to all countries;</p> <p>(iii) there must have been effective participation in the negotiations by countries belonging to different geographical regions and by countries at different stages of economic and social development; and</p> <p>(iv) the Agreement should provide for procedures for accession of countries which are not its original members and on terms that are equitable in relation to those of its original participants.</p> <p>5. India believes that the term "MEAs" contained in paragraph 31(i) of the Doha Mandate must necessarily mean an MEA that has entered into force.</p> <p>6. Japan's qualification of an MEA as one that "<i>...reflects the interests of major Parties concerned, such as Parties with substantial trade interests, actual and potential major producers and consumers of materials concerned</i>"⁹ is perhaps more appropriate for a plurilateral agreement since it introduces a distinction between WTO Members by dividing them into formal categories – "major Parties" and "others". This qualification, in our view, is not relevant in the present context."</p>
<p>Japan TN/TE/W/10 para. 10</p>	<p>"10. It may be difficult to develop a definition of an "MEA". However, we need to clarify to what extent the term of "MEA" covers, in order to identify the scope of "specific trade obligations", which is being negotiated as mandate.¹⁰ In this regard, Japan believes that the following elements are appropriate criteria for such a definition, which were submitted as part of Japan's proposal in 1996 and are now modified as then discussed.</p> <p>(i) An MEA is open to any country sharing the environmental objective of the agreement.</p> <p>(ii) An MEA, developed and agreed, taking into account works including those</p>

⁹ See Submission by Japan, TN/TE/W/10, 3 October 2002, paragraph 10.

¹⁰ In terms of definition of an MEA, the following elements are indicated.

- (1) EC proposal (TN/TE/W/1)
 - (i) Environmental objectives
 - (ii) Open to all Members, legally binding documents
 - (iii) At least 3 Parties are participating including regional agreements.
- (2) Argentina proposal (TN/TE/W/2)
 - (i) in force,
 - (ii) more than 3 countries, under UN or UNEP,
 - (iii) open to all Members.

Proposal	Position
	<p>under the aegis of the United Nations or its specialized agencies and with the participation of a substantial number of the countries, reflects the interests of major Parties concerned, such as Parties with substantial trade interests, actual and potential major producers and consumers of materials concerned.</p> <p>Other than MEAs in force, for practical reasons it would be necessary to include in the discussion MEAs which have already been signed and adopted in due course but yet entered into force."</p>
<p>United States TN/TE/W/20 paras. 10-11</p>	<p>"10. In reviewing the compilation of agreements in WT/CTE/W/160/Rev.1, the United States has not limited its consideration to MEAs that are already in force. In the U.S. view, the important factor is whether there is a specific trade obligation that warrants analysis, rather than whether the MEA in question is in force. Further, some of the MEAs that are not yet in force could enter into force during the course of these negotiations. The United States also believes that the existence of the compilation in WT/CTE/W/160/Rev.1 makes it unnecessary to debate in the abstract the meaning of such terms as "MEA", "obligation", "trade", etc. The sense of delegations regarding these terms will come to the surface through a concrete review of the examples they identify in the document.</p> <p>11. As noted by the United States in the October 2002 meeting of the CTE in Special Session, there appear to be specific trade obligations set out in six MEAs listed in WT/CTE/160/Rev.1. These are: CITES, the Montreal Protocol, the Basel Convention, the Rotterdam (PIC) Convention, the Stockholm (POPs) Convention and the Cartagena (Biosafety) Protocol. (TN/TE/R/3, paragraph 30.)"</p>

IV. SPECIFIC TRADE OBLIGATIONS

Proposal	Position
<p>Argentina TN/TE/W/2 paras. 6-7</p>	<p>"6. The reference to <i>"specific trade obligations"</i> covers the provisions of multilateral environmental agreements which entail an "obligation". All non-mandatory trade measures, non-trade obligations and non-specific trade obligations in an MEA are therefore excluded. The meaning of the expression <i>"specific trade obligations"</i> should be borne in mind when determining which such obligations in the MEA should be considered.</p> <p>7. In accordance with paragraph 31(i) of the Doha Declaration, it is a question of the provisions of multilateral environmental agreements that contain <i>"specific trade obligations"</i>, which should be understood as follows:</p> <ul style="list-style-type: none"> - <i>"obligation"</i> means a provision which prescribes "the enforceability of an act or omission imposed by a rule of law"¹¹; - <i>"trade"</i>, that is to say, such action is related to an import or export operation; - <i>"specific"</i>, that is to say, the obligation has a singular feature distinguishing it from the general category. This requirement means that only obligations which have been explicitly identified as mandatory within the framework of an MEA may be included in this category. It should be noted that an analysis of the different MEAs revealed that some establish a particular outcome as mandatory (e.g., protection of the ozone layer), whilst allowing countries the possibility of employing different measures to achieve this objective. In that respect, the action taken with a view to achieving such an outcome is not legally covered by the Doha mandate given that: <ul style="list-style-type: none"> • The obligation does not relate to a particular type of behaviour to be adhered to by a country, rather to a result which must be achieved. That is to say, the MEA does not require countries to implement a particular measure, rather to achieve an outcome, with the result that countries are <u>entitled</u> to achieve this objective using different measures. • The obligation in this case <u>is not specific</u> since the only thing explicitly identified by the MEA is a particular outcome, the measures used to achieve it being left to the countries' discretion."
<p>Australia TN/TE/W/7 paras. 5-6</p>	<p>"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.</p>

¹¹ Diez de Velázco, Manuel, "Instituciones del Derecho Internacional Público", (Tecnos, 1991), page 667.

Proposal	Position
	<p>6. Bearing in mind the important distinction between these two terms, an efficient way to proceed would be examine the range of MEA trade measures summarized in the document prepared by the CTE Secretariat, <i>'Matrix of Trade Measures Pursuant to MEAs'</i> (WT/CTE/W/160/Rev.1) in order to identify which of these measures are "specific trade obligations".¹²</p>
<p>Canada TN/TE/W/22 paras. 5-17</p>	<p>"II. ANALYSIS OF SOME OF THE FACTORS RELEVANT TO THE CONCEPT OF SPECIFIC TRADE OBLIGATION</p> <p>5. In undertaking our examination of specific provisions of each of these MEAs, based on the document WT/CTE/W/160/Rev.1, we must take into account that this document does not reproduce all provisions in each MEA. It may be necessary to examine a specific provision in the context of other provisions of the MEA and its objectives. A Party to an MEA expects other Parties to that Agreement to respect all of their MEA obligations in the same way that WTO Members expect other Members to respect all of their WTO obligations.</p> <p>6. An examination of trade related provisions in these six MEAs [See paragraph 2 of the proposal] reveals that an obligation may be contained in one specific article or a combination of several articles that taken together could constitute a specific trade obligation. Some of these provisions provide further information on how and/or when the trade-related measure should be implemented. For example, Articles 4.1 and 4.2 of the Montreal Protocol each deal respectively with the import and export of substances in Annex A. However, the process for listing of substances in Annexes is governed by Articles 2 & 6. We note that in its very useful submission TN/TE/W/13, the Republic of Korea classifies Articles 5, 6, 7, 8, 10.4, 10.9, 11.2, 12.1 and 13.2 together as precise and mandatory PIC procedures. Articles 5, 6, 7 & 8 of the PIC Convention are provisions dealing with the notification of national regulatory actions and mechanisms for additions to the annexes. These would appear not to be directly related to trade. Should the full range of provisions that support or contribute to the trade-specific articles be considered to be part and parcel of the STO?</p> <p>7. Members have raised the question of whether decisions of the Parties should be included in our discussions of STOs set out in MEAs. The question arises when MEAs use decisions to further specify when and/or how a given provision referencing a trade-related measure is to be used. Whether decisions by the Parties at Conferences of the Parties, or through some other agreed procedure, are obligations within the definition of an STO as that term is used in the Doha Declaration, or are to be used in the interpretation of these obligations, requires a careful examination of the specific MEA. There would appear to be no legitimate reasons for excluding them <i>a priori</i>.</p> <p>8. Members have also raised the issue of whether amendments to an MEA should be included in our examination. The Montreal Protocol is an example of a protocol that has been amended four times: London Amendment in 1990,</p>

¹² The Matrix summarizes trade-related measures in fourteen multilateral instruments.

Proposal	Position
	<p>Copenhagen Amendment in 1992, Montreal Amendment in 1997 and the Beijing Amendment in 1999. In some cases, these amendments have added new substances or, altered or added obligations, which are trade related. There would appear to be little justification for not including amendments to MEAs in the definition of "set out in MEAs" in para. 31(i) for those WTO Members who are also Parties to the amendments and if the amendments include measures that are STOs.</p> <p>9. Precision and clarity in provisions simplify the task of identification of an STO. For example, Article 3 of the POPs Convention provides for a Party to ban the import or export of the controlled substances or wastes subject to certain conditions. Although no details are provided on the procedures to be utilized by a Party to put these bans into effect, they clearly set forth the result (to eliminate the import or export) to be achieved while the Party still has to determine which and if "legal or administrative measures are necessary". In Article 3.2 (b), the POPs Convention requires a Party to take measures to restrict the export of certain chemicals "taking into account any relevant provisions in existing international prior informed consent instruments". While there are no details, the language is fairly precise in nature. Can this particular aspect of the obligation in Article 3.2 be considered to be a specific obligation?</p> <p>10. It is perhaps easier to identify a provision as an STO if it affects traditional areas of trade law i.e. import and export bans and restrictions on trade (Article 4.1 Montreal Protocol, Article 3 POPs Convention) but an STO may also include provisions that affect trade such as notifications, technical regulations, packaging and labelling requirements all of which are subject to WTO rules (e.g. Article 4.7 (b) Basel Convention; PIC). In all six MEAs, while the trade effect can be similar, that is to ban, restrict or condition trade, there is diversity in the approach taken to achieve these similar ends in the MEAs. This diversity should be encouraged, as a one-size-fits-all approach to trade-related measures is unlikely to effectively address all environmental problems. For example, the PIC Convention and the Basel Convention both include prior informed consent procedures but the procedures and details of the obligations vary.</p> <p>11. There are other complexities in trying to scope out the key issues when looking at the concept of STO. In some instances, an STO does not become an obligation of one Party until another Party has asserted a right or privilege (Article 4.1 (a), (b) & (c) of the Basel Convention). Should the right or privilege be captured by the concept of the STOs when its exercise results in a mandatory trade obligation?</p> <p>12. Trade related provisions in MEAs may also include processes with a discretionary element which further complicates the analysis of STOs. For example, Article 4.2 (d) of the Basel Convention requires each Party to take the appropriate measures to "ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement". It requires Parties to put in place technical regulations ("measures") to achieve this objective. It is</p>

Proposal	Position
	<p>mandatory and a transboundary movement should qualify as international trade. However, the standard of "minimum consistent with" may be subject to various interpretations and a Party will have some discretion in its application although this discretion is limited by the precision of the phrase "environmentally sound management" which is defined under the Convention and further delineated by technical guidelines for specific waste streams.</p> <p>13. Similarly, Article 4.2 (e) of the Basel Convention which requires Parties to take appropriate measures to not allow the export of hazardous wastes to a country "if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner, according to criteria to be decided by the Parties at their first meeting". Some discretion is left to the Party in the application of the provision but it would have to be consistent with criteria to be developed by the Parties and technical guidelines.</p> <p>14. Some MEAs provide that the convention does not prevent a Party from imposing additional requirements (e.g. Basel Article 4.11 and PIC Article 15(4)). These provisions are not trade specific nor are they mandatory. Some MEAs provide that any additional requirements are to be consistent with international law which would include international trade rules.</p> <p>15. In some cases, MEAs include preambular language and/or general principles (e.g. Biosafety Protocol, PIC Convention) that refer to the international trade regime. Members should take into account the potential legal implications of such references in examining the relationship between WTO rules and specific trade obligations set out in MEAs.</p> <p>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.</p> <p>III. CONCLUSION</p> <p>17. In defining what is an STO set out in an MEA, there are a number of factors to be considered. A complete analysis may require an examination of a single provision in an MEA or a combination of provisions and may also include amendments or decisions of the Parties depending on the specific circumstances of each MEA. The more explicit the language in the provision(s) as it relates to trade, the easier the task of identification of an STO. Some MEAs include trade related measures to meet environmental objectives and an understanding of both is required. A core concept for distinguishing amongst trade-related measures appears to be the level of "discretion" left to a Party in the choice of a range of measures, and the implementation and the design of a measure. Members should consider whether provisions in MEAs which permit considerable discretion should have the same relationship to WTO rules as those with little or no discretion."</p>

Proposal	Position
<p>Chinese Taipei TN/TE/W/11 para. 7</p>	<p>"7. "[S]pecific trade obligations" should include those trade measures which are required, expected or legally binding pursuant to the MEAs and their associated legal instruments, including annexes, amendments, decisions, resolutions, and recommendations."</p>
<p>European Communities TN/TE/W/1 paras. 21-28</p>	<p>"21. Existing MEAs have a variety of objectives, for example, protection of a particular species (flora, fauna...), protection of ecosystems and human health from harmful substances that could, for instance, bioaccumulate in the food chain (hazardous waste, dangerous chemicals, pesticides...) or protection of the "global commons" (ozone layer, biodiversity, global climate...).</p> <p>22. Trade measures might not always represent the best available option to address a global environmental problem. However, they represent undoubtedly one mean to reach the objective(s) of MEAs, either self-standing or combined with other types of measures, and in some cases have been key to the success of the MEA. For instance, the trade obligations contained in the Montreal Protocol on Substances that deplete the Ozone Layer have been universally recognized as being instrumental to the effective and early implementation of the Protocol.</p> <p>23. The Basel Convention on the Transboundary Movements of Hazardous Wastes and their Disposal has also been key in the reduction and elimination of the dumping of hazardous waste on developing countries. This has enabled the Convention to shift its original scope towards the one of minimising the hazardous waste generation at the source (Ministerial declaration on environmentally sound management, December 1999). Another example is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) thanks to which none of the species protected by it have become extinct as a result of trade. As became clear during exchanges of views and dialogue between MEAs secretariats and the CTE, the use of trade measures should not necessarily be regarded in a static way. In fact, their application should rather be considered in a dynamic context insofar as the nature of trade measures in a specific MEA might evolve over time depending on the effectiveness of the initial trade measure and/or the need to take other considerations into account.</p> <p>24. It is also worth noting that some MEAs, such as CITES and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC), contain the terms "international trade" in the name of the Convention itself and trade measures are the key instrument to reach the ultimate objective of the MEA in question.</p> <p>25. Trade obligations under MEAs can cover a wide spectrum of possibilities, ranging from trade bans to notification procedures or labelling requirements. For the purpose of illustration and discussion, the EU has identified four categories of measures arising from trade obligations. These are listed below. Some examples of MEAs are given in order to provide a better illustration of "trade obligations".¹³ They do not cover trade measures applied exclusively <i>vis-à-vis</i> non-Parties.</p>

¹³ Some MEAs contains several categories of "trade obligations" and examples given are not exhaustive.

Proposal	Position
	<ul style="list-style-type: none"> • Trade measures explicitly provided for and mandatory under MEAs: this is the case in CITES where trade in some species threatened with extinction which are or may be affected by trade (listed in Appendix I) can only be permitted in exceptional cases, and trade in other species which may become extinct unless trade in these species is subject to strict regulation in order to avoid utilisation incompatible with their survival (listed in Appendix II) requires an export permit or a re-export certificate. This is also the case in the Stockholm Convention on Persistent Organic Pollutants (POPs) which will <i>inter alia</i> prohibit the import and export of certain POPs with some exceptions such as their environmentally sound disposal or a specific use/purpose, such as insecticides, on the request of some Parties. The same applies to the Cartagena Protocol on Biosafety as regards obligatory advanced informed agreement procedure for the first shipment of living modified organisms. • Trade measures not explicitly provided for nor mandatory under the MEA itself but consequential of the “<i>obligation de résultat</i>” of the MEA. This category covers cases where an MEA identifies a list of potential policies and measures that Parties could implement to meet their obligations. • Trade measures not identified in the MEA which has only an “<i>obligation de résultat</i>” but that Parties could decide to implement in order to comply with their obligations. In contrast to the previous category, the MEA does not list potential policies and measures so countries have greater scope as regards the exact nature of the measures they might decide to deploy to reach the objectives of the MEA. • Trade measures not required in the MEA but which Parties can decide to implement if the MEA contains a general provision stating that parties can adopt stringent measures in accordance with international law. This is the case with the Montreal Protocol (Article 2.11) and PIC (Article 15.4). In some cases, the MEA may explicitly recognize the right of Members to apply specific trade measures. <p>26. The EU considers that the above categories have to be analysed in detail in order to determine where any cut-off point (or points) between “specific” and “non-specific” trade obligations exist.</p> <p>27. The EU welcomes the work carried out by the CTE Secretariat in cooperation with several MEAs Secretariats and considers that document WT/CTE/W/160/Rev.1 “<i>Matrix on Trade Measures Pursuant to Selected MEAs</i>” provides valuable input for WTO Members’ reflection on this aspect of the issue.”</p> <p>"28. As a point of departure it is worth recalling the fact that any specific trade obligation in an MEA is negotiated and agreed by consensus in a multilateral context and that this should be, in principle, a guarantee against discriminatory and protectionist action. ..."</p>

