# WORLD TRADE ORGANIZATION

RESTRICTED

**WT/CTE/M/27**
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**Committee on Trade and Environment**

## REPORT OF THE MEETING HELD ON 27-28 JUNE 2001

Note by the Secretariat

1. The Committee on Trade and Environment (CTE) met on 27-28 June 2001 under the Chairmanship of Ambassador Alejandro Jara (Chile). The agenda in WTO/AIR/1556 was adopted.

Observer status for intergovernmental organizations

2. It was agreed to postpone discussion of the requests for intergovernmental observer status pending discussions in the General Council, including the latest request from the World Health Organization (WT/CTE/COM/8). The list of pending requests is contained in WT/CTE/W/41/Rev.7.

LINKAGES BETWEEN THE MULTILATERAL ENVIRONMENT AND TRADE AGENDAS

MEA Information Session

3. This meeting included an MEA Information Session to enhance understanding of the compliance and dispute settlement provisions in MEAs and the WTO. As requested by the Committee, the WTO and UNEP Secretariats, in close cooperation with the MEA Secretariats, prepared a background paper (WT/CTE/W/191). The observer of UNEP introduced the paper and summarized the discussion at the UNEP meeting on this topic in Geneva on 26 June 2001. Representatives of the following Secretariats contributed to the background paper and responded to questions from Members on compliance and dispute settlement in their agreements:

- UN Framework Convention on Climate Change;
- Montreal Protocol on Substances that Deplete the Ozone Layer;
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;
- Rotterdam Convention on Prior Informed Consent;
- Stockholm Convention on Persistent Organic Pollutants;
- Convention on Biological Diversity and the Cartagena Protocol on Biosafety;
- UN Fish Stocks Agreement; and
- Convention on International Trade in Endangered Species of Wild Fauna and Flora.

4. The International Commission for the Conservation of Atlantic Tunas (ICCAT) and the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) contributed to the background paper, but were unable to attend the meeting. See the Annex on the MEA Information Session.

5. The Secretariat also prepared an annotated bibliography on the literature on compliance and dispute settlement (WT/CTE/W/197); an updated Matrix on Trade-Related Measures in Selected MEAs (WT/CTE/W/160/Rev.1); and notes on developments in the Cartagena Protocol on Biosafety (WT/CTE/W/190) and the recently adopted Stockholm Convention on Persistent Organic Pollutants (WT/CTE/W/193).

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

6. The representative of Iceland thanked the WTO and UNEP Secretariats for the paper on compliance and dispute settlement, prepared in close cooperation with the MEA Secretariats (WT/CTE/W/191). The linkages between MEAs and the WTO were highly complex, which stemmed from the fact that certain MEAs contained trade measures to further certain environmental objectives, while the underlying objective of WTO rules was the removal of trade restrictions. In both instances the objectives and means had been recognized by the majority of Governments by being simultaneously Parties to these MEAs and the WTO. One of the most important conclusions that could be drawn from the WTO-UNEP paper was the fact that the WTO dispute settlement procedures seemed to be more effective than those in the MEAs. WTO dispute settlement procedures provided for punitive measures. A Member engaged in a dispute could request permission to lift concessions granted to the Member declared to have broken the rules. MEAs did not seem to permit a Party to revert to punitive measures. UNEP and the MEA Secretariats had noted in the MEA Information Session that disputes were rare in MEAs. It would have been useful if specific disputes had been mentioned in the paper, including how they had been settled. Iceland asked whether MEA dispute settlement provisions were too weak, given that there seemed to be limited possibilities to enforce decisions or impose punitive measures. It would be interesting to hear the views of the MEA Secretariats. Iceland asked the CITES Secretariat whether it was possible that the reason there had not been any disputes in the long history of CITES was because the rules were too weak. If one agreed that it were necessary to strengthen MEA dispute settlement, how could this be undertaken and how far should one go.

7. The representative of Chile recalled that one of the first contributions to the CTE was a paper from Chile on the importance of dispute settlement procedures in the WTO and MEAs, WT/CTE/W/2, with specific reference to the UN Convention on the Law of the Sea. Chile was in the process of preparing another paper on this issue. The main question was how to settle the conflict of jurisdiction in the absence of clear rules. It was clear from CTE discussions that in MEA disputes, if MEA Parties were also WTO Members, the dispute should be resolved in that MEA. Pursuant to Article 3.2 of the Dispute Settlement Understanding (DSU), the WTO Appellate Body had recognized the importance of Article 31 of the Vienna Convention on the Law of Treaties as a source of customary international law. It was possible to clarify the WTO-MEA relationship through the flexible interpretation of WTO rules, particularly in the DSU.

8. As noted by the UN Fish Stocks Agreement Secretariat, Chile and the EC had recently had a conflict regarding conservation and sustainable use of swordfish stocks in the Southeast Pacific, which could have led to a serious conflict between international regimes. If each Party used the mechanism which they felt was the most appropriate to attain their objectives, it would meet the objectives in Article 2.2 of the DSU. There was no guarantee that the rights and obligations of either Party would be guaranteed in either of the two systems. This experience has been useful to ensure that the system was improved upon through more constructive application of the DSU. Firstly, the competent forum should be determined on the basis of certain criteria, such as those proposed by Canada and including the degree of trade restriction or distortion compared with the efficiency in meeting the environmental objective. If it were not possible to settle the issue of competence, the consultation provisions of the DSU could be improved by ensuring that consultative processes with the MEA were in sequence, not in parallel. Article 13 of the DSU had been noted as an appropriate instrument for consultations with MEAs to obtain technical advice. Chile preferred not to integrate dispute settlement procedures, but rather to address the disputes in the WTO. There was also the possibility of arbitration and mediation in the WTO system. It should be borne in mind that a panel should take into account the deliberations in WTO bodies, including the CTE. Chile recalled that the 12th meeting of the COP of CITES would be held in Santiago, 4-15 November 2002.

9. The representative of Australia said that the issue of the relationship between MEAs, particularly those with trade-related provisions, and WTO rules was a key one for the trade and environment agenda. Several elements of this relationship were uncontroversial and a great deal of consensus existed around those elements. Both realms should be as mutually supportive as possible, and pursued multilaterally. The UNEP Meeting on MEA compliance and enforcement and the joint Secretariat paper highlighted the importance of the cooperative and facilitative approaches taken under MEAs, including where trade was involved. Australia's view, borne out by practical experience, was that the WTO did not stand in the way of this approach; it was entirely consistent with the overall nature of the WTO, which embodied multilateralism and the cooperative search for solutions.

10. The Singapore Ministerial Conference and 1996 Report of the CTE reflected agreement amongst Members on key elements of this issue. It was worth raising some of these elements, as this consensus remained and was probably stronger. GATT Article XX could accommodate trade-related measures taken pursuant to an MEA. This accommodation was valuable and should be preserved. Since 1996, WTO jurisprudence on Article XX, although not dealing directly with an MEA-mandated trade measure, had not contradicted this view; rather the opposite. The 1996 CTE Report also noted that both WTO and MEA dispute settlement mechanisms emphasized dispute avoidance through parties searching for mutually satisfactory solutions (paragraph 177). WTO Members (who were also MEA Parties) had the right to bring an MEA trade dispute into the WTO dispute system, but should try to resolve it under the MEA (paragraph 178). As a practical matter, WTO Members in an MEA were likely to settle such a dispute through the MEA (paragraph 174). National policy coordination was important in reducing the possibility of MEA-WTO legal inconsistency at the time of negotiating new multilateral arrangements and when implementing subsequent obligations.

11. In Australia's view, and subject to overall developments, recognition of these areas of consensus might be a useful expression of the capacity of the WTO to contribute to sustainable development at Doha. This expression of views would be part of a balanced statement in recognition of the interests of the broad membership on other trade and environment items. This recognition would be useful in informing and reassuring a broader audience about the role of the WTO in the overall sustainable development effort. Striking a note of caution, Australia pointed out that it was not alone in remaining uncertain about some of the proposals from Members in this area. Those WTO disciplines which guarded against protectionism and unilateralism were fundamental. Multilateral, cooperative approaches were most appropriate and effective wherever trade was at issue, including in connection with environment policy and other important public policy areas. Australia saw WTO disciplines and dispute settlement as promoting genuine cooperation and mutual searches for sustainable development where this overlapped with trade. A cautious approach needed to be taken towards some proposals. Assigning of burden of proof in relation to GATT Article XX, and the treatment of WTO Members not party to an MEA when trade issues arose under that MEA were sensitive issues, particularly for smaller or less well-resourced countries. Proposals for change had to be clarified, so that those with concerns could properly assess the proposals.

12. With regard to the MEA Information Session, the representative said that the MEA and WTO systems both represented multilaterally cooperative efforts in pursuit of mutually beneficial goals and contained provisions which facilitated problem solving through non-adversarial means in the majority of cases. There were differences also in terms of the issues and the mechanisms through which cooperation was pursued. The aim of MEAs was often to agree on how to share the burden of common environmental problems; in contrast, the WTO dealt with issues concerning competitive trade interests amongst countries. Due to these differences, proposals for more reliance in MEAs on formal dispute mechanisms would not add significantly to the processes already in place or those systems considered by the COPs of the MEAs. The key question was whether strengthened compliance mechanisms under MEAs would lead necessarily to improved environmental protection. The subject matter of MEAs, particularly impact distribution arising from non-compliance, made

cooperative and facilitative approaches to compliance more appropriate than an adversarial dispute settlement system.

13. The representative of Switzerland recalled his delegation's view that MEAs should have sufficient mechanisms for dispute settlement to ensure that conflicts stemming from the implementation of an MEA did not come to the WTO. The WTO-UNEP paper did not address the problem that arose when trade measures taken under MEAs were challenged under the WTO dispute settlement mechanism. In this respect, he recalled the Swiss proposal in WT/CTE/W/168 whereby it was stressed that the WTO and MEAs should be mutually supportive. According to the Swiss approach of mutual supportiveness, the WTO and MEAs should remain within their specific areas of competence. The WTO should limit itself to considering whether an MEA trade measure was discriminatory or protectionist. The issue of whether an MEA trade measure was necessary should be settled within the framework of that MEA. Switzerland supported the approach advocated by UNEP and the MEA Secretariats that was based on the mutual supportiveness of the WTO agreements and MEAs. The Swiss proposal should be taken into consideration in developing a systemic approach to the WTO-MEA relationship.

14. The representative of Ghana said that dispute settlement in MEAs was non-confrontational and emphasized capacity building towards compliance. This was understandable given that countries joined MEAs to address common global environmental problems. It was important to build into MEAs mechanisms to encourage effective compliance.

15. The representative of the Gambia thanked UNEP and the MEA Secretariats for their presentations, and thanked UNEP for enabling his country to attend the CTE and UNEP back-to-back meetings. He noted that the Stockholm Convention had been signed in May 2001 and so far only one country, Canada, had ratified it. The issue of DDT use was of major importance in the Gambia and in many sub-Saharan African countries in view of the malaria epidemic which took the lives of an estimated two million people annually. The public health authorities in many of these countries were adamant that the use of DDT in malaria vector control should continue until cheap and equally effective alternatives could be made available. The text of the Stockholm Convention under Annex B, paragraph 5, sub-paragraph (b), stated that the COP shall encourage "Parties within their capabilities to promote research and development of the alternative chemical and non-chemical products, methods and strategies for Parties using DDT relevant to the conditions of those countries." The development of alternatives was a daunting task for many countries.

16. The representative of the United States thanked UNEP, the WTO Secretariat, and the MEA Secretariats that had participated in the UNEP workshop on 26 June and in the CTE Information Session. Commenting on the MEA Information Session in the CTE and on the UNEP workshop, the United States said that the papers and the discussion had been helpful as they had served to structure and focus the discussion on the specifics of different approaches taken with respect to compliance, enforcement and dispute settlement in different MEAs and in the WTO.

17. The United States noted its view that it is most productive to examine compliance, enforcement, and dispute settlement mechanisms in MEAs on a case-by-case basis. Given the differences in the environmental matters at issue in the MEAs, it is not surprising, and it is indeed quite logical that there are differences across MEAs in their compliance, enforcement and dispute settlement mechanisms. Strengthening compliance with MEA obligations is important; but this does not necessarily require modifying the existing compliance or dispute settlement mechanisms in MEAs. In general, strengthened MEA implementation depends on domestic measures taken by Parties to a given MEA, not necessarily on strengthening the international compliance or dispute settlement provisions included in the agreement.

