

## Committee on Trade and Environment

### REPORT OF THE MEETING HELD ON 12 OCTOBER 1999

#### Note by the Secretariat

1. The Committee on Trade and Environment (CTE) met on 12 October 1999 under the chairmanship of Ambassador István Major of Hungary. The agenda in WTO/AIR/1172 was adopted.

#### Observer status for international intergovernmental organizations

2. It was agreed to extend observer status on an ad hoc basis to the Islamic Development Bank and the Southeast Asian Fisheries Development Center.

#### Item 9 The work programme envisaged in the Decision on Trade in Services and the Environment

3. The representative of the European Communities recalled his delegation's proposal to the General Agreement on Trade and Services (GATS) Committee on Specific Commitments on classification of the environmental services sector in September 1999 (S/CSC/W/25). The benefits of the current trends in liberalization and privatization in the environmental sector can be further enhanced in future negotiations via an improved classification. The current scope of environmental services in Section 6 of the UN Central Product Classification (CPC) system set out in MTN.GNS/W/120 was too narrow and no longer reflected economic realities. Besides this obstacle, the current classification had other technical shortcomings: (i) it did not explicitly reflect the main environmental services by environmental medium (water, solid waste, air and noise); (ii) two sub-sectors in the existing classification, "refuse disposal" and "sanitation services", were virtually synonymous (to waste management); (iii) the current CPC did not reflect changes in the environmental industry currently developing beyond traditional end-of-pipe/pollution control/remediation/clean-up towards integrated pollution prevention and control, cleaner technology, and resources and risk management; and (iv) it focused on public utilities/infrastructure services supplied to the public, overlooking the provision of environmental services directly to industry.

4. The EC proposed a new classification which preserved the mutually exclusive nature of the CPC classification whilst addressing most of the above-mentioned problems. Services were classified according to their environmental media (i.e. air, water, solid, common, noise, other). The proposed classification comprised services which undisputedly can be classified as "purely" environmental and excluded conceptual services such as design, engineering, R&D and consulting services, which remained classified elsewhere in the GATS. The EC proposed that these services could be subject to a cluster negotiation, the result of which will be scheduled in the relevant GATS sectors other than environment. This approach would take into account end-use for the definition of the cluster but not for amending the existing classification, thus bringing the classification to environmental reality whilst seeking a higher level of liberalization. A cluster approach for negotiation should not be an opportunity to revisit downward existing commitments. Countries which were not prepared to take a commitment in an entire category (e.g. engineering services) could anyway schedule commitments in a more limited area, like environmental engineering.

Item10     Input to the relevant bodies in respect of appropriate arrangements for relations with intergovernmental and non-governmental organizations referred to in WTO Article V

5.        The representative of the United States said that this subject had received considerable attention in the preparations for the Seattle Ministerial Conference. Since trade liberalization had been begun under the GATT in 1947, there had been a growth in public interest in trade negotiations, particularly as work had expanded to issues which the public realized touched their daily lives. This had strengthening interest by the public sector in having opportunities to follow WTO activities and undertake a dialogue with government representatives in the WTO. The US also felt it was important to find ways in which to strengthen opportunities to inform and for dialogue with the private sector. The WTO High-Level Symposia on Trade and Environment and Trade and Development in March 1999 were important events given the high level of participation from Governments and the NGO community. This provided ample evidence of the value such exchanges can provide to the WTO. The US hoped that Members could work together to find ways of strengthening these opportunities for the WTO to increase public support for its important work.

6.        The representative of Canada said that the success of the GATT/WTO had heightened public awareness of the linkages between trade policy and domestic interests and had raised concerns about the level of transparency in the WTO. Canada felt that more should be done to build an understanding of these linkages, address these concerns, correct misperceptions and create confidence in the WTO and its processes. There were practical steps which could be taken towards the shared goals of greater public support for trade liberalization in general and the WTO in particular. Canada had proposed that the WTO adopt a liberalized document derestriction policy to help inform domestic constituencies in a more open and timely manner and provide the means for constructive, informed debate. Canada had also proposed a programme of Member and Secretariat outreach initiatives to help clarify WTO work and improve public perceptions. By establishing regular budget funding for outreach initiatives, the Secretariat could concentrate its efforts on their content and effectiveness rather than on fundraising. Canada had provided funding for all the WTO trade and environment symposia held to date. The Dispute Settlement Understanding (DSU) was also a vital part of the effective functioning of the multilateral trading system; enhancing the transparency of the DSU would increase the confidence of all stakeholders in WTO dispute settlement. Transparency was a key part of the dispute settlement review process. Canada's approach to transparency in the WTO was not meant to change its intergovernmental nature, but rather to demystify the workings of the WTO to avoid public disillusionment. Greater transparency of WTO activities was central to building and reinforcing the support necessary to maintain and improve the multilateral trading system.

7.        The representative of the European Communities said there was a need for improving public support and enhanced transparency of the WTO and that the CTE had an important role to play. The EC was pleased with the outcome of the WTO Symposia in March 1999, to which the EC had provided funding. The EC also supported the Information Sessions with Secretariats of Multilateral Environmental Agreements in the CTE. The EC had undertaken to increase transparency in its process of policy-making, including in the preparations for the Seattle Ministerial Conference. Meetings with representatives of civil society on the overall and sectoral topics to be dealt with in the next round had contributed greatly to the EC's position. By following this lead, the WTO could improve its standing in the public eye. As an important instrument in the consultation processes with civil society, the Commission had decided on the methodology which would be used to conduct a sustainability analysis of the EC's position for the next round.

## MARKET ACCESS

### Item 2      The relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system

8.      The representative of the United States recalled that the preamble to the WTO Agreement referred to achieving the goal of trade liberalization in conjunction with an overall commitment to sustainable development. Environmental reviews were an important way in which to develop the necessary information to ensure that this occurred. The US Government had made a commitment to perform a review in the context of a new round sufficiently early in the process so that the results could be taken into account in its position. Public input would be an important part of this process. The US welcomed the fact that other governments had made commitments to perform such reviews. The US encouraged all governments to consider performing reviews and encouraged such governments to share their reviews with the CTE as the US had done for its past reviews.

