



Preliminary Comments on Trade Related Issues in the 12 June Draft Plan of Implementation for the World Summit on Sustainable Development (WSSD)¹

July 2002

I. Introduction

In this brief, the Center for International Environmental Law (CIEL) sets out some preliminary comments on the 12 June 2002 version of the *Draft Plan of Implementation for the World Summit on Sustainable Development*. These comments build on our previous comments on the draft text (available at www.ciel.org), and focus on selected provisions of the text that address international trade or have trade implications. The comments do not explore the implications of provisions addressing finance or investment, or the many other issues that are raised by the WSSD draft text.

As an initial matter, CIEL recognizes the role that trade can play in fostering the economic development necessary to achieve sustainable development. Equally, however, we recognize that trade in and of itself is insufficient to achieve sustainable development. We have thus expressed concern over the years that trade liberalization not be considered an end, but rather as one means among many available to achieve improvements in the human condition worldwide. We have also noted that, done poorly, trade liberalization can have devastating impacts on the economy, communities and the environment.

CIEL thus favors an approach at the WSSD that balances trade liberalization with the regulatory regimes and policies at the international, national, and local levels to ensure that increased trade and investment rules contribute unequivocally to environmentally and socially sustainable development. Based on our review of the June 12 draft of the Plan of Implementation, we are concerned that it fails to strike the appropriate balance. Our concerns are summarized below, followed by more detailed comments on specific paragraphs.

II. General Comments

In large part, the sections of the Draft Plan of Implementation relating to trade read like a restatement of the World Trade Organization's Doha Ministerial Declaration. While it may be appropriate to cite the negotiations put into motion in Doha, it is not appropriate

¹ The Center for International Environmental Law (CIEL) is a public interest, not-for-profit environmental law firm founded in 1989 to strengthen international and comparative environmental law and policy around the world. CIEL's aims, among other things, at solving environmental problems and promoting sustainable societies through the use of law and at incorporating fundamental principles of ecology and justice into international law.

to reiterate in detail topics covered in those negotiations. First of all, there are countries involved in the WSSD process that are not members of the WTO and it is inappropriate to bind them indirectly through the Draft Plan of Implementation to matters being undertaken in the WTO. In addition, the WSSD provides an opportunity to put the WTO negotiations into a broader context: one piece, of a larger global effort to achieve sustainable development. As such, the Draft Plan of Implementation should go beyond WTO discussions to look at broader issues not covered in the Doha mandate from a sustainable development perspective. For example, the Doha mandate with respect to the relationship between multilateral environmental agreements and trade rules is limited in scope and the WSSD process provides an opportunity to address aspects of the relationship not covered in the Doha mandate (see comments to paragraph 122(c)).

Moreover, at several occasions, the Draft Plan of Implementation calls for the elimination of certain measures that are “trade distorting”. In many instances, however, measures to promote economic, social or environmental goals may have the effect of “distorting” trade but be desirable from a sustainable development perspective. For example, language in the text on the removal of subsidies fails to recognize the value of maintaining subsidies that correct market failures, protect the environment, or serve fundamental human needs. While we strongly support the removal of subsidies that have adverse environmental consequences, we also believe that the Draft Plan should address the benefits of environmentally beneficial subsidies. The Draft Plan also calls for the elimination of unilateral trade sanctions. Conversely, the WTO Appellate Body (in the recent Shrimp 21.5 decision) has recognized the validity of unilateral trade measures in certain narrowly defined contexts. In both cases the cause of sustainable development may be served by such measures, and the WSSD negotiation is not the place to introduce restrictions on these types of measures – particularly where those restrictions appear to go beyond current WTO practice.

Finally, Section III of the Draft Plan of Implementation seems to assume that ecolabeling may have “adverse effects” on developing countries and appears to establish a preference for voluntary over mandatory labeling schemes (see 14 (e)). The draft thus fails to reflect that developing countries may also be able to benefit from ecolabeling by profiting from access to niche markets. It may also have implications for the development and use of mandatory labeling schemes to inform consumers about products such as genetically modified organisms, which may not be voluntarily labeled by producers. It is hard to understand why systems that are founded on the principle of providing consumers with more information about the products (or services) they consume are the subject of such antipathy.

These and other concerns are described in more detail in our paragraph-by-paragraph commentary that follows below. The commentary is arranged according to the structure of the chapters and paragraphs in the draft text.