18. On the WTO-MEA relationship, the United States had thought a lot about this issue, as had others over time. It was an issue that had been discussed at great length. The US suggested that the

way forward was to start from a point of commonality among Members, namely the shared objectives of sustainable development and mutually supportive trade and environment policies. The US asked how best to achieve these shared objectives with respect to the relationship between MEAs and WTO rules. The US suggestion was to focus on practical steps to ensure that the WTO and MEAs continued to coexist peacefully. Such practical steps should include close cooperation and communication between the MEA and WTO Secretariats and Members, such as through the Information Sessions in the CTE and UNEP. In addition, enhanced domestic policy coordination between trade and environmental officials in capitals and during the negotiation of trade agreements and MEAs is crucial. It is necessary to ensure that trade officials understand environmental issues and disciplines, and vice versa. The US becomes concerned when discussions move away from practical suggestions to legal hypotheticals, which inevitably lead to discussions of possible changes to the architecture of MEA or WTO rules and, in turn, to hypothetical discussions of legal hierarchy, that is, whose obligations trump whose? Both the MEAs and the WTO agreements have their own distinct and equally legitimate roles, which have not come into conflict. The US was not convinced that efforts to clarify the legal relationship between MEAs and the WTO rules would add value to the debate, and was concerned that such efforts would divert discussions on trade and environment issues away from the practical positive of mutual supportiveness and toward the theoretical negative of possible conflicts.

19. The representative of Canada addressed the submissions by New Zealand, Switzerland and the European Communities on the WTO-MEA relationship. Canada agreed with New Zealand, Switzerland and the EC that, although to date no MEA trade measures had been challenged in the WTO, it would be prudent, for both environmental and trade reasons, to clarify the WTO-MEA relationship. This was not to say that Canada necessarily shared the specific approaches of those three delegations. The rationale for this view was that coherence at the policy level was required for effective application of two different, but equally legitimate, expressions of multilateral policy objectives. While the specific objectives of these agreements varied, fundamental support for sustainable development was common to both the WTO agreements and MEAs. Within a relatively small number of MEAs, trade measures had been included as tools to contribute to the fulfilment of the MEA policy objectives. Conflict between the WTO and these MEAs, or future MEAs, could arise and would in turn affect public confidence in the multilateral trading system and Members' commitment to sustainable development. Clarifying the relationship could reduce the risk of this possibility. The issue of the WTO-MEA relationship was not merely a legal one, but a policy issue, which should be addressed by WTO Members, as noted in the Swiss proposal.

20. Canada agreed that it was desirable, and should be possible, to reach a consensus among WTO Members on the relationship between trade measures in MEAs and WTO rules, given the clear preference of Members for multilateral solutions to international problems in the trade and environment fields. Canada also agreed that MEAs and WTO rules were representative of efforts by the international community to pursue shared goals and, that to the extent they were effective, they reduced the attractiveness of unilateral measures. The preference for multilateral solutions had created a growing number of environmental agreements. Many countries, particularly in the developing world, faced a real challenge in implementing the substantive obligations and procedural requirements because of a lack of institutional and financial capacity. Canada supported the efforts under way in UNEP to address international environmental governance and to improve compliance and strengthen the international environmental regime.

21. WTO jurisprudence had developed considerably towards clarifying that WTO rules provide flexibility for environmental concerns. However, primary responsibility still rested with WTO Members, rather than the dispute settlement system, to determine how best to accommodate the use of MEA trade measures. New Zealand's proposed voluntary consultative mechanism suggested that cooperation and coordination should also take place between Member countries within the MEA context. Canada agreed with that proposition, and also felt cooperation and coordination at the domestic level was important for policy coherence. New Zealand's proposal would encourage a

country implementing its MEA obligations to consult with another Member country before implementing a trade measure. While resolving differences through consultation was the preferred approach, Canada questioned whether an MEA Party would have the flexibility to implement its obligations under the MEA in this manner, particularly when MEA trade measures were precisely drafted. In such cases, a Party may not be in a position to negotiate with a non-party on the implementation of an MEA measure and still meet its MEA obligations. For this reason, the proposed voluntary consultative mechanism could unduly complicate the implementation of MEAs. New Zealand's proposal to establish an informal mechanism for a broader dialogue on the WTO-MEA relationship was worthwhile, and more information on it was requested. Canada had proposed that the CTE should organize another symposium or outreach activity, and supported broadening the dialogue.

22. Canada welcomed the UNEP and CTE meetings, held back-to-back since October 2000, which were creating synergies, and noted that there was increased cooperation between the two Secretariats, including the joint paper with MEAs (WT/CTE/W/191) and the revised Matrix on Trade Measures in Selected MEAs (WT/CTE/W/160/Rev.1). Canada also noted that the 6-7 July NGO Symposium in the WTO included discussion of the WTO-MEA relationship. For over ten years, the OECD had held joint sessions of trade and environment experts. It had addressed trade and environment issues in a balanced manner and had generated greater understanding between these two policy worlds. It might be worthwhile to consider whether a similar approach could be adopted by the WTO and UNEP, bringing together trade and environment representatives at regular meetings. Canada hoped to return to this idea at a future meeting.

23. New Zealand had suggested that the CTE explore the clear drafting of future trade-related provisions in MEAs. Similarly, the EC had suggested the adoption of a "code of conduct" for MEA negotiators. Canada was interested in further details on this proposal. As guidance was needed for the multilateral trade and environmental interface, Canada had suggested a "principles and criteria" approach to addressing the WTO-MEA relationship in order to provide a useful reference for WTO panels in understanding trade measures for environmental purposes; if adopted by UNEP and MEAs, it would also give MEA negotiators a sense of how to develop clear and predictable trade measures. The recent Canadian experience with the application of the principles and criteria approach in the negotiations of the Stockholm POPs Convention had reaffirmed their usefulness in guiding negotiators in drafting trade measures which would not conflict with WTO obligations.

24. Canada agreed with Switzerland that WTO Agreements and MEAs should be mutually supportive, should complement each other, and were equally valid treaties. In the case of a specific dispute, absent agreement between Members or parties to a conflict, the rules of treaty interpretation would prevail. However, in specific agreements, parties may have decided explicitly that one set of obligations should prevail in a conflict. Specific provisions in agreements could not be ignored; what the Parties had agreed as between themselves would have to prevail. Switzerland proposed a presumption of compatibility of MEA trade measures with WTO agreements, while the EC proposed the reversal of the burden of proof under Article XX. These were two similar approaches which sought to address the absence of a clearly stated "exception" in Article XX for trade measures mandated by MEAs. However, neither proposal indicated how the suggested approach could be implemented, short of an amendment to Article XX or the negotiation of an agreement on the environment, neither of which appeared to be practical ways of proceeding. While Canada's Principles and Criteria approach was different, the aim was to recognize and support multilateral solutions to global environmental problems and to accommodate them within the trade regime. WTO Members and the CTE should work towards reaching a consensus on how to address that issue.

25. The representative of the European Communities noted that the paper on compliance and dispute settlement in MEAs and the WTO was the result of close cooperation between the WTO and UNEP Secretariats, and welcomed this cooperation. The intent behind the paper was not only to outline the basic differences due to the respective nature of each system, but also to consider whether

and how tensions could be reduced and potential conflicts avoided, for the mutual supportiveness of their relationship. Even when both Parties to a dispute were MEA Parties and WTO Members, the two agreements may cover different elements of the dispute. It was worth bearing in mind that, although dispute settlement mechanisms played a key role in compliance and enforcement, "hard" law solutions were not the only available path. Indeed, the prospect of applying "hard" law dispute settlement could in itself encourage Parties to negotiate and seek other solutions. Alternative solutions were important from the broader perspective of international governance and the role of the WTO and MEAs, as had been highlighted by Chile and UNEP.

26. The paper recalled language from the 1996 CTE Report for the WTO Ministerial Conference in Singapore, notably that "due respect must be paid to both sets of rules in the development of a mutually supportive relationship" between MEAs and the WTO agreement. This was not only relevant when trade-related measures in MEAs were being developed, but also when they were being implemented by Parties. The basic ideas emerging from paragraphs 178 and 179 of the 1996 CTE Report should be recalled in this context, notably the idea that in order to avoid disputes between MEAs and the WTO, improved compliance in MEAs would be essential. In this sense, the EC agreed with Iceland that the relative weakness of disputes settlement under MEAs might in part explain why these mechanisms were not being used. However, as noted by Australia, there might be a more fundamental reason. The WTO-UNEP paper and the discussion in the UNEP meeting on compliance and dispute settlement had indicated that MEAs could be differentiated from WTO agreements in that they were adopted to protect the global environmental commons. Violation of MEAs did not affect individual interests of specific countries, but rather those of the international community as a whole. Thus, individual countries would not have a strong incentive to trigger MEA dispute settlement mechanisms. This was a significant difference compared with the WTO. The development of non-judicial compliance mechanisms with a strong focus on facilitation was an approach that was well adapted to the specific needs arising in the environmental field.

27. In the event of a WTO dispute involving, directly or indirectly, an MEA, the 1996 CTE Report pointed out that WTO panels should benefit from the relevant expertise as envisaged in Article 13 of the DSU. Recent panels had used this provision extensively. The EC recalled the basic principle according to which WTO rules should not be interpreted in clinical isolation from international law. The role of expertise could be further strengthened by including MEA expertise in WTO panels. The EC noted that the UNEP discussions on global environmental governance had identified the need for strengthened compliance mechanisms in MEAs to ensure their effective implementation, which had been highlighted at the UNEP meeting in October 2000. As the EC wished to avoid the risk to the environment and trade regimes of a WTO-MEA conflict, it had made a practical proposal, WT/CTE/W/170, which was worthwhile pursuing. The EC was not favourable to a change in WTO rules, but proposed a concrete suggestion to clarify the WTO-MEA relationship. It would be necessary to reflect together on the idea of a code of conduct.

28. The representative of Japan said that the clarification of MEA trade measures under the WTO agreements was important as it could prevent Members from resorting to unilateral measures. Thus, Japan had proposed that guidelines be developed for MEA trade measures in May 1996 (WT/CTE/W/31). Japan underlined the importance of these guidelines with respect to concerns expressed by some Members that clarification might weaken existing WTO provisions or may serve as a cover for protectionism. Japan assured those Members that clarification would not necessarily lead to rewriting the WTO Agreement. The WTO-MEA relationship could be addressed in the context of a new round of negotiations.

29. The representative of Hong Kong, China welcomed the joint WTO-UNEP Secretariat paper and the MEA presentations on compliance and dispute settlement. The paper noted that MEAs, in comparison with the WTO, put more emphasis on cooperative and facilitative approaches such as financial assistance and technology transfer as opposed to dispute settlement. It was noted that non-compliance, in the case of MEAs, was often due to lack of capacity and it was difficult to

evaluate precisely the nature and extent of harm caused. It was important to enhance mutual supportiveness between the trade and the environmental systems, which were not, and should not be, in conflict. The best forum for the resolution of MEA-related disputes was within the MEA concerned. Concerning the updated Matrix on Trade Measures Pursuant to Selected MEAs (WT/CTE/W/160/Rev.1), some 30 MEAs, 14 of which were set out in detail in the Matrix, had been identified as containing trade-related measures. These represented only a small portion of the 238 existing MEAs. The relevant provisions were in many cases rather general, and their application was not necessarily WTO-inconsistent. This reinforced Hong Kong, China's view that the problem, if any, of potential WTO-MEA conflict was not as serious as some Members had suggested.

30. The representative of Senegal said that MEAs and the WTO had different purposes - environmental protection and free trade. WTO rules entered the picture with respect to trade in the commodities covered by MEAs. It was sometimes necessary to restrict trade to address global environmental problems. On the lack of ability to ensure enforcement of obligations in MEAs and the WTO in many countries, Senegal supported the proposals for capacity building to enhance compliance. Attention should be paid to domestic implementation of MEAs and the WTO - the stage at which it should be ensured that trade and environmental policies were integrated.

31. The representative of India said that existing WTO rules were adequate to accommodate the WTO-MEA relationship. Policy coordination was vital and could be furthered through practical measures. Dispute settlement mechanisms in MEAs were characterized by a non-confrontational approach, while the WTO dispute settlement mechanism was characterized by a confrontational, adversarial relationship, punitive sanctions and a "winner takes all" approach. However, as noted in the presentation by the MEA Secretariats, MEAs focused on positive measures, such as financial and technology transfer, training, and capacity building in order to encourage compliance. Thus, one conclusion that could be drawn was that the WTO dispute settlement mechanism was unqualified to deal with MEA issues. Therefore, it was better to resolve MEA issues in the MEAs themselves. This conclusion had implications with respect to the WTO-MEA relationship. Another point was that non-compliance did not arise from the lack of will, but from lack of financial resources and technology. Thus, compliance in MEAs depended on the incentives offered to a country within a package of measures contained in that MEA. India felt the dialogue in the MEA Information Session should be continued. In the context of considering the rational behind the trade rules when developing trade-related provisions in MEAs, India asked if MEAs had consulted the WTO.

32. The representative of Korea said his delegation had attached importance to improving the legal stability of trade-related measures in MEAs in the context of the WTO system since the beginning of the CTE discussion. The reasons held by some for doubting the possibility of a WTO-MEA conflict were understandable and the recent trend in WTO jurisprudence provided solid grounds for taking the view that there was no need to establish the relationship between the two legal systems. Although the WTO jurisprudence had evolved in favour of the environmental perspective, leaving such decisions only to panels would not remedy the uncertain legal status of MEA trade-related measures when challenged in the WTO. As an attempt to move forward, Members could reflect on the merit of considering ways to enhance and ensure the WTO-compatibility of MEA trade measures.

