WORLD TRADE ORGANIZATION

RESTRICTED

WT/CTE/M/21
26 July 1999

(99-3131)

Committee on Trade and Environment

REPORT OF THE MEETING HELD ON 29-30 JUNE 1999

Note by the Secretariat

1. The Committee on Trade and Environment (CTE) met on 29-30 June 1999 under the chairmanship of Ambassador István Major (Hungary). The agenda in WTO/AIR/1116 was adopted.

Observer status for international intergovernmental organizations

2. It was agreed to extend observer status to the United Nations Framework Convention on Climate Change and the International Commission for the Conservation of Atlantic Tunas.

Items 1 & 5 The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements; and the relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements

3. In the light of the forthcoming Seattle Ministerial, the representative of Canada recalled her delegation's approach to clarifying the relationship between the provisions of the multilateral trading system and trade measures in MEAs. As stated at previous CTE meetings and the High Level Symposium on Trade and Environment, Canada believed it would be useful for the WTO to develop a "principles and criteria" approach to multilateral environmental agreements that would assist WTO panels in assessing MEA trade measures and international negotiators contemplating the use of trade measures in an MEA. Canada had used this "principles and criteria" approach domestically and found it to be useful in helping structure interdepartmental discussions and develop consistent policy, bearing in mind that every MEA or regional environmental agreement has a different negotiating dynamic.

4. The representative explained the "principles and criteria approach" chronologically by reviewing the criteria that MEA negotiators might use in determining the need for trade provisions in environmental agreements. The criteria suggested by Canada were: (i) That trade measures be chosen only when effective and when other alternative measures were considered to be ineffective in achieving the environmental objective or when other measures proved to be ineffective without accompanying trade measures; (ii) that trade measures should not be more trade-restrictive than necessary to achieve the environmental objective concerned; and (iii) that the trade measures chosen should not constitute arbitrary or unjustifiable discrimination.

5. With respect to an existing MEA, if there was a WTO challenge (which had not yet happened and was unlikely to happen in the future), Canada suggested that a WTO panel might consider the following qualifying principles in reviewing the relationship between trade measures in the MEA and WTO rules: (i) is the MEA open to all countries? (ii) does the MEA reflect broad-based international support? (iii) are the provisions specifically authorizing trade measures drafted as precisely as possible? (iv) is trade with non-parties to the MEA permitted on the same basis as with parties when non-Parties provide environmental protection equivalent to that required by the MEA?

(v) have negotiators explicitly considered the criteria developed by the WTO for the use of trade measures in MEAs?

6. In Canada's view it was useful for the WTO to consider undertaking work to provide guidance to WTO panels and MEA negotiators on the relationship between trade measures in MEAs and WTO rules. This approach did not contemplate amending GATT Article XX, but rather, some form of Ministerial or Interpretative statement.

7. In discussing Item 5, Canada emphasized once again the very different role that dispute settlement plays in MEAs as opposed to WTO Agreements. In Canada's experience, Parties to existing MEAs, and countries involved in negotiating new MEAs have not placed a great deal of emphasis on dispute settlement provisions largely because there is no history of them ever being used and little expectation that this situation will change in the foreseeable future. On this basis, Canada continued to support the development of strong and effective compliance regimes in MEAs. It believed a number of elements needed to be considered in developing such regimes. These included identifying potential non-compliance, determining non-compliance and its consequences, monitoring and determining return to compliance and an automatic review procedure for non-compliance in the future. The objective of any compliance regime should be to correct persistent patterns of non-compliance in a cooperative and facilitative manner. The scope of a non-compliance procedure needed to be closely linked to the achievement of the particular environmental objective of each MEA.

8. As previously stated, Canada believed it was helpful to the work of the CTE for the Secretariats of MEAs with functioning compliance procedures to keep the CTE informed of their development and operation, including measures being taken to assist developing countries and economies in transition to comply with their obligations.

9. The representative of Norway stated that the informal morning information session with a number of MEA secretariats reflected that trade measures were being used or contemplated to be applied in several MEAs in order to achieve environmental objectives. The WTO - as the guardian of the trading system – could not remain unaffected by this development.

10. Norway - in the context of the preparations for the 1999 Ministerial Conference – had submitted a communication to the General Council on trade and environment. In that communication (WT/GC/W/176) Norway proposed *inter alia* that trade-related instruments pursuant to MEAs be given specific accommodation in the WTO system. The aim of negotiations on this subject should be to clarify existing WTO provisions and elaborate new disciplines.

11. In the comprehensive process of identifying Norwegian positions on the relationship between MEAs and the WTO rules, Norway outlined a number of principles. These included, *inter alia*: (i) The most effective way of solving global/transboundary environmental problems is through international cooperation and multilateral rules, especially multilateral environmental agreements. Such agreements reduce the risk of countries taking measures that have effects on other countries but without their consent (unilateral/extraterritorial measures). (ii) It is presumed that environmental policy will continue to be drawn up within the relevant international environmental organizations and at the national level, not in the WTO. (iii) WTO rules and environmental agreements must continue to be on the same level, without a hierarchical ranking. The task ahead would then be to ensure that these two sets of rules are mutually supportive and legally consistent, and that both contribute to sustainable development. (iv) Trade measures for environmental purposes within the framework of an environmental agreement may only be taken in cases where the agreement in question includes specific provisions allowing for such trade measures. (v) It must be ensured that the use of trade-related instruments in environmental agreements does not constitute a means of arbitrary or unjustified discrimination or a disguised restriction on international trade *vis-à-vis* countries that are not party to the agreement in question. (vi) If non-parties to an MEA fulfil the obligations set out in

that environmental agreement, they will not be subject to less favourable treatment than parties to the agreement. These principles had emerged during consultation with stakeholders in Norway. They are put forward as an input to the work on this item in the WTO.

12. The representative of Japan supported the view that multilateral cooperation in the international community is indispensable to tackle global environmental problems. A multilateral approach should also be encouraged to prevent a country from applying a trade-related measure without securing understanding from other countries concerned. This should be facilitated by identifying the relationship between trade-related measures related to MEAs and the WTO. Japan welcomed the Communiqué that had been adopted at the G-8 Ministerial Meeting which shared this attitude and clearly recognized the importance of this issue.

13. Trade is only one of the many factors causing environmental problems. Therefore an attempt to depend on trade measures as the only possible solution to the environmental crisis would lead to unjustifiable discrimination and protectionism disguised as environmental protection. Japan stressed the need to maintain a balance between both aspects in discussing the relationship between trade measures pertaining to MEAs and the WTO.

14. Based on such an approach, Japan had examined possible options, including the review of GATT Article XX on several occasions, including at the March High Level Symposium on Trade and Environment. Japan was reflecting upon the views expressed by other Members at the Symposium, along with the proposals put forward by Canada and Norway.

15. The representative of the European Communities stated that discussions at the March Symposium confirmed the importance of the MEA issue. The EC remained convinced of the need to accommodate trade measures taken pursuant to MEAs within the WTO. The EC felt that MEAs were the best way of tackling international environmental problems and the fact that any trade measures they may contain were negotiated and agreed in a multilateral context was the most effective guarantee against protectionist abuse or unjustifiable discrimination.

16. This issue should be approached in a more constructive and less divisive manner than in the past. All countries had an interest in addressing global and transboundary environmental problems through strong and effective multilateral agreements. The Biosafety negotiations in Cartagena confirmed that because of their relative lack of control and enforcement capabilities, developing countries were especially vulnerable to some trade-related environmental risks. The establishment of effective international instruments to prevent such risks was therefore particularly important for developing countries. However, this element had not been sufficiently taken into account in the CTE's deliberation on the MEA issue. In fact, there seemed to be a sharp contrast between the position expressed in the CTE by many developing countries and their stance in multilateral environmental negotiations, notably on biosafety and waste.

17. The CTE's discussions on MEAs had had some positive effects. Now the relationship between MEAs and WTO rules was more systematically and comprehensively considered in environmental negotiations. However, some of the options proposed were inappropriate. Proposals were made to introduce new provisions in MEAs (e.g. Biosafety Protocol and POPs Convention) – the so-called "savings clauses" – stating that environmental agreements do not affect the obligations under existing international agreements. The EC opposed these proposals, believing them to be unnecessary and felt they would weaken the legal effectiveness of MEAs. Furthermore, they implied that MEAs would be subordinated to, or isolated from, other international agreements. The EC argued that there were other solutions available to clarify the relationship between MEAs and WTO Agreements. The notion of mutual supportiveness and consistency should be the fundamental guiding principle in this area.