Proposal	Position
<p data-bbox="213 320 368 450">India TN/TE/W/23 paras. 7-16</p>	<p data-bbox="416 320 962 349">"III. SPECIFIC TRADE OBLIGATIONS</p> <p data-bbox="416 367 1402 602">7. A number of delegations have given their views regarding what constitutes an STO. India believes that the term "<i>specific trade obligation</i>" has three elements that must be considered together i.e. the provision must be <i>specific</i> with a <i>trade</i> element and should be in the nature of an <i>obligation</i>. Thus, any provision in an MEA to qualify as an STO must be specific and mandatory in character, and so precise in its direction that there can be no doubt about the action or restraint that a party to the MEA must adopt.</p> <p data-bbox="416 620 1402 680">8. MEAs contain a number of trade related measures, which could be categorised as follows:</p> <p data-bbox="416 698 1235 734">(i) A trade measure that is both mandatory and specific in its entirety.</p> <p data-bbox="416 768 1402 864"><i>Article 4.1 (b), (c) of the Basel Convention according to which Parties are obliged to prohibit export of covered waste to Parties that have banned such imports or do not consent in writing to the specific import.</i></p> <p data-bbox="416 898 1402 965">(ii) only the outcome to be achieved is identified with a list of appropriate measures that Parties could implement to achieve the desired outcome.</p> <p data-bbox="416 999 1402 1131"><i>Article 6.2 of the Basel Convention requires the State of import to respond to the notifier in writing, by either consenting to the movement with or without conditions, or denying permission for the movement, or requesting additional information.</i></p> <p data-bbox="416 1164 1402 1229">(iii) the outcome to be achieved is identified, however the measures which could be implemented to achieve that outcome are not specified.</p> <p data-bbox="416 1263 1402 1462"><i>Article 16 of the Cartagena Protocol dealing with "Risk Management" states that the Parties shall, taking into account Article 8 (g) of the Convention, establish and maintain appropriate mechanisms, measures and strategies to regulate, manage and control risks identified in the risk assessment provisions of this Protocol associated with the use, handling and trans-boundary movement of living modified organisms.</i></p> <p data-bbox="416 1496 1402 1561">This provision fails to be specific as to the nature of the measure, although it contains an obligation.</p> <p data-bbox="416 1594 1402 1697">(iv) additional and more stringent measures to achieve the overall objectives of the MEA which are more in the form of a right granted to a Party as opposed to an obligation.</p> <p data-bbox="416 1731 1402 1863"><i>Article XIV.1 of CITES states that the provisions of the Convention shall in no way affect the right of Parties to adopt stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species (whether included in the Appendices or not) or the complete prohibition thereof</i></p> <p data-bbox="416 1897 1402 1962">9. India believes that the mandate given under paragraph 31(i) of Doha Declaration refers to only the first category of trade measures that are both</p>

Proposal	Position
	<p>mandatory and specific in their entirety. In India's view, non-specific provisions cannot qualify as an STO. Also if the provision set out in the MEA does not contain the crucial "<i>obligation</i>" element, such provisions too would fail to qualify.</p> <p>10. While identifying STOs several other aspects are also relevant in considering the specificity, as a number of trade obligations are not specific in their entirety, that is, they contain non-specific elements as well. For instance, Article 13.1 of the Rotterdam Convention states that: "<i>The Conference of the Parties shall encourage the World Customs Organization to assign specific Harmonized System customs codes to the individual chemicals or groups of chemicals listed in Annex III, as appropriate. Each Party shall require that, whenever a code has been assigned to such a chemical, the shipping document for that chemical bears the code when exported</i>". The second sentence of the provision could qualify as an STO but the first sentence would clearly not. Furthermore, several provisions have to be read with another provision containing a trade obligation to understand whether it is specific or not.</p> <p>IV. CONFERENCE OF THE PARTIES</p> <p>11. Another related and important issue is how to deal with the decisions, resolutions and recommendations of the Conference of Parties of MEAs. When approaching the question of whether STOs contained in COP decisions, resolutions, and recommendations should be treated as "STOs set out in MEAs", as per the Doha Mandate, one may seek guidance from general principles pertaining to MEAs and the role of COPs. This issue is attempted to be clarified hereunder.</p> <p>12. Typically, the Conference of the Parties (COP) exist to:</p> <ul style="list-style-type: none"> • Review implementation based on reports submitted by governments; • consider new information from governments, NGOs and individuals to make recommendations to the Parties on implementation; • make decisions necessary to promote effective implementation; • revise the treaty if necessary; <p>act as a forum for discussion on matters of importance.¹⁴</p> <p>13. A COP decision, resolution, and recommendation may differ in several manners. The question is whether the COP decisions, resolutions and recommendations which generally help in <i>directing the work of the COP</i>, i.e. are more of internal procedures or are substantive in nature? However, it seems that, exceptionally, COPs may have genuine law-making powers, such as the power to</p>

¹⁴ Global Environment Outlook (GEO)-2000, Chapter 3, "MEAs and Non-Binding Instruments".

Proposal	Position
	<p>amend the Annexes attached to an MEA, as under Article XV of CITES.¹⁵ In that case, an amendment must be adopted by a specified majority of Parties. The amendment so adopted, shall enter into force after the lapse of a specified time-frame and will be binding on all Parties, except for those Parties that made reservations. India believes that another relevant question is whether STOs contained in COP Decisions can be viewed separately from their incorporation in the MEA text, Annex or Protocol?</p> <p>14. Considering the above, it appears that the nature of each COP decision must be scrutinized prior to asserting that STOs contained in such decisions are to be treated as "set out in MEAs".</p> <p>V. BRIEF COMMENTS ON MEMBER SUBMISSIONS</p> <p>15. The submission of the European Communities contains four broad categories of "measures arising from trade obligations".¹⁶ As a general observation, it needs to be considered whether the usage of civil law terminology, such as '<i>obligation de résultat</i>', with its well-recognized connotations, is adequate to further the dialogue with a large number of WTO Members with common law or other legal regimes in place. Further clarification is required on the term '<i>obligation de résultat</i>' in common law.</p> <p>16. On a more specific level, other delegations submitted examples of MEA provisions that could qualify as "trade measures explicitly provided for and mandatory under MEAs". However, India believes that some of these provisions require closer scrutiny. For instance, Japan states that Articles 6 to 9 of the Basel Convention are "trade measures explicitly provided for and mandatory under MEAs".¹⁷ This is a rather broad statement, as may be illustrated by an analysis of Article 9, which comprises five subheadings. The <i>first</i>, defines "illegal traffic" and does not contain a trade obligation in itself. The <i>second</i>, requests the State of export to ensure that wastes are taken back, or "otherwise disposed of"; and the <i>third</i>, that these would be disposed of in an "environmentally sound manner"; the <i>fourth</i> that these would be disposed of "as soon as possible in an environmentally sound manner" – terms that all fail to meet the standard of "specificity". The <i>fifth</i>, requests the Parties to introduce "appropriate national/domestic legislation to prevent and punish illegal traffic" and encourages Parties to "co-operate with a view to achieving the objects of this Article". Article 9 is a clear illustration of provisions that, in our view, are not specific as to the means to achieve an outcome (not specific in its entirety), and hence would not qualify as an STO."</p>

¹⁵ See also Article XI.3(b) of the CITES.

¹⁶ Submission by the EC, TN/TE/W/1, 21 March 2002, paragraph 25. To know: (1) "Trade measures explicitly provided for and mandatory under MEAs"; (2) "Trade measures not explicitly provided for nor mandatory under the MEA itself but consequential of the "obligation de résultat" of the MEA"; (3) "Trade measures not identified in the MEA which has only an "obligation de résultat" but that Parties could decide to implement in order to comply with their obligations"; (4) "Trade measures not required in the MEA but which Parties can decide to implement if the MEA contains a general provision stating that parties can adopt stringent measures in accordance with international law".

¹⁷ Submission by Japan, TN/TE/W/10, 3 October 2002, paragraph 11.

Proposal	Position
<p>Japan TN/TE/W/10 para. 11</p>	<p>"11. ... Japan believes that the approach proposed by the EC, which categorizes various trade obligations according to their specificity, is helpful. Reviewing the definition of "trade obligations" is a premise of this process. Certain provisions, which do not explicitly stipulate trade obligations but only allow for Parties to take appropriate measures, do not fall within the scope of "trade obligations". In view of these criteria, Japan tried to classify trade measures stipulated in MEAs, reviewing a list of MEAs in document WT/CTE/W/160/Rev.1 prepared by the secretariat. The following preliminary results are only for illustrative purpose and this paper does not intend to prejudge the outcome of future work in this negotiation. Moreover, this categorization, needless to say, does not affect the legal status of each MEA, which is established through due process.</p> <ol style="list-style-type: none"> 1. Trade measures to be taken are explicitly provided for and mandatory under MEAs; <ul style="list-style-type: none"> - Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Articles 3 to 6 (regulation of trade in specimens of species included Appendix I-III). - Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Article 4.1 (Import prohibition of hazardous waste, notification, export prohibition), Articles 6 to 9, Article 13, etc. 2. "Obligation de résultat" is explicitly provided for in an MEA and a trade measure is identified as potential means taken by Parties to meet the obligation of that MEA; <ul style="list-style-type: none"> - Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Article 8.1 3. "Obligation de résultat" is specified in an MEA but a trade measure to be taken for the obligation is not identified in the MEA, while the MEA leaves Parties to decide measure to be taken to fulfil the obligation; and <ul style="list-style-type: none"> - Montreal Protocol on Substances that Deplete the Ozone Layer, Article 2A to 2H 4. Trade measures are not mentioned in MEAs but Parties can take trade measures in accordance with relevant decisions made under the MEA framework. <ul style="list-style-type: none"> - A number of regional fisheries agreements such as ICCAT, CCAMLR, and so forth."

Proposal	Position
<p>Korea TN/TE/W/13 paras. 4, 6-9, 11-14</p>	<p>"4. Section 2 [i.e. paras. 6-9] of [Korea's] submission presents Korea's view with regard to the criteria for identifying the STOs. The premise is that those trade obligations, which allow for Parties' discretion as to the acceptance of the obligations as well as the implementing measures, should not be regarded as STOs. ..."</p> <p>"6. In order to identify STOs, it is necessary first to have a clear idea on what STOs stand for. Korea believes that the term, "specific trade obligations," should be interpreted on the basis of its ordinary meaning. In this regard, this submission begins its analysis by quoting the Webster Dictionary's definitions of the three key words of "specific," "trade" and "obligation" to look for their ordinary meanings.</p> <p>7. First, the Webster Dictionary¹⁸ defines "obligation" as "something which a person is bound to or not to do as a result of an agreement or responsibility." An obligation binds Parties to abide by their agreement and renders them liable to coercion and punishment for neglecting it. An obligation does not allow for discretion on the part of the Parties. In this light, Korea believes that provisions of MEAs that allow for Parties' discretion as to whether to implement them do not constitute obligations. In other words, Korea is of the view that trade measures authorized, not required by MEA, cannot be considered as obligations envisaged in Paragraph 31(i).¹⁹</p> <p>8. Second, the Webster Dictionary defines "specific" as "clearly distinguished, stated or understood." "Specific" does not leave room for ambiguity, discretion or misunderstanding. To be "specific," therefore, a provision must be precise, definite and explicit in its totality. In this light, Korea believes that "specific" trade obligations are trade obligations that set forth not only a result which must be achieved (<i>obligation de résultat</i>) but also measures which must be used to achieve it (<i>obligation de comportement</i>). In other words, the obligations that lay out only the objective, while leaving the implementing measures to Parties' discretion, cannot be regarded as STOs. In this respect, Korea agrees to Argentina's interpretation of the "specific obligations."</p>

¹⁸ The New International Webster's Dictionary for the English Language, 1995 Edition, Trident Press International.

¹⁹ Reference is made to OECD's categorization of trade measures as contained in OECD study "Typology of trade measures based on environmental product standards and ppm standards" (COM/ENV/TD/93/89). The study classifies trade measures into four types: MEA-obligation measures, MEA-authorization measures, MEA-related measures and national law measures. According to the study, MEA-authorization measures are taken by individual countries based on an authorization in an MEA; MEA-related measures are measures which are discretionary or suggested in the MEA.

Proposal	Position
	<p>9. Lastly, the Webster Dictionary defines “trade” as “the business of distribution, selling and exchange.” Of course, “trade” in the context of Paragraph 31(i) does not refer to ordinary trade but international trade. For practical purposes, however, it would be convenient to presume that all of the measures listed in WT/CTE/W/160/Rev.1 would meet the trade-relatedness requirement without going into further analysis of the meaning of international trade.”</p> <p>"11. ... in some cases, the criteria established in [paras. 6-9] alone are not sufficient enough to provide guidance for identifying STOs. Those cases mostly involve COP decisions or resolutions, which suggests that identifying STOs is closely linked to the definition of MEAs.</p> <p>12. For example, Article 4.2.e and 8 of the Basel Convention contain the ambiguous words “environmentally sound way,” which is not operational by itself. However, a COP decision elaborates it. Further, Article 18 of the Cartagena Protocol on Biosafety provides for basic elements of “behavioral obligation,” while mandating the COP to elaborate more on those obligations.</p> <p>13. There are differing opinions on whether trade obligations contained in COP decisions should be treated as STOs. If Members follow a strict interpretation of “set out in MEAs,” trade obligations stipulated in COP decisions should not be regarded as STOs. Yet COP decisions are playing an increasingly important role since most MEAs lay out only a basic framework and concrete rights and obligations of the Parties take shape through COP decisions. In addition, there are cases where the MEAs concerned declare that COP decisions are their integral part.</p> <p>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 “<i>de facto</i>” obligations stipulated in the Accord are STOs. "</p>
<p>Norway TN/TE/W/25 paras. 3-6, 8</p>	<p>"3. A <i>specific trade obligation</i> needs to fulfil three criteria; it has to be specific, relate to trade and it must be an obligation:</p> <ul style="list-style-type: none"> • SPECIFICITY criterion; that it has to be clearly and precisely defined in the Agreement what measure to implement; i.e. measures are explicitly provided for and clearly identified in the Agreement. <p>For illustrative purpose we may refer to CITES, Article 3, according to which the export of any specimens of species included in Appendix 1 shall require the prior grant and presentation of an export permit, and the import of such specimens to require the prior grant and presentation of an import permit and either an export permit or a re-export certificate. Furthermore, the article spells out the conditions for granting said permits.</p>

Proposal	Position
	<p>4. In our view the specificity criterion is not limited to provisions identifying only one single measure. It also applies to provisions providing well-defined, alternative measures.</p> <p>An example might be the Rotterdam Convention, Article 10, which spells out that a response to the Secretariat concerning the future import of the chemical concerned shall consist of either a final decision ((i) to consent to import/ (ii) not to consent to import/ (iii) to consent to import only subject to specified conditions) or an interim response (which may include (i) to consent or not consent to imports/ (ii) statement that a final decision is under active consideration...).</p> <p>5. On the other hand, provisions which allow Parties to adopt stricter domestic measures, without identifying those measures, or measures adopted by Parties to fulfil an objective of the MEA, do not fulfil the specificity criterion and fall outside our mandate.</p> <ul style="list-style-type: none"> • TRADE criterion; the measure to adopt has to relate to imports and exports; i.e. it should cover those measures that we all recognize from a WTO context, i.e. packaging, labelling, notification, prior informed consent measures, etc. <p>Examples include the export prohibition of Article 4.1.b-c in the Basel Convention and the export and import licence requirements in CITES Articles III and IV.</p> <ul style="list-style-type: none"> • OBLIGATION criterion; clearly includes all mandatory provisions in the Agreements. It also covers those cases in which the Parties are required to implement at least one of several well-defined measures provided for in the Agreement while other provisions or requirements of the said Agreement may provide further guidance as to the criteria to be applied. <p>An example of the latter is the Cartagena Protocol Article 10 on decision procedure, which spells out the different possible options of the Party of import while making it clear (Article 10.1) that any decision taken, shall be in accordance with the risk assessment in Article 15.</p> <p>6. To sum up, an STO would have to be:</p> <ul style="list-style-type: none"> • Specific, meaning that measures to be implemented are explicitly provided for and clearly identified in the Agreement, including well-defined alternative measures; • Trade related, meaning measures we all recognize from a WTO context with respect to import and export; • Obligation, meaning all mandatory provisions or a combination of several articles that taken together could constitute a specific trade obligation."