33. The representative of New Zealand thanked the UNEP and WTO Secretariats for organizing the back-to-back meetings with MEAs, which added to New Zealand's understanding of the issues and reaffirmed the importance of cooperation on this issue. In particular, the joint WTO-UNEP paper on compliance and dispute settlement provisions (WT/CTE/W/191) provided a useful focus. There was a wide spectrum or continuum of approaches to compliance and dispute settlement in different contexts, particularly with respect to the emphasis placed on legalistic approaches. This suggested that any "one size fits all" solution would not be the most effective approach. However, in many instances it was clear that several MEAs and the WTO shared various tools at points along this continuum with the common objective of trying to avoid dispute settlement - whether at the "soft" or "hard" end of the continuum. Those commonalities included mechanisms such as consultation,

notification and internal surveillance provisions. Those mechanisms existed in MEAs and the WTO. New Zealand welcomed efforts to assist Parties to remain in compliance, rather than solely resolving conflicts once they arose. This was in harmony with the approach New Zealand had been exploring in the CTE with respect to the contribution that a voluntary consultative mechanism, guided by first-best principles developed within an MEA, could make.

34. Another range of mechanisms to facilitate compliance, highlighted in the MEA presentations, included concrete policy options, such as financial assistance and technology transfer. These concepts were not alien to the WTO. These instruments could be applied flexibly in order to enable compliance on a case-by-case basis. In situations where MEA provisions may be unclear as to the action prescribed, or if MEA Parties were applying trade measures, it might be useful to explore the range of different policy options available, which would increase the potential for mutually satisfactory outcomes and the best possible environmental and economic solutions. It would help to preclude a situation where dispute settlement became the only alternative. New Zealand would address Canada's comments at a future meeting. New Zealand did not believe that its proposed voluntary consultative mechanism would guarantee, in and of itself, an acceptable solution to all Parties in all instances. Nevertheless, it could present a practical approach in a large number of cases and would facilitate a better mutual understanding and policy coordination.

35. The representative of Thailand said that MEAs and the WTO Agreement were mutually supportive; there was no need to clarify this relationship. In the event of a potential conflict, consultative mechanisms could be implemented. Thailand supported the idea of reciprocal observer status between MEAs and the WTO, to enhance cooperation and mutual supportiveness.

36. The representative of Norway said that to ensure issues that arose within an MEA, remained within an MEA, their compliance mechanisms should be strengthened.

37. The representative of Malaysia welcomed the MEA presentations in the Information Session and the joint WTO-UNEP paper on compliance and dispute settlement, was a good example of greater coordination and collaboration. The ongoing joint WTO-UNEP sessions had continued to enhance understanding of both the WTO Agreements and MEAs. This session had increased the understanding of the WTO-MEA relationship in terms of their compliance and dispute settlement procedures. The session had shown that MEA and WTO compliance mechanisms were based on what was felt to be appropriate to achieving the goals in their respective areas. Those procedures had been effective in ensuring compliance mainly through positive rather than punitive measures. Malaysia saw no conflict between MEAs and WTO Agreements; indeed, it only reinforced the notion that MEAs and the WTO were not in conflict, but mutually supportive in their respective areas of competence. So, clarification of this relationship was not necessary. This did not mean that strengthening the understanding of the WTO-MEA relationship could not continue through further joint Information Session and coordination between environmental and trade officials at the national level. The latter would represent useful steps by MEAs and the WTO to pursue trade, development and environmental objectives, without need for legal clarification or changing WTO provisions.

38. The observer of the Montreal Protocol recalled that the Protocol contained some trade-related provisions which had been used to promote its universal ratification. He raised the issue of consultations between the Protocol and the WTO, noting that from the outset of the negotiations for the Protocol, the GATT and then the WTO had been fully consulted. Responses from the WTO Secretariat had been prepared under its own responsibility. Thus, although the WTO had been consulted, it was difficult to obtain definitive advice on the concerns that had arisen over use of trade measures in pursuit of the environmental objectives of the Protocol. Certainly the measures were not meant to achieve protection of the ozone layer at the expense of trade.

39. The representative of the WTO Secretariat said that it was not surprising that its responses could not be considered "definitive advice", given that it was not entitled to interpret WTO provisions.

40. The observer of the UNFCCC said that the UNFCCC Secretariat had not consulted the WTO as there had not yet been a dispute. The UNFCCC had consulted the WTO Secretariat with respect to the Kyoto Protocol compliance procedure, specifically "the competent intergovernmental and non-governmental organizations may submit relevant factual, technical information to the Compliance Committee" and "the Compliance Committee "may seek expert advice". Thus, in the event of a dispute, advice could be sought from the WTO.

41. The observer of UNEP said the capacity of the WTO Secretariat to respond to requests could be linked to reliance on judicial dispute settlement in the WTO. When formal disputes were the way in which to clarify WTO law, it was understandable that, compared with organizations that did not have formal dispute settlement and in which there was no body of jurisprudence, the WTO Membership could not expect the Secretariat to give an opinion on what measures are, or are not, in compliance.

42. The Chairman said there was a wide divergence of views on this issue. This was an important issue, particularly in light of the preparations for the Doha Ministerial Conference.

Item 7: The issue of exports of domestically prohibited goods

43. The observer of the UN Secretariat made a presentation on the UN Consolidated List of Products Whose Consumption and/or Sale Have Been Banned, Withdrawn, Severely Restricted or Not Approved by Governments. As set out in WT/CTE/W/194, exchange of information on banned hazardous chemicals and unsafe pharmaceutical products had first been considered by the UN General Assembly at its 34th session in 1979. In 1982, the General Assembly, through Resolution 37/137, asked the Secretary-General to prepare the Consolidated List following discussions in many international fora, including the GATT. Those discussions centered on the damage to health and the environment that the production and export of products banned or restricted on grounds of human health and safety from domestic markets was causing in the importing country. To avoid duplication, the General Assembly requested the Secretary-General to prepare and regularly update the Consolidated List, based on work being done within the UN system and other relevant intergovernmental organizations. The Assembly agreed that this List should be easy to understand, and should contain both generic/chemical and brand names in alphabetical order, as well as the names of all manufacturers and reference to the grounds and decisions taken by Governments that had led to the ban, withdrawal or severe restriction of products. The Assembly had also decided to keep under review the format of the List, with a view to its improvement.

44. The next triennial review of the List would be undertaken this year by ECOSOC and the General Assembly. The Assembly intended the UN Secretariat to play a coordinating role in producing the List, aimed at disseminating information internationally on products harmful to health and the environment. The List complemented information already produced within the UN system, particularly the data gathered on national restrictive regulations under the following notification schemes: the WHO Certification Scheme on the Quality of Pharmaceutical Products Moving in International Trade, and printed in the Bulletin on Drug Information and Pharmaceuticals Newsletter; the FAO International Code of Conduct on the Distribution and Use of Pesticides; and the UNEP London Guidelines for the Exchange of Information on Chemicals in International Trade and the International Register of Potentially Toxic Chemicals (IRPTC).

45. In 1985, the UN Secretariat, in cooperation with the WHO and UNEP–IRPTC, now UNEP Chemicals, held a first interagency coordinating meeting, and carried out the first review of the List. The review focused on arrangements for preparation of future issues, the need for criteria to determine the inclusion of products, the question of the legal and public health context of regulatory actions that had not been included in the first issue of the List, and the treatment of commercial data. As a result of the review, a memorandum of collaboration outlining the division of responsibilities among the WHO, UNEP Chemicals and the UN Secretariat had been agreed. Accordingly, WHO

collected, screened and processed the information on pharmaceuticals, and UNEP Chemicals performed a similar function on chemicals. The UN Secretariat coordinated these inputs, ensured that relevant information was included, and collected and reviewed commercial data. The Secretariat also edited, translated and published the List. Since the first triennial review, the arrangements for the production of the List had remained essentially the same.

46. The Consolidated List had been a valuable source of information for Governments in considering regulatory action, as well as for NGOs, academia and the media. The List had been instrumental in helping national authorities to disseminate information about products on the List and to take actions ranging from the review of licensing provisions, laws and regulations to the enforcement of new laws and regulations. Consumer groups also used the List to urge Governments and manufacturers to remove hazardous products from the marketplace. The International Organization of Consumer Unions, and Greenpeace, had employed it in monitoring the use of hazardous products and distributing information to policy makers, the media and consumers. In this connection, General Assembly Resolution 44/226 of 1989 had called on the Secretary-General to promote a more effective involvement of NGOs in disseminating the List.

47. The provision of information on trade/brand names under which these products were marketed added value to the Consolidated List and made it easier for national authorities to identify a restricted product available in the local market. The commercial data provided an easy method to cross-reference trade names with recognized common scientific names under which most regulatory information was available. To improve its format and to make the List user-friendly, references to relevant legal and statutory documents were added to the regulatory text to enable the user to ascertain the legal context and scope of the regulations. There were also bibliographic references to scientific and technical studies relating to chemical products, which had been carried out by international organizations. In addition to an alphabetical listing of products, a classified listing was added based on the category of use of these products. The List also contained indexes to scientific and common names, trade/brand names and Chemical Abstract Service Registry numbers. Decisions taken by a limited number of Governments on a specific product may not be representative of the policy position of others, particularly given different risk-benefit considerations. All pharmaceutical and chemical products were potentially harmful if not correctly used. The fact that a given product was not listed as regulated by a country did not necessarily mean its use was permitted in that country. Rather, the relevant regulatory decision to prohibit its use may not have been communicated to the UN, WHO or UNEP.

48. With a clear mandate on what could and could not be included in the List, its scope had remained more or less the same over the years. It contained text of restrictive regulatory decisions taken by competent national authorities on pharmaceuticals provided by WHO, and on agricultural and industrial chemicals provided by UNEP. Most psychotropic and narcotic substances and many widely used industrial chemicals and food additives were not included in the List as they were already taken care of somewhere else in the UN system.

49. Consumer products were included in the List only when they were regulated on account of their chemical composition, but all products included in the List were hazardous on account of their chemical composition, which, in any case, was one of the main concerns as far as hazards to human health and environment were concerned. Consumer products appeared under a separate heading in the List as a consequence of classifying chemicals by their category of use, in an effort to make the List more user-friendly. The gaps in consumer product data included in the List, such as information about their export or other similar data, were likely to remain, as the UN mandate did not allow it to gather additional information on its own. If the WTO were to gather and provide this information, the UN Secretariat would be happy to include it in the List.

50. In 1995, it was decided to divide the List into two, each being published in alternate years and focusing on pharmaceuticals and on chemicals. The sixth issue of the List, the first under the new

arrangement and containing information on pharmaceutical products, only was published in 1997. The seventh issue, currently under preparation and scheduled for publication later in 2001, would contain information on chemicals only. Information contained in the List had been maintained on personal computers since the early nineties, when it was downloaded from mainframe computers, and the data were transferred to diskettes in 1994 on an experimental basis. However, technical problems with the computer programme previously used to publish the List constrained the Secretariat's ability to produce these items in a timely manner. The Secretariat continued to make efforts to produce the List data on diskettes/CDs with search facilities, and on the Internet.

51. The Department of Economic and Social Affairs would analyse the use of the List after publication of the seventh issue. This analysis would be facilitated by the issuance of a full survey, which would cover both pharmaceuticals and chemicals, and would be distributed to all parties concerned with potentially hazardous pharmaceutical and chemical products. The survey would be provided to Member States, concerned intergovernmental and non-governmental organizations, consumer groups, and other members of civil society, such as academia and the media. The WTO could play a role in cooperation with the UN system in monitoring trade in DPGs.

52. The representative of India appreciated the comprehensive presentation by the UN Secretariat. India continued to be interested in this issue and felt it important to ensure wider dissemination of the List through the Internet. It was also important to emphasize capacity building and technical assistance to control trade in DPGs.

53. The representative of Senegal welcomed the presentation from the UN and encouraged efforts to ensure that the UN List was made readily available to developing countries. DPGs were traded, often illegally, and caused serious problems in developing countries. The UN List, along with the Rotterdam and Stockholm Conventions, provided valuable information on products of concern to many countries. Technical assistance was crucial in order that developing countries were better informed and could control DPG imports.

54. The representative of the European Communities thanked the UN Secretariat for its presentation. The issue of DPGs was an important, yet complex subject as illustrated by the references to DDT in the MEA Information Session. The EC supported India's suggestion for the List to be widely disseminated through the Internet, and welcomed further work in this area, particularly with respect to specific products of concern.

55. The representative of the Gambia said that DPGs were a major concern, particularly in Africa, and technical assistance and capacity building were crucial. It was important to increase information dissemination on DPGs. For example, a recent study indicated that a significant percentage of pharmaceuticals sold in Nigeria did not contain what was indicated on the product's label.