9.      The representative of India said that the Rio Declaration made it clear that environmental reviews were within the purview of national governments to perform as they deemed appropriate; these reviews were a useful way for national governments to have input from domestic stakeholders upon which to base their national positions. Nevertheless, this was purely a national prerogative.

10.     The representative of Canada said that the starting point and overarching objective for the trade and environment discussions was sustainable development. The environmental review of policies and programmes, known as Strategic Environmental Assessment, was an important decision-making tool to promote sustainable development. Identifying and discussing the environmental consequences of trade liberalization in relation to specific WTO negotiations had many potential benefits: (i) it helped to identify potential problem areas and the positive effects of trade liberalization early in the process; (ii) it helped to identify ways to mitigate environmental effects and inform decision-makers; and (iii) it can identify and deal with many of the concerns of stakeholders. Canada will conduct a national Strategic Environmental Assessment of the next round of WTO negotiations and encouraged all WTO Members to undertake similar work. Canada was preparing a retrospective review of the Uruguay Round, in consultation with stakeholders, by gathering information on its positive, negative or neutral effects; this review will provide Canada with a stronger foundation for its Strategic Environmental Assessment of the new round. Canada will provide the CTE with a copy of its national retrospective assessment when it is published. It would be useful for all Members undertaking environmental assessments of the new round to exchange this information in the CTE.

### Item 4      The provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling

11.     Following a proposal from the European Communities, the CTE agreed to derestrict the WTO Environmental Database (EDB) for 1998 (WT/CTE/W/118), which compiled the environment-related notifications under WTO Agreements. The Secretariat would update the EDB for 1999 and invited suggestions from delegations with respect to the search words used in its compilation.

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

Sectoral analysis

Agriculture

12. The representative of Canada said his delegation supported the key messages in Brazil's paper (WT/CTE/W/109) on the effect of environmental measures and market access in the agricultural sector. Brazil's paper was valuable to the CTE's work as it provided a developing country perspective and set out Brazil's "win-win" experiences in this sector. Brazil had reinforced the view that a major benefit of trade liberalization was the improved environmental stewardship facilitated by economic development. Commenting on the concept of multifunctionality, an issue discussed in Brazil's paper, Canada noted that some Members had argued that the provision of indirect benefits or multiple functions of agriculture was directly linked to the primary productive purposes of agriculture and that production linked support was a necessary requirement to ensure the provision of an adequate supply of non-food benefits of agricultural production. This argument may be used to try to legitimize opposition to further liberalization particularly for price and production linked domestic support. Some had extended this argument to support maintaining high border protection, particularly those concerned with food security. Canada agreed that agriculture could provide many positive externalities, including environmental benefits, and thus did not question the multifunctional role of agriculture. However, it could also be argued that agriculture was only one of many sectors which provided multiple benefits. Canada's view was that the multifunctionality argument was not well founded. Providing broadly based agricultural support that indirectly encouraged the provision of environmental benefits associated with agriculture was an ineffective and inefficient policy approach to achieving environmental objectives.

13. It had been well documented in the CTE's work that agricultural support, particularly support which was coupled with production, could lead to the intensification of agricultural production and associated environmental risk. Agricultural support could also distort production decisions in a manner which could result in environmentally-harmful effects, for example adopting monoculture agricultural practices. Countries which were prepared to defend their agricultural policies through the multifunctionality argument needed to realize the environmental implications of trade distorting support. Affecting the trade of low support countries, including developing countries which heavily relied on agriculture, impeded global efforts to achieve sustainable development. The problems in these countries would not be localized as the negative environmental effects were often felt across national boundaries. Canada shared Brazil's view that countries should address their concerns related to multifunctionality in ways which met the Green Box criteria, i.e. Annex 2 of the Agreement on Agriculture, thereby ensuring that their objectives were met in a manner that did not distort production or trade or shift the burden to producers in other countries. The desire by some Members to promote the multifunctional role of agriculture should not serve to hinder progress towards further commitments to reduce production and trade distorting domestic support.

14. The representative of Brazil thanked Canada for its comments and said that her delegation was considering another paper on this issue at some future stage.

15. The representative of Japan said that his delegation could not support a too simplistic approach, such as that trade liberalization was good for the environment. Environmental concerns should be discussed at the same time as trade was liberalized. Regarding Canada's intervention, Japan requested Members to recall discussions on decoupling and Green Box measures in the Committee on Agriculture and the Analysis and Information Exchange (AIE) process, and the CTE should not be the place for agricultural negotiations.

16. The representative of Argentina recalled that the CTE was not negotiating the Agreement on Agriculture, but rather assessing the environmental impact of production and export-related subsidies. In this connection, Argentina had already spoken at length. The central argument which had been put forward in the CTE was linked not to subsidies in general, but to subsidies which impacted on production, particularly export subsidies. Subsidies permitted the over-exploitation of the related natural resources, such as land and water, and prevented the internalization of environmental costs in the price. Free trade will contribute to a better resource allocation and thus lessen the demands of production on the environment if prices reflected the real costs of production; this was not the case primarily due to the fact that certain OECD countries subsidized production and exports. It was not possible to internalize environmental costs if internal costs were externalized due to subsidization.

17. Argentina referred to the FAO/Netherlands Conference on the Multifunctional Character of Agriculture and Land, held in Maastricht on 12-17 September, the results of which would be circulated (WT/CTE/W/127). At that meeting, it had been recognized that agriculture, as all human activity, had some multifunctional consequences which were beneficial for society. However, the important point was which policies were chosen to preserve these benefits. It had been agreed in the CTE that these policies should be well targeted, transparent and cost-effective, as well as not distort production and trade. As developing countries did not have the means to shield their producers from the subsidies provided in rich countries, these subsidies which affected production, particularly export subsidies, contributed to rural poverty, which was a key contributor to environmental degradation in developing countries. Developing country producers were also faced with the difficult alternative as to whether to reduce costs, thereby excluding investment in environmentally-friendly technologies, or going bankrupt, thereby contributing to urban migration and social unrest. Thus, the consequences of subsidies in high support countries, such as in the EC, on low support developing countries were rural poverty, environmental degradation and increased social unrest. The "win-win-win" possibilities from removing subsidies, thus, were evident for trade, environment and development.