18. At a previous meeting the Community had expressed its appreciation for the revised analysis of WTO case law on GATT Article XX issued by the Secretariat. It had made some preliminary comments on the Appellate Body report in the Shrimp/Turtle case. The positive evolution reflected in previous cases had been confirmed in this report. The EC welcomed the interpretative criteria developed by the Appellate Body. In particular: (i) the interpretation given to the exception in subparagraph (g) showed that there was broad scope to justify environmental measures under GATT Article XX; (ii) the increasing emphasis put on the requirements laid down in the head note to GATT Article XX resulted in a more logically consistent interpretation of this Article; (iii) the references made in the Shrimp/Turtle report to several instruments of international environmental law were encouraging. It was clearly desirable to avoid WTO Agreements being interpreted as if they were isolated from other branches of international law.

19. The Appellate Body clearly recognized that it would not be legitimate to enforce trade restrictions based on the exporting country's regulatory policies, while opening the door for such restrictions if based on a broader multilateral agreement. Some of the statements found in the report might be interpreted as implying that it would be possible to adopt measures aimed at ensuring that the goods that are actually imported comply with requirements, including PPM-related requirements, unilaterally decided by the importing country (e.g. measures making market access conditional upon compliance with such requirements by foreign suppliers). It would be useful to consider this issue further, taking into account the potential environmental benefits, as well as the potential trade distorting effects.

20. The representative of India argued that the debate on MEAs was a non-issue. Here was one problem that did not need fixing. The WTO should focus on more pragmatic issues as they arose. He asked the earlier speakers to give one example of an MEA that had been prevented from coming into being as a result of the WTO. The presentations made by several MEAs in the informal morning session revealed that they were all working effectively without WTO intervention.

21. In response to the EC's earlier remarks, the Indian representative claimed that in the Biosafety Protocol, developing countries asked for trade measures as part of a trade package and there was nothing contradictory in that.

22. Article XX allowed for MEAs to take measures necessary for the protection of the environment. It was clear that Article XX of the GATT did not need amendment. The problem lay in the fact that the Chapeau was used to undermine the principles of the Article, and that developed countries used MEAs as a disguise for introducing a protectionist agenda into the WTO.

23. Commenting on the Norwegian proposal, the Indian representative stated it was contradictory to state that as long as a trade measure was taken in the context of an MEA, it would not amount to arbitrary or unjustifiable discrimination, as it would in the light of the above. Therefore, there needed to be a precise definition of an MEA.

24. An accommodation to take into account an MEA really meant a trade measure taken by a particular country under certain carefully defined circumstances. As long as this was construed as it should be as a unilateral action taken by a particular country under certain specifically defined circumstances, it was difficult to have a blanket rule on the subject. Therefore the WTO needed to examine the issue case by case and apply Article XX. The WTO had already sanctioned MEAs, therefore there was no need for them to seek further accommodation within the WTO rules.

25. The representative urged members to clarify what they meant by the term "accommodation." Did it refer to Article XX or something else? With regard to Article XX, was the concern related to the principles or the chapeau? In response to the EC delegate's comments on the WTO ruling in the Shrimp-Turtle case, the Indian representative said the Appellate Body report had been adopted by a negative consensus; there had been no other option. Developing countries were deeply concerned

with the evolutionary theory of interpretation that was applied by the Appellate Body. It was for the WTO Members to interpret such cases, but this had been done by the Appellate Body in the Shrimp-Turtle case.

26. He wondered what the debate was really about. If a majority of members got together and formed an MEA, was this falling foul of WTO law? If the answer was no, then the issue needed no further discussion. There were other problems that needed to be addressed in the CTE, such as labelling, which was a market reality being faced by developing countries all the time. These were real life issues. MEAs were a non issue.

27. The representative of Brazil endorsed India's statement. Article XX did not need to be amended. To date no MEAs had been prevented from coming into being because of the WTO, in spite of the fact that WTO rules were sometimes inconsistent with MEA trade measures. With reference to the morning's informal discussion on MEAs such as CITES, trade measures taken by some countries might have given rise to conflicts between parties, but they never had because they were all multilaterally agreed upon. Some policies were against WTO rules through the use of bans and discrimination, but these were necessary. One could say that the less the trade relevance of the species concerned, the greater the consensus, and vice-versa. These issues were adequately addressed within the framework of the CITES Convention. Therefore there was no need to bring them into the WTO.

28. In response to the EC's comments on the "savings clause" and MEAs, the Brazilian representative said it had no relationship to Article XX. Trade measures to prevent the dumping of hazardous waste and domestically produced and prohibited products exported from developed countries to developing countries constituted an important problem. Certain measures, although sometimes inconsistent with WTO rules, had proved to be very effective in the prevention of such practices.

29. He added that the WTO tackled concrete cases such as hormones, bananas and aircraft subsidies and not future, possible, or eventual problems.

30. The representative of Hong Kong, China was willing to reflect with an open mind upon the views put forward by other delegations on the relationship between the WTO and MEAs. India's view that this was a false issue had its merits. Perhaps the issue was not really MEAs, but unilateral action, as proven by the recent disputes brought to the WTO.

31. The inter and intra-relationships among Members of the WTO were clearly defined by the WTO Agreement. MEAs should not be a back door for circumventing any of the WTO commitments. This should form the basis of any guiding principles on the issue. Secondly, one must not blur the dividing line between the WTO and MEAs. These were distinct sets of legal agreements and contractual obligations. While there might be some overlap between the membership of the institutions, they were not identical. They have different objectives and different instruments to achieve their goals.

32. The representative added that the MFN Principle (GATT Article one) and the one-tier Dispute Settlement Mechanism formed the cornerstones of the WTO. Any new measures that would create uncertainty or a double or multilayered Dispute Settlement Mechanism should be avoided. In this connection and in response to the Canadian proposal for a "Principles and Criteria" approach, the representative from Hong Kong, China recalled that the WTO Dispute Settlement Mechanism was based solely on the WTO Agreements. It did not seem feasible for a WTO panel to consider principles and criteria that extended beyond these. If the issue concerned unjustifiable or arbitrary discrimination, then as India pointed out, this was adequately covered by the Chapeau of Article XX. According to the representative, Canada's proposal did not bring any new value added to the

Dispute Settlement proceedings, especially in terms of criteria. In terms of principles, it was not clear how the ones outlined by Canada could be applied to the WTO.

33. If Canada and Norway wished to introduce new sets of rights and obligations into the WTO, the representative was willing to discuss these, providing they were introduced as such and not disguised. At present the proposal was not clear and needed to be more specific about its real intentions.

34. The representative of Korea stated that his delegation was also open minded on these issues. There was a general consensus that the trade measures pursuant to MEAs created a problem when countries resorted to unilateral measures. Even though the WTO could accommodate the trade measures mandated by the MEAs, there was still a need to eliminate potential areas of conflict. Further clarification was needed on the scope and conditions under which WTO rules could accommodate the trade measures used by MEAs, for the following reasons: (i) it would be beneficial to all WTO Members if the WTO more clearly articulated the rules distinguishing legitimate trade measures specifically mandated by genuine MEAs and unilateral measures to deal with environmental challenges outside the jurisdiction of the importing state; (ii) in the interest of exporting countries, notably developing countries that were more susceptible to meeting import restrictions, given the normal period of dispute settlement, it was important to define clear guidelines to resolve any conflicts that could arise; (iii) clearer rules in the WTO could enhance the predictability of future negotiations, thereby reducing the possibility of any conflict arising between WTO agreements and MEAs.

35. The representative of Switzerland shared the concerns expressed by many other delegations. The increasing awareness that MEAs have also to take into account trade aspects when pursuing environmental goals was welcomed. Furthermore, the use of trade measures within the framework of MEAs was not only understandable but seemed to be the best way to ensure effective realization of environmental goals. Even if trade relevant provisions of MEAs were generally not inconsistent with WTO rules and principles, this evolution nevertheless created a growing risk of conflict. Therefore, a further clarification of the relationship between WTO rules and rules established by MEAs was necessary.

36. There were three basic methods to clarify this relationship: (i) the relevant MEAs could adopt rules for clarification, (ii) the WTO panels and other courts and tribunals could develop such rules (iii) the WTO Members could adopt a rule for clarification of this relationship within the framework of the WTO. Switzerland found only the third option to be acceptable.