56. The representative of Benin said that the dangers of DPGs had been witnessed in agricultural and consumer products. Benin had tried to draw up an inventory to better control DPGs, which was difficult not only due to lack of national capacity, but with respect to obtaining information on measures at the international level. In this respect, the UN List was valuable. Capacity building in developing countries was crucial to implement domestic legislation to address DPGs.

57. The representative of Venezuela thanked the UN Secretariat for its presentation. Wide dissemination of the UN List was important to enhance capacity building to enable developing countries to use this information. He offered the example of methyl bromide to illustrate the complexities of this issue. Methyl bromide was a pesticide prohibited for use in Venezuela as a result of its commitments under the Montreal Protocol. Some countries were demanding that imports be fumigated with methyl bromide despite the fact that it was to be eliminated under the Protocol, and that it had substitutes. As a result, Venezuela's market access had been affected.

58. The representative of Cuba said mechanisms should be developed to build capacity to enable effective control of DPGs. Thus, it was necessary to go beyond the provision of a list to be able to control the import of certain substances by increasing domestic capacity.

59. The observer of UNCTAD said that, pursuant to Bangladesh's proposal in WT/CTE/W/141, UNCTAD had consulted with developing countries on the way forward on DPGs in the context of the joint UNEP-UNCTAD Capacity Building Task Force on Trade, Environment and Development. These consultations were based on an informal paper on lessons learned from the Bovine Spongiform Encephalopathy (BSE) crisis, where bonemeal had been banned domestically in certain countries, but continued to be exported. The WHO, FAO and the International Office of Epizootics also had held a joint meeting on this issue. UNCTAD would keep the CTE informed of developments.

60. The Chairman thanked the representative of the UN Secretariat for his presentation, which had stimulated discussion on the issue of exports of DPGs; this issue deserved careful attention in the CTE. There was a great deal of interest in making the UN List widely available, including on the Internet. Specific examples had been cited that reflected the kind of practical problems being dealt with in this area. Developing countries had expressed their need for technical assistance and capacity building to enable them to put into place effective controls on imports of DPGs. The relevant organizations should be encouraged to be forthcoming in this respect.

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

61. The representative of Peru supported the elements raised in Brazil's submission WT/CTE/W/186 (IP/C/W/228) on the review of Article 27.3(b) of the TRIPs Agreement. Peru appreciated the comments on its national experience paper on protection of traditional knowledge and access to genetic resources, WT/CTE/W/176. She responded to Chile's questions at the February meeting as to how the Peruvian proposal would solve potential conflicts between IPRs and traditional knowledge. On the comment that "Peru's proposal only dealt with issues concerning the national jurisdiction and did not provide for the settlement of potential conflicts between IPRs and traditional knowledge that cross national boundaries," it would be necessary to determine the competent international fora to deal with those aspects and any disputes concerning indigenous communities from different countries. On "the mechanisms for decision-making in indigenous communities to solve issues related to the use of specific knowledge and genetic resources", not all indigenous communities necessarily used the same mechanisms. In some cases, issues were brought before an assembly, often the highest common authority, to deal with issues that could affect the community. In other cases, problems might be put before a court or commission. In some cases, concerns were addressed within a single community, while in others, representatives of different communities would make a joint decision. On "the duration of the protection of traditional knowledge, although Article 11 of Peru's legislation laid down that indigenous communities had the rights to their collective knowledge", the proposal did not prescribe a time-period for protection. On "tax mechanisms to ensure distribution of resources on a fair and equitable basis", according to Article 22(e) the licensee should provide the community that was granting the license with a report of developments in investigation, industrialization and marketing of the products achieved through use of their collective knowledge by working the license. There were no levying systems established to draw revenue from traditional knowledge; rather, provision was made to promote a closer understanding between the indigenous owners of such knowledge and their users to enable agreements to be drawn up with those parties who wished to develop the knowledge.

62. The observer of the Convention on Biological Diversity said the Conference of the Parties (COP), in Decision V/26 adopted at the 5th meeting in May 2000, invited the WTO to acknowledge the relevant provisions of the CBD and to take into account the fact that the provisions of the TRIPs Agreement and the CBD were interrelated and to further explore this relationship. By the same decision, the COP also renewed its request to the Executive Secretary of the CBD to request observer

status in the TRIPs Council and to report back to the COP at its 6th meeting in April 2002. As requested by the COP, a letter dated 4 July 2000 was sent by the Executive Secretary of the CBD to the Director-General of the WTO to inform the relevant bodies of Decision V/26 and to give consideration to the request for observer status by the CBD in the TRIPs Council. The CBD thanked the Secretary of the CTE for her letter dated 30 March 2001 informing the CBD that the CTE had taken note of the letter from the CBD on Decision V/26 and for forwarding the recent relevant Secretariat papers. The CBD looked forward to continuing cooperation with the WTO. The CBD, however, had not received a response regarding its request for observer status in the TRIPs Council. At the last TRIPs Council meeting in June 2001, papers were tabled which related directly to the relationship between the TRIPs Agreement and the CBD. Unfortunately, the CBD had not been able to participate in these discussions and had not received the relevant documentation.

63. Concerning recent developments in the CBD, the role of intellectual property rights (IPRs) in the implementation of arrangements for access to genetic resources and benefit sharing (ABS) had been addressed by the panel of experts on ABS, which had held two meetings, in October 1999 and May 2001. As noted by the COP at its 5th meeting, the panel was not able to come to any conclusions on this topic and developed a list of issues that required further study. In response to a request by the COP, a report on these issues was being prepared by the CBD Secretariat, based on submissions by Parties and other relevant information for the first meeting of the ad hoc open-ended Working Group on Access and Benefit Sharing in Bonn in October 2001. This Working Group had been established at COP V, with a mandate to develop guidelines and other approaches to assist Parties and stakeholders in the implementation of ABS arrangements. These draft guidelines and approaches would be submitted to COP VI for consideration in April 2002.

64. The observer of the World Intellectual Property Organization commented on the work of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore set out in WT/CTE/W/182-WT/CTE/W/196 (WIPO/GRTKF/IC/1/3 and 13). Substantive discussions were held at the first session of the Intergovernmental Committee, 30 April to 3 May 2001, focusing on three areas: access to genetic resources and benefit sharing; protection of traditional knowledge; and protection of expressions of folklore. The results of the discussions were: in the area of genetic resources, to develop guidelines on "contractual practices" and model IP clauses for contractual agreements. Most of the tasks agreed by Member States were in the area of traditional knowledge, specifically: (i) to delineate the scope of subject matter by defining the term "traditional knowledge" in the context of IP; (ii) to compile, compare and assess information on the availability and scope of IP protection for traditional knowledge within the defined term; (iii) to effectively integrate traditional knowledge documentation into searchable prior art; and (iv) to consider ways of assisting traditional knowledge holders to enforce their IPRs. In the third area, on folklore, it was agreed that the Committee would collect and analyze national experiences with regard to protection of folklore, with a view to developing legal protection on expressions of folklore in a *sui generis* form. The Committee would hold its second session from 10-14 December 2001.

65. The representative of Indonesia thanked WIPO for the information on its ongoing work in this area. Article 16.5 of the CBD recognized that IPRs could have a negative effect on the implementation of the CBD. It urged Parties to cooperate to ensure that IPRs were supportive, and did not run counter to the CBD. Discussion in WIPO was relevant to ensure the supportiveness of the IP system to the CBD. Indonesia requested WIPO to provide further information on its work. While discussions in the CTE were also important to ensure that the TRIPs Agreement did not undermine biodiversity protection, the conservation and sustainable use of biological resources, and to provide for equitable benefit sharing, it was also important to guarantee that the implementation of IP regimes did not facilitate misappropriation of ownership of rights over living organisms, knowledge and processes of use of biodiversity. National legislation was not enough to deal with the effectiveness of implementation of and access to benefit sharing arrangements. There was a need for international arrangements to complement work at the national level. In this respect, Indonesia welcomed the establishment of the WIPO Intergovernmental Committee on Intellectual Property and Genetic

Resources, Traditional Knowledge and Folklore. Greater coherence was necessary amongst relevant international organizations to address this issue.

66. The representative of Norway highlighted some of the conclusions in his delegation's communication of 18 June 2001 to the TRIPs Council, IP/C/W/293. The TRIPs Agreement and the CBD had different objectives as well as areas of application. Questions had been raised as to whether there were any kind of legal conflicts between these two agreements. Norway felt that this was not the case. Nevertheless, the implementation of one agreement may have a bearing on the other's implementation. There were areas where those two agreements interacted and where there was potential for conflict, notably in patent protection, particularly on genetic resources. Article 16-5 of the CBD acknowledged this link and the fact that patents and other IPRs might have an influence on efforts to achieve the objectives of the CBD. This article included an obligation for Parties to cooperate to ensure that IPRs were supportive of the CBD's objectives. However, there seemed to be nothing in these two agreements that would prevent implementation of one in a way that was incompatible with the other. The key element in ensuring consistency between the two agreements lay in mutually supportive implementation. In this context, Norway underlined the importance of implementing effective measures at the national level to achieve fair and equitable benefit sharing from access and transfer of genetic materials. On implementation of *sui generis* systems of plant variety protection, there was sufficient flexibility in the TRIPs Agreement to allow for effective benefit sharing with indigenous and local farming communities. However, there was no obligation under the TRIPs Agreement to disclose the origin of genetic resources when applying for patent protection. It should be considered whether such an obligation should be introduced in the TRIPs Agreement to ensure more effective implementation of the CBD. This issue should be discussed and further analyzed. Norway had elaborated in its communication on issues related to plant genetic food and agriculture, an issue currently being negotiated in the FAO International Undertaking on Plant Genetic Resources. Norway welcomed the contribution by WIPO on their related activities, which would contribute to the ongoing debate on these issues.

67. The representative of Switzerland thanked WIPO for its report on the first session of the Intergovernmental Committee, and welcomed the work initiated by this Committee. Switzerland wished to see certain practical issues tackled at the second session. In a proposal to the TRIPs Council in IP/C/W/284, Switzerland had proposed the creation of a database of traditional knowledge, which could be useful for patent authorities in determining the novelty characteristic of an invention associated with traditional knowledge. A written database could help patent authorities as traditional knowledge was often transmitted orally, and could constitute an important step towards a better understanding of issues relating to traditional knowledge and benefit sharing resulting from its use. It would be wise to await the work of the WIPO Intergovernmental Committee and the CBD Working Group on Article 8(j) before going into detailed discussions on these issues in the WTO.

68. The representative of Tunisia thanked UNEP (ETU) for funding her participation at the UNEP and WTO back-to-back meetings in October and June; this was an excellent initiative taken by Mr. Hussein Abaza which had enabled her delegation to participate in the negotiations held within CTE for the first time and better understand the links between the WTO and other organizations dealing with trade and environment issues, the relationship between the WTO and multilateral environmental agreements (MEAs), particularly the Convention on Biological Diversity (CBD), and CITES, in particular the problem of dispute settlement which was just discussed two days ago in the Palais des Nations.

69. The CBD negotiations related to the overlap between the principles of national sovereignty and IPRs, in which all WTO Members should have implemented legislation. There were three processes of negotiations under way to define the legal status of genetic resources for agriculture: in the CBD, the FAO International Undertaking on Plant Genetic Resources and the TRIPs Agreement.

70. The TRIPs Agreement comprised a series of rules designed to protect IPRs and encourage investment in research and innovation. Article 27.3 permitted Members to exclude from patentability plants and animals other than microorganisms and essentially biological procedures of plant and animal breeding, which required establishing a domestic legal framework to take into account each country's plant resources. While it was incumbent on each country to implement national IPR legislation, TRIPs defined minimum standards for patents, copyrights, trade marks and trade secrets. These standards imposed developed country legislation and standards on developing countries; they ran counter to developing countries' interests. Developing countries had until 2000 to harmonize their legislation, with the least-developed having five more years. In exchange for this tight timeframe, developed countries undertook to supply technical and financial assistance. It would be useful to note what assistance had occurred, and the level of implementation by developing countries.

71. According to the UN 1999 Human Development Report, eighty per cent of patents were issued in industrialized countries. Apart from the impact on developing countries, these patent laws paid little attention to traditional knowledge and did not take into account cultural diversity. This meant that knowledge risked being lost. In the area of biodiversity, a large amount of knowledge was a common good, particularly with respect to living organisms, as firms could ask for a patent on genetic information. This was the case for medicines from plants and genetic products for agricultural practices. The situation faced by indigenous communities gave rise to many problems. The FAO was pursuing the preservation of plant genetic resources and had established a fund which would work towards a fair distribution between plant breeders and rights holders.

