WORLD TRADE ORGANIZATION

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Committee on Trade and Environment

REPORT OF THE MEETING HELD ON 24-25 OCTOBER 2000

Note by the Secretariat

1. The Committee on Trade and Environment (CTE) met on 24-25 October 2000 under the Chairship of Ambassador Yolande Biké. The agenda in WTO/AIR/1388 was adopted.

Report of the CTE for 2000

2. The CTE adopted the Report on the Committee's work in 2000 (WT/CTE/5) and its work programme and schedule of meetings in 2001 (See Annex I). Members were invited to provide suggestions of multilateral environmental agreements (MEAs) that could participate in the MEA Information Session on 27 June 2001. It was agreed to postpone discussion of Items 2, 3, 4, 7 and 8 to the next meeting.

Observer status for intergovernmental organizations

3. It was agreed to postpone to the next meeting the requests for observer status from OPEC (WT/CTE/COM/6 and Add.1); the League of Arab States (WT/CTE/COM/5); and the Gulf Organization for Industrial Consulting (WT/CTE/COM/7). The representatives of Egypt and Indonesia supported these requests; Venezuela and Nigeria supported the OPEC request.

LINKAGES BETWEEN THE MULTILATERAL ENVIRONMENT AND TRADE AGENDAS

MEA Information Session

4. This meeting included an MEA Information Session to enhance understanding of the linkages between the multilateral environment and trade agendas. Opening statements were made by the Director-General of the WTO (WT/CTE/W/168) and the Executive Director of UNEP (WT/CTE/W/169). Representatives of the following Secretariats presented papers and responded to questions from Members on trade-related developments in their agreements:

- The Convention on the International Trade in Endangered Species of Wild Fauna and Flora (WT/CTE/W/165);
- The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (WT/CTE/W/163 and Corr.1);
- UNEP Chemicals on the Rotterdam Prior Informed Consent Convention and the draft Persistent Organic Pollutants Convention (WT/CTE/W/166);
- The Intergovernmental Forum on Forests (WT/CTE/W/164); and
- the UN Framework Convention on Climate Change (WT/CTE/W/174).

5. The International Tropical Timber Organization contributed a paper on the International Tropical Timber Agreement (WT/CTE/W/169). The Executive Secretary of the Convention on Biological Diversity also attended this session. The UNEP Compliance and Enforcement Unit was unable to be present. See Annex II on the MEA Information Session.

Item 9: The Decision on Trade in Services and the Environment

6. The representative of the United States said services liberalization was an important element in promoting economic growth and participation of all WTO Members in expanded trade. The scope of the services negotiations was broad and included all sectors, with the exception of most air transport services, and the four delivery "modes". Negotiations were looking at possible new disciplines, some of which the US supported, such as related to transparency, and others, such as "necessity", about which the US was cautious. The "bottom up" nature of scheduling GATS commitments allowed Members flexibility to decide how and to what extent to make new commitments. The US was also looking at the issues from an environmental perspective, such as in the tourism and energy sectors. The CTE could help in the negotiations by identifying, discussing and informing national deliberations and the negotiating groups on the environmental implications.

7. The representative of Japan said the CTE had yet to undertake sufficient work on this item. Japan supported the US suggestion to examine the environmental impacts of liberalization in each services sector in cooperation with other organizations, such as the OECD. The CTE should undertake case studies on the environmental impact of liberalization in as many services sectors as possible, including tourism, transport, energy and financial services. Japan requested the Secretariat to survey other fora's work in this respect and provide supplementary analysis, if necessary. This work would also be useful for the Council for Trade in Services as background for the GATS negotiations. Environmental benefits would ensue from reducing trade barriers, increasing competition among environmental services providers and enhancing innovation. Given the major changes to the environmental services industry since the conclusion of the Uruguay Round, the GATS Committee on Specific Commitments was discussing the possibility of revising the current classification system to reflect the realities of the industry. The CTE could discuss environmental services liberalization in the light of environmental protection; for instance, local governments procured a major proportion of environmental services, and restrictions on procurement affected market access in this sector. The CTE also could analyse the sectors in which privatization would enhance efficiency and quality of environmental services and have presentations from other organizations working in this area, such as the OECD.

8. The representative of Venezuela supported the suggestion for the Secretariat to study the environmental effects of services liberalization. The environmental services sector was dispersed and it was necessary to go into detail to classify and assess the environmental impact of services liberalization. The OECD study and the EC paper in the GATS would contribute to the debate.

9. The representative of Norway said sustainable development was a main objective of the WTO; in the Seattle preparations, several Members had stressed the need to integrate sustainable development and environmental concerns as horizontal issues in the relevant negotiations. The challenge was how to do this. One important tool was environmental reviews. Norway welcomed Members' environmental reviews and was undertaking a review of the transport sector. Some services sectors had clear environmental impacts, such as transport, environmental services and tourism. There were two sides to liberalization and environmental issues, i.e. sequencing and domestic regulations. On sequencing, it might be environmentally beneficial first to liberalize transport sectors that polluted the least, rather than those that were more polluting. On domestic regulations, it may be important to have the necessary regulations implemented prior to liberalizing, for example in transport and environmental services. Norway drew attention to the ongoing work in the GATS Working Party on Domestic Regulations on disciplines in GATS Article VI.4. As mandated in the Decision on Trade in Services and the Environment, the CTE should clarify whether GATS Article XIV was sufficient. In this regard, Norway referred to recent decisions by the Appellate Body that clarified the term "exhaustible natural resources" in GATT Article XX(g). Work on GATS Article VI.4, as well as recent Appellate Body decisions, might spur debate. Norway suggested the Secretariat up-date WT/CTE/W/9, *inter alia*, based on these elements and GATS information exchange processes.

10. The representative of India said the relationship between services agreements and the environment raised the issue of the environmental impacts of specific services sectors, such as transport, energy and tourism. India wondered what the environmental impact of financial services would entail. Some of the problems faced by developing countries for goods were equally valid for services, such as market access. If market access were made available to developing countries, there would be correspondingly increased financial resources available for environmental protection. Noting that GATS Article XIV was modelled on GATT Article XX, regarding which India's views were well known. As services was even more complex than goods, it was premature to consider the adequacy of GATS Article XIV. India would be concerned if a examination of the relationship between services and the environment were used to develop arguments in favour of restricting trade, and if developing country concerns for goods were not taken into consideration. Although sectors with a clear link to the environment should be identified, India would be concerned if the whole range of services were included.

11. The representative of Mexico said it was premature to establish any recommendations on services considering the ongoing negotiations in the GATS Council. Mexico preferred to complete CTE work under its current mandate, which was to discuss the general concepts of the relationship between services and the environment, before establishing links or making recommendations. The distinction needed to be drawn between the negotiations in other WTO Bodies and the CTE mandate. Classification of services sectors was being handled in the GATS.

12. The representative of Japan said the CTE had a broad mandate pursuant to the Ministerial Decision on Trade in Services and the Environment to examine and report, with recommendations, if any, on the relationship between services trade and the environment, including the issue of sustainable development. Financial services liberalization could affect the environment if there were no, for example, codes of conduct in the banking sector stipulating that liberalization should not lead to environmental degradation.

Item 10: Appropriate arrangements for relations with intergovernmental and non-governmental organizations referred to in Article V of the WTO

13. The representative of Canada said that visitors to the WTO website would find a statement on trade and sustainable development from the International Institute for Sustainable Development (IISD). The IISD had made useful contributions on trade and sustainable development, including a *Handbook on Environment and Trade* in cooperation with UNEP. Canada welcomed the fact that IISD's recent statement had been made available through the WTO website, as it contributed constructively to the debate on trade and sustainable development. Members who expected nothing but criticism of the WTO from environmental NGOs may be interested to learn that this statement, among other things, recognized that trade and foreign investment were important drivers to achieve the economic growth that made sustainable development possible, and condemned blatant protectionism as bad for the environment and development. While not formally endorsing the IISD statement, Canada felt it was an important contribution that was worth bringing to the CTE's attention.

14. Although emphasizing that the WTO was an intergovernmental organization, Canada believed that a greater window onto the WTO would better enable the public to appreciate the benefits of liberalized trade and the equitable rules that were the foundation of the international trading system. Supporting efforts to enhance the transparency of the WTO, Canada had submitted a paper, WT/GC/W/415, for the General Council's discussion on external transparency. The paper proposed several initiatives that Members could consider pursuing in the shorter and longer terms, including allocating a proportion of the WTO Secretariat budget to fund regular outreach activities, such as symposia, workshops and further improvements to the WTO website. WTO Bodies could consider convening small "dialogues" with Members and civil society representatives to tackle focussed issues to inform debate and analytical work. The CTE had convened symposia on trade and environment in

1997, 1998 and 1999. Canada believed that Members should consider convening another symposium and/or a series of small-scale dialogues to enhance public understanding of the WTO.

15. Canada welcomed the announcement in Seattle in November 1999 by WTO Director-General Moore and UNEP Executive-Director Töpfer to enhance cooperation. There had been several concrete results of this cooperation, including the valuable UNEP-MEA meeting on 23 October. Canada urged both organizations to further strengthen cooperation as an effective complement, at the international level, to efforts at the national level to improve coordination among trade and environment policymakers. Canada also felt the WTO's regional seminars on trade and environment were useful and welcomed the participation of UNEP and MEA Secretariats. Canada also welcomed the NGO workshops which had been arranged in conjunction with some of these seminars. Canada was considering contributing financially to the WTO trade and environment seminar in the Caribbean.

16. The representative of Japan supported the Secretariat's NGO symposia, as well as regional seminars to enhance the constructive dialogue with civil society and WTO credibility. Japan was studying Canada's well-written paper to the General Council on external transparency and urged others also to do so. Japan appreciated the Secretariat's efforts to improve the WTO's website, which was being increasingly accessed, and asked the Secretariat to continue to update it.

17. The representative of Peru said that her Government was undertaking initiatives to contribute to the regional process on trade and environment, with the objective of involving governments and NGOs at the highest level in a South American dialogue. Peru thanked the WTO Secretariat for participating in its national workshop on trade and environment in November.

18. The representative of the United States welcomed Canada’s statement on transparency and believed there was a need to improve communications between the WTO and the public; such efforts were essential to ensuring public understanding and support of WTO work. Progress in this area was needed and could be accomplished while preserving the government-to-government WTO character. The US noted its paper in the General Council on external transparency, WT/GC/W/413/Rev.1, in which several opportunities for improvements were highlighted. In particular, like Canada, the US valued the strengthening of the WTO outreach efforts through regular seminars and symposia, and considering the practices of other international organizations to the extent relevant. This was particularly relevant in the CTE, where the benefits had been witnessed of the contribution to CTE work of regional and global symposia, as well as dialogue with international organizations.

19. The representative of Hong Kong, China sought the Chairperson's guidance concerning Canada's proposal for the CTE to consider organizing another trade and environment symposium. Noting that external transparency was in the domain of the General Council and that the present meeting was not the appropriate forum for substantive discussion, Hong Kong, China did not oppose putting this issue on the agenda of the next meeting.

20. The representative of Mexico supported Hong Kong, China's comments, and had strong reservations on Canada's proposal.

21. The Chairperson said Members could take note of Canada's request, and this matter could be placed on the agenda of the next meeting.

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

22. The representative of Switzerland said that the discussion at the last CTE meeting and UNEP's meeting on Enhancing MEA-WTO Synergies and Mutual Supportiveness on 23 October had

clearly shown that the WTO-MEA relationship was one of the core trade and environment issues. Switzerland thanked those Members who had contributed actively and constructively to this debate and noted that, at the UNEP meeting, several developing country delegations that did not normally take the floor in the CTE had expressed their support for deepening the discussion of the WTO-MEA relationship. Switzerland welcomed the broadening support for a discussion of this relationship.

23. Discussion at the last CTE meeting had shown agreement that there was no hierarchy between the WTO and MEAs, that the two regimes were mutually supportive and should be interpreted so as not to create unnecessary conflicts. There seemed to be disagreement on the need to clarify the WTO-MEA relationship. The Swiss paper, WT/CTE/W/168, illustrated that clarification would prevent potential conflicts, increase the attractiveness of multilateralism versus unilateralism, create a clearer policy-making framework, especially for MEA negotiators, and provide greater legal security for MEAs and the WTO. As the CITES Secretary General had noted at the UNEP meeting and the MEA Information Session, without CITES there would have been an enormous workload for the WTO dispute settlement system, given the many unilateral measures which would have been adopted. Multilateral solutions were also the best safeguard against protectionist or discriminatory measures, and normally the most effective approach. Incentives to facilitate multilateral approaches were also necessary. Multilaterally agreed trade measures must be viewed more favourably than unilateral measures in the WTO. Lack of clarity in the WTO-MEA relationship should not be allowed to create artificial and unnecessary impediments for multilateral approaches, as in the past. To avoid that uncertainty concerning this relationship be used to prevent the conclusion of MEA negotiations, it must be clarified by WTO Members, not panels. Clarification would benefit all stakeholders who preferred multilateralism.

24. For the general rules of no hierarchy, mutual supportiveness and deference to govern the WTO-MEA relationship, Switzerland proposed that MEA measures be assumed to be necessary for environmental protection, subject to the exceptions in Article XX(b). This would not prevent a WTO Member from challenging the way in which a measure was implemented, i.e. if it constituted a means of arbitrary discrimination or a disguised trade restriction. This would create an incentive for multilateral approaches, which would also promote a multilateral framework for capacity building and technical assistance. Trade measures should only be the last resort and should be the most effective and least-trade-restrictive available. The best way to ensure this was to create incentives against unilateral measures by clarifying that MEA measures were assumed to be WTO compatible.

25. The representative of the European Communities presented his delegation's paper, WT/CTE/W/170, which set out ideas to stimulate discussion. The EC was keen to see a clarification of the WTO-MEA relationship. Since the outset of CTE discussion, the nature of these interactions had evolved. Beyond traditional MEA trade measures, MEAs containing measures which might have trade implications and could interact with trade rules were now part of the picture. One example was the relationship between the TRIPS Agreement and the Convention on Biological Diversity, where the challenge was to find a way to implement these two instruments in a mutually supportive manner. Like many Members, the EC felt MEAs were the most effective way of tackling global environmental problems. The fact that the MEA trade measures were agreed by multilateral consensus should be a guarantee against discriminatory or protectionist action. However, the WTO-MEA relationship in general was unclear. If MEAs were deemed to justify discriminatory, protectionist action, this could set a damaging precedent for the WTO. Subordinating MEAs to WTO rules would undermine international efforts to tackle environmental problems and fuel the arguments of WTO opponents. The EC felt greater clarity would provide gains to all Members, greater legal security for MEAs and the WTO, and reinforce the integrity of both systems. It would create a clearer policy making environment for trade and MEA negotiators. Multilateralism would become de facto more attractive than unilateralism, without changing WTO rules *per se*, an element of particular benefit to smaller countries. Clarification could prevent potential conflicts by creating clearer parameters, so that WTO considerations could be factored into MEAs from the outset. To achieve greater clarity, a first step could be consensus on basic principles on the relationship between these two sets of international law,

incorporating elements of WTO dispute settlement practice. Similar to the Swiss proposal, these principles might include: the WTO and MEAs should be mutually supportive; multilateralism was the best way to solve global environmental problems; multilateral environmental policy should be made within MEAs, not the WTO; conflicts between MEA Parties on implementation should be solved within the MEA; and WTO rules should not be interpreted in clinical isolation from complementary bodies of international law, including MEAs.

26. The EC wished to see confirmation that the WTO and MEAs were separate but equal bodies of international law, and that MEAs were not subordinate to the WTO, and vice versa. That was essential in developing a mutually supportive relationship. At the moment, the onus fell on the WTO Members defending a measure under Article XX to prove that a measure, if deemed incompatible with other GATT provisions, met the requirements in Article XX. Reversing the burden of proof for specifically mandated MEA trade measures would mean that the country challenging the measure had to prove that the measures at issue did not meet the conditions of Article XX, as under the TBT and the SPS Agreements. This would not affect the right of any WTO Member to resort to dispute settlement, nor alter the substantive requirements of Article XX. The EC supported strengthening the dialogue with MEA Secretariats to exchange information and ensure transparency. To guarantee mutual supportiveness, a code of conduct for the use of MEA trade measures should be developed jointly by the WTO, UNEP and MEA Secretariats. These ideas should not been seen as a fixed recipe, but merely as enriching the discussion; the EC was open to other suggestions.