III. Specific Comments and Suggested Amendments

Changing unsustainable patterns of consumption and production (Section III)

Paragraph 14(e)

Paragraph 14(e) includes a number of references that, if adopted, may undermine eco-labeling and other consumer information schemes. First, the bracketed reference

requiring tools to be “voluntary” may be used to undermine the use of compulsory labeling schemes to, for example, provide consumers with information about genetically modified organisms.

Suggested amendment: Delete from the third sentence of paragraph 14(e) the text “and should be voluntary”

Second, the bracketed reference requiring eco-labeling to be developed “in accordance with WTO rules” is unnecessary and would inappropriately apply to governments who are not part of the WTO. Arguably, references to developing eco-labeling schemes in an “open and participatory manner” and avoiding their use “as disguised barriers” are sufficient to prevent eco-labels from being used for protectionist purposes.

Suggested amendment: Delete from the third sentence of paragraph 14(e) the text “in accordance with WTO rules”, and retain the text “These tools should not be used as disguised trade barriers. In addition, eco-labelling should be developed and implemented in an open and participatory manner”.

Finally, the final bracketed sentence assumes that such tools may have “adverse effects” on the sustainable development of other countries, especially developing countries. This statement is, at best, unbalanced as it ignores the positive effects labeling may have for niche products from developing countries.

Suggested amendment: Delete the text “Action should be taken to assess and improve such tools in order to minimize adverse effects they may have on the sustainable development of other countries, especially developing countries.” Alternatively, the text could be balanced by adding “maximize the positive effects and” after the words “in order to”.

Paragraph 15(b)

Paragraph 15(b) promotes cleaner production and eco-efficiency in all countries, including through action to provide incentives such as state-financed loans and venture capital for investment in cleaner production “[while avoiding trade-distorting measures inconsistent with World Trade Organization (WTO) rules]”. This reference to the WTO should be deleted as it extends the reach of WTO rules to non-WTO members, and introduces uncertainty into the text by failing to identify what is considered to be “trade-distorting measures”. An absence of clarity in WTO rules has been used to “chill” the development of strong national measures to promote sustainable development. Overextending the reach of the WTO rules in the WSSD process and to non-WTO members should be avoided.

Suggested amendment: Delete the reference “[while avoiding trade-distorting measures inconsistent with World Trade Organization (WTO) rules]”.

Paragraph 18(c)

Paragraph 18(c) calls for the removal of environmentally harmful and trade-distorting subsidies that inhibit sustainable consumption and production in developed countries. This reference should be extended to include developing countries, which also have subsidies with negative implications for environment, development and trade. This phrase should also be qualified to note the importance of certain subsidies to correct market failures and promote progress towards sustainable development.

Suggested amendment: Add “and developing countries” after the text “sustainable consumption and production patterns in developed”, and include the text “while noting the role and importance of certain subsidies to correct market failures and promote progress towards sustainable development”.

Paragraph 22

Paragraph 22 calls for renewed commitment to sound management of chemicals, and includes bracketed text calling for this to be “[based on sound science, risk assessment, risk management, bearing in mind the precautionary approach as set out in Rio Principle 15 [and other [relevant] international instruments]”. Currently paragraph 22 involves a hierarchy between sound science and precaution. As the text currently stands, the former must form the basis of chemicals management, whereas the latter must only be “borne in mind”. However, in some cases “sound science” will not be available and so decisions should be made “based on” the precautionary principle. We therefore suggest the following amendment.

Suggested amendment: Replace the text quoted above with “based on the precautionary principle as set out in Rio Principle 15 and developed in other international agreements, on sound science, where available, and on risk assessment and risk management.

Paragraph 30

To promote sustainable fisheries, Paragraph 30(f) calls for action to eliminate subsidies that contribute to overcapacity, “while complementing the efforts undertaken at the WTO to clarify and improve its disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries.” We support efforts to reduce fishing subsidies. At the same time, we believe greater efforts should be made at the WTO and elsewhere to distinguish between environmentally beneficial and harmful subsidies, and to ensure that WTO rules are not used to challenge the former. The WSSD text should note that any future negotiations to reduce subsidies should not undermine environmentally beneficial subsidies.

Suggested amendment: Add after the text “developing countries” the text “and also noting the role and importance of certain subsidies to correct market failures and promote progress towards sustainable fisheries ”.

Paragraph 38 (m) and (o)

These two paragraphs have implications for the WTO's agriculture negotiations. In particular, paragraph 38(m) calls for "substantial reductions in trade-distorting domestic support for agricultural products". This bracketed text is acceptable if balanced by language paralleling that in the Doha Ministerial Declaration, which notes the need to take into account non-trade (environmental, social and other) concerns when reducing domestic support.