Proposal	Position
	<p>"8. It is clear that it is not an easy task to draw an exact line between those provisions that contain obvious STOs and those that fall outside the mandate. We have a "grey area" of provisions that some Members believe are STOs while others disagree. Also, as pointed out by Peru, identifying STO by STO would imply individual interpretation only, and will not bring us any closer to fulfilling our mandate. This illustrates the importance of developing some sort of a definition rather than going through the various trade measures one after the other and decide whether they can be considered STOs."</p>
<p>Switzerland TN/TE/W/4 paras. 3-4</p>	<p>"3. Trade obligations under MEAs can cover a wide spectrum of possibilities, ranging from trade bans to notification procedures or labelling requirements. According to the European Communities (TN/TE/W/1), four categories of measures arise from trade obligations: (1) <i>mandatory trade measures explicitly provided for under MEAs</i>: this is the case of CITES, whereby trade in some species threatened with extinction which are or may be affected by trade can only be permitted in exceptional circumstances; this is also the case of the Cartagena Protocol on Biosafety as regards the obligatory advanced informed agreement procedure for the first shipment of living modified organisms; (2) <i>trade measures not explicitly provided for nor mandatory under the MEA, but consequential of the "obligation of result" of the MEA</i>: MEAs identify a list of potential measures for implementation; (3) <i>trade measures not identified in nor mandatory under the MEA, but consequential of the "obligation of result"</i>: the MEAs do not list measures; (4) <i>trade measures not identified in nor mandatory under the MEA, but which parties can decide to implement</i>: this is the case of the Montreal Protocol (Article 2.11).</p> <p>4. Switzerland feels that there is a need to define the different categories of specific trade obligations set out (or explicitly provided for) in MEAs. This requires a detailed analysis of these categories to establish the distinction between specific trade obligations and non-specific trade obligations. Moreover, Switzerland believes that it is also important to determine under what conditions specific trade obligations are automatically in conformity with WTO rules. This is particularly significant since the implementation of specific trade obligations may not be consistent with WTO rules."</p>
<p>Switzerland TN/TE/W/16 paras. 6-8</p>	<p>"6. Switzerland agrees with other delegations that the different categories of "specific trade obligations" set out in MEAs should be examined in order to be able to make a distinction between specific and non-specific trade obligations. Different categories were identified and discussed by several delegations in the framework of the latest debate. New categories also emerged with the latest contributions in particular by Japan, Korea, New Zealand and Chinese Taipei, which we found useful in preparing our submission. Having studied these analyses, Switzerland considers that the following two categories come under the heading of "specific trade obligations":</p>

Proposal	Position
	<p>1. Trade measures that are explicitly provided for and mandatory under MEAs</p> <p>This is the case of the CITES, for example, under which trade in species threatened with extinction which are or may be affected by trade is permitted only in exceptional circumstances. To illustrate our point, let us take plant X included in Appendix I to the CITES, which lists the species that are affected by trade and are subject to strict regulation. If Member A prohibits the import of plant X pursuant to Appendix I of the CITES, such a measure should be regarded as a specific trade obligation and would hence be covered by the solution negotiated among the WTO Members under paragraph 31(i).</p> <p>2. Other measures that are relevant and necessary to achieve an MEA objective</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> <p>7. Here we should underline that our analysis is similar to that of Japan. The first two categories identified by Japan in paragraph 11 of its submission are covered by our own categories. Our second category is slightly broader than Japan's, however, in that it encompasses MEAs which specify:</p> <ul style="list-style-type: none"> - An "<i>obligation de résultat</i>", and - the spheres in which a measure may be taken. Measures that may be adopted to achieve the "<i>obligation de résultat</i>" target are thus not explicitly named but implicitly derive from the sphere in which they should be taken (e.g. the fiscal sphere implies fiscal measures). <p>8. In our view, the coverage of these two categories by paragraph 31(i) appears to enjoy broad consensus in this Committee."</p>

Proposal	Position
<p>Switzerland TN/TE/W/21</p>	<p>"... Switzerland is of the view that two categories come under the heading of "specific trade obligations":</p> <p>(i) Trade measures that are explicitly provided for and mandatory under MEAs: This first category comprises all MEAs which explicitly mention a trade measure adopted in pursuit of a specific objective. This is the case of the CITES, for example, under which trade in species threatened with extinction – which are or could be affected by trade – is permitted only in exceptional circumstances. To illustrate our point, let us take plant X included in Appendix I to the CITES, which lists the species that are affected by trade and are subject to strict regulation. If Member A prohibits the import of plant X pursuant to Appendix I of the CITES, such a measure should be regarded as a specific trade obligation and would hence be covered by the solution negotiated among the WTO Members under paragraph 31(i). The other MEAs covered by this first category are the following: Stockholm Convention (POPs), Protocol on Biosafety (Cartagena), and the Basel Convention.</p> <p>(ii) Other measures that are appropriate and necessary to achieve an MEA objective: This second category 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. One example is the Kyoto Protocol which 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). This second category thus encompasses MEAs which specify:</p> <ul style="list-style-type: none"> - an obligation to achieve results, and - the spheres in which a measure may be taken. Measures that may be adopted in order to fulfil the obligation to achieve results are thus not explicitly named but implicitly derive from the sphere in which they should be taken (e.g. the fiscal sphere implies fiscal measures). <p>Other MEAs covered by this second category are the following: Rotterdam Convention (PIC), Montreal Protocol, ICCAT, CCAMLR, CBD and ITTO."</p>

Proposal	Position
<p>United States TN/TE/W/20 paras. 3, 7-9, 11-12</p>	<p>"II. LIMITS IN THE MANDATE</p> <p>3. In reviewing WT/CTE/W/160/Rev.1, the United States was mindful of the parameters set forth in the mandate in sub-paragraph 31(i). In particular, the United States focused on those provisions that could be categorized as "specific trade obligations."</p> <ul style="list-style-type: none"> • First, a specific trade obligation is one that <u>requires</u> an MEA party to take, or refrain from taking, a particular action. Such action must be mandatory and not simply permitted or allowed by a provision in an MEA. In other words, it cannot be discretionary. • Additionally, a specific trade obligation must be "set out" in an MEA. • For purposes of the immediate inquiry into examples of specific trade obligations, a further limit in the mandate is relevant. That is, the mandate only covers trade obligations among parties. Thus, it would include only those provisions in which parties to an MEA agree to bind themselves to trade obligations vis-à-vis each other. It would not include obligations requiring parties to take particular trade action in relation to non-parties." <p>"IV. CATEGORIES OF SPECIFIC TRADE OBLIGATIONS IN MEAS</p> <p>7. It is interesting to note that, even among specific trade obligations set out in MEAs, there appears to be a wide variety in terms of form and content. Variations include:</p> <ul style="list-style-type: none"> • Obligations, whether regulating exports or imports, that seek to: <ul style="list-style-type: none"> • Help conserve something in the party of export (e.g., specimens of endangered species); • help protect an importing party from something potentially harmful (e.g., hazardous wastes or hazardous chemicals); and • avoid harm to a global resource (e.g., the ozone layer); • for the sub-set of export obligations intended to protect an importing party from something harmful, those that require: <ul style="list-style-type: none"> • notifying an importing party of action taken by the exporting party; • notifying an importing party of a proposed export; • restricting export if an importing party does not want it; • restricting export if the exporting party believes it cannot be handled in an environmentally sound manner in an importing party; • restricting export altogether;

Proposal	Position
	<ul style="list-style-type: none"> • obligations that vary according to their role in an agreement, including: <ul style="list-style-type: none"> • core obligations that directly regulate trade (e.g., certain provisions of CITES); • obligations that support core ones by establishing substantive standards to control production and/or use of particular substances (e.g., certain provisions in the Montreal Protocol); • obligations that address ancillary aspects of import or export restrictions (e.g., designation of an import or export authority); • obligations that apply independently of any particular decision on the part of a party and obligations that depend upon a party's prior decision to restrict imports or exports; • obligations that specify procedures for modifying the scope of a trade obligation (e.g., for adding new species to the appendices of CITES or new chemicals to Annex III in the Rotterdam Convention). <p>8. Additionally, procedures differ among agreements on modifying the scope of a trade obligation. Some can require consensus of all parties, whereas others permit modifications upon the agreement of a certain number of parties less than consensus.</p> <p>9. While the preceding examples provide some picture of the variety of potential specific trade obligations in MEAs, they are by no means definitive in terms of categorizing kinds of obligations."</p> <p>"11. As noted by the United States in the October 2002 meeting of the CTE in Special Session, there appear to be specific trade obligations set out in six MEAs listed in WT/CTE/160/Rev.1. These are: CITES, the Montreal Protocol, the Basel Convention, the Rotterdam (PIC) Convention, the Stockholm (POPs) Convention and the Cartagena (Biosafety) Protocol. (TN/TE/R/3, paragraph 30).</p> <p>12. Attached to this paper is a matrix that identifies some examples of specific trade obligations in these six Agreements [See proposal]. Each example is a legally binding commitment to take a particular trade action. Each is "set out" in the relevant agreement. Each involves an obligation vis-à-vis another party to the MEA in question."</p>

V. RELATIONSHIP BETWEEN EXISTING WTO RULES AND SPECIFIC TRADE OBLIGATIONS

A. GENERAL

Proposal	Position
<p>Chinese Taipei TN/TE/W/11 paras. 1-2</p>	<p>"1. ... The government recognizes the importance of improving policy coherence between trade and environment. In our view, a consensus among WTO Members on the issue could more easily be reached step by step. The negotiation mandate set out by the ministers in paragraph 31(i) of the Doha Declaration clearly aims at a certain part of the overall relationship between WTO rules and trade measures taken for environmental purposes. The government believes that the mandate is an appropriate first step in the right direction.</p> <p>2. WTO rules and MEAs are bodies of public international law governing cross-border trade and environmental measures. Greater compatibility and fewer inconsistencies between the provisions of each body of law would doubtlessly enhance the mutual supportiveness of trade and environment. In order to pursue this goal, better coordination and cooperation between trade and environmental policymakers and negotiators at both the national and international levels will be crucial. The government acting on behalf of the separate customs territory of Taiwan, Penghu, Kinmen and Matsu suggests that in the future, when negotiating a new MEA, participating WTO Members who are in those negotiations shall ensure that the specific trade obligations provided for in that particular MEA will be WTO-consistent and they shall avoid possible conflicts."</p>
<p>European Communities TN/TE/W/1 paras. 9-17</p>	<p>"9. For many years, the EC has consistently taken the view that there is a need to address the relationship between MEAs and WTO rules so as to ensure that it is based on mutually supportive grounds. We consequently welcome the possibility given by the DDA to address the issue and move forward "with a view to enhancing the mutual supportiveness between trade and environment" in the realm of the WTO.</p> <p>10. Considering the growing interface between trade and environment, and, in particular between MEAs and WTO agreements, the EU believes that there is an urgent need for all WTO Members to arrive at a consensus about the way forward in this area through agreement on our shared interests and the desirable outcomes that can accrue from addressing the trade and environment relationship for the benefit of all. In particular, it is important that the relationship between WTO rules and trade measures pursuant to MEAs is the result of a political consensus arising out of a process of negotiation between WTO Members rather than simply being left to potential dispute settlement and the results it imposes.</p> <p>11. Like the vast majority of WTO Members, the EU believes that environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on international consensus, as stated in Principle 12 of the Rio Declaration on Environment and Development. Indeed, unilateral action by one country is unlikely to be effective in solving such issues. Moreover, the way in which trade measures in MEAs are negotiated and agreed, i.e. by consensus in a multilateral context, should be an effective guarantee against discriminatory action and their use for protectionist purposes.</p>

Proposal	Position
	<p>12. MEAs also represent a concrete implementation of the “common but differentiated responsibility” principle (Principle 7 of the Rio Declaration on Environment and Development). While trade measures may be needed in certain cases to achieve the environmental objective, co-operation provisions, and notably financial, technology transfer, technical assistance and capacity building are an at least equally important part of the MEA package, which can clearly be critical, notably for developing countries, for the effective implementation of the MEA</p> <p>13. The EU believes that these considerations provide sound reasons for WTO Members to strive towards and to reach a consensus on the relationship between WTO rules and trade measures taken pursuant to MEAs.</p> <p>14. The MEA issue is not a zero sum game: clarification of the relationship between WTO rules and MEAs would provide gains to all WTO Members and Contracting Parties to MEAs. It is clear that clarification would provide greater legal security for both MEAs and for the WTO, making both systems more effective and making sure that policy formulation within both systems was improved by the mere fact that neither would operate in isolation of the other. In this sense, the EU views the MEA/WTO relationship as an international governance issue, i.e. relating to the functioning of the global governance system and, in particular, to the necessary links between bodies of law dealing with international trade and environment which both form part of a global system.</p> <p>15. Clarifying the relationship would also create a clearer policy making environment for both trade policy makers and negotiators of MEAs alike and help prevent conflicts from happening in the first place because clearer parameters would mean that MEAs would take WTO rules into account and WTO law would give due weight to obligations arising under MEAs.</p> <p>16. Of particular importance, though, is the fact that clarification would render multilateralism de facto more attractive than unilateralism without changing WTO rules: a more explicit and clearer status than exists at present as regards specific trade obligations under MEAs could confirm the positive status of such measures under WTO. Such measures are more secure than similar measures taken unilaterally and without any form of international frame of reference, endorsement or debate.</p> <p>17. These factors should bode well for reaching a consensus among WTO Members on the relationship between WTO rules and trade measures taken pursuant to MEAs. Indeed, the EU considers that a positive stance among WTO Members and an open spirit focussed on the objectives of legal clarity and security could enable negotiators to clarify and interpret the WTO/MEA relationship in such a way as to further improve policy coherence between both bodies and ensure that they operate in a mutually supportive way."</p>
<p>Japan TN/TE/W/10 paras. 6-8</p>	<p>"6. When trade measures are taken, there may be the danger of these measures being used in a manner that would constitute a means of arbitrary, unjustifiable discrimination or a disguised restriction on international trade. In particular, unilateral trade measures which are not consistent with WTO rules, seriously undermine the multilateral trade system and they should be strictly avoided. Even if trade measures are taken in order to achieve the environmental objectives, these measures should be based on multilateral framework, as far as possible.</p> <p>7. From such a viewpoint, in order to ensure the mutual supportiveness of trade and</p>

Proposal	Position
	<p>environmental policies, it is essential for the international community to develop common understanding on the relationship between specific trade obligations set out in MEAs and WTO rules, though the negotiations are limited to the relationship among Parties to the MEAs in question.</p> <p>8. Up to now, many countries have been discussing the relationship between WTO rules and trade measures stipulated in MEAs. However, Members have not so much focused on the specificity of the trade measures and the applicability of existing WTO rules among the Parties to the same MEA."</p>
<p>Norway TN/TE/W/25 para. 9</p>	<p>"9. The mandate does not include negotiations of the relationship between MEAs and WTO rules as such. MEAs include a number of different measures, some of which could be defined as trade measures, or could otherwise have trade implications. Such measures are, however, not covered by the exercise we are engaged in under the Doha mandate. Consequently, these negotiations should not have any bearing on how a panel is to deal with a potential conflict arising from the applications of measures pursuant to an MEA with no STOs."</p>
<p>Switzerland TN/TE/W/4 paras. 1, 10-11</p>	<p>"1. ... Clarifying the relationship between WTO rules and MEAs would provide greater legal security, make both systems more efficient and enable the necessary links to be established between the legal provisions governing international trade and the environment. ..."</p> <p>"10. ... It is sometimes said that, although WTO Members have not been able to clarify this relationship, the Appellate Body has done so in its decision on the Shrimp-Turtle case. In any case, this decision clarified the order in which recourse could be made to the exceptions under Article XX of the GATT 1994: the Appellate Body began by assessing whether one of the exceptions in Article XX(a) to (j) of the GATT 1994 could be cited, and then went on to assess whether such a measure generally met the requirement in the introductory clause of Article XX of the GATT 1994, namely whether the measure was arbitrarily discriminatory or protectionist. Moreover, this decision clarified the term "exhaustible natural resources" in Article XX(g) of the GATT 1994 and held that, according to that Article, living natural resources, such as turtles, could be "exhaustible natural resources".</p> <p>11. In Switzerland's view, however, the Shrimp-Turtle decision did not deal with the question of the relationship between WTO rules and MEAs; it merely clarified the conditions to be met by national environmental trade measures. In fact, WTO Appellate Body decisions are unable to establish a definite clarification of the relationship between the WTO and MEAs. This Appellate Body decision merely determines the legal situation of a specific case in relation to two WTO Members, but does not constitute a general rule for the relationship between the WTO and MEAs. Thus, the Appellate Body may amend its case law in a new ruling by not necessarily following previous ones."</p>
<p>United States TN/TE/W/20 paras. 5-6</p>	<p>"5. In the U.S. view, the MEA/WTO relationship has worked and is working quite well. WTO rules have not interfered with trade obligations among MEA parties and have not had a stifling effect on MEA negotiators' willingness to include trade obligations in MEAs where deemed important for environmental purposes. For their part, MEA negotiators have generally sought to tailor their trade provisions to meet particular environmental purposes, particularly among parties, in a way that takes account of WTO implications.</p>

Proposal	Position
	<p>6. The United States has also stressed the critical importance of enhanced domestic coordination between MEA and WTO policy-makers and negotiators. Fundamentally, there is no substitute for this since it continues to be the most direct and effective means of maintaining compatibility between MEA trade obligations and WTO disciplines. In this regard, the United States believes that progress to enhance communication and cooperation between MEAs and the WTO under sub-paragraph 31(ii) could also offer dividends in promoting increased coordination between environment and trade officials at national levels."</p>

B. TERMS

Proposal	Position
<p>Argentina TN/TE/W/2 para. 5</p>	<p>"5. The reference to <i>"existing WTO rules"</i> encompasses all the provisions of agreements which are currently in force, known as <i>"covered agreements"</i>."</p>
<p>Chinese Taipei TN/TE/W/11 paras. 5-6</p>	<p>"5. <i>"[E]xisting"</i> should be understood as agreements that are currently in force. 6. <i>"WTO rules"</i> should encompass the Marrakesh Agreement Establishing the World Trade Organization and all of the agreements and associated legal instruments included in the Annexes thereto."</p>

C. PRINCIPLES

Proposal	Position
<p>Argentina TN/TE/W/2 paras. 8-12, 17 (b)</p>	<p>"8. Furthermore, criteria will have to be established for determining the kind of relationship between the <i>"specific trade obligations"</i> and the rules of the multilateral trading system.</p> <p>9. The problem of the relationship between different legal provisions which relate to a single issue is not unfamiliar to the WTO, the legal system of which is itself made up of several multilateral and plurilateral agreements all coming under one international treaty: the Marrakesh Agreement. Indeed, the Marrakesh Agreement comprises a series of independent agreements negotiated both in earlier rounds (<i>"Codes"</i>) and throughout the history of the GATT. The existence of provisions which often wholly or partially overlap rules in other agreements or which appear to constitute an implicit derogation can therefore be easily confirmed.</p> <p>10. The work of the Panels and the Appellate Body of the dispute settlement system has involved addressing situations in which several legal rules were applicable to a single issue. In that respect, the following <i>"criteria"</i> - which, moreover, stem from international legal practice - were adopted to identify the kind of relationship established between them:</p>

Proposal	Position
	<ul style="list-style-type: none"> • <i>complementarity</i>: meaning that concurrent obligations in two different, but complementary, international agreements, if not mutually exclusive, should be complied with at the same time.²⁰ Commonly referred to as the "principle of cumulation", this is what generally occurs at international level when a State is bound by several international treaties²¹; • <i>express derogation</i>: occurring when compliance with an obligation under one convention – compliance with which would be incompatible with a provision of another international agreement – is covered by an express exception in the latter²²; • <i>conflict</i>: occurring in situations where compliance with one obligation necessarily entails failure to comply with another, and the two cannot be reconciled.²³ <p>11. The above-mentioned criteria would allow a series of relationships between the "<i>specific trade obligations</i>" in the MEAs and the provisions of the Marrakesh Agreement to be identified. This, in turn, would enable us to assess the <u>need for, and form which should be taken by</u>, a possible regulatory solution within the purview of the WTO to achieve greater complementarity between environmental and free-trade objectives.</p> <p>12. We feel that this experience, which is characteristic of the WTO, constitutes a reference which could serve as guidance when reviewing the relationship between existing WTO rules and specific trade obligations in MEAs, given that both multilateral environmental agreements and the Marrakesh Agreement, in their capacity as international treaties, belong to the same international legal system."</p>

²⁰ The report "European Communities - Regime for the Importation, Sale and Distribution of Bananas" (WT/DS27/R/USA) of 22 May 1997 states that "...the obligations arising from the former (the Agreements listed in Annex 1A) and GATT 1994 can both be complied with at the same time without the need to renounce explicit rights or authorizations. In this latter case, there is no reason to assume that a Member is not capable of, or not required to, meet the obligations of both GATT 1994 and the relevant Annex 1A Agreement" (paragraph 7.160).