37. Firstly, clarification of the relationship within the MEA framework not only bore the risk that rules would be adopted which were unacceptable from a trade perspective; it was also inefficient, as each single MEA would have to regulate the relationship of its rules towards the rules of the WTO. Secondly, the clarification between WTO and MEAs was simply too important and too political to delegate to a "technical" - even if the result of such a delegation might be acceptable. Moreover, there was no guarantee that the decisions of the different panels, courts and tribunals would be consistent. Therefore, in order to enable a clear, transparent and predictable relationship between the WTO and MEAs, this relationship had to be clarified within the framework of the WTO.

38. At this moment, the discussion where to regulate the WTO-MEA relationship within the framework of the WTO focussed on the following possibilities: (i) amend Article XX, (ii) introduce a "coherence clause", e.g. in form of an "Understanding on the WTO Agreements concerning the Relationship Between the Provisions of the Multilateral Trading System and Trade Measures Pursuant to Multilateral Environmental Agreements" which could be adopted at a Ministerial Conference. To amend Article XX would open a debate and entail the risk that the whole article - which was the balanced result of long negotiations - would have to be reconsidered. This was a major disadvantage of this approach. Furthermore, it seemed that there was no necessity to change the WTO rules by

creating a new exception to the application of WTO rules and principles. Rather what was needed was to clarify the relationship between WTO rules and other, eventually conflicting rules and principles. Therefore, Switzerland preferred providing guidelines to deal with possible conflicts to clarify the relationship between WTO rules and principles and MEAs through the adoption of an interpretative "coherence clause."

39. The representative recalled that problematic conflicts between the WTO and MEAs would remain the exception: the WTO and MEAs dealt with different issues and had different concerns and goals. Therefore, the first principle should be that each framework is responsible and competent for the issues falling within its primary competence. The WTO should focus its activities on trade-related issues and not engage in adopting rules specifically aimed at protecting the environment; on the other hand, MEAs should concentrate their activities on the protection of the environment. Hence, most of the time, the question whether WTO rules or MEA rules govern a specific situation would be resolved through a "center of gravity" approach: if the question at issue concerned primarily the protection of the environment, the MEA rules apply; if it involved foremost trade aspects, then WTO rules govern.

40. Switzerland therefore suggested that the principle governing the relationship between the WTO and MEAs should be the following: (i) WTO rules govern trade-issues, MEA rules apply to environmental issues, (ii) Environmental measures adopted in an MEA should be considered, from the WTO perspective, as legitimate and necessary; it should not be possible to challenge the legitimacy or necessity within the WTO framework. The WTO should, however, be concerned whether such measures involved an arbitrary discrimination or the possibility of achieving a trade advantage (hidden protectionism). If this was the case, then a Member should be able to challenge the measure in question within the WTO on these grounds.

41. Finally, it would have to be resolved whether all MEAs should be granted this "immunity from full scrutiny", i.e whether indeed all environmental trade-measures adopted by any MEA should be considered to be legitimate and necessary. It was questionable whether the WTO was the proper institution to decide which MEAs were to be seen as providing for legitimate and necessary measures and therefore should not be subject to full WTO scrutiny. Therefore, the relevant criteria should be an objective one like the adequate representation in an MEA and its openness to all countries concerned.

42. Switzerland suggested that further discussions on this issue should consider the different concrete proposals previously made, such as the Swiss Non-Paper of 20 May 1996. Switzerland was ready to revisit its proposal and continue the discussion on the relationship between WTO and MEAs on a informal and formal basis.

43. The representative of Venezuela supported the ongoing cooperation and dialogue between MEAs and the WTO because this favoured environmental issues being discussed in an international context. There was no need to review the WTO rules as they gave the flexibility to countries to implement national measures for the protection of the environment. Venezuela considered the mechanism of the DSU to be effective in tackling environmental issues that had come before the WTO, which should not be tackling environmental concerns as such.

44. Venezuela supported the coordination of MEAs within the WTO and stressed the need to encourage the transfer of technology to developing countries by increasing the availability of funding. Environmental NGOs should be listened to at the national level and given a voice in international symposia and other fora to share their experiences and proposals to protect the environment. Venezuela did not oppose the view that a country could use an MEA to apply trade measures that are not directly refered to in the protection of its companies, or the extra-territorial application of environmental laws.

45. The representative of Australia stated that MEAs and the WTO should be able to constructively co-exist and countries should seek to ensure that they were able to fully comply with

the obligations under both sets of agreements. A great deal still needed to be done to improve policy coordination. This process had been enhanced by Information Sessions with MEAs, such as the one held in the morning. These and other discussions in the CTE helped facilitate a greater understanding of the issues and improved information flows between environment and trade officials. There needed to be continuing efforts to secure greater coordination and cooperation between officials at the national level and to ensure that delegations participating in international negotiations were able to represent well considered government positions.

46. The representative of the United States stated there already existed a broad scope under WTO rules for trade measures and other measures that affect trade under MEAs. During previous discussions on the relationship between MEAs and the WTO, there had been some occasions where the WTO had attempted to give guidelines for MEAs to follow. There had been suggestions to set criteria which included concepts such as effectiveness.

47. In the Panel report on the US Gasoline case, the argument had been made that Article XX (g) should be interpreted as requiring a measure to be effective. The Appellate Body had concluded that this was wrong as such a requirement could not be found in the Article. Also, from a practical view point, governments and international institutions should not try solutions without knowing if they would resolve the problem at hand.

48. In order to avoid problems with MEAs, some delegates had proposed to negotiate a clear set of rules of the road aimed at ensuring compliance with WTO principles. The United States representative cautioned that this might be too simplistic an approach. The best way to ensure that the WTO and these agreements operated in harmony was to have more interchanges between WTO and environmental officials negotiating these agreements. There were no easy answers or blueprints to resolve these issues. He supported Hong Kong, China's concern that MEAs should not be used as a back door to circumvent WTO rules. This occurred mainly due to a lack of cooperation between trade and environment officials, as both have a different set of priorities.

49. The "savings clause" was recognized in the Vienna Convention as a way for parties to an agreement to clarify their intentions *vis-a-vis* other agreements, and had been used in many agreements such as the Deserts Convention. These were not new tools to undercut MEAs, but had emerged from the corpus of international law. If all parties to a negotiation were clear that no conflict was intended, they could agree to reflect this in a savings clause. This was an effective way of preventing countries from changing their intentions at a later stage of negotiation or implementation. It could prevent disputes from arising and being brought to the WTO. The conflicts that had arisen during the negotiation of the Biosafety Protocol clearly highlighted the need for a savings clause to clarify the basic parameters.

50. Commenting on the Secretariat document WT/CTE/W/117 on the draft Protocol on Biosafety, the United States noted the attempt to differentiate trade articles from non-trade articles. Given the potential trade impact of the Protocol, he requested the Secretariat to circulate the entire text.

51. The representative of Costa Rica supported the views articulated by India, Brazil and Venezuela that a harmonious relationship between the WTO rules and MEAs already existed. Environmental problems needed to be resolved through MEAs and not the WTO. There was no need to introduce any amendments to Article XX, as it was sufficiently broad to contemplate a number of trade measures that could be taken to protect the environment. None of the environmental cases studied by Panels in the WTO had dealt with trade measures negotiated in MEAs, but rather unilateral measures. These were concrete issues that should be discussed, as opposed to hypothetical cases that might arise in the future.

52. The representative of Egypt failed to see the need for more legal clarity on the relationship between WTO rules and trade measures, taken pursuant to multilateral environmental agreements

(MEAs). GATT Article XX was the legally-binding provision that captured the practical relationship between trade and environmental policies, and he saw no need to go beyond existing WTO provisions to accommodate trade measures taken pursuant to MEAs. There was considerable scope for WTO Members to use trade measures for environmental purposes consistent with WTO rules, including the defined scope of Article XX. On the other hand, it was very unlikely that parties to an MEA would challenge trade measures taken pursuant to it as that would undermine the obligation they had accepted in that framework. Up to this moment there had been no GATT or WTO dispute concerning trade measures applied pursuant to an MEA. Egypt strongly cautioned against any attempt to modify or re-draft Article XX. As it stood, it addressed a wide range of environmental concerns, like the conservation of natural resources, protection of living organisms, and the protection of global commons like the ozone layer.

53. Furthermore, proposed modifications would undoubtedly introduce elements of controversy that would have the potential of mistrust leading to weakening the multilateral trading system and to have it assume functions for which it had not been created, nor for which it had a mandate. In addition, the WTO did not have the in-house technical expertise in this field that would enable it to discharge its duties appropriately.