72. Tunisia was in the process of adopting legislation on plant varieties and on IPRs. In relation to the UPOV Convention, there was already a relationship between plants and investment. Many developing countries were not UPOV Members and did not have laws to protect plant varieties. Tunisia's legislation on plant varieties, developed in partnership with the European Communities, established general provisions in this area. Tunisia had an official digest to register plant varieties under the Ministry of Agriculture. Registration in this digest resulted from an application by the interested party with a sample and a description of the plant variety. Tunisia also had a technical commission on seeds. The commercialization of seeds could only take place if the plants were registered in the digest. To be marketed, plants needed to comply with the regulations relating to labelling and packaging. The relevant authority also guaranteed plant varieties when breeders so requested. This law would be complemented by others currently being drafted to take into account the UPOV Convention, with a view to acceding to this Convention in the future. The new law set out to regulate new plant varieties. Tunisia required technical assistance, technology transfer and capacity building in this new area. Tunisia supported granting observer status to MEA Secretariats, particularly to the CBD in the TRIPs Council, to enhance coordination and information exchange.

73. The representative of Venezuela thanked WIPO for the information on the work that had begun in the Intergovernmental Committee, which would contribute to better understanding of these important new issues and reflect the needs of developing countries concerning protection of traditional knowledge of indigenous and local communities, as well as equitable distribution of their innovations, practices and inventions. He noted the Andean Workshop on access to genetic resources and traditional knowledge in Venezuela from 16-19 July.

74. The representative of Korea said facilitating access to genetic resources and benefit sharing was essential for their sustainable use and the development of the biotechnology industry. It was important to ensure that IPRs were based on the legitimate use of genetic resources and that the benefits derived were shared with the genetic resource providers. Efforts against possible abuse or misuse of genetic resources by unauthorized personnel should be made to protect the rights and benefits for the resource holders, which required cooperation among Members and relevant international organizations. It was vital to collect and share as widely as possible legal, administrative and policy measures related to access to genetic resources and benefit sharing in force in each country. Peru's national experience paper, WT/CTE/W/176, was a good example. While the proposal

for the obligatory disclosure of source of the genetic material could ensure transparency and benefit sharing, it might impose an additional burden on applicants and necessitate readjustment of the balance of interests in the TRIPs Agreement. The concept of traditional knowledge according to Article 8(j) of the CBD was ambiguous, and its practical application not easy. Definition of its scope should be given priority, and understanding should be enhanced based on specific cases of the protection of traditional knowledge. As noted by Brazil, Korea supported the recommendation on national systems and experiences of traditional knowledge adopted at the UNCTAD expert meeting; the documentation and the establishment of a database of traditional knowledge would contribute to providing patent examiners with easier access to related prior art of traditional knowledge.

75. The representative of the European Communities thanked WIPO and the CBD for their statements and supported the ongoing work in those fora to address the relationship between IPRs, biodiversity and traditional knowledge. It was important to address the relationship between the TRIPs Agreement and the CBD in order to achieve mutual supportiveness between both instruments. There was a clear link between this issue and the issues discussed under Item 1 of the CTE work programme. The EC welcomed the Chairman's initiative to contact the Chairmen of the General Council and the TRIPs Council to discuss observer status of the CBD.

76. The representative of Brazil said his delegation attributed the highest importance to the synergies between the TRIPs Council review of Article 27.3(b) and CTE debate under this Item. It was important to ensure that WTO discussions were in harmony with those in other intergovernmental organizations, such as the CBD, WIPO and FAO. Brazil felt that nothing in the TRIPs Agreement prevented Members from implementing the CBD at the national level. However, further work was required to prevent conflicts at the implementation level. This would include the need to incorporate some elements of the CBD in Article 27.3(b), such as the disclosure of benefit sharing in the patent filing process, evidence of prior informed consent from the holders of the genetic material, evidence of the traditional knowledge involved in the invention, and the disclosure of the genetic material used in the invention. Brazil could not understand the argument that these elements would constitute a burden to patent holders. These elements were not different from existing requirements in the implementation of patent procedures. The burden was on those countries that had no means to ensure that biopiracy could be prevented. Brazil noted that the statements by Norway, Peru, Tunisia and Venezuela were mutually supportive. Considering the objectives of the CBD and those of the TRIPs Agreement, there was no inherent conflict between these two agreements; it was at the implementation level that conflicts could arise. The TRIPs objectives were the transfer and dissemination of technology, a balance of rights and obligations and mutual benefits between knowledge users and providers. The CBD provided for the fair and equitable benefit sharing of the sustainable use of genetic resources, with technology transfer established as one of the means of ensuring the CBD objectives. Thus, it was important to include some of the principles of the CBD in the TRIPs review of Article 27.3(b) to ensure these agreements were mutually supportive.

77. Brazil attributed the highest importance to the establishment of databases, as proposed by Switzerland, to protect traditional knowledge and genetic resources. However, merely gathering information was not sufficient to provide appropriate protection. Databases ensured protection in a defensive manner to check against patents obtained by third parties without the consent of the traditional knowledge holders. Moreover, specific rights needed to be attributed to the owners of traditional knowledge and genetic resources included in the databases to ensure benefit sharing and that the CBD objectives were met. Brazil felt the situation of observer status for the CBD in the TRIPs Council was most regrettable; only one delegation had opposed the wide consensus in support of this request. Brazil hoped that, at the next TRIPs Council, it would be possible to respond positively the CBD. It was important to note that at present the TRIPs Agreement was being seriously questioned by public opinion, and that the TRIPs Council was undertaking discussions on TRIPs and public health. Another positive signal should be sent by granting observer status to the CBD.

78. Brazil welcomed the creation of the WIPO Intergovernmental Committee. While discussions had been initiated on contractual modalities on genetic resource use, others issues should also be included, including legislation and international disciplines to protect traditional knowledge.

79. The representative of Colombia thanked WIPO for its statement and welcomed the collaboration between intergovernmental organizations. Colombia had a long tradition in the conservation and sustainable use of biodiversity and supported efforts under way in international fora, such as WIPO and FAO, to promote biodiversity. Colombia reiterated the importance of granting the request for observer status from the CBD in the TRIPs Council, which was the best way to promote cooperation and information exchange. The development of a legal framework was essential to guarantee the transparent acquisition of genetic resources.

80. The representative of the United States thanked WIPO for its paper on its Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore. The US expressed its support for the convening of, and the consensus outcome from, the first meeting of the Intergovernmental Committee. The US noted that it was pleased that there was a broad consensus for an approach to allow sufficient time to study in an in-depth, serious way the important issues surrounding the relationship between effective intellectual property protection and genetic resources, traditional knowledge, and expressions of folklore. The US noted that these issues have long been considered in the US, and that it looked forward to further exchanges of views and experiences on how best to respect and protect intellectual property, as well as genetic resources, traditional knowledge and folklore. Finally, the US noted its view that the provisions of the TRIPs Agreement and the CBD are compatible, to the degree that they are related at all.

81. The representative of Thailand thanked WIPO for its paper and its efforts on access to genetic resources, benefit sharing, and protection of traditional knowledge and folklore. Those issues were important to Thailand, as it was rich in genetic resources and traditional knowledge. Thailand supported Indonesia's statement that national legislation for the protection of genetic resources may not be sufficient, and that international legislation was needed to protect genetic resources and ensure their sustainable use; collaboration and information exchange between the TRIPs Council, CBD, and WIPO was crucial to ensure their mutual supportiveness.

82. The representative of Japan said his delegation would participate actively in the WIPO Intergovernmental Committee discussions. Japan felt the TRIPs Agreement and the CBD could be implemented non-exclusively. The TRIPs Agreement had been negotiated to ensure a balance between IP holders and users. This should be taken into account in the discussions under Article 27.3(b). Japan's views had been circulated in the TRIPs Council as IP/C/W/236.

83. The observer of UNCTAD recalled the recommendations of the UNCTAD Expert Meeting on the Systems and National Experiences for the Protection of Traditional Knowledge, Innovations and Practices in October 2000, which had been circulated in the TRIPs Council as IP/C/W/230.

84. The Chairman noted the broad ranging discussion and the contributions of WIPO, CBD and UNCTAD, and took note of the situation concerning the request for observer status from the CBD, which, in his own capacity, he would bring to the attention of the Chairmen of the General Council and the TRIPs Council. To ensure compliance and avoid disputes, cooperation between Secretariats was vital. There had been many expressions of the mutual supportive relationship between the TRIPs Agreement and the CBD. This issue had a bearing on the discussions under Item 1. In addition, many delegations had highlighted the need for capacity building and technology transfer in this area.

Other Items

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

85. The observer of UNEP said that UNEP and the German Federal Ministry for Environment, Nature Conservation and Nuclear Safety had co-sponsored a High-Level Meeting on Environment, Sustainable Development and Trade in Berlin, 20-22 March 2001. Ministers and other high-level environment and trade officials from over 70 countries, representatives of intergovernmental organizations including the WTO, UNCTAD and four MEAs, experts and NGOs had discussed the linkages between trade, environment and development, and means to enhance policy coherence. The Chairmen's Summary of this meeting was contained in WT/CTE/W/198. At this meeting, UNEP had been requested to continue its work on enhancing developing country capacity to undertake assessments. UNEP had also been asked to conduct future meetings with a larger representation of trade and foreign affairs officials. UNEP intended to organize a follow-up meeting in late September/early October 2001.

86. Following the Berlin meeting's recommendation, UNEP and UNCTAD had established a Working Group on Economic Instruments for Environmental Policy, which met on 18-19 June 2001, and agreed on its terms of reference and work programme. As part of its work on assessment, UNEP had completed the first edition of a *Reference Manual on Integrated Assessment of Trade-Related Policies*, designed to enable Governments to evaluate the environmental and linked socio-economic effects of trade liberalization. The Manual set out a menu of options for conducting national assessments that could be adapted to meet the needs and policy priorities of each country. The effects of trade-related policies generated by these assessment techniques could then be used to develop packages of policies to maximize the development gains of trade liberalization. The Manual also addressed technical and procedural challenges, such as delimiting the scope and timing of assessments, identification of indicators, which stakeholders to involve, and capacity-building requirements to undertake an assessment. Six country projects on environmental assessment of trade liberalization would shortly be concluded, with the results fed into the UNEP meeting on assessment planned for late September/early October, and published by the end of 2001.

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

87. The representative of Switzerland presented his delegation's paper, WT/CTE/W/192-G/TBT/W/162, which highlighted the different pending issues related to marking and labelling requirements. He noted a correction to paragraph 21, where reference should be made to paragraphs 16 and 17, not paragraph 13. As there was still considerable uncertainty as to whether the TBT Agreement applied to labelling, Switzerland hoped the discussion could contribute to mitigating these legal uncertainties. There were several questions which should be clarified in relation to labelling in light of negotiations under way in agriculture. The scope of the submission was limited to public, not private labelling in the TBT Agreement. The paper also dealt with the concerns of the developing countries on labelling, which related to the multiplicity of national labelling schemes. Switzerland stressed the importance of harmonizing labelling at the international level. The paper also referred to the fear of protectionism. While the TBT Agreement offered means to avoid protectionism, clarification of labelling could contribute further in this respect. Labelling was one element in conformity assessments provided for in Article 5 of the TBT Agreement, an aspect which had not been sufficiently studied. The Swiss paper noted that the distinction between mandatory and voluntary labelling was difficult to carry out in practice; thus, different levels of obligations for these labels could be challenged. It was difficult to distinguish between labelling based on process and production methods (PPMs), which were related to product characteristics, and labelling based on PPMs not linked to the product. The terminology of the TBT Agreement was ambiguous, and it was

difficult to determine if non-product-related PPM-based labels were covered under the TBT Agreement. The Swiss paper asked whether consumer information was a legitimate goal that justified the application of technical regulations. Switzerland proposed to discuss issues relating to labelling requirements under the TBT Agreement to dispel ambiguities, and ensure that labelling was not used for protectionist purposes.

88. The representative of the European Communities said that the Swiss paper noted uncertainties in the relationship between labelling and WTO rules, and reflected the need to clarify WTO rules in this area. There would be increasing recourse to labelling, as reflected in notifications to, and specific cases discussed in, the TBT Committee. Clarification of WTO provisions would reduce the risk of PPMs being abused for protectionist purposes; promote predictable and trade-friendly regulation; reduce trade frictions; and help policy makers design measures which responded to policy concerns, whilst having greater confidence that the measures were compatible with trade rules. The aim of clarification should not be to expand or weaken trade rules, but to define what they allowed. There was scope for clarification, and the issues raised in the Swiss paper were among those that should be examined, for example, on legitimate objectives and how best to avoid unnecessary trade barriers, whether through international standards or other means, and enhancing technical assistance and capacity building. The Swiss paper provided elements for a debate on labelling. As first steps, promoting information on labelling and examining work in other international bodies could be considered. The EC looked forward to returning to this issue.

89. The representative of the Czech Republic welcomed the Swiss submission. The Czech Republic had introduced an eco-labelling scheme in 1995; since then the number of environmentally friendly products of various categories which received eco-labelling had steadily increased. The Czech Republic had recently amended marking and labelling requirements to make them more compatible with those of the European Union. In response to the issues raised in the Swiss paper, the Czech Republic felt the most complex to solve were those relating to requirements based on PPMs. Those issues deserved attention, and the Swiss initiative was a step in the right direction. As some developing countries might have problems with eco-labelling, debate should ensure that marking and labelling requirements were not misused for protectionist purposes.