18. The representative of Costa Rica supported Argentina's comments on production and export subsidies; environmental costs should be internalized in the real costs of production.

19. The representative of the European Communities said that it was important to follow a balanced approach in the discussions on the environmental effects of trade liberalization on agriculture, taking into account the positive and negative effects. The environmental impacts of trade liberalization were uncertain and the linkages were not automatic. The multifunctionality of agriculture should be taken into consideration, particularly the fact that environmental services provided by agriculture would often not be accounted for by the market. The EC's submission to the Committee on Agriculture (AIE/40) underlined the multifunctional character of agriculture, the importance of which had been acknowledged in the OECD Communiqué in March 1998. Environmental benefits were but one of the functions performed by agriculture. The fact that agriculture brought such benefits had also been highlighted at the OECD's seminar in Helsinki in September 1996. The conclusions did not apply to all kinds of agriculture, but mainly to extensive, often traditional production systems. In setting out the basic concepts underlining the multifunctional character of agriculture, the EC recognized that the preservation of rural environmental landscapes together with the production of food and fibre and the contribution to the viability of rural areas was a main function of agriculture. There was a complex and dynamic relationship between natural resources used in agriculture and the environment. Biodiversity in the EC could not be separated from agriculture; the two had developed over time. Environmental problems existed in both low and high support countries and reducing support levels would not automatically improve the environment.

20. The representative of Australia agreed with Japan that the CTE was not the forum for agricultural negotiations, but it was important to acknowledge that the CTE would be remiss if it did not recognize the contribution that agricultural liberalization could make to good environmental outcomes. Argentina had referred to the contribution that the elimination of export subsidies could make to improving environmental quality. The best policies to address environmental objectives were

those which were targeted, cost-effective, transparent, and decoupled from production and trade. This had been highlighted in the OECD Ministerial Communiqué in March 1998. It was important to recognize in the CTE that no country should be allowed under the rubric of multifunctionality to encourage policies in one country which damaged the environment or sustainability in others. This recognition would be a major advance in the discussion on the role of agricultural liberalization and positive environmental outcomes.

21. The representative of Chile supported Argentina's statement that agricultural subsidies should be eliminated from the standpoint of the environment as well as trade.

22. The representative of Poland supported the EC's statement that this issue required deeper analysis taking into account the multifunctional role of agriculture.

23. The representative of Korea said that when dealing with the environmental impact of agricultural trade liberalization, all the various perspectives should be reflected in a balanced manner. Maintaining agricultural production had positive functions, such as land conservation, flood control, underground water accumulation, and protection against erosion. These elements were being quantified through the OECD's joint working party of the Agricultural Committee and the Environmental Policy Committee. In most cases, the market was deficient in internalizing those benefits. In such cases, granting a subsidy to the farmer may be a possible remedy for market failures. In certain countries, agricultural support had allowed farmers to maintain farming systems which supported a rich variety of flora and fauna. These production systems would be unprofitable without support and the positive environmental externalities of agriculture would be reduced if agricultural subsidies and hence agricultural activity were reduced. In this context, the OECD was developing reference levels or benchmarks by which the environmental effects of agriculture can be comprehensively analyzed and used to determine whether farmers could be sanctioned or compensated in accordance with the aggregate effects, positive or negative. The CTE should consider the analysis conducted by other fora, including the OECD's Environmental Indicators, which allowed for the effects of agricultural liberalization on the environment to be qualified so that the complexities of agricultural liberalization could be analysed in a wider context.

24. The representative of New Zealand shared the views of those delegations which had referred to the environmental benefits of agricultural liberalization. The positive environmental outcomes had been well documented and discussed in the CTE. There were environmental problems in all countries, including low and high support countries; however, these were best addressed through targeted domestic resource management policies which need not be trade distorting. This applied to the protection of biodiversity and other environmental issues. The large amount of resources spent on trade distorting measures in the agricultural sector, such as export subsidies, could be better channelled towards other public priorities, such as environmental protection. This was clearly stated in reports by the British House of Commons, Maurice Strong and the Earth Council's 1997 Report entitled "Subsidizing Unsustainable Development: Undermining the Earth with Public Funds", which New Zealand would provide to the Secretariat for consultation by interested Members.

25. The representative of the United States said that this debate had been played out in the CTE and other fora extensively in the past years. It was an important debate and the US shared the views of so many delegations which recognized that agriculture can have benefits beyond the immediate effects on providing food and fibre. The issue, however, was the kinds of policies countries chose to promote the other functions of agriculture. The most problematic kinds of policies were those which were production linked, particularly export subsidies for which there was no benefit, yet strong evidence existed as to the harm they caused. It should be borne in mind that in order to achieve sustainable development it was necessary to internalize environmental costs. Subsidies interfered with internalization when they were production linked and trade-distorting. At the same time, there was room for the kinds of subsidies to promote the multifunctionality of agriculture through the Green Box, of which his delegation supported the maintenance. Non-subsidizing countries were

being harmed in their efforts to achieve sustainability by the subsidization of those countries which put in place subsidies. Thus, one of the major contributions of the next round of trade negotiations would be to deal with environmentally-damaging subsidies which would yield a "win" for trade, a "win" for the environment and a "win" for development.

26. The representative of South Africa supported those statements from delegations which pointed to the long-term and positive benefits for the environment and sustainable development which would result from removing agricultural export subsidies.

27. The representative of Thailand associated his delegation with others who called for the removal of agricultural export subsidies.

28. The representative of Switzerland said that subsidies could be justified when they addressed market failures, for example by rewarding positive externalities. As subsidies may also contribute to further environmental harm, particularly in other countries, well-targeted support mechanisms should be put in place. All forms of export subsidies should be included in the discussions, including state trading and export credits.