54. The representative of the European Communities said he was willing to listen to other Members and try and accommodate their requests. However, he was disappointed to see such opposition to issues that were of major concern for the EC. The representative challenged the view that the WTO only dealt with real issues and problems and said it did much more. Hence WTO was now in place of the old GATT, to promote cooperative policy-making in the field of international economic relations. This went beyond the borders of market access negotiations, but was real as well. Clarification on MEAs would be a safeguard against unilateralism and he appealed not to look for ulterior motives and a cover for protectionism.

55. The representative of New Zealand recalled that his delegation had put forward its position on item one and five in several CTE meetings before. New Zealand stressed that prevention was better than cure. This referred to the prevention of any inconsistencies developing between the work done in the MEA bodies *vis-a-vis* the WTO rules. There was a need for the principle of coherence to guide activities in the MEA bodies and the WTO. Various devices such as the savings clause were effective tools to help achieve this objective by creating clarity. Furthermore, there needed to be a clear set of rules on compliance and dispute settlement mechanisms to act as a disincentive to misinterpreting the rules or interpreting them very loosely and creating conflicts that could be avoided.

56. The representative of Chile said she was open to the views put forward by Canada and Norway. There was a need for consistency and coherence between the different actors in this field and especially better coordination with countries that lack sufficient resources.

57. The representative of Hong Kong, China cautioned against the use of the coherence principle in the context of the WTO and MEAs, suggesting that this could lead to the inclusion of other contentious issues such as labour standards.

58. The representative of Norway said that discussions on MEAs in the WTO were complicated, at times giving rise to misunderstandings. In response to the potential areas of conflict highlighted by some Members, Norway felt that a conflict would inevitably arise unless there was further clarification of trade measures pursuant to MEAs. Therefore, Norway suggested that *inter alia* the head note of Article XX should apply to trade measures taken pursuant to MEAs. It was sceptical of the views advocated by some Members that the WTO should only be concerned with specific cases. Strengthening WTO disciplines to achieve greater legal clarity should be one of its major tasks ahead.

59. The representative of Morocco said that it was time to implement the mandate from the Marrakesh agreement. In the framework of negotiations, a mutually agreeable solution had to be found to the MEAs: how can measures taken in relation to MEAs be compatible with WTO rules? Several proposals were suggested in past CTE meetings, including the possibility of notifying the WTO of all environmental agreements. But in order to find a real solution, there must be clearly defined criteria that take into account the interest of all parties.

60. There were measures in MEAs that were adopted by consensus and ratified by all parties such as the Basel Convention. Some Members in the WTO found these measures to be restrictive, such as one provision that provided for waste, which was considered to be discriminatory. Others saw this as a positive step as it contributed towards sustainable development. In this light, a global approach was needed to resolve these issues. Certain provisions in MEAs such as CITES used quotas to penalize countries, by limiting export quotas of ivory. Strategies to compensate these countries needed to be developed, along with technical assistance to help them conform to the standards set by MEAs such as the Montreal Protocol. This could only be achieved through a global and balanced approach, taking into account the needs and priorities of developed and developing countries.

61. The representative of Mexico emphasized that the WTO was a trade organization. In some cases, measures were imposed under the pretext of protecting the environment, when in fact they were MEA trade measures. The WTO rulings in these cases dealt with the trade aspects of these measures. None of the proposals advocated earlier seemed to be sufficiently practical to address the issues at hand. Given the limited mandate of the CTE, the representative proposed to continue further deliberations until an optimal solution was reached.

62. The representative of Canada stated that the WTO should be a proactive organization that fostered a legal environment based on rules and predictability. The criteria and principles approach put forward by Canada should be seen in this light. It was essential to integrate trade and environment policy formulation and to foster coordination between domestic trade and environment ministries to meet the challenges imposed by the cross-cutting nature of these issues. While the CTE had played a useful role in nurturing an understanding of environmental concerns in trade officials, relatively few officials from environment ministries attended CTE meetings. The lack of understanding between trade and environment officials often lead to conflicts in the context of MEAs, as pointed out earlier in the case of the Basel Convention and the Biosafety Protocol. Canada had contributed to the March High Level Symposium through sponsoring delegations from developing countries.

63. The representative of Guatemala felt that MEAs were important to achieving certain specific goals in order to protect the environment. It was up to parties to an MEA to determine whether or not the trade measures applied in that context were valid. Different institutions were set up to ensure that the MEAs were enforced. They should not be seen as a whole, but be distinguished and differentiated by their specific goal. Coordination was needed between officials working on trade and those on environment. Guatemala endorsed the need for further discussions to resolve these complex sets of issues.

64. The Chairman concluded the discussion on the relationship between MEAs and the WTO as being a rather complicated debate, with Members holding different positions. Already, a certain element of a small common denominator was emerging. Efforts were needed to co-exist constructively with the MEAs and the information session held prior to the meeting had been a useful exercise in this direction. Better coordination between officials in charge of trade and environmental policies at the national level was imperative. Constructive efforts were needed to meet the challenge of harmonizing the differing views in future discussions.

Item 7 The issue of the export of domestically prohibited goods

65. The representative of Morocco referred to the notifications on domestically prohibited goods which had been operational from 1983 until 1990, when it appeared to have been suspended. Under the provisions of the Agreement in 1984 which had called for transparency, Morocco requested the Secretariat to reactivate the process of receiving notifications. This would provide useful information on the laws and domestic regulations that govern the production and trade in products and goods and would reveal whether products were subjected to certain prohibitions, for example pharmaceutical products that were out of date, fertilizers, and dangerous chemicals used to make toys or radioactive substances. This would complement the overall transparency, which all the Members had chosen to ensure since the Marrakesh Agreement. It would also enable developing countries to prepare legislation and domestic regulations and strengthen human and institutional capacity.

66. The representative of the United States claimed that the notification process had never been terminated.

67. The representative of Morocco noted that although the contracting parties had never terminated the process, it had come to an end naturally and that there were no notifications received since 1990. Given the importance of the issue, contracting parties should again be asked to notify their exports of domestically prohibited products.

68. The representative of Egypt supported Morocco, emphasizing the need for countries to notify the WTO about their national measures relating to DPGs, especially with reference to pharmaceuticals and hazardous waste.

69. The representative of Uruguay questioned the need for a separate notifications for DPGs, given the existing provisions for notifications under the SPS and TBT agreements. If legislation was enacted at the national level prohibiting hazardous wastes or chemical products, this should be notified and this could require a special format.

70. The representative of Morocco said that in the framework of the TBT and SPS, the criteria were established by the agreements. DPGs concerned products that were prohibited at the national level or regulated for reasons concerning health and safety. It was important to examine domestic legislation and make provisions to notify the WTO about harmful products which were prohibited.

71. The Chairman was grateful to the representative of Morocco for recalling the notification requirement, which was an important issue. Members were reminded of their obligations to provide regular information on their national policies relating to DPGs, through the notifications.

Item 8 The relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights

72. The representative of Malaysia, on behalf of ASEAN, commented on the relationship between intellectual property rights and biodiversity conservation, discussed in previous meetings of the CTE. The representative urged the Secretariat on behalf of ASEAN to prepare a paper that would examine the synergies between the CBD and TRIPS Agreement. Acknowledging the two papers already done by the Secretariat on the legalistic aspects, the representative stressed the need to examine the synergies between the two agreements, with case studies focussing on the *sui generis* option of Article 27.3(b) of the TRIPS Agreement. The paper should explore the ways in which countries could implement the *sui generis* system: through UPOV and other alternatives. This would provide very useful information to developing countries and other members of the WTO.

73. The representative of the United States stated that factual papers prepared by the Secretariat had been very instructive. However, he was wary of the Secretariat writing a paper about synergies between the two Agreements and asked for clarification from the representative of Malaysia.

74. The representative of the European Communities supported Malaysia's request for a paper and said that it had consistently seen some potential synergies that needed to be developed between the CBD and TRIPS agreement. This had recently been drawn to the attention of the EC's Council of Ministers, who asked the EC delegation to move forward in this area. Therefore, the EC welcomed any support the Secretariat could provide by means of a paper.

75. The representative of Malaysia, on behalf of ASEAN requested the Secretariat to prepare an objective and factual paper based on case studies from empirical evidence. The paper should focus on the *sui generis* system and whether there is only one method, as suggested by UPOV, or whether there are other means of implementation.

76. The representative of Guatemala supported Malaysia's request for a paper and urged the Secretariat to provide a translated copy in Spanish as soon as possible, to enable it to be ready for an informed discussion on the subject in October.