90. The representative of Canada thanked Switzerland for its paper and looked forward to a future discussion on the issues raised. The Swiss paper mainly referred to TBT disciplines; Canada expected that the TBT Committee would have a substantial discussion of labelling in October. Canada asked what Switzerland felt would be the environmental elements of labelling that could usefully be pursued in the CTE, given that many of the labelling issues raised in the Swiss paper were generic, especially those related to non-product-related process and production methods.

91. The representative of Thailand noted that the Swiss paper was mainly concerned with the provisions of the TBT Agreement, and it even suggested that marking and labelling should be discussed in the TBT Committee. As the CTE was not the right forum to discuss this issue, Thailand would comment on the Swiss paper at the TBT Committee meeting.

92. The representative of Japan welcomed the Swiss contribution, which provided a basis for further discussion. Given the concern of civil society on labelling, Japan supported clarification of the status of labelling within the scope of the TBT Agreement, including the establishment of some guidelines with a view to ensuring transparency. On non product-related PPM labelling, Japan held a cautious approach as to whether such labelling was covered by existing TBT provisions.

93. The representative of Venezuela thanked Switzerland for its paper, which had been sent to his delegation's capital for comment. In principle, Venezuela shared the concerns of others, particularly on the use of eco-labelling as an instrument that distorted trade and hampered market access.

94. The representative of Hong Kong, China, commenting on the Swiss paper, said labelling was expressly mentioned as one of the items on the CTE work programme and his delegation welcomed the Swiss effort to share its views on this complicated issue. Hong Kong, China agreed that further discussion of this subject in the CTE should contribute, as suggested in paragraph 28 of the Swiss paper, to facilitating market access for LDCs and ensuring that marking or labelling requirements were not misused for protectionist purposes or deceptive practices. On the issues raised in the paper, Hong Kong, China's view differed from Switzerland. The distinction between mandatory and voluntary labelling requirements under the TBT Agreement was clear-cut; market access in the WTO context should be separated from market segregation resulting from market demand and market forces. Hong Kong, China accepted that whether a product was allowed to bear a label under a voluntary scheme might affect the perception and choice of consumers. This factor alone did not alter the nature of labelling requirements and did not make labelling mandatory under WTO rules.

95. On marking and labelling based on PPMs, which was always contentious, the three types of marks and labels and their respective bases, set out in paragraph 22, were concise, and reflected, in general, the perception of many Members on the subject. It was important to maintain the distinction, given the different WTO rights and obligations, that each one was now subject to. Hong Kong, China did not see any unmanageable ambiguity therein, and had reservations as to the Swiss proposal to reconsider this division. Doing so would upset the balance of rights and obligations, and have implications for the "like product" concept. On whether and to what extent consumer information was a legitimate objective under Article 2.2 of the TBT Agreement, Hong Kong, China felt this could only be answered on a case-by-case basis, as the list in that Article was indicative, and it may not be worthwhile to tackle the problem in a generic way, or in an abstract and hypothetical manner. A measure taken for legitimate objectives was only one of the requirements of the TBT Agreement. Other safeguards included not creating unnecessary obstacles to trade (Article 2.2) and least trade restrictiveness (Article 2.3). The different Swiss proposals called for careful scrutiny, in that their application and impact went beyond eco-labelling. For instance, unqualified acceptance of the notion of consumer information and non-differentiation of labelling requirements based on product and non-product-related PPMs could easily be turned into justifications for social labelling schemes. The proposed labelling law of Belgium was a case in point.

96. The representative of Malaysia thanked the Swiss delegation for its paper. Malaysia agreed with the statement that labelling requirements were increasingly becoming protectionist and wondered if this was not an issue of compliance with, or application of, the TBT Agreement. While eco-labelling was part of the CTE mandate, Malaysia questioned whether the labelling issue would not be more suitably addressed at the TBT Committee, given that the TBT experts could participate in the discussion.

97. The representative of Norway welcomed the Swiss submission, which raised several difficult questions. As discussions advanced, it would be necessary to determine which issues should be tackled in the CTE, and which in the TBT Committee. Norway agreed with Hong Kong, China that when addressing these issues, the CTE should be as practical and concrete as possible, and not become involved in hypothetical legal discussions. Norway advised that further discussions could take into account the conclusions set out in paragraph 28 of the Swiss paper.

98. The representative of Mexico welcomed the Swiss paper, on which his delegation would comment at the TBT Committee meeting. Mexico asked why Switzerland felt the TBT provisions should be clarified. Mexico felt the TBT provisions were sufficiently clear to cover labelling issues. This was evident in the very definition of a technical regulation in the TBT Agreement. On paragraph 27 of the Swiss paper, as a preliminary comment, Mexico did not see any grounds for developing guidelines to clarify TBT provisions, as they were already clear enough. On paragraph 28, Mexico felt discussion could facilitate market access for developing countries and eliminate protectionist use of these schemes; the TBT Committee should fight protectionism by ensuring strict compliance with TBT provisions. In other words, the issue was a problem of

application, not clarification, of standards. Mexico had concerns about the labelling issues raised in the Swiss paper. While Mexico agreed that the environment was a legitimate objective, the Swiss paper raised generic issues that went beyond environmental issues and the CTE mandate. Mexico agreed with Norway on the desire to avoid a legal discussion. Thus, reference to clarification should be avoided. What was desired was an educational exercise which ensured market access for developing countries and avoided protectionism. Mexico supported the issues raised in paragraph 28 of the Swiss paper in this regard.

99. The representative of Tunisia welcomed the Swiss paper and considered that eco-labelling rules could represent market access barriers to developing countries' exports that could be reinforced in the future, especially as they related to PPMs. Even if eco-labelling were voluntary, the fact that these criteria existed and had to be adhered to entailed enormous costs, which had a bearing on the competitiveness of exports. Another problem for developing countries was their lack of capacity to participate in the preparation at the international level of guidelines for eco-labelling, such as in the ISO, Codex Alimentarius and others, which constituted another barrier for developing countries. Tunisia raised concerns over the development of equivalence. These issues should be kept in mind in further discussions.

100. The representative of the Gambia thanked Switzerland for its submission. Many developing countries were largely dependent on agricultural exports, which were increasingly affected by eco-labels in developed country markets. Developing countries might wish to establish partnerships in order to adapt to these eco-labels, especially in terms of compliance costs. This was an important issue for developing countries, which should be further discussed in the CTE.

101. The representative of the United States thanked Switzerland for its paper. The US echoed the point made by other delegations that the TBT Committee was the body that has the expertise to deal with labelling issues, broadly speaking. Given that the Swiss paper dealt with labelling issues broadly, rather than just eco-labels, the US was glad it had been tabled in the TBT Committee as well as the CTE. As the US is interested in engaging in a discussion of labelling in the TBT Committee, the US delegation tabled in the TBT Committee a paper, G/TBT/WT/165, which provided some observations on bilateral labelling-related issues brought to the attention of the TBT Committee and the CTE over the past five years out of concern for their adverse trade effects. The paper noted that many of these labelling issues suggested the need for Members to abide by TBT rules on transparency and to consider reasonable available options for achieving a legitimate objective. The US saw the focus of the Swiss paper on coverage as missing a most important point - the need for labelling schemes, including eco-labelling schemes, to be developed and implemented in a manner that is consistent with the disciplines of the TBT Agreement on transparency, non-discriminatory treatment, and not creating unnecessary obstacles to trade. Trade problems that had arisen on labelling issues were problems in implementation of TBT obligations, in particular on transparency. The US was not convinced that the ambiguity that some – but not the US – saw with respect to coverage, or with respect to the distinction between voluntary standards and mandatory technical regulations, warranted clarification or renegotiation of TBT obligations.

102. The representative of Chile thanked Switzerland for its submission, as it believed that exchanges of opinion were useful. However, Chile had similar concerns to those raised by Canada, Thailand and Mexico. It was necessary to identify the value added by the CTE to the discussion on this subject in the TBT Committee, in order to avoid duplicating work. Thus, Chile would comment on the Swiss paper in detail in the TBT Committee. Referring to the points made in paragraph 28 on the need for discussion to facilitate market access for developing country exports, it was necessary to ensure that marking and labelling were not misused for protectionist purposes or deceptive practices. However, paragraph 10 noted that, according to the TBT Agreement, regulatory or standardizing bodies were obliged to ensure that technical regulations or standards were not prepared, adopted or applied with the effect of creating unnecessary obstacles to trade. The TBT Agreement thus already provided strong instruments against protectionism. Thus, Chile felt it was not necessary to clarify

further to avoid protectionism. It was sufficient for Members to comply with the TBT Agreement; there was no ambiguity in the TBT provisions.

103. The representative of Colombia welcomed the Swiss paper and agreed that the question of labelling should be discussed and its role as a protectionist instrument considered. Labelling had been used as a protectionist instrument in the past. Colombia recalled its national experience paper in the CTE on flower labelling, and the development of a code of conduct for certifying agencies that would hopefully put an end to certain bad practices. Colombia felt this was an issue that related to the TBT Agreement; protectionist use of labelling went beyond eco-labelling into the field of implementation of the TBT provisions. The appropriate forum to discuss non-compliance with the TBT Agreement was the TBT Committee, in which broader discussions could be held.

104. The representative of Indonesia thanked Switzerland for its submission, and agreed with Thailand and others that labelling was best discussed in the TBT Committee. For the purpose of CTE discussion, Indonesia presented some general remarks. Indonesia recognized the rights of Members to regulate and determine marking or labelling in their own territory for their products. Once it affected imported products, the issue had to be treated with care. The WTO would then have a role to play in regulating and ensuring that labelling was not used for protectionist purposes. As noted by Tunisia and the Gambia, this issue affected developing country exports. Developing countries usually had great weakness in this area. They could not improve the way to produce their products, because of lack of capacity and ability. The best way to approach this issue was to enhance technical assistance and capacity building to developing countries. Moreover, it was widely recognized that countries had different levels of development and different ways of achieving environment objectives according to the principle of common and differentiated responsibility. Those aspects should be considered in further discussions.

105. The representative of Guatemala thanked Switzerland for its paper, although his delegation was not convinced that the CTE was the appropriate forum for its discussion. Labelling issues should be discussed in the TBT Committee so that the same matters were not discussed in different WTO Bodies. This would make discussions more difficult in the TBT Committee. Guatemala would be pleased to carry out an educational exercise, as noted by Mexico, but not in the CTE.

106. The observer of China welcomed the Swiss paper. As marking and labelling was becoming increasingly widespread, China was concerned about the multiplicity of labelling in different countries and regions. As such, it was important to coordinate or harmonize different labelling requirements to facilitate trade and avoid protectionism. In this context, mutual recognition of eco-labelling schemes was important.

107. The Chairman said that the Swiss contribution had led to an extensive discussion on labelling. While some delegations wished to return to this subject, the fact that the TBT Committee was discussing generic labelling issues had to be considered. Reference had also been made to the importance of labelling work of other organizations. It had been noted that future CTE discussions should focus on eco-labelling. The discussions had stressed the need to avoid protectionism, although there were differences of view as to whether this would entail a clarification of the TBT Agreement, or whether it was an issue of implementation of TBT provisions.

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

108. The Chairman noted that the Environmental Database for 2000, which compiled the environment-related WTO notifications, had been circulated as WT/CTE/W/195.

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

Sectoral analysis

Fisheries

109. The observer of Thailand welcomed the update of work in other intergovernmental fora on fisheries subsidies, WT/CTE/W/167/Add.1, and encouraged cooperation between the WTO and other international organizations. Thailand also appreciated the update of the fisheries subsidy notifications under Article 25 of the Agreement on Subsidies and Countervailing Measures (SCM), WT/CTE/W/80/Add.2, and noted that more than half the subsidies notified were aimed at the harvesting sector. Thailand asked the Secretariat to continue to update information on this issue. Thailand also thanked the FAO Secretariat for updating its fisheries-related activities. In the report of the FAO Expert Consultation on Economic Incentives and Responsible Fisheries, WT/CTE/W/189, it seemed that all fisheries subsidies, except for factor reductions, science and fisheries management and a few other measures, had negative effects on fisheries resource sustainability. Thus, Thailand urged the FAO Committee on Fisheries to continue work in this area, especially to determine the quantitative and qualitative effects of subsidies on trade in fish and fish products and sustainability.