29. The representative of the Philippines shared the view that any form of subsidization in a country would serve to give it a competitive advantage over non-subsidizing countries.

30. The representative of Guatemala supported Argentina's comments on the benefits for trade and environment of eliminating agricultural subsidies. The CTE should continue to examine the harmful impact of these subsidies, particularly export subsidies.

#### Fisheries

31. The observer from the Food and Agriculture Organization (FAO) introduced a background document (WT/CTE/W/126) setting out FAO's work on fishing capacity and fisheries subsidies. A technical consultation would take place later this year in Mexico to address measurement issues related to fishing capacity and overcapacity, upon which technical guidelines would be prepared. In collaboration with Australia, FAO was gathering information on illegal, unregulated and unreported (IUU) fishing. This information will be reviewed in the context of two consultations to be organized in 2000 and may lead to an international plan of action on IUU. Methods for the control of fishing capacity and transition to responsible fisheries management will be reviewed, including approaches to fleet reduction and alternative livelihood programmes. As requested in the International Plan of Action for the Management of Fishing Capacity, FAO was also initiating work on the identification of factors contributing to overcapacity, such as the lack of input and output controls, unsustainable fisheries management methods and subsidies. This work would be carried out through a literature review, which may lead to an expert consultation.

32. FAO also hoped to provide increased direct support to developing countries for the promotion of sustainable fisheries and for the implementation of the International Plan of Action. A collaborative programme was being developed with the World Bank in this respect. Subsidies and other related economic and financial incentives constituted another important factor of relevance to the implementation of the International Plan of Action and for the achievement of sustainable fisheries management. In recognition of the importance of this issue and the interest expressed in various fora, such as the CTE, FAO will undertake to monitor and review the institutional and technical discussions and contributions on fisheries subsidies; and to collect and disseminate information on fisheries subsidies, as well as to exchange information with other concerned organizations. A conceptual review of fisheries subsidies will be undertaken to clarify concepts and review analytical difficulties and alternative approaches to the measurement and assessment of the impact of subsidies on trade and sustainability. This work will be reviewed in the context of an international expert consultation to be organized by FAO in late 2000. The FAO Fishery Department

will report on this work to the FAO Committee on Fisheries for possible follow-up activities. In undertaking this programme, the FAO was seeking close collaboration with other international intergovernmental organizations, particularly the WTO and its Member countries.

33. The representative of the United States welcomed the Secretariat's paper on "GATT/WTO Rules on Subsidies and Aids Granted in the Fishing Industry" (WT/CTE/W/80/Add.1), which presented an overview of possible subsidies relating to the fishing industry and helped to demonstrate the kind of problems that fisheries subsidies could cause for all countries, particularly developing countries. If the current rate that countries were catching fish continued, there would not be any fish left. Addressing the issue of overcapacity and the problem of fisheries subsidies which contributed to this problem was urgent. The US appreciated the FAO's review of its activities and the leadership it had shown in dealing with this issue. The US welcomed the statement in WT/CTE/W/126 on the need for close cooperation with the WTO and its Members. The US hoped to show to the FAO the kind of contribution the WTO could make through the Seattle process. It was essential to show to the public, who was watching this debate closely, that the WTO had identified an area where it could make a contribution both for trade, the environment and development.

34. The representative of the Philippines said that WT/CTE/W/80/Add.1 was useful in establishing the current situation of resource allocation in the fishing industry and analysing the effects of subsidies to this industry. It could be noted from the document that subsidies were largely provided by developed countries. Moreover, most of these subsidies were extended to the harvesting sector which tended to encourage fishing efforts and lead to more fish being removed from the ocean. This created an imbalance against countries, mainly developing countries, which could not afford to subsidize their fishing industry. Any subsidization could give a competitive advantage to industries in countries which subsidized. The Philippines was concerned about the management of fishing capacity and fisheries subsidies which were of growing concern in the industry.

35. The representative of Panama said that FAO's paper and statement helped to illuminate the effects of subsidies on overcapacity in the fisheries sector. As the fishing sector was an important part of Panama's economy, her delegation would follow closely FAO work in this area. Panama inquired as to when the FAO Plan of Action would be finalized.

36. The observer of the FAO responded that the Plan of Action would be completed by the end of 2000. There were numerous elements which contributed to fishing overcapacity which would be reviewed in a comprehensive manner during the course of 2000-2001.

37. The representative of Korea said that although WT/CTE/W/80/Add.1 was non-exhaustive, it illustrated the diversity and complexities of fisheries subsidies. It was difficult to assess the overall effects of fisheries subsidies on the environment. There were some subsidies which might contribute to overcapacity, but there were other types of subsidies which were trade neutral and environmentally beneficial, for example state aid for temporary and permanent cessation of fishing activities for fishermen in order to facilitate retirement from active fishing, for decommissioning redundant fishing vessels, or for the promotion of aquaculture. A key issue in determining sustainable resource exploitation and conservation was fisheries management, rather than just trade. As fisheries subsidies were only one of the contributing factors of overcapacity, a comprehensive analysis was necessary to give a complete picture of which elements depleted fisheries resources. Another element associated with fisheries subsidies was the social aspect. Fishing communities in many developing countries were based on small households whose primary source of income came from fishing. Subsidies had played a critical role in reshaping and revitalizing the fishing industry as well as coastal communities, rather than encouraging over-fishing.

38. Korea welcomed the adoption of the FAO Plan of Action, which was a constructive way in which to deal with this issue. The FAO had correctly targeted overcapacity or excess fishing capacity as the major cause of declining fisheries resources and formulated a comprehensive plan to achieve an



efficient, equitable and transparent management of fishing capacity. The Plan of Action envisaged a multi-phase, step-by-step implementation based on an objective assessment and monitoring of each country's fishing capacity. It also adopted a holistic approach in which all factors should be considered in the management of fishing capacity. The FAO had a clear mandate, competence and experience in addressing the issue of marine resource conservation while taking into account all related aspects, including the relationship between subsidies, trade and sustainability in an integrated manner. Building on the results of the FAO's analysis and progress on the implementation of the Plan of Action by FAO Members, the WTO could define an area in which to contribute.