27. The representative of New Zealand said MEAs were an essential mechanism for addressing environmental objectives. Of the over 200 MEAs in force, only 20 contained trade provisions, with two categories, protection of fauna and flora and biosecurity regulation, accounting for more than half. Thus, a potential WTO-MEA conflict was only likely to arise where MEA provisions were unclear as to the action mandated among MEA Parties, or where trade measures were applied against a non-party. As this was a tightly circumscribed area, the likelihood of difficulties should not be exaggerated. However, trade measures would continue to be a feature of some MEAs and it was thus important to develop an understanding of the WTO-MEA relationship. In WT/CTE/W/162, New Zealand suggested encouraging clear drafting of future trade-related MEA provisions and robust dispute settlement systems. The second proposal was to consider the contribution that consultative mechanisms guided by first-best principles developed within an MEA could make, including ongoing information exchange with MEA Secretariats. The third proposal was to establish an informal mechanism for a broader dialogue on issues regarding the WTO-MEA relationship, including the WTO, UNEP and MEA Secretariats, MEA Parties, as well as NGOs and industry. This could build on the useful process in the MEA Information Sessions and the UNEP meeting on MEA-WTO synergies. New Zealand looked forward to comments on these proposals. New Zealand would elaborate further how the proposed consultative mechanism would work.

28. The representative of Hong Kong, China said the Secretariat's Matrix on MEA trade measures, WT/CTE/W/160, was valuable, and could be updated periodically. He welcomed cooperation between the WTO and MEA Secretariats in preparing this document. For selected MEAs, the majority of WTO Members were non-parties, for example 109 WTO Members were not party to CCAMLR. For most of the MEAs identified in the Matrix, trade-related provisions, non-compliance and dispute settlement mechanisms were general. He agreed with New Zealand that the likelihood of conflicts between the WTO and MEAs should not be exaggerated, that customary rules of public international law provided little room for MEA Parties to contest the legality of these measures on WTO grounds, and that potential conflicts could be avoided by encouraging clear drafting of trade-related MEA provisions. Hong Kong, China was attracted by New Zealand's approach to a consultative mechanism. The concept of first-best principles was unclear. Did it mean there was a range of policy instruments suitable to resolve an environmental issue, and if a trade measure were necessary, the one chosen should be the least restrictive and distortive? How such a mechanism would address non-party situations could also be clarified. The proposed informal

mechanism for broader dialogue including NGOs should be treated with caution as this generic issue was being dealt with in the General Council.

29. Hong Kong, China felt the last CTE meeting had illustrated Members' disagreement on the need to clarify the WTO-MEA relationship. The Swiss paper, WT/CTE/W/168, was an improvement over the previous Swiss submission, but had not explained why Article XX was inadequate to address the WTO-MEA interface. It was too simplistic to contend that broad-based MEA negotiations would always include countries interested in preventing the inclusion of unnecessary trade measures. This presumed that all WTO Members had taken part in all MEA negotiations and that, irrespective of their development level, were equally effective in participating. The reality fell short of such assumptions. Most problematic was the principle that an MEA trade measures should benefit from a presumption of WTO conformity for the requirements in Article XX. Switzerland had correctly noted that the criteria MEAs must fulfill should be supported by all relevant stakeholders, who should include all WTO Members, if a WTO provision was being discussed. However, a presumption of WTO conformity did not work when WTO Members were not MEA Parties.

30. Many of the proposals in the EC paper, WT/CTE/W/170, were overly ambitious. The concept of reversal of the burden of proof was simply a non-starter; it disregarded the nature of Article XX, which was an exceptions provision. The related proposal to define an MEA was equally problematic; it suggested that environmental protection need not be the sole or even the primary aim of the MEA, provided that the MEA be open to all countries concerned. Thus, the actual number of Parties did not matter. The suggestion that relevant regional agreements should also be covered accentuated the problem of non-parties.

31. New Zealand's paper, WT/CE/W/162, provided a good basis to proceed on this subject. Hong Kong, China was willing to work with New Zealand and others to clarify the outstanding issues. Nevertheless, Hong Kong, China remained to be convinced of the existence and seriousness of a potential WTO-MEA conflict, and that a WTO accommodation was necessary. Any Members proposing options to accommodate MEA trade measures should be prepared to show how the proposed solutions would be applied to all other WTO Agreements, such as GATS and TRIPS. There were repercussions upon which Members might wish to reflect further, and which were not adequately addressed in the current proposals.

32. The representative of Australia welcomed the New Zealand, Swiss and EC papers, which built on the constructive discussion at the July CTE meeting, including Canada's detailed intervention at that meeting. While the WTO-MEA relationship had not been addressed in any WTO disputes, the relationship between different agreements had been considered in several disputes. They had emphasized the need first to identify the existence of an inconsistency or conflict between the provisions of two agreements before concluding whether one prevailed. In several cases, panels and the Appellate Body had recognized that different agreements may overlap in application to a particular measure, that they could co-exist and that one did not override the other. While these disputes had generally involved the relationship between different WTO Agreements, these conclusions seemed applicable to the WTO-MEA relationship. They pointed to the importance of countries which were Parties to both the WTO and MEAs acting in good faith in seeking to respect all their treaty obligations. This approach to the WTO-MEA relationship was confirmed by decisions and reports endorsed by WTO Members, and by the work of MEA Parties. The Marrakesh Decision on Trade and Environment and the 1996 CTE Report emphasized the objective of mutually supportive trade and environment policies, WTO-MEA complementarity, and the need for due respect to be accorded to both. The international community had also emphasized the importance of ensuring that environment-related agreements were implemented in line with the mutually supportive objective in recently concluded MEAs. These had been established on an equal footing and demonstrated the commitment to a non-hierarchical approach, as noted by Switzerland. Given this and WTO jurisprudence, Australia questioned whether there was the degree of uncertainty about this relationship, as suggested in the EC and Swiss papers.

33. The Secretariat Matrix (WT/CTE/W/160) highlighted the diversity of MEAs that raised trade-related issues. This was a reminder of the need to be cautious about suggested courses of action for clarifying the WTO-MEA relationship, such as approaches in Canada's "principles and criteria" or in the Swiss and EC papers. The Swiss paper made the valid point that the WTO should focus on its field of competence, not engage in adopting environmental rules and standards. One of the virtues of existing WTO rules, including Article XX, was that they provided a robust framework for protecting the trade interests of WTO Members, while not unduly interfering in the design of environmental or other policy measures. The evidence of the co-existence between this framework and MEAs was that it had not constrained the ability of MEA negotiators to take pragmatic approaches in designing trade-related measures appropriate for specific environmental problems. As understanding of the implications of implementing MEA trade measures increased, designing these measures could become more complex, but evidence of a need for change should be sought before taking initiatives that could disturb this framework.

34. Similar to the EC, Australia felt that efforts should focus on getting the most out of the MEA Information Sessions and UNEP meetings. The CTE should hold at least two MEA Information Sessions each year. Australia noted the value of summaries of these sessions along the lines of that annexed to the report of the July meeting, WT/CTE/M/24, which were useful in domestic policy coordination. Australia saw a strong role for UNEP in continuing to provide leadership to promote dialogue and experience sharing by MEAs on the role of trade-related measures. Australia agreed with New Zealand on the importance of processes for cooperation and coordination at the national and international level. UNEP's initiative in organizing the 23 October meeting was a welcome step in furthering coordination efforts. The scope for UNEP-WTO cooperation on capacity building should also cover a shared understanding of the implications of trade and environment agreements for domestic policy making. Other bodies, like UNCTAD, FAO and OECD should also contribute, particularly through preparing analytical studies and addressing development dimensions.

35. The representative of India made preliminary comments and shared Hong Kong, China and Australia's views on the issues in general. The problem had been defined as legal uncertainty and the chances of a legal challenge, with reference to the Biosafety Protocol. India supported Australia in questioning whether legal uncertainty existed. Although the number of MEAs negotiated did not testify to any uncertainty, India was willing to discuss this issue. However, it was necessary to be clear about the definition of an MEA. It was not conceivable that, for example, the EC and Switzerland, which shared views on this issue, formed an MEA and considered there should be a presumption of WTO compatibility for that agreement. Trade measures could not be dealt with in isolation from a package of MEA measures, which included incentives. The only conclusion that could be drawn was that certain trade measures in a given context in a specific MEA were necessary. Thus, it was not possible to argue that trade measures *per se* were necessary to achieve environmental objectives. The heart of the debate was whether existing WTO rules were adequate. India appreciated that the EC had made its position clear with respect to reversal of the burden of proof.

36. On the principles in the Swiss paper, India had no problem with no hierarchy between the WTO and MEAs. For matters within WTO competence, WTO rules should be supreme. Within the context of the MEA, India had no problem with MEA rules being supreme. That was why MEA dispute settlement mechanisms should be strengthened to avoid spillover into the WTO. On deference, the WTO and MEAs had their own responsibilities and mandates. India asked what was meant by deference; deference by whom to whom? It was possible to speak about mutual respect for the competence of each forum, but was it implied that the WTO should be more deferent to MEAs?

37. A definition of an MEA was necessary. If an MEA were defined to include all countries, there would be no problem. Problems could only arise in two circumstances: an MEA were not multilaterally negotiated, and with respect to non-parties. India appreciated the Swiss definition of an MEA as covering countries at all development stages. India would add that it should be negotiated under the UN, with other criteria, such as adequate scientific evidence. If these criteria were fulfilled,

there would be no problem, as all WTO Members would be involved, nor the possibility of a WTO challenge. The presumption that a broad-based MEA would involve all stakeholders was not always correct. However, the biggest problem was the suggestion that an MEA would be in conformity with the WTO and that the only scope for disagreement was its application. In this respect, in the Shrimp-Turtle case, the Appellate Body had concluded that the problem was not with the legislation *per se*, but its application. The concept of an artificial split between the law and its application was problematic as measures or agreements in themselves could be in non-conformity with the WTO.

38. Some considered that the WTO had made it more difficult to arrive at a conclusion in the Biosafety Protocol. It was naïve to suggest that because of lack of coordination between trade and environmental policymakers, developing countries were taking positions that were not in their best interests. A case could be made to strengthen coordination, but this would not result in fundamental changes in a country's position. If negotiators in the Biosafety Protocol were only able to achieve a convoluted compromise, the situation in the WTO would not be any different. The two preambular clauses appeared to be written in code with one indicating that one agreement was not superior to the other, and the other saying the opposite. India had sent representatives from both trade and environment to the Biosafety negotiations. The outcome of the Biosafety Protocol was not one that India particularly liked, but it was the outcome that the international community had been able to achieve. Regardless of where this issue was negotiated, the outcome would not change.

39. India had a signficant problem with the EC including regional agreements in the definition of an MEA without mention of the type of trade, or whether it were open to countries; the only criterion that the agreement be open to all countries concerned was not satisfactory. It was not possible to put different concerns on the same footing, e.g. agreement to conserve dolphins versus consensus to deal with climate change. There was value judgement in the protection of a particular species, as opposed to global environmental concerns.

40. The EC should not be surprised at the negative reaction to its proposal on reversal of the burden of proof, which was a far-reaching proposal that sought to fundamentally alter the limited exceptions under Article XX. Any attempt to change the Appellate Body reports on burden of proof should be carefully considered. The case between India and the US on *Measures Affecting Imports of Woven Wool Shirts and Blouses* was the first time the Appellate Body had made its views known on burden of proof. Customary GATT practice was that the Party invoking an exception must offer proof that the conditions had been met. The Appellate Body had said that several GATT 1947 and WTO panels required such proof for a Party invoking a defence, such as Article XX, which was a limited exception, not a positive rule establishing obligations. It was only reasonable that the burden of establishing such a defence should rest on the Party asserting it. Subsequent panels, such as *EC Asbestos, Australia Measures Affecting Importation of Salmon* and *Korea Definitive Safeguard Measures* had reiterated this. Prior to the EC paper, there had been no suggestion that the Appellate Body change the interpretation of burden of proof.

41. The implication of reversing the burden of proof was that Article XX would become a positive rule, not an exception. As it was, India had problems with Article XX, as portions of it were becoming redundant. There was concern for turtles, but no attempt to invoke Article XX(b), which referred to protection of animal health. Instead, Article XX(g) was invoked with respect to exhaustible natural resources, as the test was less rigorous than Article XX(b). When other provisions were clearly applicable, making them redundant was not legal. In addition, to suggest that Article XX should not be an exception and that there should be a reversal of the burden of proof meant that Article XX could be invoked with little opportunity to effectively rebut the use of trade measures for unilateral environmental claims. India did not consider the TBT and SPS Agreements to be relevant, as they were positive obligations, not exceptions to WTO provisions. On the proposed code of conduct, MEA trade measures might have been necessary in specific cases. The applicable test was whether the measure were necessary, and whether alternatives had been exhausted. thus, once the definition of an MEA had been established, it would not be necessary to develop a code of conduct.

42. India supported New Zealand's approach in WT/CTE/W/162. The first-best principles of least-trade distortive and most efficient were valid. India would add other first-best approaches to achieving environmental objectives, such as financial and technology transfer. For example, in the Shrimp-Turtle case, concern for turtle conservation could have been solved effectively through financing turtle excluder devices (TEDs). It was unfortunate that countries agonized over WTO-MEA compatibility and use of MEA trade measures, when the first-best solution need not be trade measures, but financing of conservation. In the Shrimp-Turtle case, all the resources spent on legal fees could have covered the cost of TEDs throughout the world. Rigorous efforts should be made to ensure that such matters be resolved without resort to trade measures. India supported New Zealand's call for clear drafting of future MEA trade-related provisions and development of robust dispute settlement provisions. The Climate Change Secretariat had noted the intention to develop such a system in the UNFCCC, which India welcomed. Although supporting continued dialogue between the WTO and MEAs, India shared Hong Kong, China's concerns.

43. The representative of Malaysia noted that Switzerland, Canada and the EC were advocating an interpretative understanding of the WTO-MEA relationship, with the EC proposing basic governing principles, and New Zealand suggesting a consultative process. There were differences of view on the need for clarification. The Swiss and EC papers noted that WTO-MEA conflicts had not and should not arise, although there was a remote possibility. Several MEA Secretariats had indicated that their agreements did not conflict with the WTO. Given the low probability of a conflict, Malaysia agreed with India and Australia that there was no need for an interpretative decision on the WTO and MEAs. WTO provisions were clear and sufficient, as Australia noted. Malaysia shared Hong Kong, China and India's concerns on the EC proposal to reverse the burden of proof. The burden of proof lay with the country implementing the measure to ensure that measures would not be more restrictive or arbitrary than necessary to achieve the objectives in Article XX. Cooperation between Secretariats, such as the WTO-UNEP arrangement, would increase coordination and understanding of each Body's competence. Malaysia did not see the value of turning this cooperation into a formal process or mechanism. Malaysia supported increased domestic coordination to ensure consistency and compatibility of international agreements, but shared the concerns of Hong Kong, China and India on New Zealand's proposal to broaden the dialogue to include NGOs.

44. The representative of Norway highlighted elements from the UNEP meeting on 23 October and the MEA Information Session, which had promoted understanding and built confidence. Communication between trade and environmental experts was important at the national and international level. Mutual supportiveness might not always be present, but it should be a goal as it was relevant to trade, environment and development. These "win-win-wins" should be taken together in the WTO and in other fora, and include technology transfer, financial assistance and capacity building. Noting discussions to mainstream trade into development, Norway said mainstreaming environment into development also should be addressed. It might be an idea to include the environmental dimension in the WTO's Integrated Framework.