77. The Chairman concluded that the Secretariat would prepare a factual paper on the relationship between the CBD and the TRIPS Agreement, in particular Article 27.3(b). This study should be prepared before the next CTE meeting in October.

Other Items

Item 3b The relationship between the provisions of the multilateral trading system and the requirements for environmental purposes relating to products including standards and technical regulations, packaging, labelling and recycling.

78. The Chairman introduced document WT/CTE/W/114 prepared by the International Organization for Standardization (ISO) to provide an update on its work on international standards for environmental labelling, in response to a request by the EC at the last CTE meeting.

79. The representative of the European Communities welcomed the ISO paper and the fact that ISO 14024 had moved forward in ISO by applying a lifecycle approach to eco-labelling schemes, an aim that one tried to achieve within the Community. Labelling was one of the three priorities the EC had highlighted in its agenda for the Seattle Ministerial in a paper submitted to the CTE. He wondered if the standards under 14024 offered clear and non discriminatory process rules

80. The representative of the ISO stated that the document reproduced the agreed definition of ISO Type I environmental labelling programmes, often referred to as Eco-labelling programmes, and provided some background information concerning the content and use of ISO 14024:1999 – *Environmental Labels and Declarations – Environmental Labelling – Principles and Procedures*. Under these programmes, manufacturers were licensed to use a mark, owned by an independent body, on their products, to demonstrate that these products were environmentally preferable. Furthermore, the document provided the definition of ISO Type II - *Environmental Labels and Declarations –Self-Declared Environmental Claims*. This definition was under final verification of consensus and should be confirmed at the closing of the ballot on 27 July 1999. According to ISO discussions during the recent series of meetings of ISO/TC 207 *Environmental Management*, held in Seoul, Korea from 31 May to 6 June 1999, this definition was expected to be adopted and had generated considerable interest. About 500 delegates from 54 countries had attended the Seoul meeting, half of them from developing countries. The standardization work on ISO/TC 207 was generally progressing well, even if there was not yet a consensus emerging from the definition of ISO Type III *Environmental Labelling: Labels and Declarations*. He added that among the resolutions of interest to the CTE was

Resolution ISO/TC 207 23/1999 concerning the participation of developing countries. The Chairperson of ISO/TC 207 was requested to ensure that members not having the possibility of participating in the various meetings were consulted so that they could provide written comments with justification/explanation to be reported at the appropriate time.

81. As far as cooperation with developing countries was concerned, since the beginning of the year, ISO had organized seven regional workshops (two in Africa; one in the Middle East; one in Asia, in cooperation with WTO and ITC; one in Latin America and two in the Baltic countries). Last but not least, the Seoul meeting established that the main elements of compatibility between ISO 14001 and ISO 9001 had been achieved.

Item 4 The provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects

82. The Chairman recalled the Secretariat's document WT/CTE/W/118 on the environmental database. All notifications that were environmentally related or included environmental references had been listed. As the document was only recently distributed, Members might need more time and could comment at a later stage.

Item 6 The effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions

83. The Chairman introduced two papers prepared by New Zealand (WT/CTE/W/121) and Iceland (WT/CTE/W/111) examining the benefits of eliminating trade distorting and environmentally-damaging subsidies in the fisheries sector.

84. The representative of New Zealand highlighted the main points of his delegations's paper: stating that world fisheries continued to face a significant crisis as a result of overfishing. The immediate cause of this situation was fishing far in excess of what the resource could sustain. The underlying factors were a combination of excess capacity and government transfers, which encouraged excessive investment and effort, together with the absence of effective management regimes. This could not be seen as simply an environment problem: it had several dimensions. With developing countries accounting for over half of world trade in fish and fish products, subsidies in this sector also had an impact on development and trade. Accordingly, this was an issue to be addressed by the WTO.

85. New Zealand's paper stressed that the FAO had estimated that some 30 to 40 per cent of current global fishing capacity was a threat to the sustainability of fish resources. Unless urgent action was taken, further fish stocks would collapse, and the viability of fishing industries and the communities they support would be further threatened. For these reasons, New Zealand urged Members to reflect further on this issue, in the CTE and in the Ministerial Conference in Seattle.

86. The sheer scale of the subsidies invested into fishing industries was immense and explained why pressures on fish stocks had become so acute. A recent World Bank study estimated that a total of US$14-20 billion of subsidies were granted each year to the fisheries sector, with at least half of that amount provided by OECD countries alone.[1] These subsidies represented 20-25 per cent of fisheries revenues.

87. New Zealand's objective in raising this issue was not to call into question subsidies that could be shown to be "good" for environment, or neutral for trade. Reference was made to a recent

[1]Earlier studies by the FAO concluded that subsidy levels were probably higher than this.

World Bank analysis that indicated environmental subsidies accounted for almost five per cent of all subsidies provided world-wide in this sector. These subsidies aside, the pressing challenge was to address the subsidies that were making a clear contribution to exacerbating the over-capacity problem, with all of their adverse consequences in the area of trade, environment, and development.

88. The fact that fish was a heavily traded commodity meant that the nature and scale of subsidies in this sector presented a number of important issues for the multilateral trading system, given the significant trade distortive effects arising from fish subsidies. Of the annual value of the fisheries trade (US$50 billion), developing countries accounted for half of this trade, and in 1996 had derived a net surplus in the order of US$17 billion. Subsidized fishing by wealthier nations limited the ability of developing countries to develop their own sustainable fishing industries with the benefit of full access to markets and true market prices.

89. The issue of subsidies in the fisheries sector had been the subject of growing concern and attention in relevant multilateral and regional *fora* in recent years. As the minutes of the CTE meetings showed, the issue had been considered in some detail by the Committee in 1997. In 1998 the Secretariat had produced, at the Committee's request, a detailed paper which described relevant WTO rules and offered an overview of fishing industry subsidies notified under Article 25 of the SCM Agreement.

90. Fish subsidies and their impact on trade, development and the environment had been highlighted at the High Level Symposia on Trade and Environment and Trade and Development held in March 1999. New Zealand, along with Australia, the Philippines, Iceland and the U.S., were among a group of countries that had issued a joint statement calling for the elimination of environmentally-damaging and trade-distorting subsidization of the fisheries sector. This call had been endorsed by other governments and non-governmental organizations alike in the course of the two meetings.

91. The problem of overfishing attracted close scrutiny in a range of other international *fora*, including the FAO, CSD, OECD, UNEP, UNCTAD and APEC. In this regard, New Zealand looked forward to a briefing by the FAO on the important work it had carried out in recent months, culminating with the adoption of an International Plan of Action for Management of Fishing Capacity. This plan provided an agreed framework for measures at national, regional and multilateral levels to balance fishing capacity with resource sustainability objectives. Its part III set out implementation provisions. They included: development of national plans to manage and, if necessary, reduce fishing capacity to balance capacity with resources available on a sustainable basis; progressive elimination of all factors, including subsidies and economic incentives which contribute, directly or indirectly, to the build-up of excessive fishing capacity; participation in international agreements which relate to the management of fishing capacity, particularly the FAO Compliance Agreement[2] and the UN Fish Stocks Agreement[3].

92. Given the trade, development and environment impacts of fish subsidies, there was ample scope for the WTO to play a constructive role in addressing this issue and complement the work undertaken in FAO and other bodies. The value of fisheries trade, the scale of the trade-distorting interventions in this sector and their impact on the global environment made this an appropriate subject for scrutiny by the CTE, as well as by other appropriate bodies of the WTO system.

[2]Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas.

[3]Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

93. The WTO could not supplant the work carried out by various international and regional bodies that had a specific mandate to address fisheries conservation and sustainable management. However, the WTO, in cooperation with the expertise that might be provided by other relevant bodies, was the appropriate forum for addressing trade-distortive measures that had also been shown to have adverse environmental effects. New Zealand suggested that recommendations for further work in the WTO subsidies could include the following: (i) The CTE could invite the FAO to provide information on the implementation of the FAO Plan of Action and any other actions taken to address the problem of overcapacity in the fisheries sector. The FAO had been tasked under the Plan of Action to prepare information in this regard. Members could also directly provide information to the Committee on the specific steps they were taking in this regard; (ii) Further analysis and study of the implementation of existing WTO disciplines as they apply to subsidies affecting the fish sector could be undertaken. Questions had been raised on transparency and adequacy of notifications under Article 25 of the SCM Agreement. Members could consider the extent to which these obligations were being met and whether they were sufficient to ensure transparent reporting of fish subsidies that are contributing to the overcapacity and overfishing problem. (iii) Consideration should also be given more broadly to the adequacy of existing WTO disciplines. This work should be aimed at determining if current provisions were effectively implemented by Members and whether they required supplementation in order to secure progressive reduction and elimination of fish subsidies that contributed to overcapacity.