39. The representative of Australia said that the FAO Plan of Action indicated that subsidies were significant contributors to problems affecting the sustainability of global fisheries resources. It was clear that there were other subsidies which may not have such damaging environmental effects and Australia also encouraged an examination of these subsidies in the WTO.

40. The representative of Canada said that WT/CTE/W/80/Add.1 illustrated the wide variety of notifications in this sector. Canada's notifications related to the fisheries sector in general and were not programmes used to provide financial assistance to the harvesting of marine resources. Canada's commercial fisheries on the east and west coast had been adversely affected by over-fishing outside Canada's Exclusive Economic Zone. Canada wished to see the elimination of practices which contributed to the depletion of marine resources with subsequent impacts on the marine environment and the livelihood of Canadian citizens. This was why Canada supported the FAO Plan of Action and welcomed FAO's statement and paper and FAO's willingness to cooperate with the WTO and its Members. Several countries had proposed that a group be established in the WTO to examine subsidies which contributed to fishing overcapacity. As a first step, this group would identify those subsidies which increased a Member's ability to harvest fish and other marine resources beyond the replenishment capacity of the resource. The second phase would be to negotiate commitments and disciplines for the reduction and elimination of such subsidies. In undertaking any such work, subsidies in other sectors should also be considered, such as shipbuilding, which had a direct and significant impact on fishing overcapacity. At the same time, it should also be acknowledged that certain practices, such as license buy-backs or assistance to displaced workers can contribute to reduce fishing capacity, as noted by Korea. An examination of the issues affecting fishing overcapacity, would also have to consider Members' obligations towards their aboriginal peoples, who may have constitutionally protected rights. This issue was currently the subject of much attention in Canada. Canada felt that all these elements should be addressed in the context of a broad-based negotiation to improve subsidy disciplines under the Agreement on Subsidies and Countervailing Measures (SCM). Canada had submitted a proposal for such a comprehensive negotiation.

41. The representative of the European Communities encouraged the FAO's work on the Plan of Action. Concerning WT/CTE/W/80/Add.1, EC member States were particularly good in notifying their subsidies in an effort to enhance WTO transparency. Other Members were encouraged to do likewise. The EC felt that the subsidy issue was one element in a bigger problem of resource management; to consider subsidies as the main element which promoted overcapacity was an oversimplification. Subsidies in the EC were put in place on the basis of a multi-annual programme to restructure the fishing fleet in order to reduce its capacity and to bring closer together fleet capacity and available resources. This complicated area should be referred to the FAO for the time being.

42. The representative of Chile said that there were advantages to eliminating fisheries subsidies for biodiversity, trade and environmental protection. Chile highlighted the point that subsidies had damaging effects on developing countries which were unable to subsidize their fisheries industry. Chile's position was consistent with its national practice to refrain from subsidizing its fishing sector.

43. The representative of Japan recalled his delegation's statement at the General Council meeting of 8 September in which Japan had set out its position on fisheries subsidies. Japan appreciated the FAO's initiatives on this issue. Japan felt that there were numerous examples of "good" subsidies

listed in WT/CTE/W/80/Add.1. Certain subsidies could not necessarily be considered "bad", such as subsidies for vessel construction, if good fisheries management was in place. For example, the August issue of *Fishing News International* noted that Iceland's regulation on vessel construction had recently been abolished, and now fishermen were free to build fishing vessels. As a result, Iceland's Ministry of Fisheries had received thousands of applications for fishing licenses. Japan assumed that fishing vessels in Iceland were built without subsidies. The question was whether this case was more likely to cause over-exploitation than another case, for example, in which fishing vessels were built with subsidies under strict control. Japan felt that the answer was in the affirmative. Although a World Bank paper stated that the proportion of "good" subsidies was at most five per cent of total subsidies, referring only to those for vessel reduction, Japan's impression was that this proportion was higher. Certain subsidies contributed to sustainability. For example, certain subsidies were necessary to implement the provisions of the UN Convention on the Law of the Sea to conserve and manage living marine resources, such as compensation for temporary cessation of fishing activities to allow for stock recovery. This subsidy should be considered a "good" subsidy.

44. The SCM Agreement did not cover the issue of how to ensure sustainable utilization of fisheries resources, nor did it shed light on how to assess the impacts of fishery subsidies on global fisheries resources. Thus, the discussion on fisheries subsidies that possibly caused over-exploitation was beyond the mandate of the SCM Agreement. It should be noted that if fisheries subsidies were dealt with in the WTO, Members may have to consider amending the existing SCM Agreement or establishing new rules. In this respect, Japan would like to hear the views of the proponents of WTO work in this area. Although supporting a solution to the over-exploitation issue, Japan did not agree that the elimination of subsidies or the abolishment of import tariffs should be singled out. Such a biased approach will hinder the solution of other important problems, and will not lead to the fundamental solution of the over-exploitation issue. Japan believed that it was necessary to list all the negative factors and examine them from a technical perspective in the FAO. Taking into account the results of such an examination, the WTO should consider what contribution it can make to the sustainable utilization of fisheries resources. In particular, the WTO should consider the fisheries subsidy issue and trade rules that can contribute to the sustainable utilization of fisheries resources. Japan had proposed to establish a separate group in the WTO to carry out these tasks. Japan did not support the proposal to establish a separate group to discuss only fisheries subsidies.

45. The representative of New Zealand said that WT/CTE/W/80/Add.1 was a useful update and an important part of improving transparency with regard to the fisheries subsidies provided by WTO Members. Concerning the trends which could be identified from the information in this document, New Zealand had two initial observations. First, the majority of notifications under the SCM Agreement listed in the document related to the harvesting sector, as well as to the modernization of technology in the fishing industry. In other words, there appeared to be a large number of subsidies which could contribute directly to capacity building. Second, almost all of the notified subsidies listed in the document were provided by developed countries. This once again highlighted that in discussing fisheries subsidies there was a potential "win-win-win" situation where there were benefits for sustainable development as well as for trade and the environment.