45. The WTO-MEA relationship had been on the GATT/WTO agenda for more than a decade and a common understanding had been reached on several elements, some of which were in the CTE Report to the Singapore Ministerial Conference. The CTE should focus on the following basic premises. Trade-related measures might be needed in certain cases to achieve MEA objectives. Disputes between MEA Parties over the use of specifically mandated trade measures were unlikely. Policy packages in MEAs, including financial and technology transfer and capacity building were important and might stimulate countries to become Parties. In formulating Norway's position on the WTO-MEA relationship, due regard had been given to these elements on the premise that conflicts between MEA Parties over trade measures were unlikely. The issue before the CTE concerned potential conflicts with MEA non-parties, and measures between MEA Parties that were not specifically mandated, which would constitute unilateral measures. Norway had concluded that there should not be a hierarchy between the WTO and MEAs; and that MEA trade-related measures should only be taken pursuant to specific MEA provisions, and should not constitute a means of arbitrary or

unjustifiable discrimination or a disguised trade restriction *vis-à-vis* non-parties. If MEA non-parties fulfilled the obligations in the MEA, they should not be subject to less favourable treatment than Parties. Any clarification of the WTO-MEA relationship should ensure greater predictability for both trade and environmental negotiators in relation to WTO rules on the use of MEA trade measures. However, flexibility in the use of instruments in environmental policy must be maintained. Clarification of the WTO-MEA relationship must not be more restrictive than current WTO rules.

46. Norway welcomed the Swiss and EC papers, as they focused on the above-mentioned principles, and supported the EC's four principles, and that MEAs were not subordinate to WTO rules, and vice versa. The informal CTE dialogue with MEA Secretariats helped to exchange information and ensure transparency. The CTE was also confronted with interesting but difficult proposals from the EC, which Norway was considering, such the burden of proof and a code of conduct. He asked for clarification on whether the Swiss proposal would be applied to MEA Parties or non-parties. Implementation of MEAs might become an issue if trade measures were not specified or mandated in the MEA, and if a non-party were involved.

47. Norway agreed with New Zealand's proposal to encourage clear drafting of future MEA trade-related provisions. The way to do so was by encouraging national coordination between trade and environmental experts. Norway recognized that where trade measures were imposed by an MEA Party *vis-à-vis* a non-party, New Zealand's proposed consultative mechanisms could be useful and should be explored. On first-best principles, a policy package was the best way to achieve a given result. As noted by India, a policy package would include trade-related measures as well as financial and technological transfer. Norway felt New Zealand's suggested informal mechanism for broader dialogue on the WTO-MEA relationship was interesting. This mechanism could also cover other trade and environment issues and the trade effects of environmental policy and vice versa.

48. The representative of Iceland said the Swiss, New Zealand and EC papers contributed to clarifying the issues under this Item, while demonstrating the complexities. Iceland also appreciated the contribution of the MEA Secretariats to the discussions. The WTO-MEA relationship was highly complex, not least because the *raison d'être* of these two international legal regimes was somewhat different, whereby one sought to protect, the other to liberalize. This did not mean these two regimes could not be mutually supportive. They could, and it was the role of their Members to ensure, as Switzerland noted, certainty, predictability and coherence between them. In terms of how, New Zealand's paper provided a good starting point, as it sought to circumscribe the area where a conflict might arise. It made the obvious, but useful, distinction between existing agreements and future directions, and the different approaches needed to address the two different circumstances.

49. New Zealand's paper pointed to Canada's earlier suggestion to develop principles and criteria to assist negotiators in the use of trade measures in MEAs. Iceland assumed the EC's suggested code of good conduct went in a similar direction. New Zealand's suggestion to negotiate rules of the game for future trade measures in MEAs was worth exploring. While the future could be managed, the past was more difficult. The question of how to deal with potential conflict between existing agreements remained, especially concerning the critical situation where trade measures were applied to protect environmental resources outside the jurisdiction of the country applying the measure. Iceland had expressed its concern that WTO jurisprudence had added to the legal confusion with respect to such actions. At the last meeting, Iceland also had stressed that clarification of the WTO-MEA relationship was so fundamental that it should not be relegated to the WTO judiciary. To be consistent with a multilateral approach, it should be Members that determined this relationship as emphasized in the Ministerial Decision on Trade and Environment. Iceland sought clarification from the EC on the suggestion to include regional agreements, notably fisheries agreements under MEAs, and on the notion of reversal of the burden of proof, with which Iceland was not completely comfortable.

50. The representative of Canada referred to the UNEP meeting on the WTO and MEAs, which had reinforced the need to act in different fora to promote synergies. Work was needed within the

trade regime, the environmental regime and at their interface. Canada was encouraged by the collaboration between the UNEP and WTO Secretariats. Canada did not feel that there was a crisis with respect to the WTO-MEA relationship; the objective was to ensure there would not be. Trade measures were not a first-best mechanism, but part of a package of instruments, which should not be examined in isolation. That was why Canada had emphasized at the UNEP meeting the need for action within the environmental regime, particularly on capacity building. There was much food for thought in the Swiss, EC and New Zealand papers. Canada noted particularly New Zealand's idea of a consultative mechanism and that the proposals in the Swiss and EC proposals had received much discussion. Canada would reflect on the issues raised and further develop its principles and criteria approach, considering elements raised at the July CTE meeting. While greater legal certainty was desirable, the question was how much. There was likely to be a trade-off between the degree of legal certainty and the scope of issues covered. Canada was also considering how an approach would related to all WTO Agreements, an issue raised by Hong Kong, China. In its statement at the 23 October UNEP meeting, Canada had suggested that UNEP, in collaboration with the WTO Secretariat, could undertake work on issues related to the use of trade measures in MEAs, including what was meant by an MEA. Canada would have further thoughts as to how WTO-UNEP collaboration could address this issue. Canada also suggested that it might be useful for the WTO, UNEP and MEA Secretariats to collaborate on a paper on compliance and dispute settlement approaches in the trade and environment regimes to elucidate synergies. These regimes were different; one was more focused on informal approaches to promote compliance, whereas formal dispute settlement procedures were prominent in the other.

51. The representative of Brazil felt the Swiss paper had improved on the previous submission. The fundamental issue with respect to the WTO-MEA relationship was whether current WTO rules were adequate. It was not necessary to clarify WTO provisions to avoid potential WTO-MEA conflicts, as Article XX provided a basis to accommodate environmental exceptions. On the EC's suggested principle on mutual supportiveness, Brazil agreed with India that this was an objective, not a principle. The best way to solve global environmental problems was multilaterally. A conflict between MEA Parties on the implementation of that MEA should be solved within the MEA, not in the WTO. Brazil was concerned about the principle that WTO rules should not be interpreted in clinical isolation from complementary bodies of international law, including MEAs. Even if agreement could be reached on principles to guide negotiators on the use of MEA trade measures, the definition of an MEA should first be elaborated. Brazil supported Hong Kong, China and India concerning the EC's proposed reversal of the burden of proof. While there was no need to change WTO rules, Brazil supported continuing the informal dialogue and exchange of views between the WTO, UNEP, and MEA Secretariats. Brazil felt the idea of a code of conduct was premature, and wondered how the EC envisaged it could jointly be developed between the WTO, UNEP and MEAs.

52. Brazil agreed with Switzerland that the WTO-MEA relationship should be governed by the general principle of no hierarchy and that the criteria that MEAs must fulfill to avail themselves of this presumption must be worked out. An important criterion would be that all stakeholders supported an MEA. Brazil supported New Zealand's call for clear drafting of future MEA trade provisions and robust dispute settlement systems. Brazil also supported the development of a consultative mechanism, guided by first-best principles. However, Brazil was concerned about New Zealand's proposed informal mechanism for broader dialogue and asked how it would be organized. The EC and Swiss papers noted that one of the main reasons the WTO-MEA relationship needed to be clarified was the Biosafety Protocol. This Protocol had turned out the way it did because both trade and environment negotiators were aware of the challenges with respect to addressing the environment and trade concerns. To create guidelines or alter WTO Agreements to accommodate such concerns would create more problems than solutions.

53. The representative of the United States said MEAs were important to address global environmental challenges. Trade measures could be critical for achieving internationally-agreed environmental objectives, when carefully tailored and appropriately applied, as exemplified in CITES

and the Montreal Protocol. MEA trade measures were broadly accommodated by the WTO, and WTO rules were sufficiently flexible in this regard. Thus far, no MEA provisions had been challenged under the WTO and it was very unlikely that widely supported MEAs would raise WTO disputes. The US had yet to see a demonstrated need for the rules to be changed or the WTO-MEA relationship clarified. The US appreciated concerns over the possibility of future challenges to MEA trade provisions, which was one reason why it supported cooperation and dialogue between the trade and environment communities to identify and avoid potential conflicts. The US drew attention to the comment in the CITES paper, WT/CTE/W/165, that priority was best concentrated on trade and environment coordination efforts, rather than theoretical WTO-MEA compatibility. The US appreciated UNEP's efforts, in collaboration with the MEA and WTO Secretariats, to foster discussion at its 23 October meeting. On India's comment that assistance could have avoided the Shrimp-Turtle dispute, the US recalled that in the Dispute Settlement Body, the US had set forth the assistance it was offering to implement the ruling.

54. The representative of Venezuela appreciated the Secretariat's Matrix on Trade Measures and Members' submissions. Similar to India and Brazil, India could not support the EC proposals to reverse the burden of proof and develop a code of conduct. Venezuela wondered if a code of conduct would be constructive, or only serve to give rise to more debate. As noted by India, trade measures should not be considered in isolation from the broader framework of MEA policy measures. A constructive approach would be to further the dialogue between the WTO, UNEP and MEA Secretariats, but it would not be possible for them to develop jointly a code of conduct.

55. The representative of Mexico said his delegation was considering the Swiss, EC and New Zealand papers. Mexico agreed with Hong Kong, China, India, Malaysia, and Brazil that there was no need to clarify the WTO-MEA relationship, given the flexibility of WTO rules to accommodate environmental concerns. Consequently, there was no need to have any kind of principles or code of conduct that would direct the interpretation of the WTO Agreements; Mexico could not support such proposals, at this stage, given that, among other things, they would require changing the whole WTO system as they limited or modified several WTO Agreements, such as the DSU and GATT. Mexico had never supported including trade measures in MEAs, but if this were the case, they should be WTO-compatible. Information exchange with MEAs should continue on an informal basis.

56. The representative of Japan said that the Appellate Body had produced good reports that represented case law. According to the DSU, Members were to make legal interpretations rather than just leave matters to dispute settlement. As India and others noted, there had yet to be a WTO-MEA conflict. However, Japan felt it was necessary to clarify the WTO-MEA relationship, and offered preliminary comments. New Zealand's paper contained interesting suggestions based on a preventative approach, and it was difficult for Japan to object to any of them. Japan supported the establishment of consultative mechanisms in parallel with discussions to clarify the WTO-MEA relationship. In controversial cases where trade measures were applied to MEA non-parties, a consultative mechanism could prevent conflicts. Japan agreed with New Zealand that if a trade measure were specifically defined in the MEA, it was less likely for conflicts to arise. However, the CTE should consider the degree to which clarity was needed. Japan supported the Swiss and EC papers, although it would be necessary to examine them further. It was difficult to object to the EC's principles, such as mutual supportiveness; the importance of multilateral as opposed to unilateral approaches to global environmental problems; that environmental policies be developed within MEAs, not the WTO; that conflicts between MEA Parties be solved within the MEA; and that WTO rules should not be interpreted in clinical isolation from relevant international law, including MEAs.

57. The definition of an MEA was a core issue, as noted by India. If the major stakeholders were represented in regional agreements, Japan felt regional agreements could be considered to be MEAs, but this issue should be considered further. A code of conduct was an interesting idea, similar to proposals to develop guidelines or an interpretative understanding. At the July meeting, Japan had stated that the WTO should mainly focus on the application of MEA trade measures, and proposed

that Members provide examples of arbitrary or unjustifiable measures. A code of conduct could include the content of measures that were justified and not arbitrary. It might be a good idea to invite eminent international legal scholars to contribute to a Secretariat paper on the issues raised in the Swiss and EC papers. India had noted that Article XX was an exceptions provision. However, if both parties to a dispute were WTO Members and MEA Parties, Article XX could be viewed in a different light. Issues such as reversal of the burden of proof should be examined case by case in consultation with international legal scholars. Japan supported positive measures in MEAs; trade measures should not be the primary means to achieve sustainable development. India's comment that, instead of paying legal advisors, it might be more useful to dedicate finances to address the environmental problem was interesting. Japan agreed that robust MEA dispute settlement provisions should be developed so conflicts could be solved within the MEA. Japan supported Canada's suggestion for a Secretariat paper comparing WTO and MEA dispute settlement mechanisms. Japan agreed with the US that, rather than indulge in theoretical debate, coordination, consultation and dialogue at the domestic and international level was important. Japan would make further comments at a later stage.

58. The representative of Korea felt Members' proposals had provided momentum to revitalize discussions. Interventions by several Members cast doubt on the need to clarify the WTO-MEA relationship. However, given the increasing trend in MEAs to envisage trade measures as the primary means to achieve environmental goals, Korea was not sure there would not be future conflicts with the WTO. Hence, Korea deemed it necessary to address the possibility of conflict between these two different international legal regimes. Clarification was all the more important with the adoption of the Biosafety Protocol. While in the process of establishing national legislation to implement the Protocol, Korea had faced difficulties reconciling the obligations, particularly related to the precautionary principle, with WTO provisions. This example illustrated why the WTO-MEA relationship must be better defined. The EC and Swiss papers contained some provocative notions. Korea shared the concerns expressed by others, particularly on reversal of the burden of proof, which might challenge the nature of WTO provisions and required further study.

59. A differentiated approach to trade measures for environmental purposes previously made by Korea and New Zealand, depending on a measure's specificity and whether it applied only to Parties or to non-parties, was a useful analytical framework. However, as noted in New Zealand's paper, this complex issue could not be solved by a "one size fits all" approach. New Zealand's approach was practical and could complement the CTE's analytical exercise. Through its preventative role, a consultative mechanism could help resolve any potential disputes over MEA implementation. The rationale behind such a mechanism was in line with the notion that trade measures be used as a last resort, after all other available and effective policy instruments had been exhausted. Trade measures were not the only policy instruments in MEAs. Positive measures, such as technology transfer and capacity building, were also indispensable to ensure implementation of MEAs. In line with this approach, Korea supported New Zealand's suggestion for clear drafting of future trade-related MEA provisions and robust dispute settlement systems. Greater emphasis on such preventative measures might avoid disputes in the first place. Korea also welcomed the idea of an informal consultative mechanism including NGOs and industry, which could enhance the transparency of WTO activities and contribute to a better understanding in civil society of CTE discussions.

60. The representative of Egypt reserved his delegation's right to comment on the Swiss, EC and New Zealand papers, and made preliminary general comments. Changes to WTO rules should be avoided to accommodate concerns about hypothetical WTO-MEA conflicts. Any effort to renegotiate WTO rules would pave the way for unilateral measures that sought to impose domestic standards on the international community. Instead of having a rules-focussed approach, which might lead to such undesirable consequences, the international community should formulate measures to support developing countries' efforts to join and comply with MEAs. Consideration should be given to implementing positive measures, such as financial assistance, technology transfer and capacity building. Proposals to modify WTO rules, such as reversing the burden of proof, would introduce

controversy and lead to mistrust, weakening the multilateral trading system. Expecting the WTO to assume functions for which it had not been created and did not have the expertise was problematic.

61. The representative of Cuba said his delegation would comment on the Swiss, EC and New Zealand papers at a later stage. Cuba noted the importance to developing countries of alternatives to trade measures in MEAs, such as technology and financial transfer and capacity building. Noting that some delegations had referred to these alternatives as a potential antidote to trade measures, Cuba recalled that in MEA negotiations, developing countries confronted difficulties with respect to the actual implementation of these alternatives as provided for in MEAs. Technology transfer was not taking place as anticipated at UNCED and *Agenda 21,* and this presented problems with respect to the TRIPS Agreement and the Biodiversity Convention. Cuba considered this to be a key factor for developing countries. Cuba hoped that the UNEP meeting on MEA-WTO synergies, and CTE discussions would illustrate the importance of achieving a balance in the application of trade measures. Only political will would avoid conflicts in the implementation of MEAs and WTO rules.