94. The observer from the FAO addressed the spreading phenomenon of excessive fishing inputs and over-capitalization in world fisheries. The issue was essentially one of having too many vessels or excessive harvesting power in a growing number of fisheries. The existence of excessive fishing capacity was largely responsible for the degradation of fishery resources, for the dissipation of food production potential and for significant economic waste. This had manifested itself in the form of redundant fishing inputs and the overfishing of most valued fish stocks. The globalization of the phenomenon had been illustrated by the relative stagnation of world marine catches of major species since the late 1980s. Evidence provided by FAO indicated that, in reference to all major marine fisheries, 35 per cent had been subjected to severe overfishing, 25 per cent were fully exploited and 40 per cent still offered scope for development. Demersal and other most valued stocks had been most affected.

95. The origin of excess fishing capacity dated back to the widespread tendency of overinvestment and overfishing under open-access conditions. Over-capitalization in world fisheries also came about progressively as a result of broader and related factors, such as: (i) The resilient profitability of fishing activities whereby technical progress and relative price inelasticity largely compensated for diminishing yields in overfished fisheries; (ii) the effect of the extension of maritime areas under national jurisdiction on private and public investment strategies and of related 'nationalization' policies, generally accompanied by sizable subsidization programmes; (iii) the relative mobility of harvesting capacity, which allowed for a pervasive spill-over of excess capital among fisheries, both within areas under national jurisdiction and on the high seas; (iv) the changing nature of the industry, which had grown increasingly competitive and capital-intensive, with markets that were now largely based on internationally traded commodities; and above all; (v) the failure of fisheries management in general, and of commonly used management methods in particular, such as total allowable catch (TAC) and other methods aimed at regulating the catch rather than the harvesting capacity itself.

96. In 1997, the FAO Committee on Fisheries (COFI) had recommended that a technical consultation be organized by FAO to clarify issues related to excess fishing capacity and to prepare guidelines. Work undertaken by FAO on this basis[2] had led to the preparation of the FAO

[2]The following reports provide additional information:

Report of the Technical Working Group on the Management of Fishing Capacity. La Jolla, U.S.A., 15-18 April 1998. FAO Fisheries Report No. 586.

International Plan of Action for the Management of Fishing Capacity, adopted by COFI in February 1999. It had been further discussed by the FAO Ministerial Meeting on Fisheries in March 1999, which had declared to "*attach high priority to the implementation of the International Plan of Action for the Management of Fishing Capacity … and on putting into place within the framework of national plans, measures to achieve a balance between harvesting capacity and available fisheries resources.*"[3] The International Plan of Action (IPA) was elaborated within the framework of the Code of Conduct for Responsible Fisheries, as an element of fisheries conservation and sustainable management.

97. The immediate objective of the IPA was for "States and regional fishery organizations, in the framework of their respective competencies and consistent with international law, to achieve world-wide preferably by 2003 but no later than 2005, an efficient, equitable and transparent management of fishing capacity." The IPA further specified that *inter alia*, States and regional fishery organizations, when confronted with an overcapacity problem which undermined the achievement of long-term sustainability outcomes, should endeavour to limit initially at existing levels and progressively reduce the fishing capacity applied to affected fisheries. On the other hand, where long-term sustainability outcomes were being achieved, it urged States and regional fishery organizations to exercise caution.

98. The IPA was voluntary and based on a number of major principles of the Code of Conduct as well as on complementary principles, such as: a three-phase implementation: (i) assessment and diagnosis; (ii) adoption of preliminary management measures; (iii) a system of periodic reviews and adjustments, with priority being given to managing fishing capacity first where it results in unequivocal overfishing. The IPA specified a number of actions to be taken urgently. Major actions were outlined below in reference to the main section of the document: assessment and monitoring of fishing capacity, the preparation and implementation of national plans, international consideration and immediate actions for major international fisheries requiring urgent attention.

99. Regarding the assessment and monitoring of fishing capacity, the IPA recommended, *inter alia*, that States: (i) supported coordinated effort and research to understand better the fundamental issues related to the measurement and monitoring of fishing capacity; (ii) proceeded within the next two years with preliminary assessment of fishing capacity and with the systematic identification of fisheries requiring urgent attention at national, regional and, in collaboration with FAO, at global level; and (iii) developed appropriate records of fishing vessels and supported the establishment by FAO of an international record of vessels operating in the high seas.

100. Concerning the preparation and implementation of national plans, the IPA recommended, *inter alia*, that States: (i) developed and implemented within two years a national plan of action to manage fishing capacity, accounting for the effect of different management systems on fishing capacity, and, if required, for the need to reduce capacity in some fisheries; (ii) regularly assessed capacity and any imbalance with available fisheries resources and management objectives; (iii) adapted such a plan of action regularly on the basis of periodic assessment and for increased effectiveness; (iv) made regular assessments in developing such a plan, considering the possible impact of all factors contributing to overcapacity on the sustainable management of their fisheries; (v) reduced and progressively eliminated all factors, including subsidies and economic incentives, contributing directly or indirectly to the build-up of excessive capacity; (vi) cooperated through regional fisheries organizations with a view to ensuring the effective management of fishing capacity;

Report of the consultation on the Management of Fishing Capacity, Shark Fisheries and Incidental Catch of Seabirds in Longline Fisheries, Rome 26-30 October, 1998. FAO Fisheries Report No. 593.

[3]The Rome Declaration on the Implementation of the Code of Conduct for Responsible Fisheries. Adopted by the FAO Ministerial Meeting on Fisheries; Rome, 10-11 March 1999.

and (vii) collaborated through FAO and other international arrangements in research, training and the production of documentation and tools to promote effective management of fishing capacity.

101. Taking account of international considerations, the IPA recommended, *inter alia*, that States: considered participating in international agreements which related to the management of fishing capacity, and in particular the FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement; took steps to manage the fishing capacity of their vessels involved in high seas fisheries and cooperated as appropriate with other States in reducing the fishing capacity applied to overfished fisheries; recognized the need to deal with the problem of those States which did not fulfil their responsibilities under international law as flag States with respect to their fishing vessels, and in particular those which did not exercise effectively their jurisdiction and control over vessels which operated in a manner that contravened or undermined international law and international conservation and management measures; supported multilateral cooperation to ensure that these flag States contributed to regional efforts to manage fishing capacity; ensured that no transfer of capacity to the jurisdiction of another State be carried out without the express consent and formal authorization of that State; and avoided approving the transfer of vessels carrying their flag to high seas areas where such transfers were inconsistent with responsible fishing under the Code of Conduct.

102. Concerning major international fisheries requiring urgent attention, the IPA called for States to take immediate steps to address the management of fishing capacity applied to these fisheries, with priority being given to transboundary, straddling and highly migratory stocks that were significantly overfished. It urged States to act individually or multilaterally to reduce substantially the fleet capacity applied to these resources as part of management strategies to restore overfished stocks to sustainable levels. The IPA also called for appropriate support to be provided to developing countries on issues related to the management of their fishing capacity. It further urged FAO to provide technical support for a range of activities identified as essential for the implementation of this instrument.

103. Steps were being taken by FAO to provide support to the implementation of the IPA. A technical consultation would be organized from 29 November to 3 December 1999 in Mexico to address issues pertaining to the measurement of fishing capacity. Technical guidelines for the management of fishing capacity was being finalized. FAO had also initiated work on the identification of factors contributing to overcapacity, such as: lack of input and output control, unsustainable fishery management, and subsidies which had contributed to overcapacity. FAO aimed at providing increased direct support to developing member States for the promotion of sustainable fisheries in general and for the implementation of the IPA in particular. A programme was being developed towards this end which included the *Forum for Sustainable Fisheries* – a multi-donor initiative being elaborated jointly by FAO and the World Bank. Finally, FAO had endeavoured to improve its monitoring of fishing fleets, in general and in the context of its new Global Information System on Fisheries (FIGIS).