²¹ The Appellate Body Report "Canada - Certain Measures Concerning Periodicals" (WT/DS31/AB/R) of 30 June 1997 states that "The ordinary meaning of the texts of GATT 1994 and GATS as well as Article II:2 of the WTO Agreement, taken together, indicates that obligations under GATT 1994 and GATS can co-exist and that one does not override the other" (page 21).

²² The Appellate Body Report "European Communities - Regime for the Importation, Sale and Distribution of Bananas" (WT/DS27/AB/R) of 9 September 1997 states that "The Agreement on Agriculture contains several specific provisions dealing with the relationship between articles of the Agreement on Agriculture and the GATT 1994. For example, Article 5 of the Agreement on Agriculture allows Members to impose special safeguards measures that would otherwise be inconsistent with Article XIX of the GATT 1994 and with the Agreement on Safeguards..." (paragraph 157).

²³ The Appellate Body Report "Guatemala - Anti-Dumping Investigation Regarding Portland Cement from Mexico" (WT/DS60/AB/R) of 2 November 1998 states that "A special or additional provision should only be found to prevail over a provision of the DSU in a situation where adherence to the one provision will lead to a violation of the other provision, that is, in the case of a conflict between them. An interpreter must, therefore, identify an inconsistency or a difference between a provision of the DSU and a special or additional provision of a covered agreement before concluding that the latter prevails and that the provision of the DSU does not apply" (paragraph 65) (emphasis added).

Proposal	Position
	<p>"VII. SUMMARY</p> <p>17. ... (b) The criteria for identifying the relationship between the "specific trade obligations" in MEAs and "existing WTO rules" can be drawn from the experience of the Panels and the Appellate Body of the dispute settlement system."</p>
<p>Chinese Taipei TN/TE/W/11 paras. 9, 14</p>	<p>"9. The government acting on behalf of the separate customs territory of Taiwan, Penghu, Kinmen and Matsu considers that "the applicability of such existing WTO rules as among parties to the MEA in question" should be understood from the following perspectives:</p> <ul style="list-style-type: none"> • The government shares the same view expressed by certain Members²⁴ that a specific trade obligation (STO) provided for in an MEA should <u>not</u> be automatically presumed to be in conformity with WTO rules. With a view to upholding and safeguarding an open and non-discriminatory multilateral trading system, the legitimacy of a trade measure implemented pursuant to a particular MEA should be examined in light of the principles of necessity, proportionality, and transparency, and in light of whether it is based on sufficient scientific evidence and whether it conforms to the chapeau of GATT Article XX. ..." <p>"14. The government shares the same view expressed by certain Members that an STO provided for in an MEA should not automatically be presumed to be in conformity with WTO rules."</p>
<p>European Communities TN/TE/W/1 paras. 19, 29-30</p>	<p>"19. ... the EU considers that the relationship between WTO rules and MEAs in the context of a global governance system should be based on the following principles:</p> <ul style="list-style-type: none"> • The importance and necessity of MEAs: global environmental problems need a multilateral approach and solutions; accordingly unilateral action should be avoided as far as possible. • Multilateral environmental policy should be made within multilateral environmental fora, and not in the WTO, in accordance with each body's respective expertise and mandate. • When governments around the world develop positions for MEAs negotiations it is desirable that they give consideration to relevant WTO rules so as to ensure a mutually supportive relationship between both sets of rules. When the trade and environment interface raises novel trade-related questions, these could usefully be a subject of information exchange between the MEA secretariat and the relevant WTO Committees. • MEAs and WTO are equal bodies of international law. They should recognize each other with a view to being mutually supportive, in order to meet the common goal of sustainable development.

²⁴ Members who have expressed similar views include: Australia (paragraph 20, TN/TE/R/1), Chile (paragraph 24, TN/TE/R/1), Hong Kong, China, (paragraph 35, TN/TE/R/1), Pakistan (paragraph 43, TN/TE/R/1), the United States (paragraph 9, TN/TE/R/2) Brazil (paragraph 17, TN/TE/R/2), and Cuba (paragraph 56, TN/TE/R/2).

Proposal	Position
	<ul style="list-style-type: none"> • WTO rules should not be interpreted in “clinical isolation” from other bodies of international law and without considering other complementary bodies of international law, including MEAs.²⁵ <p>"29. Building on this and the principles set out above, the following points are worth bearing in mind as we consider the co-existence of WTO rules and MEAs:</p> <ul style="list-style-type: none"> • The conclusion of an MEA can have considerable relevance for the application of WTO rules in a particular dispute, even in relation to non-parties. The jurisprudence of the Appellate Body in environment-related cases strongly suggests that the conclusion of an MEA could well be a key element to determine the justification of certain measures under Article XX of the GATT. Indeed, the Appellate Body has made clear that good-faith efforts to negotiate such an agreement can, provided certain other conditions are met, be sufficient to justify that a trade measure meets the criteria of the “chapeau” to article XX. In addition, the Appellate Body also confirmed that GATT Article XX “<i>must be read by a Treaty interpreter in the light of contemporary concerns of the Community of nations about the protection and conservation of the environment</i>” and that, in general, WTO agreements should not be interpreted in clinical isolation from other parts of international law such as MEAs. It is clear that the existence of an MEA should be taken into consideration in applying WTO rules. • WTO rules and MEAs are two bodies of public international law with equal status. As a general principle, countries should aim at fulfilling in good faith both sets of rules and, in the event of adjudication, the first task would be to seek to interpret each set of rules in a manner which avoids potential conflicts. This should normally be sufficient to avoid such conflicts, particularly bearing in mind that – as stated above – general WTO provisions have been interpreted giving due weight to the conclusion of an MEA, even in cases where non-parties are involved. • In those rare cases in which interpretation is not sufficient to avoid a potential conflict, there is a need to determine – under rules of public international law – which is the applicable body of law. This is a complex issue which merits further discussion. At this stage, it may suffice to say that an important consideration could be not so much the application of the <i>lex specialis</i> test but which of the two sets of rules provides for a more specific regulation of the issue under dispute. In this connection, the discussion above on the extent to which an MEA contains a specific trade obligation may well be of particular relevance. • It would appear that, in those cases in which an MEA provides a specific trade obligation and this is the basis for the trade measures under dispute, parties should in the first instance seek to resolve their dispute within the MEA in question, notably under any dispute settlement mechanism provided.

²⁵ Appellate Body in *Reformulated Gasoline* case.

Proposal	Position
	<p>VIII. CONCLUSION</p> <p>30. The EU is seeking to further constructive dialogue among all WTO Members on the relationship between WTO rules and MEAs. The EU believes that such dialogue could usefully be orientated towards seeking consensus on the following points:</p> <ul style="list-style-type: none"> • WTO Members should agree on principles that should govern the relationship between WTO rules and MEAs; • the extent to which “specific trade obligations” should be considered to be automatically in conformity with WTO; • the fact that we are currently only considering the applicability of WTO rules as among Parties to MEAs does not mean that MEAs should not be an important element of interpretation of WTO law in disputes involving non-Parties."
<p>Japan TN/TE/W/10 paras. 3, 8-9, 12-15</p>	<p>"3. The purpose of this paper is to present an idea on "specific trade obligations". That is, those which are highly specified in MEAs should be deemed to be consistent with WTO rules, while other relevant measures specified in MEAs should be presumed to be WTO consistent on condition that those measures meet certain substantial requirements."</p> <p>"8. Up to now, many countries have been discussing the relationship between WTO rules and trade measures stipulated in MEAs. However, Members have not so much focused on the specificity of the trade measures and the applicability of existing WTO rules among the Parties to the same MEA.</p> <p>9. Some may argue that it would be possible to minimize the risk of overlooking the abuse of these trade measures, if such measures are defined sufficiently specifically. They may also point out the <i>lex posterior</i> principle, which is partly incorporated in Article 30 of the Vienna Conventions on the Law of Treaties, can be invoked so as to clarify the relation between MEAs and WTO rules. However, it would be difficult to sufficiently clarify such relations by applying this principle since MEAs and WTO rules do not necessarily address the same concerns. Therefore, it is useful and beneficial to all the members to develop some common understanding to clarify the relationship between MEAs and WTO rules."</p> <p>"12. Japan considers that, with regard to trade measures explicitly provided for and mandatory under MEAs ..., such trade obligations could be deemed as compatible with WTO rules among MEA Parties, since those obligations had been negotiated under the existence of WTO or GATT rules and implementation procedures for these trade measures had been agreed.</p> <p>13. If an MEA provides for “obligation de résultat” and indicates the relating trade measures in the MEA ..., Japan also considers that there is common understanding on the needs for the measures among MEA Parties.</p> <p>14. In the case referred to in paragraph 13, though the MEA Parties have common acknowledgement of needs and relevance of the trade measures, those measures could not be automatically deemed as compatible with WTO rules, since specificity of individual measure would not be so clear as category (1). Therefore, in this case,</p>

Proposal	Position
	<p>Japan considers that it would be rebuttably presumed to be consistent with WTO rules²⁶, if substantial requirements could be introduced such as indicated as below. For instance, in terms of GATT Article XX, following substantial requirements are appropriate²⁷,</p> <ol style="list-style-type: none"> 1. The trade measures, pursuant to an MEA to achieve its environmental objectives, are based on scientific reasons, the trade measures are reasonably related to the objectives. 2. The scope of trade measures has proportional range and degree in the pursuit of MEA objectives (Proportionality). <p>15. On the other hand, trade measures categorized in (3) & (4) of the paragraph 11 above are deemed to be outside the scope of this mandate. Each trade measure categorized in the latter two groups, if necessary, should be deliberated on a case-by-case basis. Furthermore, if a Party takes certain trade measures based on a MEA categorized in (3) or (4) of paragraph 11 above, such measures could be subject to consultation between affected Parties of the MEA in question through information exchange mechanism. Thus, a linkage between paragraph 31 (i) and (ii) could contribute to enhance the legal stability of the application of MEA-related trade measures."</p>
<p>Switzerland TN/TE/W/4 paras. 4, 7-8</p>	<p>"4. ... Moreover, Switzerland believes that it is also important to determine under what conditions specific trade obligations are automatically in conformity with WTO rules. This is particularly significant since the implementation of specific trade obligations may not be consistent with WTO rules."</p> <p>"7. In accordance with its submissions in documents WT/CTE/W/139 and WT/CTE/W/168, Switzerland maintains that the relationship between WTO rules and specific trade obligations in MEAs is governed by the approach based on the general principles of no hierarchy, mutual supportiveness and deference. In focusing on their own tasks and competencies, the multilateral trading system and environmental regime are mutually supportive. In order to maintain this mutual supportiveness, each should remain responsible and competent for the issues falling within its primary area of competence. WTO Members, when negotiating an MEA, therefore make sure that trade measures are not included in the MEA if they are unnecessary, arbitrary, protectionist or unjustifiably discriminatory. It is for this reason that determination of whether specific measures constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade should clearly fall within the competence of the WTO. Moreover, it is in the competence of the MEAs to determine the legitimacy of environmental measures and the necessity and proportionality of trade measures taken under an MEA, insofar as the MEA expressly provides for such verification.</p>

²⁶ Article 2.5 of the TBT Agreement refers to a method of rebuttable presumption.

²⁷ These requirements were previously referred to in Japan's proposal to the CTE in 1996. Japan reviewed the requirements in light of relevant jurisprudence thereafter. See paragraphs 137-142 of the Appellate Body Report of the US-Shrimp case (WT/DS58/AB/R).

Proposal	Position
	<p>8. The fact that the WTO and MEAs should each focus on their primary competence does not mean, however, that the WTO cannot adopt principles and rules that affect the environment. At the same time, MEAs are not, and should not be prevented from adopting rules and principles that affect trade. Rules and principles on international trade may indeed affect the environment; similarly, environmental regulations may have an impact on trade. Thus, if the international community indicates in an MEA that implementation of a trade measure is necessary in order to achieve an environmental goal, such a measure must also be deemed to be necessary within the WTO context (principle of the presumption of WTO conformity: the trade measures provided for in an MEA are presumed to be necessary to protect the environment). Moreover, on account of the principle of the presumption of WTO conformity, when a Member, pursuant to an MEA, prohibits the sale of a product for environmental reasons, this ban would be considered to be WTO compatible and the Member would no longer have to show that its measure was covered by the exceptions of Article XX(b) or (g) of the GATT 1994, namely that it is necessary to protect the environment and neither arbitrarily discriminatory nor protectionist. Therefore, while each regime should focus on its primary competence, it is not prevented from adopting measures which affect the other regime. In so doing, the concerns and interests of the other regime should be taken into account and deference paid to its competence."</p>
<p>Switzerland TN/TE/W/16 Section III</p>	<p>"III. FUNDAMENTAL PRINCIPLES WHICH, TO OUR MIND, GOVERN THE RELATIONSHIP BETWEEN EXISTING WTO RULES AND SPECIFIC TRADE OBLIGATIONS SET OUT IN MEAS</p> <p>(a) General principles of no hierarchy, mutual supportiveness and deference</p> <p>... Concerning the principles that govern the relationship between the WTO rules and specific trade obligations set out in MEAs, Switzerland, as stated in document TN/TE/W/4, endorses the approach based on the general principles of no hierarchy, mutual supportiveness and deference. In focusing on their own tasks and spheres of competence, the multilateral trading system and the environmental protection regime are mutually supportive. In this connection, we were extremely pleased to see that one of the outcomes of the Johannesburg World Summit on Sustainable Development (paragraph 92 of the Plan of Implementation) confirms, at the global level, our position/approach of promoting mutual supportiveness between the multilateral trading system and multilateral environmental agreements. Our approach is specifically geared towards this mutual supportiveness goal.</p> <p>(b) Principle of presumption of conformity with the WTO rules</p> <p>According to the principle of presumption of conformity with the WTO rules, trade-related measures in MEAs are assumed to be necessary for the protection of the environment. Switzerland thus endorses paragraph 12 of Japan's submission, stating that, as regards trade measures that are mandatory and explicitly provided for under MEAs, such trade obligations may be deemed to be consistent with the WTO rules among MEA parties. This principle obviously requires Members negotiating an MEA to make sure that the MEA does not include unnecessary, arbitrary, protectionist or unjustifiably discriminatory trade measures.</p>

Proposal	Position
	<p>(c) Reversal of the burden of proof</p> <p>Under the principle of presumption of conformity with the WTO rules, when a Member, pursuant to an MEA, prohibits the marketing of a product for environmental reasons, such a ban is considered to be WTO-consistent and the Member would no longer have to show that its measure was covered by the exceptions under Article XX(b) (<i>reversal of the burden of proof</i>)</p> <p>(d) "Objectionable" practical implementation</p> <p>Notwithstanding the above, it should be pointed out that the <i>practical implementation</i> of trade measures might still be challenged where a Member has used its discretion in a manner which infringes WTO obligations. Here the burden of proof would lie with the complaining party, however, and not with the Member having adopted the measure. This should answer the question from Chile. To illustrate the problem, let us start from the hypothesis that an MEA expressly prohibits the production and importation of substance S because of its harmful effects on the environment in general. In accordance with the presumption of WTO conformity, the import ban imposed by Member M would be regarded as WTO-consistent. Thus, a WTO Panel would not have to examine whether the import ban is necessary under Article XX(b) but should consider that the measure as such is covered by the exception under Article XX(b). Complainant P could still claim, however, that the manner in which Member M applies the ban is not consistent with WTO obligations, if the measure constitutes, for example, arbitrary or unjustifiable discrimination or a disguised restriction on international trade. This particular situation does not reflect a conflict between the WTO rules and an MEA but a traditional conflict between the WTO rules and a domestic measure. "</p>
<p>Switzerland TN/TE/W/21</p>	<p>"All the trade-related measures provided for in any of the MEAs referred to above [See proposal] are presumed to be necessary for the protection of the environment. Such mandatory trade obligations, as explicitly provided for in an MEA, may be deemed to be consistent with the WTO rules among the MEA parties. This principle obviously requires Members negotiating an MEA to make sure that the MEA does not include unnecessary, arbitrary, protectionist or unjustifiably discriminatory trade-related measures. It should be noted, however, that the <i>practical implementation</i> of trade-related measures might still be challenged where a Member has used its discretion in a manner out of keeping with its WTO obligations."</p>

