

Statement by India - Delivered by Ambassador & PR to the WTO

AGENDA ITEM 8. DRAFT STATEMENT ON AGENDA ITEM 8 ON PAPER TITLED LEGAL STATUS OF JSIS AND THEIR NEGOTIATED OUTCOMES [WT/GC/W/819/REV1] - REQUEST BY INDIA AND SOUTH AFRICA.

Thank you Chair.

2. At the outset my delegation would like to thank the delegation of Namibia for cosponsoring the paper WT/GC/W/819/Rev1 on Legal Status of JSIs and their Negotiated Outcomes, submitted by India and South Africa.

3. Chair, as co-sponsor to this paper, India would like to reiterate that we are not questioning the right of Members to meet and discuss any issue. What we are saying is that when such discussions turn into negotiations and their outcomes are to be brought into the WTO rule book, the fundamental rules of the WTO must be followed.

4. Chair, any attempt to introduce new rules, resulting from JSI negotiations, into the WTO without fulfilling the requirements of Articles IX and X of the Marrakesh Agreement will create a precedent for any group of Members to bring any issue into the WTO without the required consensus; bypass the collective oversight of Members for bringing in any new rules or amendments to existing rules; usurp limited WTO resources available for multilateral negotiations. Most importantly, such an approach will undermine balance in agenda setting and result in Members disregarding existing multilateral mandates arrived at through consensus in favour of matters without multilateral mandates, leading to marginalization or exclusion of issues which are difficult but critical, such as agriculture.

5. To sum up, our paper only states that basic fundamental principles and rules, of rule based multilateral trading system, as enshrined in the Marrakesh Agreement, should be followed by all Members, including the participants of various JSIs. Chair, our paper also lists out options available to JSI proponents for bringing in their negotiated outcomes in the WTO, including an option for proponents of 'Flexible Multilateral Trading System' advocating various JSIs to even seek an amendment to Article X of the Marrakesh Agreement, following procedure enshrined therein, to provide for such an approach.

6. Chair, in the last formal meeting of this Council, we heard a number of delegations stating that they do not agree with the contents of the paper. However, we are yet to hear from anyone of the Members any legal basis for their

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disagreement. We would urge these Members to express their views more explicitly on various elements of our paper.

MC12 Priorities

7. For MC12 to be successful, WTO Members need to build trust among each other and build confidence in the multilateral trading system. This should be done in the path to MC12 and also at the Ministerial itself.

8. The Tokyo Round plurilateral codes created a fragmented system of rules. In respect of some contracting parties the GATT rules were applicable, while in respect of the rest the GATT rules and the rules of plurilateral codes were applicable. This created considerable complexity in determining what obligations were applicable in respect of which contracting party.

9. Recognising the problems created by the fragmented system of trade rules on account of the Tokyo Round codes, WTO members sought an end to this problem. This has been clearly articulated in the following recital of the Preamble to the Marrakesh Agreement - Resolved, therefore, to develop an integrated (emphasis added), more viable and durable multilateral trading system”.

10. The reference to an integrated multilateral trading system clearly highlights the concern of WTO members arising from the fragmentation of the multilateral rules on account of Tokyo Round plurilateral codes. This is also evident from the observation of the Appellate Body in one of the earliest disputes under the WTO. The Appellate Body Report in Brazil – Desiccated Coconut observed the following: "The authors of the new WTO regime intended to put an end to the fragmentation (emphasis added) that had characterized the previous system. This can be seen from the preamble to the WTO Agreement which states, in pertinent part: Resolved, therefore, to develop an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past trade liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations."

11. Going back to plurilateral agreements would be a step in the wrong direction and would be contrary to the Preamble.

12. Let us remind ourselves that the JSIs do not have a multilateral mandate.

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