62. The representative of Switzerland appreciated the critical yet constructive comments, which represented a step forward in the debate that would have been difficult to imagine previously. Thus, it seemed that the CTE was progressing towards a common understanding of the complex WTO-MEA issue. If further improvement to the Swiss proposals occurred it would be thanks to the helpful comments received at this meeting. Switzerland agreed that the definition of an MEA was an important issue that had yet to be resolved and would work with others to develop a response. Some delegations had questioned the degree of uncertainty that existed with respect to the WTO-MEA relationship. Switzerland referred to the Montreal Protocol's statement at the MEA Information Session in July concerning the substantial potential for conflict between the Montreal Protocol and the WTO, given that not all Parties to the Protocol were necessarily also Parties to all subsequent protocols. Several other MEAs functioned in a similar manner. Thus, the situation was more complex than strictly between Parties and non-parties.

63. Switzerland felt Article XX was insufficient to deal with the WTO-MEA relationship, as it only dealt with the relationship between GATT and MEAs. What was required was a clarification of the whole body of WTO law and MEAs. According to Article XX, the burden was on the defending party to prove that an environmental measure was necessary. Herein lay the potential for substantial conflict. If the international community agreed in an MEA that certain trade measures were necessary, this did not ensure that a WTO panel, lacking the knowledge and competence of MEA negotiators, would come to the same result. Thus, the WTO should defer to MEAs, not adopt environmental rules or engage in technical issues. The MEA was the competent body to resolve these issues. Current WTO rules could be adequate depending on the way in which they were interpreted. In paragraph 19 of WT/CTE/W/165, CITES noted that there might be conflicts depending on the interpretation of Article XX. Although reference had been made to WTO jurisprudence, Switzerland felt that was not the way to resolve fundamental issues. Important decisions should be taken by WTO Members, not panels. WTO panels took decisions in specific cases, but did not establish general, abstract rules. Switzerland felt solutions should build on the approach of mutual supportiveness and avoid unnecessary conflicts. Thus, it would be necessary to use deference, which meant that the WTO should focus on its areas of competence and respect the competence of other organizations. One issue that should be deferred to others was whether specific MEA measures were necessary.

64. Responding to Norway's question on the coverage of the Swiss proposal with respect to Parties and non-parties, Switzerland said there could also be situations where both were MEA Parties. The distinction between the measure itself and its implementation was relevant. There was agreement that trade measures between MEA Parties should be considered WTO-compatible and not raise conflicts. However, the possibility could arise with respect to implementation of a measure in a way that did not conform to WTO provisions. Thus, even if both were MEA Parties, there was concern from a WTO perspective and it should be possible to bring such situations to the WTO.

65. The debate highlighted a common view shared by all WTO Members, namely that there was no hierarchy between the WTO and MEAs and that the trade and environment regimes should be mutually supportive. Moreover, there seemed to be agreement that sometimes trade measures were important to achieve environmental objectives, that multilateral approaches were preferable to unilateralism, and that the WTO should not impede such measures. These points of agreement represented a common basis upon which to address the WTO-MEA relationship, which was the first step to resolving this challenge in a balanced manner.

66. The representative of the European Communities welcomed the stimulating discussion, which had been the goal of the EC paper. There was a convergence of views on the fact that the common goal should be to ensure the mutual supportiveness of MEAs and the WTO. That objective could not be approached in the WTO except through general principles to clarify and ensure accommodation. The status quo was not satisfactory, given the possibility of a conflict arising with non-parties. The EC's intention was to establish mechanisms and principles to prevent conflict, rather than to have to manage conflict once it arose. Even if conflicts were limited, the WTO-MEA interface was increasing because MEAs were using trade measures or measures with trade implications, as illustrated by the PIC and draft POPs Conventions and the Biosafety Protocol. Negotiations on the savings clause in the Biosafety Protocol had been particularly difficult, which was an indication of a problem. The Biosafety preamble was far from satisfactory, but it illustrated that the WTO-MEA relationship had to be mutually supportive. This would have to be echoed in the WTO to be fully satisfactory. The EC also wished to have a solution as panels were not sufficient to clarify the WTO-MEA relationship, which required a political decision.

67. Reversal of the burden of proof was one of the options the EC was considering. This was not revolutionary in the WTO, given the presumption of conformity that existed in the TBT and SPS Agreements between national legislation and international standards. A parallel had to be drawn between existing mechanisms and the solutions proposed for MEAs. The EC's suggestions would not involve substantial changes to Members' rights and obligations under Article XX. Reversal of the burden of proof as a mechanism to accommodate MEAs should only cover specifically prescribed measures in MEAs. The distinction drawn by some Members between specific and unilateral measures was too radical, since all non-specific measures were not automatically unilateral if they were linked with the MEA. Further thought should be given to categorize these measures. Definition of an MEA was important; the EC proposed MEA negotiations be open from the outset to all countries concerned, and that regional agreements be covered. The EC agreed that trade measures were not necessarily the first-best option in all situations. However, there was also agreement that trade measures were warranted and necessary in certain cases, such as in CITES. It was also clear that WTO rules should be taken into account in MEA negotiations through better domestic coordination. UNEP would have to be closely associated with the New Zealand's informal consultative mechanisms between the WTO, UNEP and MEAs. Although initially proposed by other Members, the EC was open to a code of conduct.

68. The representative of New Zealand was encouraged that the CTE appeared to be broadly supportive of New Zealand's three proposals. Several Members had supported New Zealand's proposal on the need to draft clear MEA trade measures, as well as robust dispute settlement mechanisms. New Zealand welcomed the broadly supportive remarks on the second proposal for establishing a consultative mechanism guided by first-best principles. In response to Hong Kong, China, Korea, India and others, New Zealand said "first-best" was a mathematical model in economic theory that outlined approaches to a hierarchy of choices and utilised pareto concepts of allocative efficiency. First-best was an effective tool to establish choices. In response to comments by Malaysia, Korea, India and Hong Kong, China, New Zealand was not proposing that first-best only apply to trade measures. The idea was to use first-best approaches to assess a package of instruments. Trade measures might not necessarily deliver the most efficient outcome in specific cases. Financial assistance, technology transfer and capacity building may be more effective in achieving a specific environmental outcome. The basic presumption on the application of first-best through a trade

measure was that it must be least-trade distorting and non-discriminatory. Hong Kong, China's question as to how this mechanism would work for non-parties required further thought, and New Zealand would seek to elaborate a suggestion for the next meeting, working with others. New Zealand was encouraged by the support for the principle underlying its proposed informal information exchanges, similar to the UNEP meeting on 23 October. New Zealand assured Brazil, Mexico, India, Hong Kong, China and others that concerns on the potential role of NGOs had been registered. Although including NGOs in this process would be helpful, it required discussion.

69. The Matrix on MEA trade measures in WT/CTE/W/160 was comprehensive and identified specific MEA trade measures. Given that the role of non-parties was at the crux of the WTO-MEA relationship, provisions for non-parties were an important inclusion. The use of a separate category on dispute settlement mechanisms highlighted the problem noted in New Zealand's paper that existing mechanisms may not be as effective as desired. The MEA Information Sessions and the MEA Matrix indicated the multifaceted nature of the efficiency of MEA trade measures, which were dependent on the particular environmental problems addressed and the nature and role of the specific provision. More discussion was needed on what worked and what did not work in terms of MEA trade measures to ensure that evolving and new MEAs could design effective trade measures. To that end, New Zealand suggested the Secretariat prepare an analytical paper outlining factors contributing to the success of MEA trade measures and those which undermined those prospects.

70. It was agreed that the Secretariat would prepare a factual paper, in cooperation with UNEP and the MEA Secretariats, on compliance and dispute settlement provisions in the WTO and MEAs.

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.

Fisheries

71. The representative of Japan presented his delegation's paper, WT/CTE/W/173, on Japan's basic position on fishery subsidies and comments on the US paper, WT/CTE/W/154. Many factors, such as inadequate fishery management and illegal, unregulated and unreported (IUU) fishing were likely to cause depletion of fishery resources. To achieve a fundamental solution to overexploitation of fish stocks, the FAO should continue to address all the possible negative factors affecting sustainable use of resources, including subsidies. It would be wise to utilize FAO expertise, given the limited human resources in the CTE. Japan wondered why the US paper gave special consideration to fishery subsidies when these subsidies were covered by the SCM Agreement. The reason was, perhaps, that the fishing industry utilized fishery resources, which were renewable but exhaustible natural resources that could be depleted without proper management. The same consideration should be given to other aspects of fishery trade. The results of the recent OECD study should be fully taken into account. As the study clearly stated, possible negative effects of fishery subsidies can be minimized if appropriate management and conservation measures were taken.

72. A case by case examination should be made under which circumstances a certain subsidy actually produced negative impacts on fishery resources. If the US wished to categorize fishery subsidies into those having adverse resource impacts under inadequate management and those that did not, Japan did not necessarily object. However, the WTO should not be expected to conduct such fishery-related technical work; the CTE should request FAO to conduct work and feed back the results. The CTE could then conduct further analysis on fishery subsidies based on FAO work. The FAO International Plan of Action for the Management of Fishing Capacity addressed fishery subsidies. Recognizing that the main concern was that certain fishery subsidies seemed to have negative effects on sustainable resource use, Japan agreed that this concern was not appropriately addressed by the SCM Agreement. The US paper also covered the negative effects of fishery subsidies on trade, but as long as these effects fell within the meaning of "adverse effects" stipulated

in Article 5 of the SCM Agreement, these subsidies could be dealt with by that Agreement. However, the fishery subsidy argument consisted of a variety of factors and, among others, attention should be given to resource sustainability in the CTE.

73. The representative of Korea introduced his delegation's paper, WT/CTE/W/175, which aimed to contribute to the debate by sharing Korea's national experience and help the CTE form a balanced view of the fisheries sector. Korea agreed that fisheries subsidies should not be used in such a manner as to have negative effects on resource sustainability or distort trade. Korea's experience indicated that fisheries subsidies had played a positive role in generating fisheries resources, particularly by contributing to the improvement of the marine environment and enhancing productivity of fishing grants to develop environmentally sound technologies to replenish marine resources. Debate on fisheries subsidies should be conducted from a comprehensive and balanced perspective, taking into account socio-economic policies and different development levels. It would be necessary to form a consensus on the definition of fisheries subsidies. The competence and role of each forum should be respected, avoiding duplication. Given that the FAO dealt with the relationship between subsidies and resource conservation, its work should guide CTE discussion. Korea hoped that Members would consider all relevant factors and avoid premature conclusions on the effects of fisheries subsidies.

74. The observer of the OECD presented its recently concluded study reviewing financial transfers in OECD countries and assessing their impact on fisheries resource sustainability, which was included in the OECD publication *Transition to Responsible Fisheries – Economic and Policy Implications*. Its conclusions had been agreed among all OECD countries. The case studies and background material were available at www.oecd/agr/fish. The nature of OECD government financial transfers had changed since the 1970's, when they were aimed at developing fisheries. In 1997, transfers to the fisheries sector amounted to US$6.3 billion, with US$4.9 billion or 75 per cent devoted to general services for infrastructure and activities to ensure sustainable use of fish stocks and ecosystems, such as research, enforcement and management. Effects of transfers on resource sustainability were complex, given the many influences on fish stocks that were difficult to disentangle. Possible negative effects of certain transfers could be minimized when transfer and resource management policies were coherent. Capacity and dependency-reducing transfers combined with appropriate management could reduce pressure on fish stocks. When compared to agricultural transfers, fisheries subsidies in OECD countries were far lower. Transfers to the fisheries sector, including general services, were 17 per cent of the landed value, compared with 22 per cent of the farmgate value in agriculture. Market price support had been excluded from the study, given lack of information. The study used broad classifications of financial transfers according to economic effects, i.e. direct payments, cost reducing transfers, and general services. The study would be updated annually in the OECD *Review of Fisheries*, and the trade effect of transfers would be assessed in a study on market liberalization in the fisheries sector, to be completed in 2002.

75. The representative of Iceland said Japan and Korea's papers contributed to the debate. Iceland welcomed Japan's comment that the adverse effect of fisheries subsidies on sustainable use was a topic for CTE discussion. Iceland also agreed that inadequate fisheries management was the principal cause of fish stock depletion and shared Japan's concern about IUU fishing. The CTE should identify the subsidies that had adverse effects on sustainable fisheries and trade. Iceland shared Japan's view that the CTE should involve more fisheries experts in its work and strengthen cooperation with FAO. Iceland disagreed that addressing subsidies in the WTO was singling out one issue from many factors affecting fisheries management. FAO technical expertise and regional focus was best equipped to assist countries in developing fisheries management regimes that fitted their national and regional situation. A critical and common aspect of inadequate fisheries management was fleet overcapacity, which had serious implications for sustainable fisheries, as demonstrated in the literature, Secretariat reports and Members' submissions, including by Iceland. Too many boats fishing too few fish in one region frequently drove fleets to fish on the high seas or in other countries' jurisdictions, which could take the form of IUU fishing. In addition to encouraging overfishing in domestic waters, overcapacity encouraged excessive fishing in other regions. Overcapacity caused supply distortions that put

downward pressures on world seafood prices. Such circumstances put pressure on global fishing operations to meet diminished returns by increasing supply, and intensifying fishing, which adversely impacted on fish stocks and trade.

76. Subsidies were the principal cause of overcapacity. By reducing costs and increasing revenues, subsidies attracted more entrants into the industry and encouraged expansion of fishing, particularly by operations that otherwise would have disinvested or left the industry. Unlike fisheries management, subsidies were not meaningfully addressed at the national and regional level. Subsidies should be addressed globally, as the ability of countries to remove subsidies depended on a level international playing field in order to avoid domestic economic casualties. The FAO was the competent forum to address fisheries management and IUU fishing. Given that subsidies were a global trade issue, the WTO was the competent forum to address them. No factor was being singled out, and the WTO must cooperate with FAO.

77. Although certain government financial transfers might contribute to sustainable fisheries, as noted in Korea's paper, all types of subsidies should be assessed to evaluate their effects. The literature showed that while there might be some benign subsidies, they only contributed to sustainability under certain conditions. WT/CTE/W/167 provided a comprehensive review of work on fisheries subsidies and information on the legal and institutional framework of the discussions. Iceland had requested that paper for two reasons. Iceland's analysis had shown that fisheries subsidies generated overcapacity and overfishing of global fishing fleets. Fisheries subsidies thus harmed the environment, distorted trade and undermined sustainable development in all countries. Also, there was a lack of factual analyses of the adverse impact of subsidies, especially on trade.

78. The Secretariat's paper showed that removing subsidies was a necessary condition to achieve sustainable global fisheries. It was clear that overcapacity of global fishing fleets was a common consequence of inadequate fisheries management. Subsidies were among those government policies that could impact on capacity and fishing effort. Governments had introduced subsidies that encouraged entry into the fishery and expanded capacity beyond that which oceans could sustain. In open-access regimes, cost-reducing and revenue-enhancing subsidies encouraged increased effort and overfishing. Such subsidies led to more capacity than needed to harvest resources efficiently, which drove down income and led to pressure on fisheries managers to set TAC levels higher than was sustainable. While the paper recognized that there might be some benign subsidies, these could only support sustainable management under certain conditions. The paper confirmed that empirical work was needed on the nature, extent and implications of fisheries subsidies on trade and sustainable management. The paper confirmed that the WTO had a role to play in encouraging sustainable fisheries within its mandate to address the major trade distortions, such as subsidies. This was consistent with international law, such as UNCLOS, which attributed competence to the WTO in settling disputes involving trade-related measures, notably production subsidies and trade restrictions.