46. New Zealand thanked the FAO for its paper and presentation. Progress on the FAO work programme would be useful in future WTO discussion of the issue of fisheries subsidies. In response to some points raised by Japan and others, New Zealand agreed that fisheries subsidies were not the only part of the problem of overcapacity. However, subsidies were clearly an area where the WTO had a mandate and for which there were already existing rules. New Zealand's suggestion was to build upon this expertise in relation to the specific issue of fisheries subsidies. New Zealand would be interested in more concrete information from Japan on the other types of matters it would see being usefully discussed in the WTO, i.e. what is the "fundamental solution" to the problem. New Zealand was interested to hear that Japan had been able to identify a large number of "good" subsidies in WT/CTE/W/80/Add.1 and would be interested in discussing this in further detail. New Zealand's interpretation differed in that it can see at least six pages of subsidies that could be directly linked to

overcapacity as they were provided to the harvesting sector. The example used by Japan of shipbuilding must be the clearest of all in terms of illustrating the direct linkage between a subsidy and capacity. If one built more boats, one could fish for more fish - it was that simple. How this can be classed as a "good" subsidy was an issue that New Zealand looked forward to discussing with Japan. The WTO's expertise to deal with this issue should be used and Members should move to address fisheries subsidies under the SCM Agreement as proposed in the preparatory process for the Seattle Ministerial Conference.

47. The representative of the United States said that no one was arguing that all subsidies were "bad". Fisheries subsidies which were of concern were those which contributed to overcapacity. There was no disagreement that subsidies were not alone in causing over-fishing, but it was incontrovertible that the FAO considered fisheries subsidies to be such a problem that it had called for their elimination. It had been noted that this was a complicated area in which it was difficult to determine which were "good" and "bad" subsidies. Although this was true, it would be difficult to find any subject area in the new round of negotiations which could not be described as complicated. It was clear to the US that there was a complementary role for the FAO and the WTO. The FAO had important expertise in this area and had exercised welcome leadership. At the same time, the WTO had substantial expertise in disciplining subsidies. The reason this discussion was being held in the WTO was that these subsidies not only caused problems for conservation and the environment, but distorted trade. This argued strongly for the WTO to take a stand and to show how it could contribute to resolving this problem for the fisheries sector and the trading system.

48. The representative of Argentina said that the list of subsidies notified under the SCM Agreement in WT/CTE/W/80/Add.1 gave an indication of the kinds of subsidies applied by the notifying countries. A considerable number of these notifications appeared to contribute to overcapacity of fishing fleets and that explained why there were less and less fish in the oceans. It also explained why fishing was still good business in spite of the increased scarcity of fish. Argentina recognized that open access to fisheries resources was a problem in terms of putting in place adequate management policies for the sustainable exploitation of fisheries resources. In addition, there were subsidies which encouraged fishing activities by socializing production costs. Although the WTO could not address the issue of the regulation of access to fisheries resources, it had an expertise in disciplining subsidies. Therefore, with reference to Japan's comment on the "fundamental solution" which should be sought in this area, Argentina posed the question as to whether it could be agreed that the elimination of subsidies which contributed to fishing overcapacity was part of this fundamental solution. If the answer were affirmative, then common ground could be found for future work. Argentina also asked which other elements should be discussed alongside the elimination of fisheries subsidies in terms of their contribution to overcapacity of fishing fleets.

49. The representative of Japan reiterated that the mandate of the SCM Agreement did not cover the issue of how to ensure the sustainable utilization of fisheries resources, nor did it shed light on how to assess the impact of fisheries subsidies on global fisheries resources. If appropriate fisheries management was in place, subsidies were not a problem. Japan's fundamental solution was that the WTO should deal comprehensively with the factors which contributed to the sustainable utilization of fisheries resources, and not only focus on fisheries subsidies. A fundamental solution would consist of several elements, including the elimination of fisheries subsidies contributing to overcapacity or over-exploitation. However, focusing on only one element would not contribute to an overall solution. Therefore, Japan had proposed to deal with all the possible negative factors. One of the important issues was that of illegal, unreported and unregulated (IUU) fishing activities, particularly the fishing activities of flags of convenience vessels. Fisheries subsidies could be one of the negative factors contributing to overcapacity; therefore Japan had proposed a different negotiating group to discuss comprehensively all the elements in the sustainable management of fisheries resources.

50. The Chairman recalled that there were several proposals related to fisheries subsidies under discussion in the General Council as part of the preparatory process for the Seattle Ministerial Conference.

#### Forestry

51. The representative of Japan recalled his delegation's proposal in the General Council on forestry and fishery products (WT/GC/W/221). The negotiations on such products should establish a set of rules and disciplines which contribute to sustainable resource utilization through the promotion of adequate resource conservation and management, and which were also fair and equitable for both exporting and importing countries. With respect to forestry and fishery products, which were exhaustible natural resources, Japan had proposed to establish a separate group to examine all the relevant factors in a comprehensive manner, giving due consideration to the global environmental issues, and resource conservation and management issues to ensure sustainable resource use.

#### Environmental services

52. The representative of Canada said that further liberalization of trade in environmental goods and services would bring environmental benefits by lowering costs, which would allow governments to improve the quality of basic environmental infrastructure and help promote sustainable development. Since the inception of the APEC early voluntary sectoral liberalization initiative in 1997, Canada had led efforts to facilitate trade in environmental goods and services by encouraging greater liberalization in this sector. In this context, Canada supported the 1998 decision of APEC Ministers to pursue the tariff elimination element of the initiative at the WTO. Meanwhile, work continued within APEC to liberalize trade in environmental services (leading, ultimately, to commitments at the WTO); to reduce non-tariff barriers affecting this sector; and to undertake economic and technical assistance projects. In the GATS Committee on Specific Commitments, WTO Members were examining issues related to the classification of service sectors. One of the sectors being examined was environmental services, in which many countries, including Canada, had made submissions. Canada hoped that improved classification will lead to a better understanding of the Environmental Services sector that will, in turn, assist WTO Members in undertaking commitments in this sector in the upcoming GATS negotiations.