Suggested amendment: Add to the end of paragraph 38(m) the text "while confirming that non-trade concerns should be taken fully into account;".

Paragraph 42 (j)

Paragraph 42 addresses the need to conserve biodiversity, and includes a number of paragraphs addressing the need to protect the rights of indigenous and other local communities over traditional knowledge, innovations and practices through benefit-sharing mechanisms. The reference in paragraph 42(j) to the development and implementation of benefit-sharing mechanisms "on mutually agreed terms" is unclear, and is acceptable if it means on terms "mutually agreed" between the communities and national governments. This reference should not be interpreted to inhibit countries from establishing clear and binding access and benefit sharing rules *vis-à-vis* those seeking access to traditional knowledge (i.e. usually foreign corporations), or to push for an *ad hoc* contract-based approach to benefit-sharing, rather than a more systematic approach based on clear national policies and guidelines.

Paragraph 42(m)

Paragraph 42(m) encourages technical and financial support to developing countries and countries with economies in transition to develop national *sui generis* systems and traditional systems with a view to the conservation and sustainable use of biodiversity. We endorse increased support, provided the systems are sensitive to and incorporate traditional and customary law. In our view, technical and financial support for the development of *sui generis* systems should be undertaken within the context of the Convention on Biological Diversity.

Suggested amendment: Insert after "national priorities and legislation", the text "as well as traditional and customary law".

Paragraph 42(o)

The reference in paragraph 42(o) includes bracketed text calling for negotiations for the "creation of an international regime to effectively promote and safeguard the fair and equitable sharing of benefits arising from the use of biodiversity and its components". We support such negotiations if they are conducted under the auspices of the Convention on Biological Diversity, and explicitly address the use of patents that facilitate the misappropriation of genetic resources and associated traditional knowledge, and that safeguard policy space for varying national systems within developing countries that reflect different national objectives and levels of development.

Paragraph 42(q)

Paragraph 42(q) refers to promoting “practicable measures for access to the results and benefits arising from biotechnologies based upon genetic resources”. This phrase subtly twists the language of the Convention on Biodiversity to promote access to biotechnology, rather than to the biological resources upon which they are based. Moreover, the concept of “benefit sharing” also seems to differ from the traditional concept. Whereas under the CBD, benefit sharing refers to the “results of research and development and the benefits arising from the commercial and other utilization of genetic resources” paragraph 42(q) focuses more narrowly on the benefits from biotechnology *per se*. We are deeply concerned about the promotion of biotechnology in this paragraph, with no recognition of its risks to health and environment, nor of the right of nations and citizens to voluntarily reject or accept its use. We therefore suggest that the reference to biotechnology be replaced with more neutral language from the Convention on Biodiversity on benefit sharing.

Suggested amendment: Following the phrase “measures for access to the results and benefits arising from” delete “biotechnologies based on genetic resources” and insert “the utilization of genetic resources”.

Second, this paragraph promotes practicable measures for benefit sharing “in accordance with articles 15 and 19 of the CBD” without referencing the protocol negotiated under Article 19 of the CBD – the Cartagena Protocol on Biosafety – to address the environment and health risks associated with living modified organisms. We believe that, if retained in the text, any reference to promoting access biotechnology should be counterbalanced by an explicit reference to the main international agreement that establishes rules regarding biosafety.

Suggested amendment: Add “and the Cartagena Protocol on Biosafety” after the “articles 15 and 19 of the CBD”. In the event that this is not acceptable to some negotiating parties, add the alternative text “and other relevant international agreements addressing issues of biosafety”.

Paragraph 42(r)

Paragraph 42(r) promotes discussions “with regard to the relationships between the obligations of the CBD and of agreements related to international trade and intellectual property rights, as outlined in the Doha Ministerial Declaration.” We support efforts to clarify the relationship between the CBD and the WTO’s intellectual property (TRIPS) agreement, in order to ensure that intellectual property rights support and do not undermine the objectives of the CBD.

Sustainable development in a globalizing world (Section V)

Paragraphs 45 and 45 (alt)

These paragraphs provide alternative visions of globalization as an introduction to the subsequent paragraphs of Section V. Paragraph 45’s version broadens globalization to include “extension of democracy and rule of law to an ever-widening circle of countries”.

It also focuses extensively on the benefits of globalization, claiming it “is integral to sustainable development”, “has the potential to improve living standards for all” and “offers enormous opportunities for further improvement”.