79. The paper confirmed the need for the CTE to pursue a common methodology to identify and assess the nature, extent and implications of subsidies. The US paper, WT/CTE/W/154, was useful, but more work was needed to develop categories of subsidies and clarify their trade-distorting effects. To assist the CTE in identifying those subsidies that distorted trade and undermined sustainability, and in assessing the adequacy of WTO rules, Iceland suggested the Secretariat develop its paper by providing an overview of the attempts to categorize subsidies. The CTE should also encourage FAO to assess the impact of subsidies on sustainable management.

80. The representative of New Zealand welcomed Japan's recognition that the CTE was an appropriate body to discuss the relationship between sustainable use of fishery resources and trade in fish and fishery products. New Zealand recognized that the CTE could explore the role played by other trade restrictive measures in addition to subsidies, and looked forward to contributions in this area. Subsidization was not the only problem to be addressed if sustainable fisheries were to be achieved. Poor management and IUU fishing should be addressed through effective national, regional

and international action. In relation to subsidies, the WTO had a key role to play given its expertise. New Zealand noted Japan's request for Members to provide case studies illustrating that specific fisheries had suffered due to subsidies. Useful information had already been provided in this regard, such as the US studies relating to its national experience. UNEP also had convened a seminar on fisheries subsidies, during which case studies had been discussed; Members could review the papers prepared for those discussions, particularly by Dr. Gareth Porter. New Zealand joined Japan in encouraging Members to contribute case studies and experiences. However, analysis should not be restricted to a narrow focus on individual cases, without considering the broader whole, i.e. the high level of global subsidies to a significantly depleted resource.

81. Work in other organizations, such as the OECD and FAO, could contribute to CTE discussions. New Zealand noted the relevance of FAO work on the International Plan of Action, which explicitly recognized the impact of subsidies on resource sustainability by calling for the reduction and progressive elimination of subsidies that contributed, directly or indirectly, to excessive fishing capacity, thereby undermining fisheries sustainability. Linkages between subsidies and their negative impact on resource sustainability was recognized in the FAO Plan of Action's call for several immediate actions, including mandating a 20-30 per cent reduction in capacity for large-scale tuna long-line fleets. OECD work also had focussed on the impact of subsidies on resource sustainability and had contributed to the CTE debate. However, these activities in no way absolved the CTE of its responsibility to discuss the broader trade and environment aspects of fisheries subsidies, including the WTO contribution to solving problems in this area. New Zealand encouraged the OECD and FAO to continue their efforts in accordance with their mandates and to update the CTE.

82. New Zealand welcomed Korea's national experience paper. Most of the information appeared to relate to measures adopted for inshore fishery. New Zealand encouraged Korea to provide information on the nature of support provided to distant water fishing operations to ensure a full picture with regard to financial transfers to fisheries in Korea. In this regard, the OECD and APEC studies indicated that a number of Korean programmes did not appear to relate to its inshore fisheries, for example loans for "Support for the Development of Deep Sea Fishery," the "Fund for Supporting Fishing Activities" and the "price stabilisation fund."

83. New Zealand welcomed WT/CTE/W/167, particularly the information on recent APEC and OECD analysis, which provided useful material to examine different categories and types of fisheries subsidization and complemented earlier World Bank work. The nature of those measures was relevant in considering their effects from a trade and environmental perspective. New Zealand noted the useful information in the APEC study on the relationship of many subsidies in APEC Members to the SCM Agreement. In several cases, the subsidies reviewed were not considered to be actionable under the SCM Agreement. This did not mean that subsidy issues were less serious than earlier suggested, but rather raised issues that should be addressed. The CTE was confronted with several simple, but significant realities: the crisis around the world in fisheries sustainability was arising at a time when significant government financial transfers that encouraged fishing effort continued to flow into the sector. The environmental damage created was self-evident.

84. Examining the World Bank, OECD and APEC studies, it was clear that an industry worth around $100 billion a year appeared to be subsidized by some $20-25 billion annually on a global scale. Even if a particular subsidy may not be susceptible to challenge based on existing SCM disciplines, it was necessary to determine the impact of the overall 25 per cent subsidization on market prices for fish products. The OECD also had observed that 17 per cent of the landed value was paid in subsidies by OECD countries. This may not be as high as in the agricultural sector as a whole, but was comparable to certain sectors, such as pork and poultry. There inevitably had to be a downward effect on fish prices, which impacted negatively on the returns that fishing nations, including many developing countries, could make from the resource, thereby impeding sustainable development. It was that basic negative trade, environment and development equation that fisheries subsidies raised; it was imperative that the CTE deepen its analysis in this critically important area.

85. The representative of Peru appreciated Japan, Korea and the Secretariat's papers, which contributed to the discussion. WT/CTE/W/167 gave an account of overexploitation of marine resources and overcapacity in some developed countries that promoted fishing activities through subsidies. Overcapacity contributed to exhaustion of marine stocks. Although recognizing that inappropriate management was one of the factors underlying fish stock overexploitation, it was also noted that subsidies in some developed countries resulted in overcapacity of fishing fleets and overexploitation of fisheries. Subsidies distorted international trade in fish and fish products and led to resource deterioration. Peru highlighted the need to determine the nature, extent and effects of subsidies on fisheries sustainability and trade. Peru supported Iceland's suggestion for the Secretariat to provide information to assist in categorizing those environmentally-harmful and trade-distorting fisheries subsidies. Peru reiterated the importance of working jointly to eliminate these subsidies and their consequent adverse effects.

86. The representative of the United States appreciated that Japan and Korea had shared their views and national experiences in the fisheries sector, and invited other Members to do so. A common theme that arose in the CTE meeting was that these exchanges of views were helpful to understand the issues. The US welcomed Japan’s confirmation that the CTE should play an integral role in assessing and analyzing the effects of certain subsidies on trade and resource sustainability in the fisheries sector. This issue was important as the depleted state of global fisheries was a major environmental and economic concern. Subsidies had contributed to these undesirable results, and complicated Governments' attempts to reduce efforts and capacity levels in overexploited fisheries. Many subsidies had aggravated the problem and obstructed solutions. The US recognized the many other challenges that should be addressed, including an urgent need to implement sound management systems world-wide. The US had participated actively in regional and global efforts to deal with many of the most significant obstacles to sustainable fisheries, including fleet overcapacity; IUU fishing; by-catch of non-target and protected species; strengthened Regional Fisheries Bodies; and protection of coral reefs. The US also recognized that environmentally-harmful and trade-distorting subsidies existed and contributed in a meaningful way to resource conservation problems in domestic and international fisheries. The WTO provided an opportunity to reform subsidies in ways that were beneficial for trade and fisheries resources.

87. The US agreed with Korea that not all subsidies were "bad". The US paper, WT/CTE/W/154, had excluded certain environmentally-benign programmes. "Bad" subsidies did not refer, for example, to government-funded stock assessments. If funding were to promote more efficient use of raw fish or improved safety of fishing operations, such as described by Korea, the environmental outcome could be benign or even positive. If support promoted operations that targeted "under-utilised" species without putting in place an adequate management structure, the result might be undesirable. In the US, as elsewhere, the Government had provided grants to stimulate new fisheries, especially in the 1980s, and, in a few years, previously under-utilized fisheries had been over-fished. The US would be pleased to confer with Korea to explain its position.

88. On Japan's request for specific case studies to corroborate the pernicious effects of certain subsidies, the US noted that the literature substantiated this view and the US would provide references. A 1999 US Congressionally-mandated study, entitled *Federal Investment Study*, showed that subsidies had some capacity-enhancing effects in some fisheries during certain periods, and recommended certain changes in some programmes. The US also appreciated the expert advice of the FAO on the role of sustainable fisheries management, and hoped FAO would provide information on the results of its Expert Consultations. The US welcomed W/CTE/W/167, which was informative about recent work in international fora on this topic and also highlighted some fundamental problems that existed concerning the various studies undertaken in different fora. Specifically, there was much confusion about the analytical categories of different government programmes. For example, the FAO's 1992 work mentioned "subsidies" but projected global costs and revenues; the OECD assembled information on government financial transfers to include all fisheries-related government-funded programmes; and APEC studied "subsidies" and other support programmes. The US

supported the suggestion for the Secretariat to refine its paper by providing an overview of the attempts to categorize subsidies to allow the CTE to evaluate the information generated in other fora.

89. The representative of Australia welcomed the Secretariat's overview of the fisheries sector in WT/CTE/W/167, which confirmed the importance of action to promote sustainable fisheries management and the significant trade interests involved. Australia thanked Japan and Korea for their papers. While many of the capture fisheries appeared to have reached their maximum production potential, fish remained a vital source of animal protein for some one billion people. About one third of fish production entered international trade, so that sustainable fisheries management was vital if trade were to continue on a viable footing. About 50 per cent of fish exports were sourced from developing countries, so there was also an important development dimension to future fisheries trade. This information illustrated why the WTO should participate actively in international consideration of the environmental and developmental challenges facing fisheries. Problems with data availability and other uncertainties that prevailed in the fisheries sector made sustainable fisheries management challenging. International cooperation in relevant fora was essential and the Secretariat paper provided a useful overview of the actions under way in various fora. There had been important initiatives at the national, regional and international levels to improve fisheries management, provide incentives for sustainable fishing practices, reduce fishing capacity, reform subsidy practices and address IUU fishing. However, the evidence in the Secretariat paper indicated there was much work to do to achieve sustainable fisheries management. One of the key problems was that, when action was taken to address overcapacity in one fishery, at the national or regional level, fishing resources and capacity were often displaced to other fisheries, continuing the cycle of overuse and depletion.

90. The nature and scale of the challenges faced by fisheries pointed to the need for action on many fronts. Subsidies were only one part of the problem of fisheries resource sustainability. There was still uncertainty over the extent of subsidization, the nature of subsidies and the extent to which certain subsidies had an adverse impact on fish stocks. However, identification and reform of those subsidies that contributed to fishing overcapacity was a necessary step towards addressing policy failures impeding the development of sustainable fisheries management. The US paper, WT/CTE/W/154, usefully attempted to categorize environmentally-harmful and trade-distorting fisheries subsidies. CTE work would be assisted by the Secretariat developing its paper to provide an overview of attempts to categorize subsidies. A detailed comparison of categorization would help the CTE to identify those subsidies that might be environmentally-harmful and trade-distorting and to assess how adequate WTO rules were in disciplining them. Australia appreciated Members' differing views on the extent to which different types of subsidies were harmful or helpful in their impacts on sustainable fisheries management. A better understanding of the types of subsidies identified in various studies would help the CTE in its consideration of these views.

91. The representative of Chile said that, as noted in WT/CTE/W/167, the UN Convention on the Law of the Sea gave coastal States exclusive rights over and the obligation to ensure sustainable marine resources. Korea's paper gave interesting examples of the reintroduction of fish species and fisheries management. Many domestic programmes to increase fishers' incomes and create employment also had to be seen from the perspective of the market access implications for developing countries. Developing countries might have similar concerns regarding income and employment of fishers, but were convinced that these concerns should be addressed through open and fair trade. Clarification of concepts was necessary depending on the situation in each country. Chile shared many of the points in Japan's paper, particularly on the lack of appropriate fisheries management and the contribution of IUU fishing to overexploitation. Reference was lacking to the recent APEC study. If the approach lay in sustainable fisheries management, how was it possible to justify subsidies to distant water fishing fleets, which caught highly migratory species and jeopardized EEZ coastal management systems? Chile appreciated the OECD presentation, but emphasized that the study's conclusions had been agreed by the OECD, in which Chile, like many others, was not a Member. Chile supported Iceland's suggestion to categorize environmentally-harmful and trade-distorting fisheries subsidies.

92. The representative of Tunisia said the fisheries sector was an important one for Tunisia and her delegation attached importance to its development. Tunisia had ratified the FAO Code of Conduct for Responsible Fisheries. The Mediterranean region suffered from fisheries overexploitation by coastal States as well as foreign fleets, which had modern equipment to detect stocks, particularly blue-fin tuna. Thus, it was prudent to assess the effects of fisheries subsidies with sustainability in mind. This exercise should identify the different subsidies and their impacts on sustainability. The CTE should carry out this analysis in cooperation with FAO.

93. The representative of Mexico welcomed the papers by Japan, Korea and the Secretariat. Mexico made preliminary comments on WT/CTE/W/167. Paragraph 28 carried a subjective presumption that ICCAT and CCAMLR were considered to provide appropriate and WTO-compatible examples of the use of trade measures. The CTE had not given any consensus view on the issue. Given that there were Members that did not believe trade measures in MEAs were the best way to reach environmental objectives, Mexico requested clarification from the Secretariat, as well as rectification of the document. The issue of subsidies was not just to determine whether they were positive or negative. This issue was covered by the SCM Agreement and work should not be duplicated with respect to determining which subsidies were authorized or prohibited, which was a matter for Members. The CTE should assess the environmental effects of subsidies. Mexico continued to maintain that subsidy elimination was beneficial not only for the environment, but for trade, particularly for developing countries.

94. The representative of Norway appreciated the discussions on the possible effects of fisheries subsidies, as Norway was a fishing nation. Norway welcomed the US, Japan and Korea's papers, as well as the Secretariat paper. In many cases, government transfers to the fisheries sector could contribute to overcapacity, overexploitation and depletion of fish stocks. However, fisheries subsidies was only one of several elements that might have a negative impact on sustainable fisheries. Lack of fisheries management regimes, along with rapid technological developments, had been an unfortunate combination, resulting in unsustainable development of fish stocks and excess fishing capacity. There was, to a large extent, an international acknowledgement that overcapacity and overfishing were major problems. Although a responsible management regime had been introduced in many EEZs, such systems were lacking in many countries. Fisheries management must be in place to adapt fishing capacity to available resources, including restrictions on vessel types and fishing gear, and access limitations to fisheries or restrictions on the quantity and species caught. Many subsidies had increased the negative effects on fisheries sustainability and not helped to solving overcapacity. Thus, coherence between subsidy and resource management policies was important.

95. The US paper, WT/CTE/W/154, gave an interesting overview of the situation and of work in other fora, particularly concerning fisheries sustainability and trade. The second part on the categorization of subsidies should be regarded as preliminary. The CTE could not base discussions of harmful subsidies versus those that did not impact on the environmental on brief descriptions. Although "good" and "bad" subsidies may be discussed in the WTO, fishery experts must categorize them. International organizations, such as FAO, with knowledge of management systems and the status of fish resources and fish trade were indispensable to reach agreement on categorizing subsidies. Although the SCM Agreement categorized subsidies, identification and categorization of fisheries subsidies with environmental impact called for the relevant expertise. Norway supported Japan's suggestion to request FAO to conduct work and report to the CTE. This request should be made prior to the FAO Expert Consultations on Economic Incentives in November, with a time-limit for FAO to report. Norway welcomed Iceland's suggestion for the Secretariat to develop its paper and review Members' SCM notifications.

96. The representative of the Philippines welcomed Japan, Korea and the Secretariat's papers. The Philippines had a keen interest in this issue given its vast marine resources and the importance of the fisheries industry. The fisheries sector accounted for 5 per cent of the Philippine GDP, representing a significant share of employment in this export-driven industry, i.e. about 2 million jobs.

Given the importance of this industry to its economy, the Philippines was committed to sustainable management to conserve fisheries resources and ensure economic gains. Efficient fisheries management was indispensable for sustainable fisheries. Moreover, impeding trade opportunities for developing countries also would lead to unsustainable fisheries exploitation. The Philippines supported examining fisheries subsidies with a view to disciplining those that promoted overcapacity, excessive fishing efforts, trade distortions and environmental degradation. The Philippines agreed with Korea that not all subsidies were "bad", some could benefit sustainability and play a role in development strategies of developing countries. The Philippines agreed with Japan that the CTE should take into account studies in other fora, such as the OECD, UNEP and FAO. The FAO and others should be encouraged to continue work, which they could be invited to present to the CTE. Given its experience in dealing with subsidies, the WTO had a vital role in complementing other fora's work, within its mandate, to address trade-distorting and environmentally-damaging subsidies.