104. The representative of Iceland thanked New Zealand for its submission on the benefits of eliminating trade-distorting and environmentally-damaging subsidies in the fisheries sector. He referred to the link the paper made with sustainable development and the situation of the developing countries. It was important to reiterate the fact that fisheries subsidies were practiced primarily in the industrialized countries and that the negative trade-distorting effects of these subsidies affected first and foremost the fish-exporting developed countries. Thus the removal of these subsidies would benefit the developing countries most and their prospects for sustainable development. Iceland appreciated New Zealand's efforts to highlight the FAO's International Plan of Action for Management of Fishing Capacity and the FAO Code of Conduct for Responsible Fisheries. Any work the WTO carried out in the area of fisheries subsidies should be in cooperation with FAO. Iceland welcomed the submission's recommendation on a work programme to assist in advancing the Committee's work on fisheries subsidies. It was clear that the issue of removing fisheries subsidies

was a strong candidate in building the WTO "win-win" strategy with respect to trade, environment and sustainable development. Iceland was willing to explore such a work programme further.

105. At the last meeting of the CTE, Iceland had presented a paper addressing the relationship between sustainable fisheries management and fisheries subsidies (WT/CTE/W/103 with Corr.1.). Using the experience of Iceland as an example, the paper argued that economic efficiency was a prerequisite of sustainable fisheries. Given that fisheries subsidies were a primary cause of fisheries overcapacity, their removal would be the single most important global action in favour of sustainable fisheries. The paper aroused a number of valid questions concerning the relationship between subsidies and fisheries management. To further illustrate this relationship, Iceland presented another paper to the CTE (WT/CTE/W/111). This paper demonstrated why and how fisheries subsidies had led to increased fishing efforts and to the depletion of fish stocks, especially in common property fisheries.

106. The issue of fisheries subsidies was of direct relevance to the WTO. Not only did such subsidies promote overfishing; they also distorted trade and impeded sustainable development. The committee had sought to address in a meaningful manner the nexus between trade and environment, consistent with the call of Agenda 21 for action to promote sustainable development through trade and to make trade and environment mutually supportive. Iceland intended to submit a proposal to the Special Session of the General Council of the WTO for the preparatory process for the 1999 Ministerial Conference. The proposal stated: "That as part of the upcoming WTO negotiations, Members agree to eliminate subsidies that contribute to fisheries overcapacity, in view of the fact that they distort trade, seriously undermine sustainable utilization of fish stocks and hamper sustainable development."

107. The representative of Peru supported the proposals made by Iceland and New Zealand to promote sustainable development through the elimination of fisheries subsidies. The subsidies imposed by developed countries on their fisheries distorted trade and gave them an unfair trading advantage. This had undermined the trading potential of developing countries, some of whose populations relied heavily on their fisheries sector for subsistence. Efforts had been taken by countries such as Peru to ensure that these resources were being utilized more sustainably, without the use of subsidies. She said the preservation of the environment should be a responsibility shared by all countries on an equal footing. Countries that had shown particular concern for the environment should show leadership by eliminating subsidies that contributed to overcapacity in fisheries.

108. The representative of the Philippines supported New Zealand's initiative. She said the problem associated with these forms of subsidies was one of inter-linkage between trade and sustainable development, of which environment was an important element. Subsidies promoted the operation of distant water fleets fishing off the coasts of developing countries, offering unfair and economically inefficient competition with local fishermen. A World Bank study had estimated the amount of fishery subsidies to be between US$14-20 billion, representing 20-25 per cent of commercial revenues in fishing industry. She said this figure in fact represented a conservative estimate and might not have captured other potentially significant government subsidies. Nonetheless, even such magnitude and scale of fishery subsidies gave cause for alarm on their trade-distorting consequences and harmful effects to sustainable fisheries.

109. The representative said the WTO could, within its mandate, contribute significantly in addressing the issues of fisheries subsidies. This objective should begin with the examination of present relevant WTO provisions including the SCM Agreement, on which New Zealand's twin approach could be pursued: the first being to assess the transparency aspects of fish subsidies. In this regard, Members could probably ask the Secretariat to compile the notifications concerning such subsidies, in order to evaluate whether or not they provided adequate transparency. The second approach would be to look into how notified fish subsidies fared against the SCM Agreement,

particularly in respect of the disciplines on prohibited, actionable and non-actionable disciplines. She hoped that the CTE would endorse the proposal by New Zealand.

110. The representative of the United States referred to a recent FAO report that revealed that 69 per cent of the world's fish stocks was in a dire condition and said there were too many boats chasing too few fish. The increased capacity was an unfortunate by-product of government programmes intended to bolster this sector but had resulted in unintended consequences of diminishing its viability. It was estimated that US$14 to US$20 billion had been granted to the fisheries sector world-wide, and only five per cent of this amount had been for environmentally beneficial subsidies. In short, these programmes had essentially subsidized unsustainability.

111. The subsidies that had led to overcapacity in the fisheries sector had been highly trade distortive; they led to overproduction, encouraged inefficient producers to remain in the market, shifted the burden of adjustment in overcapacity situations to foreign suppliers and made it difficult for developing countries to take full economic advantage of the fish in their Exclusive Economic Zones (EEZ). In fact these subsidies had been a "lose-lose-lose" proposition, since they represented a losing proposition for trade, environment, and particularly for development.

112. The United States had been working in several international *fora* to address this issue, and commended the FAO and the OECD for the valuable work they had done in this area, in particular, the FAO Committee on Fisheries for adopting the International Plan of Action. The United States representative urged the WTO to address the problem of overcapacity in the fisheries sector because it was a trade and development problem as well as an environmental concern. At the same time, she recognized that the solution to this problem must not be over-broad – it must focus on those subsidies that contributed to overcapacity. In addition, she recognized that there were government subsidy programmes that had beneficial effects in addressing capacity, which needed to be considered in further deliberations on fisheries.

113. The representative of Norway said a lot of work had already been done in the CTE on subsidies in the fisheries sector in the form of submissions. He shared the view that the CTE should look more closely on subsidization as one cause of excess fishing capacity. However, to solve the problem of excess capacity and unsustainable use of fish stocks and the protection of the marine environment, a broader approach was necessary. An example of such an approach was FAO's International Plan of Action for the Management of Fishing Capacity. This plan was aimed at ensuring that levels of fishing efforts were commensurate with sustainable use of fishery resources.

114. Norwegian authorities saw the management of fishing capacity as an important element of the overall resource management in the fisheries sector. Norway had taken an active part in the work on the FAO Plan of Action. The representative considered it useful that the WTO made its contribution towards realization of the objectives of the FAO Plan of Action within its sphere of competence. Environmentally-damaging subsidies falling under the SCM agreement were particularly relevant in this respect. He requested that WTO Members be kept informed of the implementation of the FAO Plan of Action to guide the WTO's work in this area. He agreed that transparency and the existing notifications could be studied further.

115. The representative of Japan felt that several Members had misunderstood Japan's position on fisheries subsidies. He dismissed the perception that Japan was reluctant to eliminate subsidies in this sector. Japan fully supported the sustainable utilization of fisheries products and had to this end scrapped 132 long line fishing vessels earlier in the year. He stressed the need to look beyond subsidies at the other negative factors that were responsible for the over exploitation of fisheries resources, such as illegal fishing. This was very technical work that required expertise in fisheries management and, therefore, Japan felt that the WTO was not the most appropriate place to tackle the issue. The FAO was much better equipped to deal with such problems and should proceed in implementing its Plan of Action. He said the WTO could play a supportive role by working in

cooperation with the FAO to protect the fisheries sector. This was a much more comprehensive approach than just eliminating subsidies. Finally, he was cautious of the figures reflected in the World Bank paper, as they were rough estimates of fisheries depletion.

116. The representative of Argentina said his country was facing serious losses in fish reserves and had therefore cancelled a number of agreements promoting trade in fisheries. Subsidies were indirectly promoting illegal fishing by supporting fleets that operated against national laws. He supported the views put forward by New Zealand and Iceland that not all aspects of the fisheries sector should be brought into the WTO, but subsidies could be addressed. Further work was needed to clearly define the WTO's role in dealing with the fisheries problem in relation to other organizations doing so.

117. The representative of Australia welcomed New Zealand's paper as a timely contribution to the Committee's consideration of the issues raised by those subsidies which encouraged overcapacity and adversely affected sustainability in the world's fisheries. A recent FAO report had drawn attention to the problem "of having too many vessels or excessive harvesting power in a growing number of fisheries", and the role of excessive fishing capacity in the degradation of fishery resources, the dissipation of food production potential and for significant economic waste. The report noted that this problem "manifests itself especially in the form of redundant fishing inputs and the overfishing of most valued fish stocks". (FAO, "The Management of Fishing Capacity: A New but Crucial Issue for Sustainable World Fisheries", Document FI:MM/99/2, February 1999).