Paragraph 45 (alt), by contrast, notes that globalization “offers opportunities and challenges” and says that “it is a matter of great and increasing concern that not all countries are reaping the benefits of globalization and some may even be falling further behind”. The characterization of globalization in paragraph 45 (alt) is more plausible, and is consistent with the content of the WSSD’s text, which, in a number of places, focuses on the challenges of globalization. Paragraph 52(f), for example, refers to the “severe structural handicaps in integrating into the global economy” faced by small island developing states. And paragraph 56 notes that most African countries “have not benefited fully from the opportunities of globalization, further exacerbating the continent’s marginalization”.

Furthermore, as Section V focuses primarily on the economic aspects of globalization – and less on the social aspects such as “extension of democracy and rule of law” – we believe that this section should commence with a definition that focuses on “economic globalization” rather than a broader (and less clearly defined) concept. Such a definition of economic globalization could refer to the “growing integration of economies around the world encouraged by the progressive removal of barriers to the free movement of goods, services, and capital”.

Paragraph 45(c)

This paragraph refers to the multilateral trading and financial system, and raises at least two issues. First, of the two alternative openings to this paragraph, the first (“create an” open, equitable, rules-based, predictable and non-discriminatory multilateral trading and financial system) is preferable to the second (“continue to promote the”) as the second implies that the system is already “open, equitable, rules-based, predictable and non-discriminatory” – something a number of governments and major groups participating in the WSSD process would find difficult to accept.

Suggested amendment: Delete the words “continue to promote the”.

Second, bracketed text in the paragraph calls on the systems to benefit “[all]” countries in “the[ir] pursuit of sustainable development”. We support this text as it reinforces the notion that the system should be equitable and promote the interests of each country, not just those with the resources and political power to take advantage of it.

Suggested amendment: Retain the bracketed words “all” and “their”.

Paragraph 45(c) bis

Paragraph 45(c) bis calls for successful completion of the work launched under the Doha Declaration. We agree with the text’s suggestion to delete this paragraph since its elements are contained later in the document.

Suggested amendment: Delete paragraph 45(c) bis.

Paragraph 45(e)

The text includes two alternatives for this paragraph: the former uses the term “precautionary approach” and refers to Rio Principle 15; the second uses the term “precautionary principle as established in the Rio Declaration on Environment and Development and further developed in international law”. We support the second version for the following reasons.

First, as a general matter we support use of the term “precautionary principle” (the term is also used in paragraph 93(e) bis), as precaution is defined in Rio *Principle* 15, and references to precaution are found in the laws of both developed and developing countries, representing the major legal systems, and the major regions of the world. The term “principle”, as opposed to the term “approach”, reflects the widespread adoption of precaution in law at the national and international level.

Second, the first version calling for the application of precaution “[as set forth in Principle 15]” is inappropriate because it fails to acknowledge that governments will in many cases apply precaution in a manner specifically set forth in an MEA or other instrument, rather than as generally set forth in Rio Principle 15.

Third, the first version includes the terms “while avoiding its misuse as a disguised barrier to trade, which may restrict exports to developing countries”, whereas the second version includes the qualification “while avoiding recourse to it for protectionist purposes.” We prefer the second version. The first version’s qualification “may restrict exports from developing countries” sets up a false dichotomy between exports from developed and developing countries, both of which may be affected by valid precautionary measures.

Paragraph 45(f)

We support retention of the bracketed text that calls for capacity building to include a focus on “interlinkages between trade and sustainable development”.

Paragraph 45(h)

We support retention of the bracketed text calling for the integration of “sustainable development objectives” into regional trade and cooperation agreements.

Paragraph 45 (i)

Paragraph 45(i) calls for action to create favorable conditions in developing countries for foreign direct investment. Bracketed text calls for governments to support measures “to encourage environmentally and socially sound investments”. We support retention of the bracketed text as a step to ensure a balanced approach to fostering foreign direct investment. However, the current language does not appropriately address concerns raised with respect to Export Credit Agency (ECA) reform.

Suggested amendment: After “promote, use and further develop government support measures for private industry such as export credit and investment guarantee schemes to encourage environmentally and socially sound investments” add “and

develop and implement common binding standards and guidelines for Export Credit Agencies (ECAs) strengthening transparency, public consultation, accountability and integrating high environmental and social considerations, including human rights, in all investment decisions."

Paragraph 45(n)

We support retention of paragraph 45(n), which calls for the provision of "assistance to developing countries to promote the impact assessments that identify trade, environment and development linkages and related policy measures." This text builds on the Doha Ministerial Statement, which encourages "that expertise and experience be shared with Members wishing to perform environmental reviews at the national level" (paragraph 33), by noting the need to focus also on development linkages. The paragraph could be strengthened by replacing the call to "promote" assessments with a call to "conduct" such assessments.