VI. PARTY/NON-PARTY ISSUES

Proposal	Position
<p>Argentina TN/TE/W/2 paras. 14-16, 17 (d)</p>	<p>"14. The mandate under paragraph 31(i) establishes that the negotiations shall not prejudice the WTO rights of any Member that is not a party to an MEA. That is to say, the "intangibility" of the rights of WTO Members that are not a party to an MEA has been established by the Ministers regardless of the final outcome of the negotiations.</p> <p>15. Negotiating in such circumstances raises questions about the legal effects and situations which would result from a <u>decision to adopt rules as a response</u> to ensure compliance with "<i>specific trade obligations</i>" which are potentially inconsistent with WTO principles.</p> <p>Compliance with "<i>specific trade obligations</i>" which could come into conflict with WTO provisions or principles would involve diminishing the rights currently enjoyed by WTO Members which are also a party to an MEA. Two categories of WTO Members would therefore be established:</p> <p>Members which are a party to an MEA: their rights would be diminished to ensure compliance with specific trade obligations which are potentially inconsistent with the Marrakesh Agreement;</p> <p>Members which are not a party to an MEA: they would enjoy more extensive rights under the Marrakesh Agreement since they would not be affected by the outcome of the negotiations, as expressly stated in paragraph 31(i) of the Doha Declaration.</p> <p>16. Were this to be the final outcome, the legal situations and implications for WTO Members which are a party to an MEA would be as follows:</p> <p>(a) Some environmental agreements have been signed with a special safeguard clause which protects rights and obligations under other international agreements, including the Marrakesh Agreement. <u>Any modification of the WTO rights of Members which are a party to an MEA would therefore involve a radical change in the normative context in which the agreement was signed.</u> That is to say, it would alter the conditions in which a WTO Member consented to be bound by an MEA.</p> <p>(b) A change in the WTO rights of States which are a party to an MEA in order to comply with "<i>specific trade obligations</i>" which may prove contrary to the Marrakesh Agreement would involve modifying the scope of MEA obligations. In other words, an amendment of the Marrakesh Agreement would quite simply mean altering the <u>scope and extent</u> of the obligations in the MEA, with consequent effects on the parties thereto."</p> <p>"VII. SUMMARY</p> <p>17. ... (d) In the event of a normative solution being chosen to ensure compliance with the specific trade obligations in multilateral environmental agreements, the legal implications for Members party to the MEA should be taken into consideration since this would involve a radical change in the normative context in which the agreement was signed and a modification of the extent and scope of the specific trade obligations in the MEA."</p>

Proposal	Position
<p>Chinese Taipei TN/TE/W/11 paras. 9-12, 16</p>	<p>"9. The government acting on behalf of the separate customs territory of Taiwan, Penghu, Kinmen and Matsu considers that "the applicability of such existing WTO rules as among parties to the MEA in question" should be understood from the following perspectives: ...</p> <ul style="list-style-type: none"> • When there is a specific trade dispute arising between WTO Members/Parties to the MEA in question, the complaining Member <u>alone</u> shall have the right to bring the case to the dispute settlement mechanism under the WTO regime or the regime of the MEA in question, subject to the provisions of Article 23 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), which contemplate that disputes arising under WTO rules will be brought to the Dispute Settlement Body for resolution. However, if the trade dispute is between a WTO Member/Party and a WTO Member/Non-party to the MEA in question, the case shall <u>only</u> be settled according to WTO rules and procedures as stipulated in the DSU. <p>10. Because negotiations under the mandate are limited to the applicability of existing WTO rules as among WTO Members/Parties with respect to MEAs, it follows that such negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question. <i>The WTO rights</i> should be interpreted as encompassing substantive as well as procedural rights conferred upon every WTO Member by the existing WTO rules. Substantive rights include legitimate trade interests guaranteed to a WTO Member under any of the WTO agreements, while procedural rights include the right to resort to the WTO dispute settlement mechanism.</p> <p>11. Further, in our view, when a Member is not able to participate in the decision-making procedure of a particular MEA and if a trade dispute arises between a WTO Member/Non-party and a WTO Member/Party to such an MEA, a panel established according to the DSU shall, if applicable, give weight to the fact that the WTO Member/Non-party to the MEA in question was precluded from participation in the negotiations of such an MEA.</p> <p>12. In this context, it is important to recall that the ministers also stated in paragraph 32 of the Doha Declaration that "the negotiations carried out under paragraph 31(i) and (ii) 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, and will take into account the needs of developing and least-developed countries."</p> <p>"IV. SUMMARY</p> <p>... 16. If a trade dispute arises between a WTO Member/Party and a WTO Member/Non-party to an MEA, such dispute shall only be settled according to rules and procedures as stipulated in the DSU of the WTO Panels and the Appellate Body shall, if applicable, give weight to the fact that the WTO Member/Non-party to the MEA in question was precluded from participation in the negotiations of such an MEA."</p>

Proposal	Position
<p>European Communities TN/TE/W/1 paras. 28-29</p>	<p>"28. As a point of departure it is worth recalling the fact that any specific trade obligation in an MEA is negotiated and agreed by consensus in a multilateral context and that this should be, in principle, a guarantee against discriminatory and protectionist action. Challenges between Parties over specific trade obligations are, therefore, highly unlikely from both a political and legal point of view. Accordingly, if Parties have agreed specific trade obligations, they should have no reason or ground to challenge them afterwards. The EC is also of the view that, were such a case to arise, the Parties involved should make every effort to solve the issue through the MEA dispute settlement, as recommended by the CTE in its report to Singapore.²⁸ If such a course of action were not followed and a case were brought in the WTO without any effort to resolve the issue in the MEA's dispute settlement mechanism, or if the MEA in question did not have such a mechanism, the WTO panel should take due account of the MEA when addressing the case, as has been consistently confirmed by successive panels. It could be legitimately argued that the measures taken by a WTO Member to implement specific trade obligations should in such a case be recognized as legitimate by the WTO and yet their concrete implementation might still be challenged if a Member has used its discretion in a manner which infringes WTO obligations.</p> <p>29. Building on this and the principles set out above, the following points are worth bearing in mind as we consider the co-existence of WTO rules and MEAs:</p> <ul style="list-style-type: none"> • The conclusion of an MEA can have considerable relevance for the application of WTO rules in a particular dispute, even in relation to non-parties. The jurisprudence of the Appellate Body in environment-related cases strongly suggests that the conclusion of an MEA could well be a key element to determine the justification of certain measures under Article XX of the GATT. Indeed, the Appellate Body has made clear that good-faith efforts to negotiate such an agreement can, provided certain other conditions are met, be sufficient to justify that a trade measure meets the criteria of the "chapeau" to article XX. In addition, the Appellate Body also confirmed that GATT Article XX "<i>must be read by a Treaty interpreter in the light of contemporary concerns of the Community of nations about the protection and conservation of the environment</i>" and that, in general, WTO agreements should not be interpreted in clinical isolation from other parts of international law such as MEAs. It is clear that the existence of an MEA should be taken into consideration in applying WTO rules.

²⁸ Paragraph 178 : "While WTO members have the right to bring the dispute to the WTO dispute settlement mechanism, if a dispute arises between WTO members, Parties to an MEA, over the use of trade measures they are applying between themselves pursuant to the MEA, they should consider trying to resolve it through the dispute settlement mechanism available under the MEA".

Proposal	Position
	<ul style="list-style-type: none"> • WTO rules and MEAs are two bodies of public international law with equal status. As a general principle, countries should aim at fulfilling in good faith both sets of rules and, in the event of adjudication, the first task would be to seek to interpret each set of rules in a manner which avoids potential conflicts. This should normally be sufficient to avoid such conflicts, particularly bearing in mind that – as stated above – general WTO provisions have been interpreted giving due weight to the conclusion of an MEA, even in cases where non-parties are involved. • In those rare cases in which interpretation is not sufficient to avoid a potential conflict, there is a need to determine – under rules of public international law – which is the applicable body of law. This is a complex issue which merits further discussion. At this stage, it may suffice to say that an important consideration could be not so much the application of the <i>lex specialis</i> test but which of the two sets of rules provides for a more specific regulation of the issue under dispute. In this connection, the discussion above on the extent to which an MEA contains a specific trade obligation may well be of particular relevance. • It would appear that, in those cases in which an MEA provides a specific trade obligation and this is the basis for the trade measures under dispute, parties should in the first instance seek to resolve their dispute within the MEA in question, notably under any dispute settlement mechanism provided."
<p>Norway TN/TE/W/25 para. 7</p>	<p>"B. "AMONG PARTIES"</p> <p>7. Our mandate is limited to "among parties to the MEA in question". It is understood that when an agreement allows for reservations to certain provisions in the agreement, a Party having made such a reservation is to be treated as a non-party with respect to this provision."</p>
<p>Switzerland TN/TE/W/4 paras. 5-6</p>	<p>"5. As the European Communities recalled in its submission (TN/TE/W/1), any specific trade obligation in an MEA is negotiated and agreed by consensus in a multilateral context and challenges between Parties are, therefore, highly unlikely. Accordingly, if parties have agreed specific trade obligations, they should have no reason to challenge them afterwards. However, were such a case to arise, the Parties involved should endeavour to solve the issue through the MEA dispute settlement mechanism. The measures taken by a WTO Member to implement the specific trade obligations under an MEA should, in such a case, be recognized as legitimate by the WTO; and yet their concrete implementation might still be challenged if a Member has used its discretion in a manner which infringes WTO obligations.</p> <p>6. The notion of "among parties to the MEA" raises another issue: sometimes both parties to a dispute have acceded to an MEA, but one has not subscribed to all of the annexes or amendments, as is possible with the Montreal Protocol. Would this Member be considered a party to the MEA in question and, as such, affected by the applicability of existing WTO rules? Does the dispute qualify as "among parties to the MEA"? Or, is it, rather an MEA - non-MEA relationship? Switzerland believes that there is a particular need to clarify whether "among parties to the MEA" means that both parties which have acceded to an MEA must be parties to the MEA and</p>

Proposal	Position
	its annexes in exactly the same way or whether it is enough that they should be parties to a framework convention without taking the annexes into consideration. This would involve specifying whether or not the party to the MEA in question which has not subscribed to the specific annexes could be affected by the applicability of WTO rules in the same way as an MEA party which has subscribed to the annexes."
<p>United States TN/TE/W/20 para. 3</p>	<p>"II. LIMITS IN THE MANDATE</p> <p>3. ...For purposes of the immediate inquiry into examples of specific trade obligations, a further limit in the mandate is relevant. That is, the mandate only covers trade obligations among parties. Thus, it would include only those provisions in which parties to an MEA agree to bind themselves to trade obligations vis-à-vis each other. It would not include obligations requiring parties to take particular trade action in relation to non-parties."</p>

VII. OUTCOME OF THE NEGOTIATIONS

Proposal	Position
<p>Argentina TN/TE/W/2 paras. 16, 17 (d)</p>	<p>"16. Were this to be the final outcome [see paragraph 15], the legal situations and implications for WTO Members which are a party to an MEA would be as follows:</p> <p>(a) Some environmental agreements have been signed with a special safeguard clause which protects rights and obligations under other international agreements, including the Marrakesh Agreement. <u>Any modification of the WTO rights of Members which are a party to an MEA would therefore involve a radical change in the normative context in which the agreement was signed.</u> That is to say, it would alter the conditions in which a WTO Member consented to be bound by an MEA.</p> <p>(b) A change in the WTO rights of States which are a party to an MEA in order to comply with "<i>specific trade obligations</i>" which may prove contrary to the Marrakesh Agreement would involve modifying the scope of MEA obligations. In other words, an amendment of the Marrakesh Agreement would quite simply mean altering the <u>scope and extent</u> of the obligations in the MEA, with consequent effects on the parties thereto."</p> <p>"VII. SUMMARY</p> <p>17. ... (d) In the event of a normative solution being chosen to ensure compliance with the specific trade obligations in multilateral environmental agreements, the legal implications for Members party to the MEA should be taken into consideration since this would involve a radical change in the normative context in which the agreement was signed and a modification of the extent and scope of the specific trade obligations in the MEA."</p>
<p>Australia TN/TE/W/7 para. 12</p>	<p>"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."</p>
<p>Chinese Taipei TN/TE/W/11 paras. 9, 15</p>	<p>"9. The government acting on behalf of the separate customs territory of Taiwan, Penghu, Kinmen and Matsu considers that "the applicability of such existing WTO rules as among parties to the MEA in question" should be understood from the following perspectives: ...</p> <ul style="list-style-type: none"> • WTO Members could negotiate an interpretative decision or an understanding that explicitly set out conditions and principles for the WTO-consistency of certain trade obligations provided for MEAs. This decision or understanding could be used to examine the legitimacy of trade measures instituted to implement such MEA requirements. Furthermore, the decision or understanding could also provide meaningful guidance for WTO Members negotiating new MEAs. ..."

Proposal	Position
	<p>"IV. SUMMARY</p> <p>... 15. WTO Members could negotiate an interpretative decision or an understanding that sets out conditions and principles for the WTO-consistency of an STO provided for in an MEA. The principles of necessity, proportionality, and transparency - as well as a requirement of sufficient scientific evidence and conformity with the chapeau of GATT Article XX – should be incorporated into the interpretative decision or the understanding for examining the legitimacy of a trade measure instituted pursuant to an MEA."</p>
<p>Japan TN/TE/W/10 paras. 16-17</p>	<p>"16. With respect to the relationship between existing WTO rules and specific trade obligations set out in MEAs, the above-mentioned classification could be considered as a criterion to assess compatibility with the WTO Agreement. When we have to find a way out at the end of the negotiations, Japan could propose to adopt a binding interpretative understanding pursuant to Article 9.2 of Marrakesh Agreement Establishing the WTO on the relationship between existing WTO rules and specific trade obligations set out in MEAs among MEA Parties. It is true that there have been few disputes over trade measures between MEA Parties that are also Members of the WTO. However, we could suggest establishing such an interpretative understanding, because such indication would ensure the legal stability and enhance predictability on the compatibility between both jurisprudence.</p> <p>17. Even if “specific trade obligations” pursuant to MEAs are deemed as consistent with the WTO rules, each trade measure actually taken by a WTO Member is not automatically consistent with the WTO rules. If a certain interpretative understanding, as mentioned above, can be adopted, an issue to be examined in the dispute settlement would be presumably “whether the measure in question has been taken in pursuant to relevant provisions of MEAs or not”."</p>
<p>Norway TN/TE/W/25 paras. 10-12</p>	<p>"10. The mandate determines that the negotiations should not add nor diminish the rights and obligations of members under the existing WTO agreements.</p> <p>11. In our view, this would imply:</p> <ul style="list-style-type: none"> • That the negotiations cannot limit any Members’ right to take what is perceived as a breach of WTO rules to a panel – regardless of whether the measure is applied pursuant to or outside the scope of an MEA. • the negotiations should not have any bearing on measures taken pursuant to an MEA, on the grounds that the measure is not an STO. <p>12. What is the value added of these negotiations? We agree with Switzerland that this exercise should not be to analyze the consistency of MEAs with WTO rules. Given the limitations in the mandate, we would find it useful if the negotiations could reaffirm the mutual supportiveness between relevant WTO rules and STOs in MEAs, and that there is no hierarchy between them. Also, our aim should be to prevent that the conflicts between Parties to an MEA occur in the WTO. In addition the process would hopefully increase the awareness in the WTO of objectives, provisions and measures negotiated in MEAs and vice versa. This would contribute to national coherence throughout negotiations of both sets of agreements and reduce the potential of conflicts between them."</p>

Proposal	Position
<p>Switzerland TN/TE/W/4 paras. 9-16</p>	<p>"IV. OPTIONS FOR REGULATING THE RELATIONSHIP BETWEEN WTO RULES AND SPECIFIC TRADE OBLIGATIONS IN MEAs</p> <p>9. In accordance with the Note by the WTO Secretariat (TN/TE/S/1), several approaches were proposed prior to the Doha Ministerial Conference for clarifying the relationship between the rules and provisions of the WTO system and those of MEAs which were most likely to prove incompatible: (A) leave the issue to be settled by the dispute settlement mechanism; (B) amend Article XX of the GATT 1994 by introducing a reference to the environment; (C) adopt an interpretative decision. These three options, then, can provide appropriate means of clarifying the relationship between WTO rules and MEAs.</p> <p>A. DISPUTE SETTLEMENT MECHANISM</p> <p>10. The first proposed solution is to let this issue be settled in a specific case by a Panel or by the Appellate Body in a dispute settlement proceeding. It is sometimes said that, although WTO Members have not been able to clarify this relationship, the Appellate Body has done so in its decision on the Shrimp-Turtle case. In any case, this decision clarified the order in which recourse could be made to the exceptions under Article XX of the GATT 1994: the Appellate Body began by assessing whether one of the exceptions in Article XX(a) to (j) of the GATT 1994 could be cited, and then went on to assess whether such a measure generally met the requirement in the introductory clause of Article XX of the GATT 1994, namely whether the measure was arbitrarily discriminatory or protectionist. Moreover, this decision clarified the term "exhaustible natural resources" in Article XX(g) of the GATT 1994 and held that, according to that Article, living natural resources, such as turtles, could be "exhaustible natural resources".</p> <p>11. In Switzerland's view, however, the Shrimp-Turtle decision did not deal with the question of the relationship between WTO rules and MEAs; it merely clarified the conditions to be met by national environmental trade measures. In fact, WTO Appellate Body decisions are unable to establish a definite clarification of the relationship between the WTO and MEAs. This Appellate Body decision merely determines the legal situation of a specific case in relation to two WTO Members, but does not constitute a general rule for the relationship between the WTO and MEAs. Thus, the Appellate Body may amend its case law in a new ruling by not necessarily following previous ones.</p> <p>B. REFERENCE TO THE ENVIRONMENT IN ARTICLE XX</p> <p>12. The second solution proposed is the adoption of an environmental clause which would explicitly define the relationship between WTO rules and MEAs. Such a clause would enable the principles governing the coexistence of the two systems, namely the trade and environmental systems, to be defined. Introducing an environmental clause would mean reviewing Article XX of the GATT 1994, and more particularly, amending Article XX(b) and (g) of the GATT 1994, and inserting a new provision in that Article.</p> <p>13. Switzerland believes that a review of Article XX of the GATT 1994 would reopen the debate on that Article at the risk of having to reconsider the whole Article; and while such an approach does not seem to meet with the favour of WTO Members at this stage, Switzerland does not oppose it.</p>