118. The representative said a range of factors were involved in the threat to fish stocks posed by excess capacity in world fisheries. These included inadequate management regimes, the persistence of relatively open access conditions in many fisheries, and the relative mobility of harvesting capacity. Action was needed in a range of international bodies to effectively deal with these problems. But there was also sufficient evidence that subsidies had been a major factor in promoting overcapacity in fishing fleets, inefficiencies in production and overfishing. The FAO Plan of Action significantly included a commitment that States should reduce and progressively eliminate all factors, including subsidies and economic incentives, which had contributed to the build-up of excessive fishing capacity.

119. As noted in the New Zealand paper, subsidies relevant to the fisheries sector had raised important development as well as environment issues, with international trade in fishery products representing a significant source of foreign exchange earnings for many developing countries. Ensuring that developing countries could compete fairly in international trade in fishery products was one essential element in working to promote the goals of sustainable development in relation to the fisheries sector. The paper suggested recommendations for a balanced work programme by the WTO. Given the urgency and significance of the problems facing global fisheries, Australia believed that there was a clear role for the WTO in complementing efforts under way in other *fora* to address these problems. There was a need to identify how the WTO could support these efforts through full implementation of existing WTO disciplines as well as considering the need and scope for building on them.

120. The representative of Korea supported the Japanese view that subsidies were one of many causes of over fishing capacity and a broader approach was needed to take into consideration all these factors. She suggested that Members should distinguish positive subsidies from negative ones that were detrimental to the sustainable use of fisheries resources. The positive ones could be utilized to restructure the fisheries sector and strengthen training and technical capacity. Further detailed work was needed and the representative welcomed the FAO's work in this area to guide the CTE.

121. The representative of the European Communities stated that his delegation was committed to sustainable fisheries and subscribed to a number of the views expressed earlier. He supported a comprehensive approach that addressed the economic and social dimensions of the problem. This

could serve as an example of how environmental and sustainability objectives could be brought to bear on specific policy areas to yield positive results. The EC was open to discussions, provided conclusions were not reached in advance. Some subsidies had helped reduce capacity by addressing certain social concerns related to fisheries and these should be encouraged.

122. The representative emphasized the need to tackle the other aspects of the problem related to management issues, capacity control and monitoring the oceans. He supported the FAO Plan of Action and the work of the OECD and encouraged a number of key actors to play a more active role. Several technical questions had arisen in the context of the differing figures being advocated by different institutions, that needed to be resolved. The WTO should be concerned with the trade-related aspects of the fisheries problem under the subsidies and countervailing duties agreement. The CTE' s mandate concerned sustainability and it was within that context that the Committee could examine the issue as it has done and should continue to do.

123. The representative of Canada supported the FAO's Plan of Action, along with New Zealand and Iceland's emphasis on the elimination of subsidies. He said Canada had taken several measures domestically to reduce the use of subsidies that had led to over capacity. Further discussions in the WTO were needed to clarify the exact kinds of subsidies that were detrimental to the environment, particularly if the objective was to contemplate disciplines on certain government practices. Canada supported the use of positive subsidies that would lead to a sustainable and self-reliant fisheries sector and the strategies outlined by New Zealand to achieve this end.

124. The representative of Chile thanked New Zealand and Iceland for their papers and endorsed her delegation's commitment to the protection of the environment. Given the importance of the fisheries sector for the Chilean economy, national legislation had been introduced to protect marine species. She said Chile did not offer subsidies and incentives that led to overcapacity and overfishing and supported further discussions on the elimination of trade distortive subsidies, particularly in agriculture. The actions suggested by New Zealand served as a good starting-point to address this issue.

125. The representative of Morocco shared the concerns of other Members and endorsed the recommendations of the FAO. He suggested the WTO should carry out some investigative and analytical work within the framework of the SCM Agreement to establish certain disciplines that would regulate the fisheries sector.

126. The representative of Egypt said his country did not subsidize its fishery sector and favoured the elimination of trade-distorting subsidies. He drew attention to Part 4 of the FAO Plan of Action dealing with the mechanisms to promote implementation, especially the references in paragraph 43 thereof that called for support for capacity building, financial, technical and other assistance to developing countries, as well as paragraph 47, addressing the role of the FAO on the issue of in-country technical assistance projects.

127. The representative of New Zealand said the responses of other Members to his delegation's paper highlighted the extent of the problem and reflected a strong commitment to tackling the issue. While the WTO examined the trade distorting aspects of subsidies, organizations such as the FAO should continue to look at the other aspects beyond the scope of the WTO. At the same time, cooperation between the different key agencies needed to be enhanced. He urged the WTO to focus on trade-distorting subsidies, which were the real issue and said that some of the proposals made could be acted upon immediately, such as the Secretariat updating its list of subsidies notified under Article XV of the SCM Agreement.

128. The representative of Iceland thanked Members for their positive responses to his delegation's paper and agreed that the problem of overfishing could not be resolved with one single measure. It was a complex problem that had many facets and needed to be addressed in many different *fora*. It

was therefore critical to specify the mandate of each of these. The subsidy aspect had to be resolved in the WTO, but consideration had to be given to the various impacts of the different subsidies; both positive and negative.

129. The representative of Japan was pleased that several Members also acknowledged the initiatives taken by FAO. However, further discussions were needed to determine the extent to which the FAO should be involved in dealing with fisheries subsidies. As the SCM Agreement defined the WTO's mandate to deal with fisheries subsidies, he requested the Secretariat to prepare a paper on the implementation of the agreement.

130. The representative of Mexico felt that subsidies could be addressed in the WTO Committee on Subsidies. However, environmental aspects should be dealt with in the CTE.

131. The representative of Costa Rica recalled document WT/CTE/W/106 submitted by Uruguay on behalf of 14 countries at the last meeting, which emphasized that the CTE should examine the environmental benefits of removing trade restrictions and distortions, particularly export subsidies in agriculture. The document had urged the WTO to give prior consideration to the elimination of export subsidies.

132. The representative of Norway commented on papers submitted by Australia (WT/CTE/W/105) and Brazil (WT/CTE/W/109) at the last meeting. The environmentally-damaging activities outlined by Brazil, such as the use of pesticides, were echoed in the preliminary findings of Norway's paper (WT/CTE/W/100). The empirical findings from that paper had suggested there was no clear relationship between environmental degradation and the level of support provided by different countries. With reference to non-trade concerns, Brazil's paper had rightly pointed out that the concept of multi-functionality of agriculture in relation to environment had to be considered in a universal perspective. As agriculture contributed to food security and the viability of rural areas in developing countries, Norway supported such a broad based approach; these aspects were of such a nature that might require special government intervention. In that context, one major challenge was to ensure that policy measures were designed in the least trade distortive manner.

133. The Norwegian representative agreed with the Australian paper that poorer communities were worst affected by environmental degradation. Trade policy reforms did not necessarily contribute to changing this pattern. He stressed that potential affects on poor communities were not contingent on support policies, but rather on the applied design of the policy measures. The question of equity was another important issue, as liberalization in itself did not automatically lead to poverty reduction; but would have to be accompanied by policies geared towards reducing inequities. Norway fully supported the need for preferential and differential treatment, including preferential market access opportunities for least developed countries. Trade-related technical assistance measures were of major importance to the integration of the LDCs into the trading system. Policies related to trade, environment and poverty reduction had to take into account a wide range of factors, within the WTO and beyond, at the national and international level.

134. The representatives of Brazil and Australia welcoming Norway's comments on their delegations' papers, which they would reflect upon, looked forward to further comments from other Members at the next meeting.

135. The representative of Guatemala endorsed Costa Rica's call for the reduction of export subsidies in agriculture.

136. The representative of the European Community proposed an item for discussion at the next CTE meeting on the general exceptions clause under the GATS Article XIV, in the context of the reformulated Gasoline and Shrimp-Turtle cases.

137. The Chairman concluded that the discussions had been useful and interesting and that there was a consensus to continue this dialogue. New Zealand and Iceland's papers had touched on a burning issue, which had received the support of many delegations. Others, however, had expressed some reservations and doubts. Based on the discussions and proposals, the Chairman put forward two proposals: (i) to invite the FAO to keep the CTE informed on the progress of its activities in this area; (ii) to invite the Secretariat to present an updated paper on the fishing subsidies under Article XXV of the SCM agreement. He said that the EC's proposal could be included under item nine of the Agenda for the October meeting.