Suggested amendment: Replace "promote" with "conduct".

Health and sustainable development (Section VI)

Paragraph 47(h)

Paragraph 47(h) refers to promoting traditional medicine knowledge and practices, while promoting effective protection of traditional knowledge, as appropriate, "consistent with international law". The term "consistent with international law" refers to a range of obligations, including those in the WTO's TRIPS Agreement. These obligations have been cited by some governments to undermine or challenge efforts by developing countries to protect traditional knowledge. The United States, for example, has argued that provisions in national or international law designed to require patent applicants to provide information on access and benefit-sharing arrangements would be inconsistent with the TRIPS Agreement. We believe this assertion is incorrect, and encourage governments participating in the WSSD process to take note of this in their discussions of this paragraph, and to insert language noting that any process promoting traditional medicine knowledge and practices should also be sensitive to priorities at the national and local levels.

Suggested amendment: Add "and sensitive to priorities at the national and local level for the protection of traditional knowledge" after "consistent with international law."

Paragraph 51

The call in paragraph 51 to "implement the WTO/TRIPS Agreement as part of the wider national and international action to address public health problems affecting many developing and least developed countries" departs from the language of the WTO Declaration on the TRIPS Agreement and Public Health. Whereas the declaration stresses "the need for" the TRIPS Agreement "to be part of the wider national and international action to address" health problems, and calls for an expeditious solution to the problems facing countries with limited or no manufacturing capacity for

pharmaceuticals, the WSSD draft text implies that implementing the TRIPS Agreement *is* part of the solution.

This is inconsistent with, and may undermine, the attempts by many developing countries to extend the transition periods for implementation of the TRIPS Agreement, including as part of the “expeditious solution” that the Doha Declaration calls for. Many developing country governments believe that delaying, rather than speeding, the implementation of the TRIPS Agreement will promote public health and access to medicines for all.

If the WSSD says anything on intellectual property and public health, it should be to call on the WTO to find “an expeditious solution” to the problem of “insufficient or no manufacturing capacities in the pharmaceutical sector” experienced by some WTO Members, as required by paragraph 6 of the Declaration on the TRIPS Agreement and Public Health. It should also pick up the language from paragraph 4 of the declaration stating that “the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health”, and “we reaffirm the right of WTO Members to use, to the full, the provisions in the TRIPS Agreement, which provide flexibility for this purpose. Our first preference is to delete paragraph 51, failing which we suggest the following amendment.

Suggested amendment: At the commencement of paragraph 51 replace “implement” with “we stress the need for” and “as” with “to be” and add the language mentioned above from paragraph 4 of the Declaration on the TRIPS Agreement and Public Health.

Sustainable development for Africa (Section VIII)

Paragraph 56(f), (g) and (h)

We support retention of bracketed text calling for increased market access and strategic environmental assessments in these paragraphs.

Paragraph 58(a)

We support retention of bracketed text that promotes equitable access to health care “and services”. We believe this should be supplemented with text calling for an assessment of proposed liberalization of services at the World Trade Organization on health care and other fundamental services such as education and provision of water.

Suggested amendment: Add a new paragraph 58 bis stating “Provide financial and technical support for efforts by African countries to assess the potential impacts of the World Trade Organization’s negotiations on trade in services on the provision of fundamental services, including health care services.

Means of implementation (Section IX)

This section, as well as Section X following it, contains numerous and detailed paragraphs relating to international trade and finance, many of which are bracketed. In

the following comments, we have not remarked on the paragraphs addressing finance, or on all paragraphs addressing trade, but rather have limited our discussion and suggested amendments to those paragraphs addressing trade that have significant implications from a sustainable development perspective.

By way of general comment, we believe the text focuses unduly on trade as a means of promoting sustainable development, and that many of the paragraphs on trade are ambiguous or otherwise controversial. We believe that this part of the text – particularly paragraphs 81 to 88 require substantial revision. We suggest therefore the following amendments to the existing text as the bare minimum required to ensure they constitute a step in the direction of, rather than against, sustainable development.

Paragraph 75

Paragraph 75 notes that progress in implementing Agenda 21 and internationally agreed development goals will require implementation of “the outcomes of the [relevant] major United Nations conferences and international agreements since 1992, particularly those of the International Conference on Financing for Development, and the fourth Ministerial Conference of the WTO, [including building on them as part of a process of achieving sustainable development.” This statement on “means of implementation” raises a number of concerns.