110. The representative of Iceland welcomed the update of work in other intergovernmental fora on fisheries and trade, WT/CTE/W/167/Add.1, which illustrated the growing concern on the use of fisheries subsidies. These efforts were of high importance, bearing in mind the efforts to put the issue of the fisheries subsidies on the agenda of a new round of multilateral trade negotiations. If that succeeded, efforts to analyse this issue would be accelerated. Noting that APEC work was of particular interest, Iceland drew attention to the findings, set out in paragraph 19 of WT/CTE/W/167/Add.1, that "regrettably, even subsidies designed to enhance fish stocks, or vessel buy-back programmes designed to constrain fishing efforts, all of which are intended to be positive for fisheries sustainability, cannot be guaranteed to have precisely the intended positive effect." This was an interesting problem that was attracting increased attention by experts and policy-makers. This issue had been raised recently in the OECD Joint Session of Trade and Environment Experts concerning the polluter pays principle (PPP). He asked whether it was possible that subsidies intended to improve the environment and sustainability could have harmful effects, for example, subsidies to decommission fishing vessels, particularly on the high seas. The result could be that the remaining fishing fleets increased their capacity, which was harmful for fish stock sustainability and for trade, as subsidized fish competed in the market with unsubsidized fish. Thus, the PPP rules applied to fisheries in a reversed manner. Although the fishing fleets were not polluting, they were overfishing and undermining fish stock sustainability. The OECD intended to further study this issue.

111. The OECD May Ministerial Meeting had decided to further analyse fisheries subsidies. The Ministerial communiqué stated: "Fisheries policies have to address the relation between sustainable management of resources and trade liberalisation, the causes of unsustainable fishing, and the need to avoid those subsidies that are harmful, to be further analysed by the OECD based on its recent study, *Transition to Responsible Fisheries*. This study was a valuable contribution and we look to OECD, in cooperation with the FAO and other international organization, to deepen its analysis in these fields to inform policy development." In an effort to implement this decision, the next meeting of the OECD Fisheries Committee in October 2001 would be devoted to discussing how to proceed on that matter.

112. Iceland appreciated the FAO report of its Expert Consultation, discussed at the COFI meeting in February 2001, WT/CTE/W/189. Although the report raised more questions than it answered, it had improved understanding of the complex issue of subsidies in the fisheries sector. Moreover, the report provided directions for further analysis on the nature and implications of fisheries subsidies. In an attempt to draw pragmatic conclusions from the report, Iceland identified items of importance.

The report confirmed the widespread agreement among experts that fisheries subsidies tended to lead to increased fishing efforts under many, if not most, real-world fisheries management regimes. The experts also confirmed that subsidies had an effect on trade whenever they had an impact on the volume of fisheries products moving across international frontiers and/or on the prices at which those products were traded. Finally, the analysis lent support to the view of many countries, including Iceland, that the existing WTO subsidies regime left much to be desired when it came to fisheries subsidies. Thus, it was interesting to learn that the definition and identification of subsidies, as reflected in the provisions of the SCM Agreement, particularly Article 1, only corresponded to one of the four sets of subsidies identified by the FAO experts. It was regrettable that the experts had not provided empirical data to substantiate their findings. Some of the conceptual work would also need clarification; for example, the classification of "absence or lack of interventions" by Governments.

113. There was a lack of factual and accurate assessments of the nature and extent of fisheries subsidies world-wide and of their exact implications for trade and resource sustainability. Part of the problem had been the lack of consensus about the appropriate method for such an assessment. The report of the Expert Consultation contributed to resolving that matter. The experts correctly pointed out that a distinction must be made between the conceptual exercise of defining the term "subsidies" and the analysis of the concrete impacts of fisheries subsidies in the real world. Iceland was not concerned about the intellectual exercise, but about identifying those government transfers that promoted excessive levels of fishing effort and harvesting capacity, and that distorted prices and trade, as well as distinguishing such transfers from government transfers to promote sustainability. The FAO had a key role to play in gathering and analysing technical information on fisheries subsidies. The Expert Consultation had gone a long way towards establishing a common technical basis for discussion. At the COFI meeting, it had been agreed that a second expert consultation would be held in 2002 and evaluated at the COFI meeting in 2003.

114. The representative of Australia recalled his delegation's statement under Item 1 on the importance of the WTO membership being able to recognize, and agree on, an expression of the capacity of the WTO to contribute to sustainable development in the context of MEA-WTO interaction. The same considerations applied equally under this Item, and, depending on developments in the next couple of months, might be an important item to act upon at Doha. If there were to be balance overall on trade and environment at Doha, weight had to be placed on this Item. This Item was important in showing that market access could, and should, also have a clear "green" dimension. It was an opportunity to show that economic and environmental reform were not separate, and if they were pursued as complements to each other, provided the best chance of reaching sustainable global development. As a member of the informal "Friends of Fish" group, and a long-standing supporter of "brown" subsidy reform, Australia considered it important that the WTO did its utmost to contribute to improving global fisheries sustainability. It was not contested that this was one of the more serious issues facing the global community and that extensive subsidy payments did feature in this sector, particularly in Northern Hemisphere developed countries.

115. The papers prepared by the Secretariat and the FAO showed the seriousness with which a variety of international organizations were pursuing these issues. This was appropriate given the overfished or recovering status of many of the world's fisheries, particularly Northern Hemisphere fisheries. This was in keeping with the crisis in many fisheries. They also noted that there was some uncertainty about the exact link between subsidies and fisheries sustainability. This was not surprising, given the economic and environmental complexities involved, but could not be an argument for delaying WTO work. Delaying work was irresponsible and flew in the face of an integrated international approach to making trade and environment mutually supportive. On the contrary, Australia asked where better than the WTO to examine the question of how the WTO could contribute to reducing and eliminating those subsidies promoting over-fishing and over-capacity. This work could be pursued simultaneously with other international work on subsidies and sustainability, including subsidies for fishing industry services and infrastructure development.

116. The fishing subsidies issue had also attracted significant public attention, due to fish depletion in national waters and in the global commons. It was vital that the WTO addressed this issue in a positive way so that its contribution to sustainable development could be understood and acknowledged. Fisheries was also important as a prime example of a key natural resource sector where subsidies, which are predominately applied by developed countries, along with other trade impacting distortions such as tariff escalation and tariff peaks, operated as a negative factor in sustainable development. This was of particular interest to poorer countries, many of which relied on fisheries for protein, economic activity and export earnings. These issues needed to be broadly addressed, so that the WTO could be identified as part of the solution to serious sustainability problems in those sectors.

117. The representative of Mexico said that the worst enemy of the environment was not trade, but poverty. Mexico felt it was crucial to work towards removing distortions from trade, so that trade could offer a genuine improvement for developing countries. In many cases, developing countries depended on fisheries trade, and the distortions generated by developed countries prevented market access for their fisheries products. There was also a clear linkage between free trade and environmental improvement. Disciplining fisheries subsidies was one of the clearest examples of the need for measures to be developed in MEAs. Mexico felt MEAs should be examining these measures rather than negotiating trade sanctions. Subsidies represented a specific, clear-cut example of the links between trade and environment. Removing trade restrictions and distortions would be of economic benefit to developing countries, as well as enhance the environment.

118. The representative of Japan said that the common ground between countries proposing discussions under fisheries subsidies in the WTO and Japan's position was the importance attached to the sustainable utilization of fisheries resources. The issue of fisheries subsidies should be seen in such a perspective. When discussing the depletion of fisheries stocks, there were many important issues aside from the effects of subsidies such as illegal fishing, illegal, unreported and unregulated (IUU) fishing, and resources management, which affected fisheries sustainability. While some subsidies could be environmentally harmful, some subsidies could be environmentally friendly. Thus, a holistic approach should be taken to address this issue. Japan felt that Members selected those points that were in favour of their perspective. For example, Iceland noted that, in most cases, fisheries subsidies had an adverse impact on fisheries resources. However, there were several paragraphs in the FAO Report, WT/CTE/W/189, that seemed contradictory on this issue. One paragraph noted that, if appropriately managed, fisheries subsidies had no adverse effects on fish resources. Then, another paragraph said that in the real world, fishery subsidies tended to increase fishing effort. However, the next sentence said there was no direct, empirical evidence indicating this point. So it was not difficult to extract different conclusions from the FAO Report. Japan supported the convening of a second expert consultation as soon as possible.

119. Japan noted that the results of the APEC study on fisheries subsidies had been updated in WT/CTE/W/167/Add.1 to reflect the finalized version. The important difference between these versions was that the previous one had concluded that about two-thirds of fisheries subsidies in the APEC region were "bad", whereas the final version concluded that the effect of fisheries subsidies could not be separated from fisheries management. This was an important point, which was in line with Japan's statements in the CTE. Iceland had also noted that subsidies that were intended to be "good" were not necessarily so if they were misused. For example, if a vessel buy-back subsidy were used incorrectly, it might have negative effects, and if a subsidy for vessel construction were used appropriately, it might have positive effects, or vice versa. Therefore, it was not possible to look at subsidies outside the larger framework of fisheries management.

120. Japan recalled that the OECD was conducting a study on trade liberalization. At the last meeting of the Committee on Fisheries, Japan had provided a paper on the negative effects of flags of convenience, an issue which his delegation would pursue at the OECD. There had also been a paper by Dr. Hannesson, referred to in WT/CTE/W/167/Add.1, which noted that where management was

bad, subsidies and trade, investment and services liberalization could have negative effects on fisheries resources. It would be irrational to pick up only subsidies and ignore other elements that could negatively affect fisheries resources. Thus, Japan had problems with focusing on subsidies as one of the items of the Doha Ministerial. Although this issue would continue to be discussed in other fora, at this stage, Japan did not support the discussions in the WTO.

121. The representative of New Zealand said that when the FAO Report of the Expert Consultations on Economic Incentive and Responsible Fisheries, WT/CTE/W/189, had been presented at the 24th Session of the FAO Committee on Fisheries, several FAO Members had expressed reservations on it, reflected in the report of the meeting. Some Members, including New Zealand, felt that the Expert Consultation had raised more questions than answers and that further work was needed, particularly on the technical information on subsidies and their effect. On the update of SCM notifications in WT/CTE/W/80/Add.2, New Zealand found that WT/CTE/W/80/Add.2 confirmed the range of subsidies in the fisheries sector that had been notified under SCM Agreement. New Zealand asked that this information be provided on a regular basis. New Zealand also welcomed WT/CTE/W/167/Add.1, which surveyed work on sustainable fisheries management in international fora, especially with respect to subsidies, such as in APEC, FAO, the OECD and UNEP. The key conclusion New Zealand drew from this material was that available information on fisheries subsidies was inadequate. There was a clear need for detailed work to establish the true nature and scale of subsidies, which were delivered on a large scale; however, there was a major problem of transparency of specific programmes. This issue was important for the CTE because fisheries trade was a substantial component of global trade (in excess of US$50 billion per annum according to FAO figures); transfers and subsidies accounted for a conspicuously large share of fishing industry revenues; there was good reason to believe that these transfers, along with large scale market access barriers on fisheries products, contributed to making fisheries one of the sectors where trade distortions were most extreme; and those distortions had a particularly heavy impact on developing countries. Yet, there was still a lack of information of the accuracy needed to consider whether work was needed on WTO disciplines in relation to fisheries, particularly subsidies. New Zealand felt that the issue of subsidies in the fisheries sector should be on the Doha agenda for decision by Ministers.

122. The representative of Peru welcomed the update of fisheries work, WT/CTE/W/167, and the FAO Report, WT/CTE/W/189. In general, Peru agreed with Iceland, Australia, New Zealand, and Mexico, and felt it was necessary to give shape to the proposal to eliminating fisheries subsidies which contributed to over-capacity and over-fishing with adverse impact on sustainable trade and the environment. Peru noted that some Members who proposed clarifying and strengthening certain provisions of WTO agreements in order to allow for greater flexibility in implementing trade measures to protect the environment, were on the other hand reticent to adopt measures in the fisheries sector which reflected a clear "win-win-win." Eliminating damaging fisheries subsidies would contribute to sustainable development, international trade without distortions, and environmental protection. Peru reiterated the importance of adopting a work programme to address this issue as soon as possible.

123. The representative of Korea thanked APEC, FAO, OECD and UNEP for their contribution to WTO work on the sustainable use of fisheries resources. On the relationship between subsidies and fisheries sustainability, Korea recalled that the UNEP Workshop on Fisheries Subsidies in February 2001 had provided an opportunity for open dialogue on the complexities of this issue. Korea stressed that simply applying macroeconomic analysis in terms of costs and revenues to the fisheries subsidies issues would fall short of the clarity required to define the issues involved. Korea recalled its paper, WT/CTE/W/175, which was an attempt to share Korea's experience with environmentally friendly subsidies that promoted fisheries resource sustainability. Korea was pleased to note that the recent APEC study had found that the fisheries sector was developing in favour of sustainability. The FAO Report of the Expert Consultations on economic incentives and responsible fisheries, WT/CTE/W/189, also stated that subsidies did not inevitably contribute to resource

depletion and that their effects would depend on the extent to which fishing effort was controlled. Korea believed that it was critical to address the critical aspects, such as ensuring a sound framework for sustainable fisheries management at the national, regional and global levels. The FAO Report suggested that the kind of subsidies of concern in relation to their trade impacts did not seem to be highly prevalent in the fisheries sector. Korea welcomed the FAO intention to hold a second expert consultation in 2002 and hoped that FAO work would continue to provide material upon which to base discussions that might lead to the formulation of a definition of fisheries subsidies.