Proposal	Position
	<p>C. INTERPRETATIVE DECISION</p> <p>14. Adoption of an interpretative decision by WTO Members to settle the issue of the relationship between WTO rules and specific trade obligations in MEAs is the third proposed solution. An interpretative decision would be able to indicate clearly that the relationship between the trade and environmental systems is governed by the general principles of no hierarchy, mutual supportiveness and deference.</p> <p>15. Switzerland is of the opinion that the relationship between the WTO and MEAs is a fundamental issue which WTO Members must resolve themselves through an interpretative decision rather than requiring the Appellate Body to do so. Moreover, an interpretative decision neither adds to or diminishes the rights and obligations of Members, but simply clarifies the texts. Finally, this approach would also underscore the WTO's commitment to taking environmental needs into consideration.</p> <p>V. CONCLUDING REMARKS</p> <p>16. In view of the foregoing, Switzerland is of the view that the first option, namely to let this issue be settled as a specific case by a panel or by the Appellate Body in the framework of a dispute settlement proceeding, cannot constitute a solution given that under the Doha Declaration, WTO Members agreed to hold negotiations on the relationship between existing WTO rules and specific trade obligations set out in MEAs. In so doing, they underscored their determination to find a solution to this issue and not to leave it to dispute settlement bodies. Nor, as far as Switzerland is concerned, does the second option, namely revising Article XX of the GATT 1994, constitute a solution either, given that the Doha Declaration requires that the negotiations carried out under paragraph 31(i) should be compatible with the open and non-discriminatory nature of the multilateral trading system and should not add to or diminish the rights and obligations of Members under existing WTO Agreements. Thus, Switzerland believes that the only possible solution is to adopt an interpretative decision. Consequently, it recalls that MEAs and the WTO are equal legal entities and that the relationship between WTO rules and specific trade obligations in MEAs can only be governed by the general principles of no hierarchy, mutual supportiveness and deference, for which purpose an interpretative decision is necessary."</p>
<p>Switzerland TN/TE/W/16 paras. 9-11</p>	<p>"IV. WHAT SHOULD BE THE OUTCOME OF THE NEGOTIATION</p> <p>9. An interpretative decision would, in Switzerland's opinion, clearly indicate that the relationship between the trade and the environmental protection systems is governed by the general principles of no hierarchy, mutual supportiveness and deference. Switzerland is convinced that the adoption of an interpretative decision is the only probable solution so far. Indeed, this would meet the WTO Members' wish to find a solution to the issue of the relationship between the WTO rules and MEAs which neither adds to nor diminishes the rights and obligations of Members, but simply clarifies the texts. We therefore welcome Japan's endorsement of our option.</p> <p>10. If we do not adopt a interpretative decision, responsibility for determining the relationship between the WTO rules and the specific obligations in MEAs – an area which has eminently political implications – will de facto lie in the legal, and not the legislative, sphere.</p>

Proposal	Position
	<p>11. Switzerland is convinced that the decisions of the Appellate Body are designed to determine the legal circumstances specific to a case involving two WTO Members but not to establish general rules as would be required for the relationship between the WTO and MEAs. Moreover, Switzerland re-emphasizes that under the Doha Ministerial Declaration, the WTO Members agreed to hold negotiations on the relationship between the WTO rules and MEAs. In so doing, they underscored their determination to find a solution to this issue and not to leave it to the dispute settlement bodies. Indeed, what is at stake is the predictability of the WTO legal system. An interpretative decision would thus pursue two objectives. On the one hand, it would clarify the scope of WTO law (which will be useful in negotiating the development of trade rules in MEAs) and, on the other, it would provide guidance for the WTO Dispute Settlement Body."</p>
<p>United States TN/TE/W/20 para. 4</p>	<p>"4. The United States has previously communicated its perspective in discussions in the CTE in Special Session under sub-paragraph 31(i). First and foremost, the United States is interested in ensuring that any result in this negotiation maintains the integrity and mutual supportiveness of both sets of international obligations – those in MEAs on the one hand and those in the WTO on the other. We must be careful not to create any reluctance on the part of individual countries to join MEAs for fear that they are simultaneously agreeing to prejudice their WTO rights. Furthermore, ministers at Doha, in paragraph 32 of the Declaration, already directed that the negotiations must not add to or diminish the rights and obligations of Members under existing WTO agreements."</p>

VIII. MEAS REFERRED TO IN THE PROPOSALS

A. INTERNATIONAL PLANT PROTECTION CONVENTION (IPPC)

Provision	Proposal	Comments
7(1)	Korea TN/TE/W/13 para. 10	Not an STO: "Gives Parties a sovereign right to regulate plant importing."
7(2)	Korea TN/TE/W/13 para. 10	STO: 'Stipulates Parties' obligation to take precisely specified measures such as publishing and transmitting phytosanitary requirements."

B. INTERNATIONAL COMMISSION FOR THE CONSERVATION OF ATLANTIC TUNAS (ICCAT)

Provision	Proposal	Comments
General	Japan TN/TE/W/10 para. 11	ICCAT is an MEA which contains "[t]rade measures [that] are not mentioned in [the MEA] but [that] Parties can take ... in accordance with relevant decisions made under the MEA framework."
	Korea TN/TE/W/13 paras. 10, 11	10. "ICCAT does not contain trade measures, but resolutions taken by the Parties do contain trade restrictions, which can be STOs ...". "11. The analysis above [i.e. in para. 10] shows that, in some cases, the criteria established in Section 2 [i.e. in paras. 6-9] alone are not sufficient enough to provide guidance for identifying STOs. Those cases mostly involve COP decisions or resolutions, which suggests that identifying STOs is closely linked to the definition of MEAs."
	Switzerland TN/TE/W/21	ICCAT is one of the MEAs covered by the second category of STOs identified by Switzerland in its proposal, 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."

C. CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES (CITES)

Provision	Proposal	Comments
General	European Communities TN/TE/W/1 paras. 23, 24-25	The European Communities refers to CITES as an example of an MEA for which trade measures have been key to its success: "23. ... Another example is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) thanks to which none of the species protected by it have become extinct as a result of trade..."

Provision	Proposal	Comments
		<p>"24. It is also worth noting that some MEAs, such as CITES ..., contain the terms "international trade" in the name of the Convention itself and trade measures are the key instrument to reach the ultimate objective of the MEA in question.</p> <p>25. ... [CITES contains] [t]rade measures explicitly provided for and mandatory under MEAs: ... in CITES ... trade in some species threatened with extinction which are or may be affected by trade (listed in Appendix I) can only be permitted in exceptional cases, and trade in other species which may become extinct unless trade in these species is subject to strict regulation in order to avoid utilisation incompatible with their survival (listed in Appendix II) requires an export permit or a re-export certificate. ..."</p>
	<p>Switzerland TN/TE/W/16 para. 6 and TN/TE/W/21</p>	<p>"... Switzerland considers that the following two categories come under the heading of "specific trade obligations":</p> <p>1. Trade measures that are explicitly provided for and mandatory under MEAs</p> <p>This is the case of the CITES, for example, under which trade in species threatened with extinction which are or may be affected by trade is permitted only in exceptional circumstances. To illustrate our point, let us take plant X included in Appendix I to the CITES, which lists the species that are affected by trade and are subject to strict regulation. If Member A prohibits the import of plant X pursuant to Appendix I of the CITES, such a measure should be regarded as a specific trade obligation and would hence be covered by the solution negotiated among the WTO Members under paragraph 31(i)."</p>
II	<p>India TN/TE/W/23 Annex</p>	<p>Article II "[c]ontains the fundamental principles of the MEA".</p>
	<p>Korea TN/TE/W/13 para. 10</p>	<p>Not an STO: "Describes only the general principles of the Convention."</p>
II.4	<p>United States TN/TE/W/20 Annex</p>	<p>STO: Article II.4 "prohibits trade in specimens of species listed in Appendices I, II, and III except in accordance with the Convention".</p>
III	<p>India TN/TE/W/23 Annex</p>	<p>Article III.2 "[c]ontains trade obligations but the sub-clauses which do not contain obligations need to be read together to bring specificity".</p> <p>Article III.3 "[c]ontains trade obligation. The sub-clauses which do not contain obligations may be read together with the main provisions".</p> <p>Article III.4 "[c]ontains trade obligation. The sub-clauses which do not contain obligations may be read together with the main provisions".</p>

Provision	Proposal	Comments
	<p>Japan TN/TE/W/10 para. 11</p>	<p>Article III is an example of a situation where the "[t]rade measures to be taken are explicitly provided for and mandatory under MEAs."</p>
	<p>Korea TN/TE/W/13 para. 10</p>	<p>STO: "Stipulate[s] precise and obligatory requirements concerning export and import documentation".</p>
	<p>Norway TN/TE/W/25 paras. 3, 5</p>	<p>Article III is an example of an MEA provision that meets the "specificity criterion" of an STO. Article III is an example of an MEA provision that meets the "trade criterion" of an STO.</p>
	<p>United States TN/TE/W/20 Annex</p>	<p>STO: Article III "regulates all trade in specimens of species listed in Appendix I".</p>
IV	<p>India TN/TE/W/23 Annex</p>	<p>Article IV.2 "[c]ontains trade obligation. The sub-clauses which do not contain obligations may be read together with the main provisions". Article IV.3 "[r]efers to the monitoring rights of other Parties". Articles IV.4, 5, 6 & 7 "[c]ontain trade obligations. The sub-clauses which do not contain obligations may be read together with the main provisions".</p>
	<p>Japan TN/TE/W/10 para. 11</p>	<p>Article IV is an example of a situation where the "[t]rade measures to be taken are explicitly provided for and mandatory under MEAs."</p>
	<p>Korea TN/TE/W/13 para. 10</p>	<p>STO: "Stipulate[s] precise and obligatory requirements concerning export and import documentation".</p>
	<p>Norway TN/TE/W/25 para. 5</p>	<p>Article IV is an example of an MEA provision that meets the "trade criterion" of an STO.</p>
	<p>United States TN/TE/W/20 Annex</p>	<p>Articles IV.1, IV.2, IV.3, IV.4, IV.5, IV.6 are STOs; they "regulate all trade in specimens of species listed in Appendix II".</p>
V	<p>India TN/TE/W/23 Annex</p>	<p>Article V.2 "[c]ontains trade obligation. The sub-clauses which do not contain obligations may be read together with the main provisions". Article V.3 "[c]ontains trade obligation". Article V.4 "[c]ontains trade obligation".</p>

Provision	Proposal	Comments
	Japan TN/TE/W/10 para. 11	Article V is an example of a situation where the "[t]rade measures to be taken are explicitly provided for and mandatory under MEAs."
	Korea TN/TE/W/13 para. 10	STO: "Stipulate[s] precise and obligatory requirements concerning export and import documentation".
	United States TN/TE/W/20 Annex	STO: Article V "regulates all trade in specimens of species listed in Appendix III".
VI	India TN/TE/W/23 Annex	Article VI "[c]ontains trade obligation".
	Japan TN/TE/W/10 para. 11	Article VI is an example of a situation where the "[t]rade measures to be taken are explicitly provided for and mandatory under MEAs."
	Korea TN/TE/W/13 para. 10	STO: "Stipulate[s] precise and obligatory requirements concerning export and import documentation".
	United States TN/TE/W/20 Annex	Articles VI.1, VI.2, VI.3, VI.4, VI.5, VI.6 are STOs; they "govern permits and certificates".
VIII	India TN/TE/W/23 Annex	Article VIII "[e]ncourages Parties to take appropriate measures to enforce the provisions of the Convention".
	Japan TN/TE/W/10 para. 11	Article VIII.1 is an example of a situation where an "[o]bligation de résultat" is explicitly provided for in an MEA and a trade measure is identified as potential means taken by Parties to meet the obligation of that MEA."
	Korea TN/TE/W/13 para. 10	Not an STO: "Allow[s] for Parties' discretion as to the implementation measures to be taken."
	United States TN/TE/W/20 Annex	Articles VIII.1(a), VIII.1(b), VIII.3, VIII.4, VIII.6 and VIII.7 are STOs, they "concern measures to be taken by Parties to enforce the Convention to prohibit trade in specimens in violation thereof".

Provision	Proposal	Comments
IX	United States TN/TE/W/20 Annex	STO: Article IX "requires the designation of Management and Scientific Authorities".
XIV	India TN/TE/W/23 paras. 8-9	Article XIV.1 is not an STO: it falls within a category of trade-related measures which includes "additional and more stringent measures to achieve the overall objectives of the MEA which are more in the form of a right granted to a Party as opposed to an obligation."
	India TN/TE/W/23 Annex	Article XIV "[r]efers to the right of a Party to adopt stricter domestic measures".
	Korea TN/TE/W/13 para. 10	Not an STO: "Allow[s] for Parties' discretion as to the implementation measures to be taken."
XV	India TN/TE/W/23 para. 13	"...[I]t seems that, exceptionally, COPs may have genuine law-making powers, such as the power to amend the Annexes attached to an MEA, as under Article XV of CITES. In that case, an amendment must be adopted by a specified majority of Parties. The amendment so adopted, shall enter into force after the lapse of a specified time-frame and will be binding on all Parties, except for those Parties that made reservations..."

D. COMMISSION FOR THE CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES (CCAMLR)

Provision	Proposal	Comments
General	Japan TN/TE/W/10 para. 11	CCAMLR is an MEA which contains "[t]rade measures [that] are not mentioned in MEAs but [that] Parties can take ... in accordance with relevant decisions made under the MEA framework."
	Korea TN/TE/W/13 para. 10	"CCAMLR does not contain trade measures, but trade-related measures have been adopted in the Conservation Measures that are binding to contracting parties. Most conservation measures are precisely mandated obligations, which can be STOs."
	Switzerland TN/TE/W/21	CCAMLR is one of the MEAs covered by the second category of STOs identified by Switzerland in its proposal, 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."

E. MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER (MONTREAL PROTOCOL)

Provision	Proposal	Position
General	Canada TN/TE/W/22 para. 8	"Members have also raised the issue of whether amendments to an MEA should be included in our examination. The Montreal Protocol is an example of a protocol that has been amended four times: London Amendment in 1990, Copenhagen Amendment in 1992, Montreal Amendment in 1997 and the Beijing Amendment in 1999. In some cases, these amendments have added new substances or, altered or added obligations, which are trade-related ...".
	European Communities TN/TE/W/1 para. 22	"... the trade obligations contained in the Montreal Protocol on Substances that deplete the Ozone Layer have been universally recognized as being instrumental to the effective and early implementation of the Protocol."
	Switzerland TN/TE/W/4 para. 6	"The notion of "among parties to the MEA" raises another issue: sometimes both parties to a dispute have acceded to an MEA, but one has not subscribed to all of the annexes or amendments, as is possible with the Montreal Protocol. ...".
	Switzerland TN/TE/W/21	The Montreal Protocol is one of the MEAs covered by the second category of STOs identified by Switzerland in its proposal, 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."
	Japan TN/TE/W/10 para. 5	"... [A] 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. ...".
2	Canada TN/TE/W/22 para. 4	"... [T]rade-related measures ... take different forms such as bans, restrictions or conditions on international trade in products, substances or species. In some cases, this is accompanied by restrictions or bans on domestic production and/or use (e.g. ... Montreal Protocol, Article 2)."
2A to 2H	Japan TN/TE/W/10 para. 11	Articles 2A to 2H are examples of situations where an "[o]bligation de résultat" is specified in an MEA but a trade measure to be taken for the obligation is not identified in the MEA, while the MEA leaves Parties to decide measure to be taken to fulfil the obligation".
2.11	European Communities TN/TE/W/1 para. 25	This provision corresponds to a trade measure which is "not required in the MEA but which Parties can decide to implement if the MEA contains a general provision stating that parties can adopt stringent measures in accordance with international law."

Provision	Proposal	Position
4	Canada TN/TE/W/22 para. 6, 10	"6. ... an obligation may be contained in one specific article or a combination of several articles that taken together could constitute a specific trade obligation. Some of these provisions provide further information on how and/or when the trade-related measure should be implemented. For example, Articles 4.1 and 4.2 of the Montreal Protocol each deal respectively with the import and export of substances in Annex A. However, the process for listing of substances in Annexes is governed by Articles 2 & 6...". "10. It is perhaps easier to identify a provision as an STO if it affects traditional areas of trade law i.e. import and export bans and restrictions on trade, [e.g.] Article 4.1 Montreal Protocol...".
	Korea TN/TE/W/13 para. 10	STO: "Stipulates precisely the measures to be taken, namely import and export ban of trade in ozone-depleting substances."
	United States TN/TE/W/20 para. 13	Not an STO: "Article 4 of the Montreal Protocol (in contrast to Article 4A) obligates parties to take particular trade action in relation to non-parties, rather than parties".
4A	India TN/TE/W/23 Annex	Article 4A(1) "[c]ontains trade obligation".
	United States TN/TE/W/20 Annex	STO: Article 4A(1) "governs the control of trade with Parties".
4B	India TN/TE/W/23 Annex	Article 4B(1) "[d]escribes the obligation of a Party to adopt a licensing system by January 2000, but acknowledges the right to delay taking action".