First, it seems to identify the outcome of the WTO Doha Ministerial as a foundation for the implementation of Agenda 21. We are concerned about the bracketed suggestion that the WTO’s Doha agenda should be “built upon” as part of a process of achieving sustainable development. If this text means that the outcome of the WSSD should *qualify and go beyond* the Doha agenda to achieve sustainable development, then we can support it. If, however, it means that the Doha agenda provides a *foundation* for achieving sustainable development, then – in light of the serious development and environment challenges posed by the WTO’s existing agreements and its mandate for further negotiations – we are concerned by the reference and suggest that it is removed. Finally, the text currently implies that the WTO is a “major United Nations conference”, which it is not.

Second, while it elevates the status of recent WTO and financing for development meetings, the text seeks to limit the applicable UN conferences and agreements to those that are “relevant”, and to those that are “after 1992”. These delimitations are unacceptable in the introductory paragraph of Section IX, which has as its goals defining the means by which the international community should implement Agenda 21 and achieve internationally agreed development goals. Any concerns about the scope of “UN conferences and agreements” should be mitigated by the existing term “major”, which sufficiently delimits the agreements and conferences identified in this paragraph.

Suggested amendment: Delete “[relevant]” and “since 1992”.

Paragraph 81 (introduction)

Of the three alternatives for paragraph 81’s introductory text, we support the second version, which should be amended to include a reference to sustainable development that parallels that in the preamble of the WTO Agreement.

Suggested amendment: After the words “In order”, insert the phrase “to pursue the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with the respective needs and concerns of countries at different levels of economic development, and in order”.

Paragraph 81(b)(ii)

Paragraph 81(b)(ii)'s recommendation that the WTO's technical assistance efforts be aimed at “advancing the Doha agenda”, threatens to place the interests of the institution and its wealthier members above those of its developing country members. Technical assistance should be aimed not at advancing a particular “agenda”, but on assisting developing countries to identify, defend and achieve their individual and collective best-interests.

Suggested amendment: Delete paragraph 81(b)(ii).

Paragraph 83

Both versions of paragraph 83 call on WTO Members to be “mindful of the important deadlines that must be met to ensure progress by the Fifth Ministerial Conference and of the opportunities that will result from successful conclusion of these negotiations by 1 January 2005”. We are unconvinced that “opportunities will result” from pushing the WTO agenda, and believe that the risks associated with pushing the agenda too fast outweigh any potential opportunities that may arise from its completion by 1 January 2005.

Suggested amendment: Delete reference to being “mindful of the important deadlines that must be met to ensure progress by the Fifth Ministerial Conference and of the opportunities that will result from successful conclusion of these negotiations by 1 January 2005”.

Paragraph 83(a)

The phrase in this paragraph calling to “eliminate unilateral trade sanctions used to reinforce the environment agenda” raises a range of serious concerns. First, if environmental damage may occur in the country of import, then often trade measures (including trade bans) are an appropriate way to advance an environmental agenda. Both developed and developing countries adopt such trade bans to protect health and environment. Second, the WTO Appellate Body in the Shrimp 21.5 case interpreted Article XX of the GATT to allow a unilateral measure to protect the environment where a WTO Member was making good faith and serious efforts to negotiate a multilateral environmental agreement. The statement in paragraph 83 would be inconsistent with Article XX as interpreted by the WTO Appellate Body. Finally, the reference may undermine the rights of countries to implement trade bans to restrict entry of genetically modified products and other potentially environmentally harmful products, especially where no international framework exists or is yet in force.

Paragraph 83(b)

We support the call in paragraph 83(b) to “operationalize all special and differential treatment provisions and take action to strengthen them, making them more precise and effective, including through concluding a framework agreement on special and differential treatment”.

Paragraph 85

This paragraph includes a number of references promoting progress on integrating considerations of trade and environment. Of the two alternative chapeau texts, neither captures what is required to ensure that trade promotes sustainable development. The former assumes trade and environment are *already* mutually supportive (“continue to enhance the mutual supportiveness...”) and the latter fails to include references to the economic, social and environmental aspects of sustainable development. We suggest that these two texts are combined as follows:

Suggested amendment: Insert a new chapeau text to paragraph 85 stating “Make trade, social and economic development and environmental protection mutually supportive, including through action at all levels to.”