97. The representative of Thailand welcomed the Secretariat's fisheries paper, which permitted a better understanding of the work in other international fora. Developing countries were the key exporters of fish products, representing nearly 50 per cent of the total value of exports. Not only did international trade in fish, fish products and fisheries services play a crucial role in development, especially in developing countries, it also provided an important source of income. Fisheries subsidies in the developing countries, especially for artisanal fisheries and offshore fishing were necessary and should be distinguished from other subsidies. Thailand reiterated its request for the Secretariat to address the socio-economic effects of fisheries subsidies in developing countries, and asked that analysis be furthered based on the best available data, starting with Members' SCM notifications. The study should indicate measures to ensure equitable access to fisheries resources for developing countries and to maintain sustainable fisheries. Thailand welcomed the continued dialogue between the CTE and other international fora, such as FAO, APEC and OECD. Thailand requested FAO to accelerate its work to facilitate CTE discussions.

98. The representative of Canada noted the threat posed by fisheries overcapacity to marine resource sustainability. Canada had participated in discussion of this issue in several international fora, including the FAO Fisheries Committee and the International Plan of Action for the Management of Fishing Capacity. Sustainability of fish stocks could be adversely affected by subsidies that encouraged excessive capacity in the harvesting sector, and such subsidies ought to be eliminated. However, certain programmes, such as license retirement, and assistance to displaced workers, could reduce excessive fishing capacity and pressure on marine resources. Canada welcomed the papers by Japan, Korea and the US. Canada also welcomed the Secretariat's paper, although it might be necessary to go beyond simply identifying the problem in order to examine solutions. Canada did not object to the Secretariat elaborating on the paper in keeping with Members' suggestions. Canada noted that the APEC study had yet to be endorsed by the APEC Fisheries Working Group and that, accordingly, it should not be used as a discussion piece in other fora. Canada had noted its concern that the definition of subsidy in that report included expenditures on fisheries management. Canada agreed with Japan that it was only by adopting an effective fisheries management regime that the problem of overfishing would be resolved and that the FAO was the proper forum to discuss this issue. However, given that misuse of government support can facilitate overexploitation of fish stocks, Canada could not agree with paragraphs 3 and 4 of Japan's paper, WT/CTE/W/173, particularly with respect to being unaware of specific cases in which subsidies had been a major cause of stock depletion. Canada would comment at a future date on Korea's paper. The US paper, WT/CTE/W/154, made a positive contribution, particularly in response to one of Canada's primary concerns that the term subsidies needed to be better defined. Although Canada was not completely satisfied with the US definition, the paper represented a good starting-point and appropriately excluded positive subsidies, such as government funded programmes to facilitate the transition to sustainable fisheries. Canada was interested in how the US had developed its categories.

99. The representative of the European Communities said WT/CTE/W/167 contributed to the discussions and was well researched. The central issue for sustainable fisheries lay in sound resource

management. The principal cause of stock depletion was inadequate fisheries management. The economic analysis highlighted the importance of good management instruments to avoid the so-called "tragedy of the commons." The EC would have welcomed a more in-depth economic analysis of the trade-distorting effects of certain subsidies. The key issue for work was identified in paragraph 49, namely how to distinguish between potentially environmentally harmful and environmentally beneficial forms of fisheries support. The paper showed that there were different approaches to classifying subsidies and their effects, noting that despite a number of studies it was still difficult to find a clear demarcation between those subsidies. It was essential to reach a consensus at the international level on these matters. As several Members had noted, the CTE was not the only forum in which fisheries management was being discussed.

100. The OECD presentation on the *Transition to Responsible Fisheries* set out several interesting points, some of which were taken up in WT/CTE/W/167, such as the variety of objectives of government transfers. Over three quarters of the transfers to the fisheries sector in OECD countries represented general services, for which the largest proportion went to infrastructure, i.e. ports, fisheries management, enforcement and research, which did not directly lead to overcapacity. This point was also noted in the US paper, WT/CTE/W/154. Enforcement and research were essential for ensuring sustainable use of fish stocks. There were other points from the OECD study that could have contributed to WT/CTE/W/167, such as the relationship between subsidies and other aspects of fisheries management. The OECD study set out several key findings, such as the fact that it was difficult to determine the effect of transfers on resource sustainability, as there were many influences on fish stock health that were difficult to disentangle.

101. Another forum that was debating the fisheries issue was the FAO, a body in which developed and developing countries were represented. The FAO should be the main forum for discussions on fisheries management and could provide the CTE with valuable input. This did not mean there should not be an exchange of views in the CTE. It was essential to establish a common terminology to form the foundation of the debate on the significance of fisheries subsidies for trade and sustainability and on possible options for action. The EC was encouraged by the positive debate and hoped that, on the basis of FAO work, the CTE would be able to develop a more structured approach to discussing the link between government financial transfers and fisheries trade and sustainability. The EC supported the suggestion for the Secretariat to update subsidy notifications. While the EC did not oppose further Secretariat papers, the CTE could discuss in detail the FAO's pending report to allow any requests to be refined and to dove-tail FAO work. It would be opportune to invite the FAO to present the results of its Expert Consultations at the next meeting. The EC welcomed Japan and Korea's papers, which underlined the complexity of the issues, and might comment further at a later stage.

102. The observer of UNEP said that, building on work since 1997, UNEP would hold a fisheries workshop on 12 February 2001. This work was linked to the assessment of the effects of trade liberalization in the fisheries sector in country projects under way in Argentina and Senegal.

103. The observer of the FAO recalled that the FAO had made regular briefings to the CTE. The FAO publication, *The State of World Fisheries and Aquaculture (SOFIA 2000)*, had been finalized and would be available at the 24th Session of COFI, 26 February - 2 March 2001. The FAO was coordinating the implementation of the Code of Conduct for Responsible Fisheries. The International Plan of Action mandated FAO to collect data upon which to identify factors, including subsidies, that might cause excessive fishing capacity, which in turn might threaten fish stocks. The FAO Subcommittee on Fish Trade had requested FAO to collect, analyse and disseminate information on global fisheries subsidies. An FAO Expert Consultation would be held on 28 November – 1 December to assess the state of knowledge of subsidies in fisheries and their likely impact on trade and fishery resources sustainability. The report would be submitted to the 24th Session of COFI and was expected to include findings on the concept of subsidy in the fisheries sector, documentation on the effects of subsidies on fish trade and fish stocks, including an assessment of the methods used and FAO's role in future studies. Note had been taken of the requests for further FAO briefings.

104. The representative of Japan noted the WTO Director-General's statement at the UNEP meeting on 23 October with respect to fisheries subsidies constituting a "win-win" situation. Given the politically sensitive nature of this issue, the Secretariat should be more cautious in its references. Japan appreciated the Secretariat's efforts to compile information on the status of global fisheries and the relationship between resource management and subsidies. However, FAO fishery experts would better digest this type of information. The fundamental logic in WT/CTE/W/167 was that overexploitation of fishery resources prevailed due to management failures. If this were the case, the adverse impacts of fishery subsidies, as well as the adverse impacts of trade on sustainability should be considered. At the 2nd Session of the IUCN World Conservation Congress, in Jordan in October 2000, concern had been expressed that trade liberalization might encourage unsustainable resource exploitation. Japan noted that the draft APEC fisheries study had yet to be finalized, and that Japan had requested its revision. Given that reference to an incomplete study was misleading, as Japan had noted to the APEC Secretariat, the WTO Secretariat should refrain from referring to the study until finalized. Japan noted that, as opposed to the OECD and APEC papers, the World Bank had not been responsible for the paper referred to in WT/CTE/W/167, and should not be treated equally.

105. Japan appreciated Korea's efforts to share its national experience in WT/CTE/W/175, particularly on the various factors that should be considered when assessing fisheries subsidies. Japan noted the agreement that government expenditures on management, research and enforcement should not be considered subsidies. Not all subsidies were "bad," as noted by Korea. Korea's paper would also contribute to FAO discussions. Japan observed a shift in Members' recognition of the nature of fisheries subsidies. The OECD study noted that 75 per cent of subsidies were not necessarily "bad". One Member previously had stated that about 95 per cent of subsidies were "bad". Japan welcomed the fact that Governments were recognizing that many factors other than subsidies caused fisheries overexploitation. Japan agreed that the CTE could have a role in discussing fisheries subsidies, as well as the effect of trade on fisheries sustainability. If those Members who advocated subsidy elimination declined to discuss the negative effects of trade on fisheries sustainability, Japan would have to reconsider its position. Given that the WTO did not have an expertise in fisheries management, input from other international fora, such as FAO and OECD, was necessary. If Iceland's proposal was for the Secretariat to update and compile other organizations' work, Japan had no objections as long as it did not contain a biased analysis of this sensitive subject. A further paper could include the finalized APEC study and the results of the FAO Expert Consultations.

106. The representative of Korea appreciated the comments on Korea's paper and noted New Zealand's request for information on distant water fishing fleets and related policies. Korea would give due consideration to the US comments, and welcomed its willingness to engage in dialogue in this respect. Korea noted Chile's concerns about the possible market access impacts of fisheries subsidies. Korea was pleased to observe that a broad range of Members also recognized the need for enhanced cooperation between the CTE and other fora on sustainable fisheries management.

107. The representative of the Secretariat said that, given the breadth of the issue, work called for cooperation with other international and regional fora, such as the FAO, OECD, UNEP, CBD, ICCAT, and CCAMLR. The Secretariat took note of the comments by Canada, Norway and Japan on the preliminary nature of the APEC study; when this study was finalized, along with work in the FAO and OECD, a fuller picture of fisheries subsidies would emerge. Consideration could be given to updating WT/CTE/W/167 once work under way in other fora had been finalized, and include the development dimension. In the meantime, the Secretariat could update the notifications under Article 25 of the SCM Agreement. Responding to Mexico, the Secretariat said paragraph 28 referred to ICCAT and CCAMLR presentations on the measures in their respective agreements, i.e. catch documentation schemes, which Parties to these regional fisheries agreements considered to be an effective and non-discriminatory manner in which to deal with conservation.

108. The Chairperson said that Members' requests had been noted, particularly for other international organizations to brief the CTE on their fisheries work and for further Secretariat papers.

Environmental services

109. The observer of the OECD presented its recently released study, *Environmental Goods and Services: An Assessment of the Environmental, Economic, and Development Benefits of Further Global Trade Liberalization*, summarized in WT/CTE/W/172. One of the key conclusions of the research of the OECD Joint Working Party on Trade and Environment was the need for policy to address supply and demand factors in the environmental goods and services industries. Supply side factors, including a diverse and cumulative range of trade barriers were more significant inhibitors to the deployment of environmental technologies than previously thought. Defining the environmental industry was fraught with difficulties, for example there was no chapter in the Harmonized System entitled "environmental goods." Average tariff levels for the illustrative list of environmental goods were set out in Table 5 of the study for: the Quad countries; three other OECD countries; and a group of seven emerging economies. A state of the art manual on the classification of the environmental industry by an OECD-Eurostat working group differed from the GATS classification list (MTN.GNS/W/120), as it reflected the industry's evolving integrated nature.

110. Inventories of OECD countries and several non-OECD countries illustrated the supply side barriers facing the environmental services sector. OECD work had examined whether "win-win" situations applied to environmental services liberalization through foreign participation in the sector. "Win-win" outcomes from trade and investment liberalization on the environmental side included increased access to clean water and waste collection, and availability of a larger choice of environmental technologies. On the development front, there had been reduced pressure on budgets at the state and municipal levels with the creation of skilled and unskilled local employment opportunities. Availability of water and waste management attracted foreign and local investment and increased the local tax base. The trade wins included local and foreign companies participating in this trade gain, which provided new opportunities to employ skills and technologies. At the global level, trade and investment liberalization improved resource allocation and allowed supply side aspects to be addressed. Complementary actions to environmental goods and services liberalization were: the need to strengthen the environmental regulatory framework and the choice of environmental policy instruments; the recognition that environmental goods and services were necessary, which had implications for the timing and sequencing of services liberalization in relation to goods; recognition of the importance of pollution prevention; and the need for appropriate technologies tailored to the needs of emerging economies. As technology transfer was a matter primarily for the private sector, it was essential to enlist its cooperation.

111. The representative of the Secretariat said environmental services were part of the GATS Article XIX negotiations. The GATS Committee on Specific Commitments was dealing with the classification of services, including consideration of a revision of the classification of environmental services. The Committee was taking a case-by-case approach to revising the classification of various sectors. Some Members felt there was a need to revise the current classification for environmental services in W/120, which was considered not to adequately reflect current market reality. Consideration of revising W/120 was advancing on the basis of an EC proposal. There were three outstanding issues under discussion: water distribution and purification services; recycling services and operation, maintenance and repair services. There was no convergence of views on whether these services should be classified as environmental services or, in the case of water and recycling, as services. Work would continue at the December session when the EC proposal would be revised.

112. The representative of India welcomed the presentations and noted the suggestion that developing countries open their markets and remove barriers to the supply of environmental services, which would result in "win-win" situations. To the extent that market access benefits expected by developing countries occurred in sectors and modes of their choice, this would lead to better environmental protection. India's concern was that developing countries had priorities for allocating financial resources, such as poverty eradication or structural improvements. There were different perspectives from which this issue could be approached. If the appropriate infrastructure and

regulatory framework was not in place when environmental services were liberalized, there could be an outflow of foreign exchange, with resource implications for developing countries.

113. The representative of the European Communities welcomed the presentations and the OECD paper, WT/CTE/W/172, which the EC would examine in greater detail. The EC was keen to advance work on environmental services and had put forward proposals for classification of environmental goods and services in the GATS. There were clear links between Items 6 and 9 of the CTE work programme. The EC supported calls by other Members for the CTE to devote more time to services issues and to examine the impact of liberalization on various services sectors. Noting the recent trend towards greater liberalization, including in the environmental sector, it was timely for the CTE to return with renewed vigour to services, an area in which it had the potential to contribute.

114. The representative of Canada said his delegation was still analysing the OECD study. Canada underlined that, in the last two years, the GATS Committee on Specific Commitments had been discussing the definition of environmental services. While Canada welcomed technical input from the CTE, the GATS Council was best placed to deal with this issue. Canada would examine Annex V of the OECD study on the list of measures affecting trade in environmental services. Canada supported liberalization of environmental services, including for its direct and indirect environmental benefits, and wished to make progress on classification to encourage additional GATS commitments.

115. The representative of Mexico welcomed the presentations, but felt that the issues raised went beyond the CTE mandate. The CTE should discuss the issues related to its mandate, which was to review, study and analyse the relationship between trade and services and the environment, and leave other issues to the appropriate fora. As noted by Canada, classification was being dealt with in the special session of the GATS Council. Mexico noted that these negotiations were not even discussed in the regular GATS Council meetings, let alone the CTE.

116. The representative of Venezuela welcomed the presentations and appreciated the EC contribution to the GATS classification to improve the understanding of the scope of environmental services and their environmental effects. The CTE had a role to play in studying the effects of environmental services liberalization, although not in the actual GATS negotiations.

117. The Chairperson said further consideration could be given to adopting a more focused approach to this issue and to the requests for the Secretariat to update work on environmental services.

Market access

118. The representative of India presented his delegation's paper in WT/CTE/W/177, which was part of an UNCTAD project involving India and nine other countries on the market access impacts of environmental requirements. The expectation had been that there would be a significant increase in market access following the Uruguay Round, at least in specific areas, such as textiles and agriculture. Increased market access would result in increased financial resources for developing countries to afford better environmental protection. This expected market access had not materialized in areas such as textiles, and existing market access had been reduced. Environmental requirements had increased significantly for developing countries, which had adversely affected their market access. India's paper gave examples of bans on azodyes that affected India's textiles and leather sectors and had led to market access being denied in its main export markets. Strict requirements on pesticide residual levels in the US and some European countries had led to increased compliance costs and had become insurmountable market access obstacles. Additional compliance costs and social issues were also emerging as market access barriers. Suggestions on how to move forward were set out in India's paper, which it hoped Members could react to at the next meeting.