#### General comments

53. The representative of India said that it was correct that trade liberalization need not automatically lead to positive environmental outcomes, which was why India emphasized the need for good environmental policies. However, it could not be denied that trade liberalization in conjunction with the appropriate environmental policies can lead to positive outcomes. Market access was important for developing countries so that more resources were correspondingly available for environmental protection. India was conscious of the fact that environmental standards will differ from country to country and recognized the right of countries to put in place appropriate domestic environmental policies. Developing countries were concerned that if trade measures were taken on the basis of standards which were higher than international standards, this had the potential to lend itself to protectionism, which would adversely affect market access opportunities of developing countries and their ability to put in place environmental policies.

54. The representative of the United States said that India's comments on the importance of trade policies being complemented by environmental policies at the national level were important. This would ensure that trade liberalization also contributed to environmental benefits. Concerning the use of national standards which could be higher than international standards, it was important to bear in mind that WTO rules recognized the right of countries to set their own levels of protection, even if they were higher than those set by international standards. The task of developing harmonized international standards was not one of setting ceilings but of floors, of giving sufficient guidance so

that countries, which might not otherwise have the capacity, were able to develop a level of standards which were determined to be sufficient to their needs. It would not be appropriate to take the view that it was considered negative to depart from an international standard to adopt a higher standard. Each country was striving to achieve the best standard of health and environment for its citizens and it was not the role of the WTO to stand in the way of this. The WTO's role was to ensure against the various forms of protectionist actions.

55. The observer of the International Trade Centre (ITC) informed the CTE about a recent ITC publication entitled "Implications of the WTO Agreements for International Trade in Environmental Industries", copies of which were available. This report addressed the implications of the WTO Agreements for international trade in environmentally sound technology and related products. The report drew upon a wide variety of industry-based research. Since 1997, ITC had conducted a series of workshops with government departments, trade associations and the environmental industry in several countries, including India, Malaysia, Pakistan, the Philippines and Thailand. Information obtained during these workshops had been used in writing the report. A questionnaire had also been sent to about 100 environmental businesses and trade associations to obtain industry feedback on their understanding of the WTO Agreements. The ITC thanked the WTO Trade and Environment and Trade in Services Divisions, particularly Jan-Eirik Sørensen, Sabrina Shaw and Aaditya Mattoo for their contribution to this report and active participation in the national workshops.

56. ITC's activities on trade and the environment focused on: (i) incorporation of environmental considerations into trade promotion and export development strategies; (ii) provision of trade information to facilitate adjustments by exporters to the increasingly rigorous environmental requirements of international markets (for example on eco-labelling in the textile sector); and (iii) identification and pursuit of commercial opportunities for exporters within the rapidly-growing international market for environmental goods and services, and the generic promotion of "green" products. ITC consultations with the environmental business community in developing countries and economies in transition had provided private sector insight on international trade in environmental industries and its global challenges. The most frequently heard message was that international institutions, such as the WTO and ITC, could provide more technical support to manufacturers and exporters of environmentally sound technologies, products and services, particularly for SMEs. The ITC looked forward to further cooperation with the WTO in this respect.

#### LINKAGES BETWEEN THE MULTILATERAL ENVIRONMENT AND TRADE AGENDAS

##### Item 7 The issue of exports of domestically prohibited goods

57. The representative of Egypt referred to the letter dated 7 September 1999 from the World Health Organization (WHO) to the WTO Secretariat, which had been circulated to CTE Members. The letter highlighted the hazards of the production and consumption of certain products, namely mercury-containing soaps and cosmetics, which were manufactured in European countries for export mainly to developing countries even though these products were domestically prohibited in the country of origin. Egypt requested the EC to shed some light on this issue.

58. The representative of the European Communities gave a preliminary response to Egypt's request and hoped to respond in greater detail at a further meeting. At this stage, the sale of these products was regulated within the EC under Cosmetics Directive number 768 of 1976. This Directive had been amended six times and adapted twenty-three times since it had first entered into force. The Directive regulated the sale but not the manufacture of these products. For example, some products which could be classified as over-the-counter drugs in some countries, were classified as cosmetics in the EC. Thus, a similar situation existed if these products were produced in one country and not sold there but sold in the EC. The EC had voluntarily subjected mercury-based products and a range of others to an interim prior informed consent (PIC) procedure to regulate their export to third countries in advance of the PIC Convention entering into force.

59. The representative of India said that Egypt had raised an important issue and asked the EC to provide further details on the coverage of this issue by the PIC Convention at the next CTE meeting.

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

60. The representative of India gave preliminary comments on the Secretariat's background document on "The relationship between the Convention on Biological Diversity (CBD) and the TRIPS Agreement: with a focus on Article 27.3(b)" (WT/CTE/W/125). India felt that there was a fundamental incompatibility between the CBD and the TRIPS Agreement. The CBD referred to communal and sovereign rights over the resources of countries. The TRIPS Agreement referred to patent and monopoly rights for individual firms. There were ongoing discussions in the TRIPS Council on this issue and India would be introducing a paper for the TRIPS Council's meeting on 20 October. There were some CBD provisions which had clashed or had the potential to clash with the TRIPS Agreement related to two major aspects. When patents were granted there was the problem of access to resources and sovereign control of the countries over resources where prior informed consent had not been obtained. The concept of benefit sharing, clearly inscribed in the CBD, was lacking in the TRIPS Agreement. Article 16(5) of the CBD stated that there could be problems of compatibility between the two Agreements and Members should ensure that they took measures to avoid a conflict from arising.