Paragraph 85(a)

We support the inclusion of references to UNEP and UNCTAD in paragraph 85(a). We question the need for an in-depth study of the “negative impact of measures on market access and trade-related environment measures taken by developed countries on trade” suggested in paragraph 85(a) alt as this issue has been studied since the inception of the CTE in 1995 under item 6 of the CTE’s agenda. While we believe further understanding of the relationship between market access and national regulations is positive, we do not believe that the CTE has identified this, as opposed to the many other issues it studies, as something requiring an in-depth study. Indeed, WTO Members in Doha specifically identified a number of other issues – including the relationship between WTO rules and specific trade obligations in MEAs, and liberalization of environmental goods and services – as subjects for further discussion and negotiation.

Paragraph 85(b)

The call in the first alternative of this paragraph to “eliminate trade-distorting subsidies in developed countries” should be deleted. For sound economic, social and environmental reasons, many subsidies “distort trade”. Indeed, the purpose of many subsidies is to correct market failures by changing the nature and structure of economic activity, often with trade implications. Here, as in other places, the text mischaracterizes the role of the WTO as one of removing “trade distortions”, rather than as avoiding trade protectionism. We believe that in a text aimed at promoting sustainable development, a more careful balance should be struck that acknowledges the need to balance regulation and liberalization of trade to promote sustainable development.

Suggested amendment: Replace “eliminate trade-distorting subsidies” with “address trade-distorting subsidies”.

Paragraph 85(c)

We support the call in this paragraph to “further develop and promote the use of sustainable impact assessment at the national level as a tool to better identify trade, environment and development linkages and appropriate mitigating and enhancing measures.”

Paragraph 87 (alt)

We also support the call in paragraph 87 (alt) to “comprehensively address the problems encountered by developing countries in the implementation of the Uruguay Round Agreements, as well as the resource constraints faced by them in fulfilling those agreements”.

Paragraph 88

We have two main concerns about the language in this paragraph. First, we are concerned about the suggestion that implementing the TRIPS Agreement should be “part of the wider national and international action to address public health problems affecting many developing and least developed countries”. Experience of the relationship between implementation of the TRIPS Agreement and public health has been largely negative, leading to widespread concern in civil society and in many developing country governments. This concern culminated in adoption by the WTO at the Doha Ministerial of the Declaration on the TRIPS Agreement and Public Health. Many of the issues arising from this Declaration – including the requests for a moratorium on the application of the TRIPS Agreement to some developing countries and extensions of transition periods – remain outstanding. By calling for countries to “implement the TRIPS Agreement”, the WSSD would run counter to these requests, with potential negative implications for public health, especially in developing countries. For this reason, we support the second version of the bracketed text that commences “Address public health problems affecting many developing and least developed countries...”

Suggested amendment: Delete the first sentence of paragraph 88 commencing “[While reiterating...” and concluding “...Declaration of the TRIPS Agreement and Public Health adopted in Doha.]”

Second, we believe that the reference to “HIV/AIDS, tuberculosis, malaria and other epidemics” will limit the paragraph’s application to “epidemics” and thus fail to address other diseases that do not reach epidemic proportions, but still have significant public health implications in developing countries.

Suggested amendment: Add “and diseases” after the phrase “HIV/AIDS, tuberculosis, malaria and other epidemics”.

Paragraph 93(e.bis)

We strongly support the call in this paragraph to “apply in decision-making the precautionary principle as established in the Rio Declaration on Environment and Development, and further developed in international law in order to protect health and

environment, while avoiding recourse to it for protectionist purposes.” In particular, the reference to its further development in international law recognizes that the principle is not static, but evolving.

Paragraph 119

Given the importance of increased understanding of trade, environment and development linkages, the appeal in this paragraph to promote sustainability impact assessments should be strengthened.

Suggested amendment: Replace the term “further develop and promote” with “finance and implement”.

Institutional Framework for Sustainable Development (Section X)

Paragraph 122(b)

A number of aspects of this paragraph deserve comment. First, we support a number of the bracketed references in this paragraph including calls to ensure that the decisions-making processes and institutional structures of finance and trade institutions are open, transparent, equitable, rule based, predictable, non-discriminatory and that take account the need for strengthening and making more precise WTO provisions on special and differential treatment of developing countries.

Second, we do not support calls to conclude accession proceedings “as quickly as possible” if this leads to further pressure on developing countries. In the past, developing countries have been pressured to accept conditions of accession that go far beyond those adopted by other WTO members. We believe this reference should thus be replaced by one promoting accession on terms that are equitable and reflect their level of development.