ANNEX I

Work Programme and Schedule of Meetings for 2001

1. The 2000 Report of the Committee on Trade and Environment (WT/CTE/5) 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. 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, and to raise other issues of relevance to the fulfilment of the Committee's mandate.

2. At a meeting to be held on 13-14 February, the Committee 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. On 27-28 June, the CTE will meet to discuss the Items related to the linkages between the multilateral environment and trade agendas, including:

MEA Information Session;
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. Discussions at the CTE meeting on 30-31 October will include:

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;
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); and adoption of the 2001 Report

ANNEX II

MEA INFORMATION SESSION
24 October 2000

A. OPENING STATEMENTS

1. The Director-General of the WTO made an opening statement (WT/CTE/W/178). The Executive Director of UNEP made opening remarks (WT/CTE/W/179). Members welcomed their contributions, which illustrated the institutional commitment to addressing the linkages between trade and environment. Several Members noted the emphasis on considering issues related to poverty. The real enemy of the environment was poverty; trade played a crucial role in alleviating poverty throughout the world.

2. Members also welcomed the UNEP-MEA sponsored meeting on Enhancing Synergies and Reducing Tensions between MEAs and the WTO held in Geneva on 23 October.

B. THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FLORA AND FAUNA (CITES)

3. The presentation by the CITES Secretariat was based on WT/CTE/W/165. The CITES Secretariat considered it necessary to work closely with other MEAs, UNEP and the WTO to promote the formulation of common positions on international trade issues. Discussion on synergies would raise practical concerns that MEAs might have on the multilateral trading system, e.g. how it intended to internalize the cost of environmental degradation generated by trade. The main interfaces between the MEA and WTO regimes should be clarified. CITES dealt with a wide range of trade measures and contained six categories of measures, including trade bans on approximately 800 endangered species. There were, however, situations in which trade could help to transfer species from Appendix I to Appendix II, under which trade was possible subject to export permits and, in some cases, import permits. Thus, there was a guarantee that exports were legal and sustainable. In the CITES context, it was becoming increasingly clear that trade was not necessarily the enemy of conservation.

4. Where there were serious cases of non-compliance with CITES provisions or a lack of enforcement in general, or with respect to particular species, trade measures were also implemented by the Conference of the Parties (COP) of CITES. The CITES Secretariat described the decision-making bodies in CITES, listed in paragraph 9 of WT/CTE/W/165. The Convention permitted two categories of stricter domestic measures adopted by the Parties, those based on CITES criteria and those based on other criteria. Technical input from the WTO on those trade measures, including possible alternatives and their relationship to the WTO, would be useful. The role of trade measures in achieving CITES objectives was clear; CITES established a multilateral legal framework for regulation of trade to conserve a list of endangered species of wild fauna and flora. Without CITES, there would have been numerous unilateral measures to restrict trade in certain species.

5. Increasingly, CITES provided technical assistance to wildlife producer countries, which were developing countries. CITES was providing capacity building and training for customs inspectors in cooperation with the Basel Convention, there being similarities in the control of hazardous wastes and endangered species. CITES was enhancing its scientific basis in order for Parties to properly implement CITES, including in cooperation with IUCN. Enforcement and compliance was lacking partly due to capacity problems and inadequate political commitment.

6. For several reasons, the COP in April 2000 had been unable to adopt proposals to list shark species in CITES Appendix II. An important number of Parties had concerns about CITES with respect to, for example, commercial fish and timber species. More work was needed to show that listing species on CITES Appendix II would not entail the end of trade. In fact, CITES-regulated

trade might well provide a means to promote trade in these species and to ensure sustainable and legal use of particular species. For example, there was scope for development of an eco-labelling scheme to reflect CITES documentation (permits, certifications, markings, universal tagging systems, etc.) as a "green label" for specimens traded in compliance with CITES requirements. CITES would continue to work with the WTO, the World Customs Organization, Interpol, civil society, the media and others to address synergies between trade and environment in CITES.

Comments and questions

7. The comment was made that CITES was basically a multilateral trade agreement with environmental objectives, thus different from other MEAs. As the principal objective of CITES was to control trade in endangered species, trade measures were intrinsic to the Convention.

8. Members appreciated the examples given by the CITES Secretariat to help understand the nature of the issues. It was pointed out that the future success of CITES as regards commercially significant species and the avoidance of trade disputes would depend on its ability to assess the situations of particular species and to devise management systems to sustain them as based on scientific decision making. There were trends towards extreme conservationism, for example with respect to the listing of certain species.

9. It was noted that CITES, which had been operating successfully for several decades, provided a valuable case-study for the CTE, particularly as its conservation objectives called for trade measures. It was also noted that CITES might have an important role to play in promoting the sustainable use of natural resources, not least by helping to produce a system of regulated trade to give wildlife producers a stake in sustainable use. The economic dimension was one in which there was considerable work to be done, and for which there were potential synergies between trade, environment and sustainable development.

10. The comment was made that labelling was interesting in the CITES context insofar as it increased consumer awareness with respect to goods produced in a sustainable manner.

11. The importance of concentrating trade and environment coordination efforts on implementation and capacity building, rather than on the theoretical compatibility of MEA provisions with WTO rules, was noted. One of the reasons for the effectiveness of CITES was that the Convention had adopted an elaborate multilateral process for evaluating the scientific status of a species, based on detailed criteria for listing species. That process would enable CITES to maintain and adapt these scientific criteria and to apply them in cases where a species was or might be affected by trade. Although cooperation under CITES could help to protect those species, Parties should consider strengthening the procedures for scientific evaluation.

12. The comment was made that trade and environment was a complex issue, with the impact of linkages differing between regions and countries. To address environmental concerns without incurring adverse trade effects, policies should be premised on individual studies and local solutions, given that MEAs were implemented at the national, subnational and local levels. Provisions such as "stricter domestic measures" left room for local solutions and priorities, and did not necessarily give a blank cheque for implementation of an MEA.

On the potential for conflicts to arise between CITES and the WTO.

13. Given that CITES had dealt with species of relatively unimportant commercial value, there had not been any disputes. The process by which decisions on trade measures, such as Appendix listings and quotas, were taken involved a two-thirds majority vote or consensus in the COP. There was also the possibility for Parties to make a reservation to a decisions on, for example, the listing of a

particular species, which had helped to avoid disputes. If CITES decided to take measures to restrict trade in more commercially important species, the risk of disputes might increase.

On non-parties to CITES with significant wildlife populations.

14. CITES had 152 Parties, including all the important wildlife producer countries, with only a number of major importing countries missing from the Convention. Thus, CITES coverage could be considered to be effective. Given that CITES had provisions for trade with non-parties if the non-parties complied with CITES, there had not been any conflict in this respect.

On the provision for Parties to take stricter domestic measures.

15. Article 14 of CITES, which allowed both importing and exporting Parties to take stricter domestic measures with respect to any species, those listed or not listed in CITES, had been a necessary provision when the Convention was negotiated 25 years ago to ensure that Parties, certainly importing countries, that were taking measures to restrict trade in certain species joined the Convention. However, it had also been noted that Article 14 had not only been put in place for importing, but also for exporting countries. Stricter domestic measures could be based on multilateral criteria. For example, if a Party proposed to list a species in CITES Appendix I, yet during the COP it was clear that there would not be a majority supporting such a listing, a compromise might be to list the species in Appendix II. If a Party considered that the criteria for an Appendix I listing had been met, but for other reasons the COP could not agree, the Party could put in place a stricter measure to treat the species at issue as if it were listed in Appendix I under its domestic legislation, and not import it. This was an example of a stricter measure based on criteria in CITES. Other criteria were not necessarily multilateral, for example, CITES covered many species subject to animal welfare concerns in some countries, such as transport, mortality and housing, which were not covered by CITES or other multilaterally-agreed criteria.

On the need to focus on capacity building and technical assistance.

16. Capacity building in CITES had been financially strengthened at the last COP to help countries to put forward project proposals in the interest of CITES species conservation, to find appropriate donors, and satisfy their funding requirements. CITES was concentrating on producing training packages to allow countries to train their own people at the national level.

On the use of the precautionary approach in CITES.

17. In effect Appendix II of CITES was the precautionary approach *avant la lettre*, as it ensured that trade in species was sustainable and thus followed a precautionary approach. Some considered that, if it were not known whether a species could sustain trade, then trade should be permitted, while others felt it should be prohibited. This was one of the issues that CITES had been tackling and the COP was trying to find a balance. It might be useful to clarify exactly what the precautionary approach was and what it meant in different fora. For example, a future MEA Information Session in the CTE could focus on issues of relevance to the debate, such as the precautionary approach.

On the coverage of CITES strategic management plans.

18. A five-year "strategic vision" for 2000-2005 was being put in place to enhance the capacity of Parties to implement CITES; to enhance the scientific basis for CITES decisions; and to enhance enforcement and compliance in cooperation with the World Customs Organization, Interpol, and NGOs. This issue was important, given the significant levels of illegal wildlife trade. CITES undertook capacity building and training based on Parties' voluntary contributions. Financing was a major problem for every Convention, and expectations were created that could not be fulfilled given the lack of financing. Nevertheless, there was an important number of donors to CITES. The

strategic plan included an action plan that implemented those objectives, which would be revised by a Working Group. Information was available at http://www.wcmc.org.uk/CITES/index.shtml.

On the use of science in CITES.

19. At the last meeting of the COP, the attention of Parties had been drawn to the fact that although there had been 62 species proposals and approximately 50 other proposals, NGOs and the media had concentrated on only four, specifically those relating to elephants, whales, sharks and hawksbill turtles. Those four species were the flagships of CITES and thus it was not surprising that any decision relating to them would be among the most politicized. There were instances in which decisions taken in relation to those flagship species were influenced by politics, either negatively or positively depending on the perspective. CITES could not operate in isolation from the wider context, nor based solely on science. If this were the case, there would be no need to discuss proposals, as decisions could be based purely on scientific assessment. It was the role of all CITES Parties to de-politicize the discussions. This was difficult, particularly given the high degree of NGO participation in CITES, which accounted for about half the 1,800 participants at CITES meetings.

On the potential inclusion of commercially significant marine species in CITES.

20. The comment was made that it was necessary to be cautious in including certain commercially significant species in CITES, such as marine species, given that decisions might be based on political motivations and not solely on scientific grounds. There should be a demarcation between the role of CITES and that of Fisheries Management Bodies. For example, ICCAT had adopted certain measures for tuna conservation. There could not be a biological extinction of marine species, although it might not be commercially viable to continue fishing certain species.

21. The CITES Secretariat noted that it was not always possible for CITES to operate on a purely scientific basis. Where CITES could not contribute to species conservation, it should not be involved the management of that species should be left to Fisheries Agreements. It had yet to be discussed where CITES could make a difference in this regard, given that certain Parties had rejected the inclusion of certain commercially significant marine species in CITES. CITES tended to intervene at an early stage when a species was no longer able to play the role it was supposed to play in its eco-system. This role had ceased well before the last fish in a stock was caught or purchased.

On whether trade restrictions were the best way to handle the conservation of certain species.

22. The sustainable use of species had been a difficult issue in CITES for some time. Here, perspectives had become more nuanced concerning the role of trade in conserving certain species. For the most part, it was no longer the case that NGOs categorically opposed the downlisting or transfer of species from Appendix I to Appendix II in order to facilitate regulated trade in that species. Appendix I was not a haven for endangered species. For example, the listing of rhinos in Appendix I had not resulted in their conservation. Trade restrictions were absolutely necessary for conservation of tigers. Even trade in captive-bred tigers could encourage illegal trade and undermine conservation efforts. It was becoming increasingly apparent that CITES should find solutions to individual problems in specific countries, rather than blanket prohibitions for a given species in all countries. The principal aim of CITES was to ensure that species were traded sustainably; where trade was a negative factor in conservation, it should be regulated.

C. THE BASEL CONVENTION ON THE TRANSBOUNDARY MOVEMENT OF HAZARDOUS WASTES AND THEIR DISPOSAL

23. The Basel Convention Secretariat presented its background paper in WT/CTE/W/163. The first decade of the Basel Convention had seen the development of a technical and legal framework and a deepening understanding of the concept of environmentally sound management, particularly

through the new Annexes to the Convention containing the list of wastes pursuant to the Export Ban Decision and the Protocol on Liability and Compensation. Development of technical guidelines on environmentally sound management would enable Parties to comply with the Convention. At the COP in December 1999, Parties had set goals and adopted a Ministerial Declaration on Environmentally Sound Management.

24. Three major developments were taking place in the Convention. Parties were working to enlarge the scope of the technical cooperation trust fund, which had a three-tiered approach to assist in cases of emergencies; compensate for damages; and build capacity to prevent damages. This work was being conducted in relation to the Protocol on Liability and Compensation for Damages resulting from Transboundary Movements of Hazardous Wastes or their Disposal. Work was also under way in the Legal Working Group to establish a mechanism to promote implementation of, and compliance with the Convention in an effective, transparent and non-confrontational manner. The Technical Working Group had started to review the list of waste in Annexes VIII and IX, specifically in order to classify wastes, harmonize with other international lists of waste, and clarify the Convention's scope. While implementing the review, the Technical Working Group had raised fundamental issues, such as the purpose of Annex IX, the list of wastes characterized as non-hazardous and the impact of decisions to amend this list on the waste management infrastructure of importing countries, particularly in developing countries and countries with economies in transition. For environmentally sound management and the Basel Declaration to be effective, policy convergence between environment and trade law was crucial, for example in recovery, recycling, and services, such as the disposal of hazardous waste. Identification of responsibilities among stakeholders was also necessary.

25. The Basel Convention was a dynamic instrument with the potential to accommodate emerging issues, for example end-of-life-cycle equipment and post-consumer goods, such as electronic and electrical equipment, used cars, and ship dismantling. At present, the capacity did not exist to develop or upgrade the waste management infrastructure of all Parties at a comparable level. Discrepancies existed in know-how, experience and enforcement capacity. Markets alone would not help where there was no economic benefit involved. For some countries, access to cleaner industrial processes would not happen soon, but delocalization of polluting industries could be a reality for these countries. Land contamination would require significant resources for clean-up activities.

26. Compliance and enforcement were critical to deal with hazardous waste disposal and called for technical assistance, for example to manage used lead-acid batteries, which needed to be collected, properly stored and disposed of in an environmentally sound manner; the Convention Secretariat was working with the US Government and industry to develop projects. Development of methodologies for inventories of hazardous waste was another important technical tool, as many countries might not be fully aware of domestically-generated waste. It was necessary to facilitate and support technical assistance, access to technology transfer and know-how to minimize the generation of hazardous wastes at source. To promote technology for environmentally sound management of hazardous wastes, a multi-stakeholder approach was called for in the Basel Declaration, as well as the establishment and operation of regional centers for training and technology transfer. The Convention Secretariat welcomed the possibility of organizing workshops with the WTO at the Convention's regional centers. Cooperation and information sharing with other MEAs, UNEP and the WTO Secretariats was an essential process towards a preventive approach and to enhance mutual understanding of decisions in different fora.

Comments and questions

27. Members welcomed enhanced cooperation and complementarity between the Basel Convention and the WTO. It was noted that there was an increasing commitment to technical assistance, capacity building and technology transfer as a means of implementing MEAs and achieving MEA objectives. It would be important to make the dialogue between MEA Secretariats, UNEP and the WTO more concrete, based on practical experience. Joint efforts between the WTO

and Basel Convention Secretariats would be valuable, particularly with respect to whether Article 7 of the TRIPS Agreement was enhancing technology transfer in practice.

28. The comment was made that establishment of dispute settlement mechanisms in MEAs, such as the Basel Convention, would help ease the controversy between MEAs and the WTO. The Basel Convention Secretariat could provide the CTE with information on mechanisms related to compliance and enforcement that were being developed in the Legal Working Group.

29. Reference was made to the importance of the Bamako Convention, negotiated by African countries to deal with movements of hazardous wastes. This Convention could be reviewed by the CTE. Issues related to hazardous wastes were critical for African countries, particularly in the context of technology transfer and capacity building. The issue of environmental services and the Basel Convention could be pursued.

