

### **General trade points (for any Party)**

- The United States is fully committed to open trade policies and robust efforts to address climate change – which are mutually supportive objectives we should all pursue.
- We will not agree to a package that limits the trade-related actions that the United States can take to combat climate change. And we will not renegotiate our international trade rights and obligations here in the UNFCCC. This is a redline for us. As we continue our important work here in Lima, we will not agree to any outcome that indicates agreement to negotiate trade or unilateral measures in the ADP (or other Convention body).
- The WTO -- not the UNFCCC -- is the appropriate forum for discussion of and work on trade issues. In fact, both the WTO's Committee on Trade and Environment (CTE) and its Trade-Related Aspects of Intellectual Property Rights (TRIPS) Council have had robust discussions of climate-related trade issues, such as greenhouse gas footprinting schemes and green technology transfer.
- Specific trade-related rights and obligations have already been established in the WTO – and the WTO is where the expertise on these issues lies.

### **Talking points for the UG, EU, and other like-minded Parties, as appropriate**

- Should continue to oppose any outcome, process, etc. on trade (or unilateral measures).
- India, Argentina, and other Parties aim to negotiate new international rules to limit our ability to take trade-related measures to combat climate change. This would be a lose-lose for us in terms of both our trade and climate objectives.
- As discussed in years past, we cannot stop these Parties from raising trade and unilateral measures. But we must continue to oppose any efforts to formalize or specify trade or unilateral measures in a Lima package, be it in the form of elements for a draft negotiating text of the 2015 agreement, agenda items, decision language, work programs, workshops, recommendations, etc. These Parties would attempt to leverage any negotiations or work on trade or unilateral measures in the ADP or other bodies to press for new rules in the 2015 agreement.
- These Parties are raising trade here, because they want to override WTO rules with UNFCCC rules more favorable to developing countries and to frame discussion of trade issues in the context of CBDR. In fact, these very same Parties have attempted to block discussion of climate-related trade issues in the WTO Committee on Trade and Environment.

- Should all agree that the WTO is the relevant forum to discuss trade issues. Should all agree any outcome, including the elements for a draft negotiating text of the 2015 agreement, should not indicate agreement to negotiate trade or unilateral measures. The ADP Co-Chairs have issued a revised non-paper as well as a scenario note. It is unclear how this non-paper will be revised, how the session will be structured, and what will be the status of the document that emerges from Lima, so it will be critical for us to keep in close contact.

**If raised:** reaffirmation of Article 3.5/Cancun decision para. 90/ Doha decision preamble to para. 54

- As part of a balanced package, the Cancun decision reiterated the Convention article that recognizes Parties' right to take unilateral trade measures consistent with WTO commitments (Article 3.5). The Doha decision also reiterated Article 3.5.
- Our position should be no text on trade.
  - If the time comes, we can look back at this language with respect to any necessary decision on response measures. But now is too early to consider or signal any gives to India and other Parties.
  - We should not agree to reaffirmation of Article 3.5 in the 2015 agreement. Such agreement would be equivalent to agreeing to negotiate trade and unilateral measures in the ADP and to address these issues in the agreement. There is no reason to reaffirm what is in the Convention, and reaffirming what is in the Convention is not the aim of India and other Parties. [Also see points below.]

**If raised:** reference to unilateral measures in Doha decision para. 54<sup>1</sup>

- We made clear that, regarding the phrase "of concern", we understand that to mean that this is the concern of the particular Party raising the issue. The Doha decision does not mandate any outcome or process on trade or unilateral measures.

**If raised:** trade in the response measures forum instead of the ADP

- India, Argentina, and other Parties have raised trade (and unilateral measures) in the forum. If the forum is extended, they will persist in raising these issues, and we cannot prevent them from doing so. But we must continue to oppose any efforts to formalize or specify trade (or unilateral measures) in any extended forum (or anywhere else in the UNFCCC), be it in the form of work programs, agenda items, workshops, decision language, recommendations, etc.

---

<sup>1</sup> 54. Welcomes the progress made in the work of the forum on the impact of the implementation of response measures being convened under the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation and invites Parties to continue to participate in the forum, including the sharing of views on policy issues of concern, such as unilateral measures;

- Agreeing to formalize or specify trade (or unilateral measures) in Lima in response measures will not help us in keeping these issues out of the ADP. The ADP process will continue for another year and it is unlikely that India and other Parties will simply drop their agenda.
- In fact, they would leverage any work on trade (or unilateral measures) in any extended forum into the ADP.

**References to trade and unilateral measures in the ADP Co-Chairs' non-paper<sup>2</sup> (for any Parties)**

- As a threshold matter, we will not agree to negotiate trade or unilateral measures as part of a 2015 agreement and will not agree to any paper, non-paper, or other document that indicates such agreement, regardless of the specific content.
- "Option 1" (lines 74-75) appears to pick out pieces of Convention Article 3.5. This appears to be renegotiation of Article 3.5 and negotiation of new rules on trade. That is a redline for us.
- **If raised (reaffirmation of Article 3.5):** There is no reason to reaffirm what is in the Convention. Moreover, Article 3.5 or any other Convention article must be viewed in its context, including text in other articles. The context of the 2015 agreement will be different than the context of the Convention.
- **If raised (repeating Article 3.5 word-for-word):** There is no reason to repeat what is in the Convention. Moreover, Article 3.5 or any other Convention article must be viewed in its context, including text in other articles. The words of any article will have a different context in the 2015 agreement.
- **If appropriate:** Article 3.5 was carefully crafted to, among other things, specify that the provision is a "principle" and not a "commitment" (in contrast to Article 4), that the provision applies specifically to actions to achieve the objective of the Convention and to implement its provisions, and that Parties shall be guided, inter alia, by the provision (and other paragraphs in the article).

**IF APPROPRIATE: WTO (for any Parties)**

- The WTO -- not the UNFCCC -- is the appropriate forum for discussion of and work on trade- and IPR-related issues.

---

<sup>2</sup> 74 9. *Option 1:* Unilateral measures not to constitute a means of arbitrary or unjustifiable discrimination or a  
 75 disguised restriction on international trade;  
 76 *Option 2:* No reference to unilateral measures in the agreement.