Suggested amendment: Replace the two bracketed references to accession with the phrase “assist developing countries to accede to the WTO on terms that are equitable, appropriate for their level of development, and do not require them to enter into commitments that are beyond the those embodied in current WTO agreements.”

Paragraph 122(c)

Paragraph 122(c) refers to the relationship between multilateral environmental agreements and the rules of the multilateral trading system. The implication of the alternative terms “[coherence]/[complementarity]/[coordination]” is unclear, and should be clarified using more explicit text. As a general matter, we support the concept of “no hierarchy” as long as appropriate deference is given to MEAs in their areas of competence. Deference is required as MEAs often regulate specific categories of products that are either environmentally harmful (hazardous waste, chemicals, persistent organic pollutants) or that, if traded, may result in harm to the environment (e.g. species or specimens). It would be inappropriate to “liberalize” trade in these products, and so WTO rules requiring liberalization should be interpreted accordingly, or the

environmental exceptions applied where appropriate to defer to the more specific rules negotiated for these products in the relevant MEAs.

We support using the lens of “economics, environment and social development” as one to view the relationship between multilateral trade and environment agreements. We believe this is more useful than the approach traditionally adopted in the trading system of using the lens of “trade, environment and development”, which inappropriately elevates trade from means to ends, and threatens to balkanize environment and development as subsidiary goals. In our view, the ultimate goal of both trade and environment agreements is a development process that is human-centered and sustainable; that to achieve this will require the progression and integration at all levels of economic (trade), social and environmental agendas; and that trade, if guided by appropriate institutional arrangements, forms one tool by which to achieve this progression.

Paragraph 123

While we support the goals expressed in the chapeau to paragraph 123, we are concerned about the call to “prevent extraterritorial application of domestic legislations” as this forms a major tool for promoting the accountability of transnational corporations in developing countries. The WTO’s Appellate Body in the Shrimp 21.5 case has also upheld measures in domestic legislation to protect the environment where the importing country is making serious and good faith efforts to conclude a multilateral environmental agreement. This incentive to environmental policy-making should in our view be retained. We therefore suggest that paragraph 123(b) is deleted.

Suggested amendment: Delete paragraph 123(b)

Paragraph 126(f)

We believe that, in addition to having a role in reviewing progress in the implementation of the decisions and commitments made at Monterrey, ECOSOC should have a role in monitoring the contribution made by the WTO to sustainable development. As the central UN body for coordination of UN system and its specialized agencies, ECOSOC is ideally placed to work with the WTO to examine linkages between the work of UN organizations and the WTO, and the contribution of the latter to the implementation of Agenda 21.

Suggested amendment: Insert in paragraph 126(f) a penultimate sentence stating “Ensure that ECOSOC cooperates with the WTO to review the contribution of the multilateral trading system to sustainable development and the implementation of Agenda 21.

Paragraph 133

We support the call in this paragraph to enhance cooperative efforts to promote effective and collective support to the implementation of Agenda 21 at all levels. We suggest strengthening paragraph 133(b) by clarifying that the implementation of the outcomes of the WTO’s Fourth Ministerial Meeting should be undertaken in a manner that promotes sustainable development. This reference is consistent with the preamble to the WTO

Agreement, which states that trade should promote optimal use of the world's resources "in accordance with the objective of sustainable development", and the Ministerial Statement itself in which WTO Members "strongly reaffirm [their] commitment to the objective of sustainable development".

Suggested amendment: Insert after the text "outcomes of the Fourth WTO Ministerial Meeting", the text "in a manner that promotes sustainable development".

Paragraph 135

We believe that references to strengthening support for UNDP should be complemented with a reference to strengthening support for UNEP. Currently the text (e.g. in paragraph 137) calls for UNEP and other organizations to strengthen their contribution to sustainable development programmes without calling on governments to strengthen support for these organizations. We recommend adding a new paragraph following the current paragraph 135.

Suggested amendment: Insert a new paragraph 135 (bis) stating "Significantly strengthen support for UNEP, with a particular focus on capacity building in the area of trade, environment and development and on efforts to implement the programme for the development and periodic review of environmental law for the first decade of the twenty-first century."

Paragraph 139

This paragraph could be restructured to increase its clarity. If the paragraph's main focus is increasing and targeting GEF financing, then the reference to the UN Convention to Combat Desertification should be moved into a subparagraph. We also reiterate our observation, made in earlier comments on Section X, that we are unaware of a "principle of non-discrimination among major MEAs". The case for increasing and targeting financing is defensible on the merits and does not, in our view, require recourse to concepts of non-discrimination.

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