61. India felt that WT/CTE/W/125 may give the impression that as far as plant variety protection was concerned, a country either had to follow the patent system, as in the case of the US and Korea, or, alternatively, follow the UPOV system. It may be incorrect to recognize the cases of the US and Korea as *sui generis* systems; although these systems may be somewhat different from the normal patent systems, they were basically patent systems. Furthermore, only developed countries had implemented obligations under the UPOV Convention at this stage. Thus, until alternative *sui generis* models were examined, it was incorrect to infer that there were only two options: either a patent or a UPOV-based *sui generis* system. In the Kenyan case study four options were set out. A country could either provide for plant variety protection through patents; by putting in place systems set out in the UPOV Convention; by implementing a suitable plant variety protection without joining UPOV; or by devising a *sui generis* system. The choices were there and it was up to each country to choose a system which best suited their development and public policy objectives as recognized in the Preamble and Articles 7 and 8 of the TRIPS Agreement. This was an important area which India felt should be considered in greater detail.

62. The representative of Thailand, on behalf of ASEAN, recalled that at the CTE's June meeting ASEAN had requested the Secretariat to prepare a paper on the synergies between the CBD and the TRIPS Agreement. The relationship between the CBD and the TRIPS Agreement was important and the results of various country studies on the implementation of *sui generis* systems, as well as examples of legislation enacted to implement the CBD, served the purpose of educating CTE Members. ASEAN hoped that the experience gained from the elaboration of *sui generis* systems will be helpful for the CTE's future analysis. ASEAN will comment later on WT/CTE/W/125.

63. The representative of the United States said that his delegation had yet to see an identification of any fundamental incompatibility between the CBD and the TRIPS Agreements. India felt that the problem was reflected in the fact that the CBD spoke of sovereign rights and the rights of indigenous communities while the TRIPS Agreements spoke of private rights. This was correct, but did not necessarily reflect that there was any conflict. The fact, for instance, that a party could control under the CBD what resources could be taken out of a country and used for research in no way conflicted with the TRIPS Agreement which provided protection for firms which had used innovation to provide a new product. It did not give them the right to take a product out of a country. The US remained unconvinced about whether there was a conflict between these two agreements.

64. The representative of Switzerland said that his delegation would comment on WT/CTE/W/125 at a later stage. It might be useful to add to the country case studies. Switzerland agreed with India that there might be a conflict with between the CBD and the TRIPS Agreement. This was why a clarification of the WTO Agreements and MEAs should be a priority for the WTO. The possibility that there might be a conflict was sufficient reason to work together to find a mechanism to deal with possible conflicts before they arose.

65. The representative of Canada said that the TRIPS Agreement was not inconsistent with the CBD. However, such issues as traditional knowledge, farmers' rights and linkages between biodiversity and intellectual property issues were important and would require further development before they could be incorporated into international agreements. Canada felt that WIPO was the primary expert forum for discussions of the intellectual property aspects of these issues. This would not preclude these issues from being raised in more general discussions in other fora, including the WTO. The provisions of Article 27.3(b) of the TRIPS Agreement would be reviewed in the TRIPS Council; Canada did not see the need to alter the existing language of this provision.

66. The representative of the European Communities said that his delegation would provide comments on WT/CTE/W/125 at a later stage. The biodiversity legislation of Costa Rica could usefully be elaborated by Costa Rica, with specific reference to the provisions of the law which were designed to reconcile Costa Rica's CBD and TRIPS obligations.

67. The representative of Costa Rica said that the Congress of Costa Rica was assessing legislation to implement the TRIPS Agreement, including a review of the law on biodiversity. Costa Rica would be pleased to make a presentation on its legislation after this review had been completed.

68. The representative of Korea said that Korea would comment later on WT/CTE/W/125.

69. The representative of Argentina said that his delegation would comment on WT/CTE/W/125 at a later stage. Argentina had highlighted that it would be appropriate initially to focus on the possible synergies between the CBD and the TRIPS Agreement. In this respect, Articles 15 and 16 of the CBD required the implementation of measures by CBD Parties related to intellectual property and therefore should be notified under Article 63 of the TRIPS Agreement. To focus on the complementarity between these two agreements, Argentina asked the Secretariat to provide any examples of national legislation which had been notified under the TRIPS Agreement in fulfilment of the obligations in Articles 15 and 16 of the CBD.

#### Report of the CTE for 1999

70. The CTE adopted the Report on the Committee's work in 1999 (WT/CTE/4), which the Chairman will forward to the General Council at its meeting on 4 November, and adopted the work programme and schedule of meetings for the CTE in 2000 (see Annex). The Chairman invited Members to provide the Secretariat with suggestions of MEA Secretariats which could participate at the MEA information session in 2000.

## ANNEX

### Work Programme and Schedule of Meetings for 2000

1. The 1999 Report of the Committee on Trade and Environment (WT/CTE/4) sets out that the CTE will continue to analyse all the items on its work programme based on the "cluster approach" under the themes of market access and the linkages between the multilateral environment and trade agendas. Pending the future work programme of the WTO and building on the contribution of Members, including where possible their national experience, on the items of the work programme, the following tentative schedule of meetings is proposed. At each meeting, time will be allotted for Members, if they so wish, to return to Items discussed at the previous meeting.

2. The CTE meeting of 29 February-1 March will address those Items relevant to the theme of market access, including:

- Item 2: The relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system;
- Item 3: the relationship between the provisions of the multilateral trading system and:
  - (a) charges and taxes for environmental purposes;
  - (b) requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling;
- 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; and
- 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.

3. At a meeting on 5-6 July the CTE will discuss the Items related to the linkages between the multilateral environment and trade agendas, including:

Information session with selected Secretariats of Multilateral Environmental Agreements;

- Item 1: The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements;
- Item 5: the relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements;
- Item 7: the issue of exports of domestically prohibited goods; and
- Item 8: the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

4. On 24-25 October, the CTE's discussions will include:

Review of the two thematic clusters of market access (Items 2, 3, 4 and 6) and the linkages between the multilateral environment and trade agendas (Items 1, 5, 7 and 8);

- Item 9: The work programme envisaged in the Decision on Trade in Services and the Environment;
- Item 10: input to the relevant bodies in respect of appropriate arrangements for relations with intergovernmental and non-governmental organizations referred to in Article V of the WTO; and

adoption of the 2000 Report of the CTE.

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