F. BASEL CONVENTION ON THE TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL (BASEL CONVENTION)

Provision	Proposal	Comments
General	Canada TN/TE/W/22 para. 10	"...In all six MEAs [See proposal], while the trade effect can be similar, that is to ban, restrict or condition trade, there is diversity in the approach taken to achieve these similar ends in the MEAs. This diversity should be encouraged, as a one-size-fits-all approach to trade-related measures is unlikely to effectively address all environmental problems. For example, ... the Basel Convention ... include[s] prior informed consent procedures but the procedures and details of the obligations vary".

Provision	Proposal	Comments
	European Communities TN/TE/W/1 para. 23	"The Basel Convention on the Transboundary Movements of Hazardous Wastes and their Disposal has also been key in the reduction and elimination of the dumping of hazardous waste on developing countries. This has enabled the Convention to shift its original scope towards the one of minimising the hazardous waste generation at the source (Ministerial declaration on environmentally sound management, December 1999)".
	Switzerland TN/TE/W/21	The Basel Convention is one of the MEAs covered by the first category of STOs identified by Switzerland in its proposal, which comprises "trade measures that are explicitly provided for and mandatory under MEAs".
3.1	United States TN/TE/W/20 Annex	STO: Article 3.1 "requires reporting on national definitions of hazardous wastes and requirements concerning transboundary movement".
3.2	United States TN/TE/W/20 Annex	STO: Article 3.2 "requires reporting on national definitions of hazardous wastes and requirements concerning transboundary movement".
4.1	Canada TN/TE/W/22 para. 11	Articles 4.1 (a), (b) and (c) are examples of situations where "an STO does not become an obligation of one Party until another Party has asserted a right or privilege."
	India TN/TE/W/23 paras. 8, 9	Articles 4.1(b) and (c) are STOs: they are examples of trade measures that are "both mandatory and specific in [their] entirety".
	India TN/TE/W/23 Annex	Article 4.1(a) "[g]ives Parties the right to ban the import of hazardous waste. Once they do so, they are obliged to inform other Parties". Article 4.1(b) "[c]ontains trade obligation". Article 4.1(c) "[c]ontains trade obligation".
	Japan TN/TE/W/10 para. 11	Article 4.1 is an example of a situation where the "[t]rade measures to be taken are explicitly provided for and mandatory under MEAs."
	Korea TN/TE/W/13 para. 10	Article 4.1(a) is not an STO, as it "describes Parties' right". Articles 4.1(b) and 4.1(c) are STOs, as they "describe very specific and mandatory PIC procedure."
	Norway TN/TE/W/24 para. 5	Articles 4.1(b) and (c) are examples of MEA provisions that meet the "trade criterion" of an STO.
	United States TN/TE/W/20 Annex	STO: Article 4.1 contains a general obligation "regarding the transboundary movement of hazardous waste".

Provision	Proposal	Comments
4.2	Canada TN/TE/W/22 paras. 12-13	<p>"12. Trade related provisions in MEAs may also include processes with a discretionary element which further complicates the analysis of STOs. For example, Article 4.2 (d) of the Basel Convention requires each Party to take the appropriate measures to "ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement". It requires Parties to put in place technical regulations ("measures") to achieve this objective. It is mandatory and a transboundary movement should qualify as international trade. However, the standard of "minimum consistent with" may be subject to various interpretations and a Party will have some discretion in its application although this discretion is limited by the precision of the phrase "environmentally sound management" which is defined under the Convention and further delineated by technical guidelines for specific waste streams.</p> <p>13. Similarly, Article 4.2 (e) of the Basel Convention requires Parties to take appropriate measures to not allow the export of hazardous wastes to a country "if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner, according to criteria to be decided by the Parties at their first meeting". Some discretion is left to the Party in the application of the provision but it would have to be consistent with criteria to be developed by the Parties and technical guidelines."</p>
	India TN/TE/W/23 Annex	Article 4.2(e) "[c]ontains a trade obligation. A specific criterion on "management in an environmentally sound manner" is to be decided by the COP".
	Korea TN/TE/W/13 paras. 10, 12	<p>10. It is unclear whether Article 4.2(e) is an STO: "The term "environmentally sound manner" is not specific. However, Conference of the Parties (COP) decision elaborates on the term (See Paragraph 12)."</p> <p>"12. ... Article 4.2(e) ... of the Basel Convention contain the ambiguous words "environmentally sound way," which is not operational by itself. However, a COP decision elaborates it."</p>
	United States TN/TE/W/20 Annex	Articles 4.2(e), (f) and (g) are STOs, they "contain general obligations regarding the transboundary movement of hazardous waste".
4.5	Korea TN/TE/W/13 para. 10	STO: "Stipulate[s] precise, obligatory measures (restriction on import and documentation requirement)".
	United States TN/TE/W/20 para. 13	Not an STO: Article 4.5 "obligates parties to take particular trade action in relation to non-parties, rather than parties".

Provision	Proposal	Comments
4.6	India TN/TE/W/23 Annex	Article 4.6 "[c]ontains trade obligation".
	Korea TN/TE/W/13 para. 10	STO: "Stipulate[s] precise, obligatory measures (restriction on import and documentation requirement)."
	United States TN/TE/W/20 Annex	STO: Article 4.6 contains a general obligation "regarding the transboundary movement of hazardous waste".
4.7	Canada TN/TE/W/22 para. 10	"It is perhaps easier to identify a provision as an STO if it affects traditional areas of trade law i.e. import and export bans and restrictions on trade... but an STO may also include provisions that affect trade such as notifications, technical regulations, packaging and labelling requirements all of which are subject to WTO rules (e.g. Article 4.7 (b) Basel Convention...)"
	India TN/TE/W/23 Annex	Article 4.7(b) "[r]equires hazardous waste, subject to transboundary movement to be packaged (...) in conformity with accepted international rules". Article 4.7(c) "[c]ontains trade obligation".
	United States TN/TE/W/20 Annex	STO: Article 4.7 contains a general obligation "regarding the transboundary movement of hazardous waste".
4.8	United States TN/TE/W/20 Annex	STO: Article 4.8 contains a general obligation "regarding the transboundary movement of hazardous waste".
4.9	United States TN/TE/W/20 Annex	STO: Article 4.9 contains a general obligation "regarding the transboundary movement of hazardous waste".
4.10	United States TN/TE/W/20 Annex	STO: Article 4.10 contains a general obligation regarding the transboundary movement of hazardous waste.
4.11	Canada TN/TE/W/22 para. 14	"Some MEAs provide that the convention does not prevent a Party from imposing additional requirements (e.g. Basel Article 4.11 ...). These provisions are not trade specific nor are they mandatory..."
5.1	United States TN/TE/W/20 Annex	STO: Article 5.1 "requires the designation of a competent authority and focal point".

Provision	Proposal	Comments
6	Korea TN/TE/W/13 para. 10	STO: "Stipulates Parties' obligation to prohibit or restrict trade with specific procedural requirements".
	Japan TN/TE/W/10 para. 11	Article 6 is an example of a situation where the "[t]rade measures to be taken are explicitly provided for and mandatory under MEAs."
6.1	India TN/TE/W/23 Annex	Article 6.1 "[c]ontains trade obligation".
	United States TN/TE/W/20 Annex	STO: Article 6.1 governs "the transboundary movement of hazardous waste".
6.2	India TN/TE/W/23 paras. 8-9	Not an STO: Article 6.2 is an example of a situation where "only the outcome to be achieved is identified with a list of appropriate measures that Parties could implement to achieve the desired outcome".
	India TN/TE/W/23 Annex	Article 6.2 "[r]efers to the right of a Party to import, ban an import, request for additional information or provide a conditional consent".
	United States TN/TE/W/20 Annex	STO: Article 6.2 governs "the transboundary movement of hazardous waste".
6.3	India TN/TE/W/23 Annex	Article 6.3 "[c]ontains trade obligation".
	United States TN/TE/W/20 Annex	STO: Article 6.3 governs "the transboundary movement of hazardous waste".
6.4	United States TN/TE/W/20 Annex	STO: Article 6.4 governs "the transboundary movement of hazardous waste".
6.5	United States TN/TE/W/20 Annex	STO: Article 6.5 governs "the transboundary movement of hazardous waste".

Provision	Proposal	Comments
6.9	United States TN/TE/W/20 Annex	STO: Article 6.9 governs "the transboundary movement of hazardous waste".
6.10	United States TN/TE/W/20 Annex	STO: Article 6.10 governs "the transboundary movement of hazardous waste".
7	Japan TN/TE/W/10 para. 11	Article 7 is an example of a situation where the "[t]rade measures to be taken are explicitly provided for and mandatory under MEAs."
8	India TN/TE/W/23 Annex	Article 8 "[o]bliges Parties to re-import the hazardous waste, if the transboundary movement cannot be completed. Lacks specificity on sound environmental disposal".
	Japan TN/TE/W/10 para. 11	Article 8 is an example of a situation where the "[t]rade measures to be taken are explicitly provided for and mandatory under MEAs."
	Korea TN/TE/W/13 paras. 10-12	10. It is unclear whether Article 8 is an STO: "The term "environmentally sound manner" is not specific. However, Conference of the Parties (COP) decision elaborates on the term (See Paragraph 12)". "12. ... Article 8 of the Basel Convention contain the ambiguous words "environmentally sound way," which is not operational by itself. However, a COP decision elaborates it."
	United States TN/TE/W/20 Annex	STO: Article 8 "governs the duty to re-import".
9	India TN/TE/W/23 para. 16	Not an STO: "[...] Article 9 [...] comprises five subheadings. The <i>first</i> , defines "illegal traffic" and does not contain a trade obligation in itself. The <i>second</i> , requests the State of export to ensure that wastes are taken back, or "otherwise disposed of"; and the <i>third</i> , that these would be disposed of in an "environmentally sound manner"; the <i>fourth</i> that these would be disposed of "as soon as possible in an environmentally sound manner" – terms that all fail to meet the standard of "specificity". The <i>fifth</i> , requests the Parties to introduce "appropriate national/domestic legislation to prevent and punish illegal traffic" and encourages Parties to "co-operate with a view to achieving the objects of this Article". Article 9 is a clear illustration of provisions that, in our view, are not specific as to the means to achieve an outcome (not specific in its entirety), and hence would not qualify as an STO".
	Japan TN/TE/W/10 para. 11	Article 9 is an example of a situation where the "[t]rade measures to be taken are explicitly provided for and mandatory under MEAs."

Provision	Proposal	Comments
9.2	United States TN/TE/W/20 Annex	STO: Article 9.2 "governs the repatriation of illegal waste".
13	Japan TN/TE/W/10 para. 11	Article 13 is an example of a situation where the trade measure to be taken is "explicitly provided for and mandatory" under the MEA.
13.2	United States TN/TE/W/20 Annex	STO: Article 13.2 "governs the transmission of information".
13.3(a)	United States TN/TE/W/20 Annex	STO: Article 13.3(a) "governs the transmission of information".
13.4	United States TN/TE/W/20 Annex	STO: Article 13.4 "governs the transmission of information".

G. CONVENTION ON BIOLOGICAL DIVERSITY (CBD)

Provision	Proposal	Comments
General	Switzerland TN/TE/W/21	The CBD is one of the MEAs covered by the second category of STOs identified by Switzerland in its proposal, 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."
8 (j)	Korea TN/TE/W/13 para. 10	Not an STO: "Gives a general description of the objectives of the Convention; allows for Parties' discretion regarding implementation measures."
10 (b)	Korea TN/TE/W/13 para. 10	Not an STO: "Is mandatory in nature but not specific, as Parties can have discretion concerning implementation measures relating to the use of biological resources."
	United States TN/TE/W/20 para. 13	Not an STO: Article 10(b) contains a general, rather than specific, obligation "that accord[s] discretion to the parties regarding implementation."
15	Korea TN/TE/W/13 para. 10	Not an STO: "Is not specific concerning the PIC procedures (in comparison to those in the Basel Convention and the PIC Convention). COP decision on the Bonn Guidelines is not mandatory."

Provision	Proposal	Comments
16, 19	Korea TN/TE/W/13 para. 10	Not STOs: "Are currently not specific. However, future COP decision can elaborate them."
22	Korea TN/TE/W/13 para. 10	Not an STO: "Stipulates general principles."

H. CARTAGENA PROTOCOL ON BIOSAFETY TO THE CONVENTION ON BIOLOGICAL DIVERSITY
(BIOSAFETY PROTOCOL)

Provision	Proposal	Comments
General	Canada TN/TE/W/22 para. 15	"In some cases, MEAs include preambular language and/or general principles (e.g. Biosafety Protocol ...) that refer to the international trade regime. Members should take into account the potential legal implications of such references in examining the relationship between WTO rules and specific trade obligations set out in MEAs."
	European Communities TN/TE/W/1 para. 25	The Biosafety Protocol contains trade measures "explicitly provided for and mandatory under MEAs", "as regards obligatory advanced informed agreement procedure for the first shipment of living modified organisms."
	Switzerland TN/TE/W/21	The Biosafety Protocol is one of the MEAs covered by the first category of STOs identified by Switzerland in its proposal, which comprises "trade measures that are explicitly provided for and mandatory under MEAs."
2.4	Korea TN/TE/W/13 para. 10	Not an STO: "Gives Parties a general authorization."
	India TN/TE/W/23 Annex	Article 2.4 "[r]efers to the right of a Party to take action that is more protective than that called for in the Protocol".
7	Korea TN/TE/W/13 para. 10	STO: "Describe[s] specific and mandatory Advance Informed Agreement (AIA) procedures."
7.1	India TN/TE/W/23 Annex	Article 7.1 "[c]ontains trade obligation".

Provision	Proposal	Comments
	United States TN/TE/W/20 Annex	STO: governs "the application of the advanced informed agreement procedure".
7.3	United States TN/TE/W/20 Annex	STO: governs "the application of the advanced informed agreement procedure".
8	Korea TN/TE/W/13 para. 10	STO: "Describe[s] specific and mandatory Advance Informed Agreement (AIA) procedures."
	United States TN/TE/W/20 Annex	STO: "governs notification".
8.1	India TN/TE/W/23 Annex	Article 8.1 "[c]ontains trade obligation".
9	Korea TN/TE/W/13 para. 10	STO: "Describe[s] specific and mandatory Advance Informed Agreement (AIA) procedures."
9.1	United States TN/TE/W/20 Annex	STO: governs "acknowledgement of receipt of notification".
9.2	United States TN/TE/W/20 Annex	STO: governs "acknowledgement of receipt of notification".
9.4	India TN/TE/W/23 Annex	Article 9.4 "[e]xplicitly provides an interpretation of a failure to notify by a Party".
10	Korea TN/TE/W/13 para. 10	STO: "Describe[s] specific and mandatory Advance Informed Agreement (AIA) procedures."

Provision	Proposal	Comments
	Norway TN/TE/W/25 para. 5	Article 10 is an example of an MEA provision that meets the "obligation criterion" of an STO. It spells out the different possible options of the Party of import while making it clear (Article 10.1) that any decision taken, shall be in accordance with the risk assessment in Article 15."
10.1	United States TN/TE/W/20 Annex	STO: governs "the decision procedure".
10.2	United States TN/TE/W/20 Annex	STO: governs "the decision procedure".
10.3	India TN/TE/W/23 Annex	Article 10.3 "[r]efers to the right of a Party to arrive at a decision relating to the import of an LMO".
	United States TN/TE/W/20 Annex	STO: governs "the decision procedure".
10.4	United States TN/TE/W/20 Annex	STO: governs "the decision procedure".
10.6	India TN/TE/W/23 Annex	Article 10.6 "[r]efers to the right of a Party for risk assessment before reaching an import decision".
	Korea TN/TE/W/13 para. 10	Not STO: "Give[s] Parties a right."
11	India TN/TE/W/23 Annex	Article 11 "[c]ontains trade obligation. The sub-clauses which do not contain obligations may be read together with the main provisions".
11.1	Korea TN/TE/W/13 para. 10	STO: "Describes specific and mandatory Advance Informed Agreement (AIA) procedures."
11.2	Korea TN/TE/W/13 para. 10	STO: "Describes specific and mandatory Advance Informed Agreement (AIA) procedures."

Provision	Proposal	Comments
11.4	Korea TN/TE/W/13 para. 10	Not an STO: 'Leaves specific measures for Living Modified Organisms – Food/Feed Processing (LMO-FFP) to Parties' domestic law.'
11.5	Korea TN/TE/W/13 para. 10	STO: "Describes specific and mandatory Advance Informed Agreement (AIA) procedures."
11.8	Korea TN/TE/W/13 para. 10	Not an STO: "Give[s] Parties a right."
12.1	India TN/TE/W/23 Annex	Article 12.1 "[r]efers to the right of a Party to review its decision".
13	India TN/TE/W/23 Annex	Article 13 "[r]efers to a right of the party which can be exercised in accordance with the objective of the Protocol".
	Korea TN/TE/W/13 para. 10	Not an STO: "non-mandatory, since the Party of import "may" take measures."
14	Korea TN/TE/W/13 para. 10	Not an STO: "non-mandatory, since the Party of import "may" take measures."
14.1	India TN/TE/W/23 Annex	Article 14.1 "[r]efers to the right of a Party to enter bilateral (...) agreements in accordance with the objective of the Protocol".
15	India TN/TE/W/23 Annex	Article 15 "may be read together with Articles 7, 8, 10 and 12 and Annex III".
	Korea TN/TE/W/13 para. 10	STO: "Describe[s] specific and mandatory Advance Informed Agreement (AIA) procedures."
16	India TN/TE/W/23 paras. 8, 9	Not an STO: Article 16 falls within a category of trade-related measures for which "the outcome to be achieved is identified, however the measures which could be implemented to achieve that outcome are not specified."