On the disposal and dismantling of old ships.

30. It was recognized that there were problems linked with the dismantling of ships. The issue had been raised in the Convention and had received a positive reaction from the international community. At present, the main objective was to develop technical guidelines for the environmentally sound management of the dismantling of ships in cooperation with Parties, the International Maritime Organization and the International Chamber of Shipping. Thus, the institutional platform was being built to address the problem in a concrete way.

On the disposal of used lead-acid batteries.

31. Issues related to used lead-acid batteries concerned the economically viable trade in this product for recycling. In many countries, there was also a localized problem of how to dispose of used car batteries. The difficulty was that those countries did not have sufficient means to collect and store batteries, nor the capacity to dispose of or recycle, their lead content. The Convention Secretariat was assisting countries to improve collection and storage of used lead-acid batteries and to determine the best options for their disposal, keeping in mind the economic value of the lead.

On the compliance mechanism.

32. Parties to the Convention were negotiating a compliance mechanism. In this regard, the Convention Secretariat would make available the outcome of the work of the Legal Working Group.

On the list of hazardous waste.

33. An Annex to the Basel Convention contained a list of wastes characterized as hazardous under the Convention, with the main criteria being their intrinsic properties, or whether they contained elements that might reveal hazardous characteristics, such as eco-toxic, flammable, infectious.

On the scientific criteria used to permit imports of hazardous wastes.

34. This issue was at the centre of debate and analysis in the context of the Ban Amendment to the Convention. For the time being, the formulation that Parties had adopted was that Annex VII Parties and others were not allowed to export hazardous wastes to non-Annex VII Parties. Some countries would like to develop technical criteria to determine if a country had an environmentally sound waste management infrastructure to recycle hazardous waste. It had been decided to wait until the Ban Amendment had entered into force after the ratification of 62 Parties. It would then be possible to see how the Ban would operate and, if necessary, determine what criteria were necessary. Parties had made clear that there should not yet be discussion of technical criteria to include or exclude countries from Annex VII. However, given that views differed on the Ban and Annex VII

membership, the Convention Secretariat had been asked to analyse issues related to Annex VII for the next COP, including the environmental, economic, social, institutional and legal aspects.

On capacity building to assist African countries in handling waste and training customs officials.

35. The Convention was attempting to implement potential synergies through regional training to elaborate, for example, the relationship between technology transfer in the Convention and the TRIPS Agreement. Apart from access to new and sophisticated technologies, there were many possibilities to promote existing affordable and socially acceptable local technologies. The Convention Secretariat was assisting the Bamako Convention to organize its first COP, which would focus on lack of resources and the need to enhance capacity of competent authorities.

36. The Convention was undertaking technical assistance based on identification of hazardous waste streams, particularly in Africa. Assistance was being given to develop inventories of hazardous wastes. In January 2001, the Basel Convention was organizing the first conference for Africa on environmentally sound management of unwanted stocks of hazardous waste, focusing on pesticides, which were critical for many African countries and for which the political awareness and funding was insufficient. The environmentally sound management and disposal of those pesticides would be complemented by a strategy to prevent their further accumulation. Training activities for compliance and enforcement were in place, in cooperation with CITES, UNEP Chemicals, the Rotterdam Convention, the World Customs Organization, the Montreal Protocol and others dealing with illegal trade. In December 2000, a meeting in Hong Kong, China had been organized to build institutional capacity with respect to port enforcement.

On the effects of the Ban Amendment to the Basel Convention on the Bamako Convention.

37. The Bamako Convention was a regional agreement that prohibited imports of hazardous wastes from outside Africa. The Basel Convention's Export Ban Amendment was valid for exports from OECD countries, EC, and Liechtenstein (i.e. Annex VII Parties) to non-Annex VII Parties. Thus, the Bamako Convention and the Basel Ban reinforced each other.

D. UNEP CHEMICALS ON THE ROTTERDAM CONVENTION AND THE DRAFT POPS CONVENTION

38. UNEP Chemicals made its presentation of the Rotterdam Convention on Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the draft Convention on Persistent Organic Pollutants (POPs), based on a background paper in WT/CTE/W/166. UNEP Chemicals noted that Dr. Töpfer had referred to several key issues, particularly sustainable development and poverty. In the case of toxic substances, these two issues clearly came together. Chemicals were an integral part of a country's development and their proper management was essential to achieve sustainable development. The Rotterdam and draft POPs Conventions addressed the linkages between health, poverty and sustainable development.

39. Governments had decided that the Rotterdam Convention would be operated on an interim basis, with an interim Secretariat operated jointly with FAO. The essence of the Convention was a country's right to know what it was importing and the belief that a country needed to be confident that it could manage these substances soundly prior to permitting import. Part of the process was to determine the substances being imported, and to decide if a given substance should be imported, based on whether it could be managed appropriately. Information exchange was crucial to the Convention. A key element of the Convention was that it was trade neutral and non-discriminatory; if a country took a decision not to import a chemical, it must also not allow its domestic production. In general, a Party that took an action on a chemical must notify the Secretariat. Following receipt of notification on a chemical from more than one PIC region, the Secretariat passed on the information to a scientific review body for a recommendation to the COP on whether it should be listed in Annex III. If the COP decided to list the chemical, a management document was prepared to inform

countries on how it should be managed. The obligation on exporting countries was to ensure that any chemical contained in Annex III was not exported unless the importing country was notified and an export notification process followed.

40. The final negotiating session of the POPs Convention, a legally-binding instrument for the control of 12 persistent organic pollutants, was scheduled in Johannesburg in December 2000. The intention was to adopt the Convention at a diplomatic conference in Stockholm in May 2001. Given that once those highly toxic POPs were released into the environment, it was not possible to retrieve them, eliminating their production and release was the key objective. Although there had been action at a national level in OECD countries for many years, and there were several regional POPs agreements, the Convention under negotiation was the first truly global initiative. The draft text of the Convention reflected the precautionary principle and identified specific control measures. There were some exceptions for essential use of certain chemicals for the protection of human health, for example DDT, a pesticide also used for malaria control, and PCBs widely in use, particularly in the energy sector. Cooperation between the Basel and POPs Conventions was essential. The Convention had provisions for financial and technology transfer to enhance capacity. It was anticipated that ratification would take around two years and that interim measures were necessary.

Comments and questions

41. The comment was made that the draft POPs Convention raised an issue that the CTE had been emphasizing for some time, namely the need to ensure that MEAs and the WTO were mutually supportive. On the eve of the final negotiating session for a POPs Convention, it was noted that Members should carefully examine those provisions of relevance to WTO rights and obligations. While supporting the precautionary approach set out in Rio Principle 15, concern was expressed that the proposed references to the precautionary principle in the POPs Convention could lead to a lack of transparency and consistency in decision-making, and impact on rules and guidelines affecting science-based decision-making, including WTO rights and obligations. Governments negotiating the POPs Convention had made an effort to develop science-based criteria and procedures to assess nominated substances, given the regulatory experience with POPs chemicals. Import and export measures should be practical and suitable for countries at all stages of development, and consistent with other POPs provisions on exemptions and waste, as well as WTO rights and obligations. It was unlikely that a well-designed set of trade measures within a POPs Convention that enjoyed broad international support would lead to WTO disputes.

42. It was noted that the trade-neutral approach of the POPs Convention was an efficient manner in which to tackle those environmental issues.

On whether the Rotterdam Convention notifications on domestic bans and import restrictions were also notified to the WTO.

43. At present there was no obligation. The WTO and Rotterdam Secretariats could consider this issue in their cooperation efforts.

On the interim operation of the Rotterdam Convention and when it was expected to enter into force.

44. For all intents and purposes, operating the Rotterdam Convention on an interim basis meant implementing it as a fully-fledged Convention. The prior informed consent process in the Convention had previously been essentially in operation on a voluntary basis. Entry into force of the Convention depended on each country's domestic ratification process. Available information indicated that this process was well advanced in many countries.

On the process through which new chemicals may be added to the POPs Convention.

45. Although the POPs Convention focused on 12 initial chemicals, it was likely that the list might be expanded. A scientific process had been agreed to screen potential additional chemicals. It remained to be determined how the COP would take up the results of this screening process. The point of application of the precautionary principle was a key issue that could affect the basis on which the COP took decisions. This was a matter for Governments to resolve when finalizing the Convention. There were likely to be proposals to add new POPs in the fullness of time.

E. THE INTERGOVERNMENTAL FORUM ON FORESTS (IFF)

46. The IFF Secretariat presented the recent developments concerning the IFF, based on the background paper in WT/CTE/W/164. As the IFF was dealing with forest policy deliberations and was not a legally-binding agreement, the nature of the IFF was different from MEAs under consideration at this Information Session. The IFF deliberations on trade and environment were relevant to the CTE. Trade and environment was one of the programme elements under discussion in the IPF/IFF as set out in WT/CTE/W/164. A trend that could be discerned during the IFF process was the shift of focus towards trade in support of sustainable forest management.

47. Certification of sustainable forest management was an increasingly important issue. Of the total area of global forests, around 3.5 billion hectares, approximately 75 million hectares or 2 per cent was certified, mainly in developed countries. Two-thirds of global timber harvests was used domestically for fuel and local consumption, and did not enter international trade. Tropical deforestation in the 1980's had been 15.5 million hectares per year and, according to FAO figures, it had slightly decreased during the 1990's to 14 million hectares. Against this background, the IPF and the IFF recognized that, although market-based certification was not sufficient to decrease the rate of deforestation, it could be seen as one of the many potential market-based tools to promote sustainable forest management. In 1997, the IPF had developed guidelines for certification involving open access and non-discrimination, credibility, non-deceptiveness, cost effectiveness, participation, sustainable forest management and transparency. Further studies were needed, particularly on effectiveness in promoting sustainable forest management and to clarify the relation between certification (market tool) and criteria and indicators (forest policy and monitoring tool), consistency in terminology and mutual recognition of certification schemes. Discussion had also emerged on the role of governments in this process as regulators and, in some countries, forest owners.

48. The UN Forum on Forests (UNFF), the permanent body open to all countries that would succeed the IPF, had been established on 18 October by an ECOSOC resolution. Its first meeting would be held on 12 February 2001 in New York to elect a bureau and discuss its location. The first substantive meeting would be in June 2001 to decide a multi-year work programme and develop a plan of action to implement the IPF/IFF proposals for action.

Comments and questions

49. It was noted that UNFF had a mandate within five years to recommend to ECOSOC the parameters in which to develop a legal framework on all types of forests, as well as to take steps to devise approaches towards appropriate financial and technology transfer support for sustainable forest management. It would be important to work towards a legally-binding agreement on forests.

On the cross-sectoral forest issues related to the UNFCCC, CBD and the Desertification Convention.

50. The IFF Secretariat was cooperating with several MEAs, including UNFCCC, CBD, and the Desertification Convention on forest-related issues. The COP of the CBD had taken into account the IPF/IFF decisions and proposals for action. Carbon sequestration and the role of forests were increasingly important in the UNFCCC.

On the development dimension, as forests were a major economic resource in developing countries.

51. In the IPF/IFF, the concept of sustainable forest management was discussed from a comprehensive and holistic approach to incorporate the different dimensions of sustainable forest management, including economic, social, environmental, cultural and spiritual aspects.

On how sustainable forests management would be judged.

52. There was no mechanism at the global level to judge whether particular countries were moving toward sustainability. There were eight regional processes, with approximately 150 countries participating in the development of criteria and indicators for sustainable forest management.

On the valuation of forest goods and services, an important economic tool to achieve the objectives of sustainable forest management.

53. The IPF and IFF had discussed this issue in the context of increasing revenues, particularly in developing countries, and had noted that many non-wood forest products were undervalued or had no commercial value. There was considerable work to be done on valuation of forest goods and services.

F. THE UN FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC)

54. The UNFCCC Secretariat presented developments in the Convention based on WT/CTE/W/174. Measures to implement commitments included market-based and regulatory policy instruments. The Kyoto Protocol would examine economic issues and instruments. Development of the compliance system and the implications for non-compliance was adding greater clarity to the commitments under the Protocol. There were different types of commitments, emissions reduction targets, specific quantitative commitments, as well as requirements for eligibility to participate in the market-based mechanisms. Focus was also on Parties' capacity to generate and transmit the relevant information to determine compliance. There were also domestic measures to be taken to reduce emissions and set up national systems to measure progress. The UNFCCC had financial and technology transfer provisions common to other MEAs. In accordance with the principle of common but differentiated responsibility, developing country Parties had general commitments to reduce emissions. Developing country Parties were arguing that their commitments were contingent on the provision of financial and technology transfer.

55. There was a broad consensus that a strong compliance system was needed. The development of a compliance system had borrowed in fair measure from the WTO experience and would consist of two aspects: facilitative measures, modelled on the Montreal Protocol, and enforcement, drawing on the WTO. The key element of the compliance system, however, remained enforcement facilitation, as enforcement consequences were likely to be limited to the commitments related to emissions reduction. While there was no agreement on the consequences of non-compliance, the options ranged from political consequences, such as publication of non-compliance and suspension of rights and privileges, to economic consequences, including financial penalties. Within this range, there were measures that needed to be taken by Parties to ensure that shortfalls were met in their commitments to reduce emissions and that they could lose the flexibility of emissions trading, thereby requiring the shortfall to be met through domestic measures. Borrowing from the WTO experience, Parties were stressing an element of automaticity in determining the consequences of enforcement.

56. The procedures to develop a compliance system in the UNFCCC provided for input from relevant organizations. The UNFCCC Secretariat placed great emphasis on a continuing dialogue with the WTO Secretariat, and had met with the Directors of the WTO Legal Affairs Division and the Appellate Body. The UNFCCC Secretariat welcomed the opportunity to participate in WTO regional trade and environment seminars. The UNFCCC Secretariat looked forward to briefing the CTE on the results of the COP in The Hague on 13-24 November 2000.

Comments and questions

57. The comment was made that the development of strong dispute settlement mechanisms within MEAs was the way to make progress, instead of discussing the theoretical WTO-MEA relationship. Discussing trade outside the larger context of a package of measures, such as financial and technology transfer, was difficult. It would be useful for the UNFCCC to contribute a paper describing the development of its compliance mechanism.

On the contribution of nuclear energy to meeting commitments under the Kyoto Protocol.

58. This issue had not been raised officially in the UNFCCC process, as the Protocol did not refer to nuclear energy. There was a divergence of views as to whether nuclear power plants would be eligible for credits under the Clean Development Mechanism. The economic instruments under negotiation in the Protocol allowed for transfer of emission reduction credits generated by projects in developing countries that were financed by developed country Parties.

On the merits of market-based versus regulatory instruments in the Kyoto Protocol.

59. Under the Kyoto Protocol, Parties had undertaken commitments to reduce emissions with provisions for traditional domestic regulatory command and control measures and cost-effective market-based mechanisms, i.e. joint implementation, emissions trading and the Clean Development Mechanism in order to transfer emissions reductions from one country to another. There was an increasingly supported view that market-based instruments were the most cost-effective means of reducing pollution. Market-based mechanisms introduced the element of transferring credits from one country to another in order to be more cost-effective than efforts purely at the domestic level. The way in which credits could be transferred would be developed at the November 2000 COP.

On the concept of shortfalls in excess emissions reduction commitments.

60. Shortfalls in excess emissions commitments referred to the market-based arrangements that were flexible instruments for developed country Parties to meet their commitments. Thus, it was developed country Parties that would lose an element of flexibility and have to undertake more of these measures domestically, possibly at high cost. There would be further information on these aspects following the November 2000 COP.

On the need for a strong compliance and enforcement system.

61. The comparison with the WTO Dispute Settlement Understanding had been made to illustrate that the WTO was considered to have a strong compliance system when compared with those in existing MEAs, the features of which the COP was considering in developing a strong compliance mechanism. The compliance system being developed was likely to be as strong as in the WTO and stronger than in other MEAs.

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