Provision	Proposal	Comments
	India TN/TE/W/23 Annex	Article 16 "[r]equires Parties to set up appropriate mechanisms (...) to control risks identified in the risk assessment provision of the Protocol".
	Korea TN/TE/W/13 para. 10	Not an STO: "Is not specific in comparison to Article 15, which is elaborated by Annex III."
	United States TN/TE/W/20 para. 13	Not an STO: contains a general, rather than specific, obligation "that accord[s] discretion to the parties regarding implementation".
18	Korea TN/TE/W/13 paras. 10, 12	10. It is unclear whether Article 18 is an STO: It "[d]escribes relatively specific obligation regarding documentation but leaves more specific elements to COP decision (See Paragraph 12)". "12. ... Article 18 of the Cartagena Protocol on Biosafety provides for basic elements of "behavioral obligation," while mandating the COP to elaborate more on those obligations."
18.2	India TN/TE/W/23 Annex	Articles 18.2(b) and (c) contain trade obligations: "However, the specificity of Article 18.2(a) is to be further articulated by COP Decisions".
	United States TN/TE/W/20 Annex	STO: "governs documentation accompanying living modified organisms".
19	United States TN/TE/W/20 Annex	STO: "requires the designation of competent national authorities and focal points".
26	Korea TN/TE/W/13 para. 10	Not an STO: "non-mandatory, since the Party of import "may" take measures."
26.1	India TN/TE/W/23 Annex	Article 26.1 "[r]efers to the right of a Party".

I. UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC)

Provision	Proposal	Comments
General	Canada TN/TE/W/22 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."
	Saudi Arabia (Observer) TN/TE/W/9 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). ..." "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."
4.2 (a)	Korea TN/TE/W/13 para. 10	Not an STO: "Allows for Parties' discretion regarding implementation measures, with a broadly stated requirement to adopt national policies and corresponding measures."
	United States TN/TE/W/20 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".

J. KYOTO PROTOCOL TO THE UNFCCC

Provision	Proposal	Comments
General	Canada TN/TE/W/22 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."

Provision	Proposal	Comments
	<p>Switzerland TN/TE/W/16 para. 6</p>	<p>"6. ... Switzerland considers that the following two categories come under the heading of "specific trade obligations":</p> <p>2. Other measures that are relevant and necessary to achieve an MEA objective</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>
	<p>Switzerland TN/TE/W/21</p>	<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>
<p>2</p>	<p>Saudi Arabia (Observer) TN/TE/W/9 para. 30</p>	<p>"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)."</p>
<p>2.1</p>	<p>Korea TN/TE/W/13 para. 10</p>	<p>Not an STO: "Allow[s] for Parties' discretion regarding implementation measures for quantified emission limitation and reduction commitment."</p>

Provision	Proposal	Comments
2.3	Korea TN/TE/W/13 para. 10	Not an STO: "[A]llows for Parties' discretion regarding implementation measures for quantified emission limitation and reduction commitment."
6, 12, 17	Korea TN/TE/W/13 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)." "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	Saudi Arabia (Observer) TN/TE/W/9 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. ..."

K. INTERNATIONAL TROPICAL TIMBER AGREEMENT (ITTA)

Provision	Proposal	Comments
General	Switzerland TN/TE/W/21	The ITTA is one of the MEAs covered by the second category of STOs identified by Switzerland in its proposal, 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."
1	Korea TN/TE/W/13 para. 10	Not an STO: "Allows for Parties' discretion regarding implementation measures."

L. UNITED NATIONS FISH STOCKS AGREEMENT

Provision	Proposal	Comments
17.4	Korea TN/TE/W/13 para. 10	Not an STO: "Lacks specificity in types of implementation measures to deter activities of fishing vessels."

Provision	Proposal	Comments
23.1, 23.3	Korea TN/TE/W/13 para. 10	Not STOs: "Offer a port State options for implementation measures."

M. ROTTERDAM CONVENTION ON THE PRIOR INFORMED CONSENT PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES IN INTERNATIONAL TRADE (ROTTERDAM CONVENTION)

Provision	Proposal	Comments
General	Canada TN/TE/W/22 paras. 10, 15	"10. It is perhaps easier to identify a provision as an STO if it affects traditional areas of trade law i.e. import and export bans and restrictions on trade ... but an STO may also include provisions that affect trade such as notifications, technical regulations, packaging and labelling requirements all of which are subject to WTO rules (e.g. ... PIC). "In all six MEAs [See proposal], while the trade effect can be similar, that is to ban, restrict or condition trade, there is diversity in the approach taken to achieve these similar ends in the MEAs. This diversity should be encouraged, as a one-size-fits-all approach to trade-related measures is unlikely to effectively address all environmental problems. For example, the PIC Convention ... include[s] prior informed consent procedures but the procedures and details of the obligations vary." "15. In some cases, MEAs include preambular language and/or general principles (e.g. ... PIC Convention) that refer to the international trade regime. Members should take into account the potential legal implications of such references in examining the relationship between WTO rules and specific trade obligations set out in MEAs."
	European Communities TN/TE/W/1 para. 24	"24. It is also worth noting that some MEAs, such as ... the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC), contain the terms "international trade" in the name of the Convention itself and trade measures are the key instrument to reach the ultimate objective of the MEA in question."
	Switzerland TN/TE/W/21	The Rotterdam Convention is one of the MEAs covered by the second category of STOs identified by Switzerland in its proposal, 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."
5	Canada TN/TE/W/22 para. 6	Article 5 is a provision "dealing with the notification of national regulatory actions and mechanisms for additions to the annexes. This would appear not to be directly related to trade".
	India TN/TE/W/23 Annex	Article 5 contains a trade measure: "However, any obligation relating to [this measure] would ultimately depend upon the decision of the COP to list the chemicals".

Provision	Proposal	Comments
	<p>Korea TN/TE/W/13 para. 10</p>	<p>STO: "Describe[s] precise and mandatory PIC procedures."</p>
<p>5.1, 5.2</p>	<p>United States TN/TE/W/20 Annex</p>	<p>STOs: Articles 5.1 and 5.2 "govern procedures for banned or severely restricted chemicals".</p>
<p>6</p>	<p>Canada TN/TE/W/22 para. 6</p>	<p>Article 6 is a provision "dealing with the notification of national regulatory actions and mechanisms for additions to the annexes. This would appear not to be directly related to trade".</p>
	<p>India TN/TE/W/23 Annex</p>	<p>Article 6 contains a trade measure: "However, any obligation relating to [this measure] would ultimately depend upon the decision of the COP to list the chemicals".</p>
	<p>Korea TN/TE/W/13 para. 10</p>	<p>STO: "Describe[s] precise and mandatory PIC procedures."</p>
<p>7</p>	<p>Canada TN/TE/W/22 para. 6</p>	<p>Article 7 is a provision "dealing with the notification of national regulatory actions and mechanisms for additions to the annexes. This would appear not to be directly related to trade".</p>
	<p>India TN/TE/W/23 Annex</p>	<p>Article 7 contains a trade measure: "However, any obligation relating to this measure would ultimately depend upon the decision of the COP to list the chemicals".</p>
	<p>Korea TN/TE/W/13 para. 10</p>	<p>STO: "Describe[s] precise and mandatory PIC procedures."</p>
<p>8</p>	<p>Canada TN/TE/W/22 para. 6</p>	<p>Article 8 is a provision "dealing with the notification of national regulatory actions and mechanisms for additions to the annexes. This would appear not to be directly related to trade".</p>
	<p>India TN/TE/W/23 Annex</p>	<p>Article 8 contains a trade measure: "However, any obligation relating to [this measure] would ultimately depend upon the decision of the COP to list the chemicals".</p>
	<p>Korea TN/TE/W/13 para. 10</p>	<p>STO: "Describe[s] precise and mandatory PIC procedures."</p>

Provision	Proposal	Comments
9	India TN/TE/W/23 Annex	Article 9 contains a trade measure: "However, any obligation relating to this measure would ultimately depend upon the decision of the COP to list the chemicals."
	Korea TN/TE/W/13 para. 10	Not an STO: "Describes the procedure for de-listing a chemical from Annexes."
10	Norway TN/TE/W/25 para. 4	"In our view the specificity criterion is not limited to provisions identifying only one single measure. It also applies to provisions providing well-defined, alternative measures. An example might be the Rotterdam Convention, Article 10, which spells out that a response to the Secretariat concerning the future import of the chemical concerned shall consist of either a final decision ((i) to consent to import/ (ii) not to consent to import/ (iii) to consent to import only subject to specified conditions) or an interim response (which may include (i) to consent or not consent to imports/ (ii) statement that a final decision is under active consideration...)."
10.2	United States TN/TE/W/20 Annex	STO: Article 10.2 governs "obligations in relation to imports of Annex III chemicals".
10.4	India TN/TE/W/23 Annex	Article 10.4 "[r]efers to the right of a Party to arrive at a decision relating to the import of chemicals".
	Korea TN/TE/W/13 para. 10	STO: "Describe[s] precise and mandatory PIC procedures."
	United States TN/TE/W/20 Annex	STO: Article 10.4 governs "obligations in relation to imports of Annex III chemicals".
10.5	United States TN/TE/W/20 Annex	STO: Article 10.5 governs "obligations in relation to imports of Annex III chemicals".
10.7	United States TN/TE/W/20 Annex	STO: Article 10.7 governs "obligations in relation to imports of Annex III chemicals".
10.8	United States TN/TE/W/20 Annex	STO: Article 10.8 governs "obligations in relation to imports of Annex III chemicals".

Provision	Proposal	Comments
10.9	India TN/TE/W/23 Annex	Article 10.9 "[c]ontains trade obligation".
	Korea TN/TE/W/13 para. 10	STO: "Describe[s] precise and mandatory PIC procedures."
	United States TN/TE/W/20 Annex	STO: Article 10.9 governs "obligations in relation to imports of Annex III chemicals".
11	United States TN/TE/W/20 Annex	STO: Article 11 "governs obligations in relation to exports of Annex III chemicals".
11.2	India TN/TE/W/23 Annex	Article 11.2 "[c]ontains trade obligation".
	Korea TN/TE/W/13 para. 10	STO: "Describe[s] precise and mandatory PIC procedures."
12	India TN/TE/W/23 Annex	Article 12 "[c]ontains trade obligation".
12.1	Korea TN/TE/W/13 para. 10	STO: "Describe[s] precise and mandatory PIC procedures."
	United States TN/TE/W/20 Annex	STO: Article 12.1 governs "export notification".
12.2	United States TN/TE/W/20 Annex	STO: Article 12.2 governs "export notification".
12.3	United States TN/TE/W/20 Annex	STO: Article 12.3 governs "export notification".

Provision	Proposal	Comments
12.4	United States TN/TE/W/20 Annex	STO: Article 12.4 governs "export notification".
13.1	India TN/TE/W/23 para. 10	<p>"While identifying STOs several other aspects are also relevant in considering the specificity, as a number of trade obligations are not specific in their entirety, that is, they contain non-specific elements as well. For instance, Article 13.1 of the Rotterdam Convention states that: <i>"The Conference of the Parties shall encourage the World Customs Organization to assign specific Harmonized System customs codes to the individual chemicals or groups of chemicals listed in Annex III, as appropriate. Each Party shall require that, whenever a code has been assigned to such a chemical, the shipping document for that chemical bears the code when exported"</i>. The second sentence of the provision could qualify as an STO but the first sentence would clearly not. Furthermore, several provisions have to be read with another provision containing a trade obligation to understand whether it is specific or not."</p>
	India TN/TE/W/23 Annex	Article 13.1 "[c]ontains trade obligation once the WCO has assigned a code to a chemical that is being exported".
13.2	India TN/TE/W/23 Annex	Article 13.2 "[r]equires Parties to label Annex III chemicals before export, in accordance with relevant international standards".
	Korea TN/TE/W/13 para. 10	STO: "Describe[s] precise and mandatory PIC procedures."
	United States TN/TE/W/20 Annex	STO: Article 13.2 governs "information to accompany exported chemicals".
13.3	India TN/TE/W/23 Annex	Article 13.3 "[r]efers to a right of a Party to label exports that are subject to labelling requirements in its own territory".
	Korea TN/TE/W/13 para. 10	Not an STO: "Is not mandatory since Parties "may" require labeling"
	United States TN/TE/W/20 para. 13	Not an STO: Article 13.3 "provides discretion to individual parties on whether to subject certain of its chemical exports to labelling requirements and, as such, is not an obligation".

Provision	Proposal	Comments
13.4	United States TN/TE/W/20 Annex	STO: Article 13.4 governs "information to accompany exported chemicals".
15.4	Canada TN/TE/W/22 para. 14	"Some MEAs provide that the convention does not prevent a Party from imposing additional requirements (e.g. ... PIC Article 15(4)). These provisions are not trade specific nor are they mandatory...".
	European Communities TN/TE/W/1 para. 25	This provision corresponds to a trade measure which is "not required in the MEA but which Parties can decide to implement if the MEA contains a general provision stating that parties can adopt stringent measures in accordance with international law."
	India TN/TE/W/23 Annex	Article 15.4 "[r]efers to the right of a Party to take action that is more stringently protective than that called for in the Convention".
	Korea TN/TE/W/13 para. 10	Not an STO: "Gives full discretion to Parties in taking "stricter measures"."

N. STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS (STOCKHOLM CONVENTION)

Provision	Proposal	Comments
General	European Communities TN/TE/W/1 para. 25	The Stockholm Convention contains "trade measures that are explicitly provided for and mandatory under MEAs": "[the Convention] <i>inter alia</i> will prohibit the import and export of certain POPs with some exceptions such as their environmentally sound disposal or a specific use/purpose, such as insecticides, on the request of some Parties."
	Switzerland TN/TE/W/21	The Stockholm Convention is one of the MEAs covered by the first category of STOs identified by Switzerland in its proposal, which comprises "trade measures that are explicitly provided for and mandatory under MEAs."
3	Canada TN/TE/W/22 paras. 4, 9, 10	"4. ...Trade-related measures ... take different forms such as bans, restrictions or conditions on international trade in products, substances or species. In some cases, this is accompanied by restrictions or bans on domestic production and/or use (e.g. POPs Convention, Article 3 ...)."

Provision	Proposal	Comments
		<p>"9. Precision and clarity in provisions simplify the task of identification of an STO. For example, Article 3 of the POPs Convention provides for a Party to ban the import or export of the controlled substances or wastes subject to certain conditions. Although no details are provided on the procedures to be utilized by a Party to put these bans into effect, they clearly set forth the result (to eliminate the import or export) to be achieved while the Party still has to determine which and if "legal or administrative measures are necessary". In Article 3.2 (b), the POPs Convention requires a Party to take measures to restrict the export of certain chemicals "taking into account any relevant provisions in existing international prior informed consent instruments". While there are no details, the language is fairly precise in nature. Can this particular aspect of the obligation in Article 3.2 be considered to be a specific obligation?"</p> <p>"10. It is perhaps easier to identify a provision as an STO if it affects traditional areas of trade law i.e. import and export bans and restrictions on trade (... Article 3 POPs Convention) but an STO may also include provisions that affect trade such as notifications, technical regulations, packaging and labelling requirements all of which are subject to WTO rules ...".</p>
3.1	India TN/TE/W/23 Annex	Article 3.1(a) "[c]ontains trade obligation. Some of the provisions of Annex A-Part II relating to "priorities" to follow prior to 2025 may not contain an obligation, but may be read together with the main provision". Article 3.1(b) "[r]elates to national production and use of chemicals listed in Annex B".
	Korea TN/TE/W/13 para. 10	STO: "Stipulate[s] explicit and mandatory restrictions. In addition, "environmentally sound disposal" mentioned in Article 3.2 is specified in Paragraph 1(d) of Article 6."
	United States TN/TE/W/20 Annex	Article 3.1(a)(ii) is an STO: it governs obligations concerning the export and import of listed chemicals (as among Parties)
3.2	India TN/TE/W/23 Annex	Article 3.2 "[c]ontains trade obligation that is further specified by Article 6.1(d)".
	Korea TN/TE/W/13 para. 10	STO: "Stipulate[s] explicit and mandatory restrictions. In addition, "environmentally sound disposal" mentioned in Article 3.2 is specified in Paragraph 1(d) of Article 6."
	United States TN/TE/W/20 Annex	Articles 3.2(a), 3.2(b)(i), 3.2(b)(ii) and 3.2(c) are STOs: they govern "obligations concerning the export and import of listed chemicals (as among Parties)".

Provision	Proposal	Comments
4	India TN/TE/W/23 Annex	Article 4 "[e]stablishes a register of specific exemptions. It provides a right to Parties to register specific exemptions listed in Annex A or B".
	Korea TN/TE/W/13 para. 10	Not an STO: "Stipulates register of specific exemptions."
8	India TN/TE/W/23 Annex	Article 8 "[r]efers to the right of a Party to list a chemical in Annex A, B or C".
	Korea TN/TE/W/13 para. 10	Not an STO: "Describes Party's right to list POPs in the Annexes."
Annex A Part II	United States TN/TE/W/20 Annex	Annex A, Part II, Paragraph (c) is an STO, as it applies among Parties.