124. The representative of Chile said that Chile was a country with more than five thousand miles of coastline, in which fisheries represented an important element not only of exports, but GDP. Chile had an efficient industry without subsidies and a modern fishing fleet. However, the exploitation of Chile's fishing stocks and the distortions created by the subsidies paid by other countries caused serious problems. Chile agreed with Japan that there were other issues that also affected the fisheries sector, such as IUU fishing or the lack of adequate management regimes, but the responsibility for the subsidies aspects kept being thrown from one side to the other. The different initiatives under way in international fora, such as the UNEP Workshop and the FAO Expert Consultations were vital in stimulating discussion and had led to a greater understanding of the problem. However, the fisheries subsidies issue never seemed to be tackled directly. Concrete action was needed. The role of the FAO was recognized. However, subsidies were the exclusive competence of the WTO. Chile agreed that some subsidies might result in environmental benefits, but others distorted trade and impacted negatively upon sustainable development. As even environmental-friendly subsidies could detract from the "win-win-win" equation, Chile wondered whether they were really justified.

125. The representative of the European Communities welcomed the papers submitted by the Secretariat on other organizations' work and on SCM notifications, noting that the EC continued to be the most diligent in complying with the obligation to notify subsidies. He also thanked UNEP for the Chairman's summary of its fisheries subsidies workshop in WT/CTE/W/187 and the FAO report in WT/CTE/W/189. As in the past, the EC delegation considered the FAO to be the principal forum for discussions on fisheries and the various aspects of its management. As a point of information, the EC was aware of the risks of overfishing and excess capacity regarding sustainable development. The EC was currently examining its own fisheries management framework. This process of reflection was orientated by a recent Commission's Green Paper on the future of the Common Fisheries Policy in the EC, available at http://europa.eu.int/comm/fisheries/greenpaper/green1_en.htm. Proposals to change the EC fisheries policy were expected following the public debate next year.

126. The representative of Norway said his delegation supported the idea of making fisheries subsidies part of the next Round of WTO negotiations, which had been Norway's view at the Seattle Ministerial Conference. Strengthening the SCM Agreement should aim at building an efficient way to reduce and eliminate certain subsidies. Norway recalled that this issue had been included in the CTE agenda because of the potential "win-win-win" outcomes. Norway recognized that the link between the trade and environmental aspects of this issue was obvious; hence, the reason for CTE discussions on this issue. Norway acknowledged the important role of FAO concerning fisheries resource management. From previous discussions, Norway understood that it was possible to find "good" subsidies in terms of their environmental impact as well as subsidies that had a "bad" impact. As a result, Norway proposed to examine the different types of subsidies and their impact on trade and the environment.

127. The representative of the United States thanked the WTO Secretariat and the FAO and said that the updates of recent work in other international fora and on WTO subsidy notifications in the fish sector were valuable in building a baseline of knowledge of the issues surrounding fish subsidies. The US supported the suggestion that the Secretariat continue to update the CTE in order to keep abreast of latest developments in this area. The US noted its view that the depleted state of the world's fisheries had become a major economic and environmental concern. Subsidies that contribute to over-capacity, or over-fishing, or that had other trade distorting effects, are a significant part of the

problem and should be addressed in the WTO. The fish subsidies initiative is a "win-win-win" that advanced trade liberalization, environmental protection, and development goals at the same time and in a concrete way. In looking towards Doha, the US sees the fish subsidies initiative as presenting a golden opportunity to demonstrate to the outside world that the WTO can advance its trade agenda in a way that is good for the environment and for developing country interests. The US, therefore, strongly supports WTO work in this area to develop disciplines on harmful fisheries subsidies. The US did not disagree with those delegations that suggested there was a need to consider the role of effective fisheries management. The US did not agree, however, that this was a reason not to tackle fish subsidies in the WTO, given that subsidies are within its competence. The US noted that the UN Fish Stocks Agreement and the FAO Compliance Agreement are aimed at achieving sustainable use of straddling and highly migratory fish stocks on the high seas, which are among the most significant fisheries entering world trade. The US noted that the two States that had highlighted the importance of effective fisheries management regimes had yet to ratify the UN Fish Stocks Agreement. Only two more ratifications were needed for the UN Fish Stocks Agreement to enter into force, and four ratifications for the FAO Compliance Agreement.

128. The representative of Malaysia said her delegation recognized the importance of the sustainability of fishing practices from the trade and environmental perspective, but also from the development dimension. Several organizations, including the FAO, had undertaken studies on fisheries subsidies. From WT/CTE/W/167/Add.1, Malaysia noted the conclusion of the APEC study that subsidies to expand fishing efforts might turn out to be compatible with sustainability provided a point of maximum sustainable yield had not been reached. This meant that there was scope for the development perspective to be further incorporated. The proposal to give impetus to WTO work on fish subsidies could improve the understanding of the nature of fisheries subsidies and their impact on trade, development, as well as environment. Efforts in the WTO should not neglect work being undertaken in other international fora.

129. The representative of Indonesia thanked the WTO and FAO Secretariats for their relevant and useful paper to improve his delegation's understanding on the issue. Papers issued by various international organizations had demonstrated serious issues of the impact of fisheries subsidies. He said removing fisheries subsidies would represent a gain to all Members and provide "win-win-win" situations for trade, environment and development. The WTO had a major role to play in disciplining fisheries subsidies, which contributed to over-capacity and over-fishing, while not denying that other international organizations also had a role. From a developing country perspective, the elimination of fisheries subsidies would improve the competitiveness of Indonesia's exports. Most developing countries could not afford to provide subsidies to their fishermen, while developed countries, as noted by Australia, had the capacity to provide large subsidies. Therefore, it was difficult for developing countries to compete with subsidized products and ensure market access for their fisheries products.

130. The observer of UNEP said that following the UNEP technical workshop on fisheries subsidies in February 2001, the workshop paper, *Fisheries Subsidies and Overfishing: Toward a Structured Discussion*, had been revised to reflect comments from the workshop and would be published under the UNEP *Trade and Environment* series. Reports of the two case studies presented at the workshop on fisheries subsidies and sustainable development in Senegal and Argentina would also be published. The Chairman's summary of the workshop was contained in WT/CTE/W/187. As agreed at the 24th FAO Committee on Fisheries, an ad hoc FAO Meeting with Intergovernmental Organizations on Fisheries Subsidies was held in May 2001. Challenges and possible ways forward through further collaboration were identified, as follows: conducting country specific studies; holding a workshop on fisheries subsidies; establishing a data bank of information on subsidies; and preparing the second expert consultation on fisheries subsidies. UNEP was undertaking two new case studies on fisheries subsidies and was exploring possibilities for holding a technical workshop in early 2002, in collaboration with the FAO, OECD and other relevant organizations.

131. The observer of the FAO noted that the FAO Fisheries Department had provided information on its work on fisheries subsidies at every CTE meeting since October 1999. The Report of the FAO Expert Consultation on Economic Incentives and Responsible Fisheries had been reviewed by Members at the 24th Session of the Committee for Fisheries, 26 February - 2 March 2001. The recommendations of COFI and the Report of the Expert Consultation were contained in WT/CTE/W/189. COFI agreed that future FAO work on fisheries subsidies should build on past efforts and work towards determining the quantitative and qualitative effects of subsidies on trade in fish and fish products and sustainability of fishery resources. The study of the trade aspect should be technical and be coordinated with the WTO, as the competent trade body. COFI agreed that the FAO organize a second Expert Consultation, and that substantial preparatory work, including an inventory of efforts, first be carried out. The second Expert Consultation would be comprised of a wider range of experts, having relevant practical and multidisciplinary experience in fisheries management and trade issues, and reflecting a regional and topical balance of the issues. Governments would be consulted in the selection of the experts. The Expert Consultation was scheduled to take place in the second half of 2002. It was agreed that the Expert Consultation be followed by a Government Technical Consultation, partly as a means of quickly disseminating information.

132. COFI had agreed that FAO work be coordinated with, and complementary to, work in other relevant organizations, and had recommended that the FAO should take a leading role in the promotion of cooperation on fisheries subsidies and the relationship with responsible fisheries. In this regard, the FAO Fisheries Department had organized an ad hoc Meeting of Intergovernmental Organizations on Work Programmes Related to Fisheries Subsidies, 21-22 May 2001, with the participation of the FAO, UNEP, WTO, OECD and SADC. Discussion included two main issues: discussion of fisheries work in the participating organizations, and challenges and possible ways forward/issues for the future. While noting that inter-agency collaboration had been going on for some time, the meeting identified several further opportunities for collaboration. The meeting also identified actions for intergovernmental organizations and governments respectively.

133. Concerning actions by intergovernmental organizations, it was agreed that the organizations concerned would keep each other informed of future country studies to collaborate in their planning and use of results. The second opportunity for collaboration was in the planning and execution of a workshop on fisheries subsidies to be hosted by UNEP in early 2002. A third opportunity for collaboration lay in establishing a data bank on subsidies information in the FAO. This information could be made available on the Internet. A fourth opportunity for collaboration was the preparation for the second FAO expert consultation in the second half of 2002. Organizations present agreed to provide advice on methodologies to be used in case studies on the effects of subsidies on producers, and in peer-reviewing case studies. A major challenge was to develop a common methodology. It was also suggested that an important mechanism for assuring inter-agency cooperation on fisheries subsidies was to hold regular coordination meetings.

134. Concerning action by individual organizations, it was suggested that present knowledge about subsidies - their magnitude, nature and effects - be made available to policy makers who were neither fishery specialists, nor economists. It was recommended that the FAO produce a document for the second expert consultation based on experiences of other intergovernmental organizations. Concerning action by governments, the meeting considered what should be done to speed up work to clarify the role of subsidies, as a prerequisite for any future arrangement on how to deal with them. It was highlighted that information was available, though not always in a transparent form. Unless this information was readily shared with intergovernmental organizations, progress would be slow. The point was made that progress could be enhanced through better coordination at the national level among the national agencies and ministries. It was essential that progress on these issues be made with a view to enhancing transparency and clarity in policy formulation.

Energy

135. The representative of Venezuela commented on the request to the Secretariat to update the energy section of WT/CTE/W/67. Venezuela suggested that this update include studies carried out by the Massachusetts Institute of Technology and OPEC on the environmental effects of eliminating trade distortions and restrictions in the energy sector. It was crucial to associate eliminating trade restrictions and distortions with sustainable development, a concept which was enshrined in the preamble to the WTO Agreement. On paragraph 7 of the EC proposal on energy, WT/CTE/W/185, while some of the factors which had an effect on the final energy price could have distorting effects on trade and environment, there were additional socio-economic factors that weighed heavily on developing countries. Venezuela asked that the update include a section on the methodology used to internalize environmental externalities, as well as the need for technology and financial transfers to facilitate developing country responses to the challenges faced in the energy sector. Venezuela stressed the usefulness of reflections on these issues, keeping in mind negotiations under way in the UN Framework Convention on Climate Change and the Kyoto Protocol.

136. The observer of UNEP said that UNEP and the International Energy Agency (IEA) had recognized the potential contribution of energy subsidy reform to sustainable development and had jointly engaged in work on energy subsidy reform and sustainable development. Four regional workshops had been conducted, focusing on OECD countries and economies in transition; Africa; Asia; and Latin America. The aim of these workshops was to improve the understanding of social, economic and environmental effects of energy subsidies and their reform and to provide a platform for representatives from governments, research institutes, NGOs and industry to discuss the benefits and challenges of energy subsidy reform. The key issues, policy options and recommendations resulting from the first three of these workshops had been reported at the February CTE meeting. Since then, the concluding Latin American workshop had taken place in Santiago, Chile on 27-28 March, and a UNEP/IEA side event had delivered the results of the workshop series at the 9th session of the UN Commission on Sustainable Development in April 2001. Major elements of the analysis included the detrimental effects of subsidies: traditional energy subsidies often failed to achieve their underlying social and economic objectives, represented a large drain on national budgets, and often had detrimental environmental effects. By artificially reducing energy prices, they often created disincentives for investing in energy efficiency and renewable energy solutions.

137. There was also a need for subsidy reform. Under certain conditions, nevertheless, energy subsidies could serve environmental and social goals. This was especially the case for subsidies to research and development and for infant industries, as well as those ensuring access to energy services for the poor. Subsidies needed to be targeted, time restricted, based on accurate cost-benefit analysis, practical and transparent. Hence, reform rather than removal of energy subsidy systems was generally required, and should be part of overall energy policy reforms. Reforms needed to be implemented gradually to alleviate socio-economic impacts on beneficiaries, and to give them time to adjust their energy consumption patterns. The adverse impacts of subsidy reform on the welfare of specific social groups could be offset by compensating measures that supported their real incomes in more direct ways. Effective communication of the overall benefits of energy subsidy reform for the economy and society was essential to counter political inertia on this issue. Further steps suggested by participants of the workshops included transmitting results of the workshops to key government delegates; preparing a list of policy options to help governments identify country specific opportunities for reform; increasing awareness and encouraging involvement of a wider range of stakeholders to better design reform processes; increasing analysis on how to target subsidies and improve their design; and promoting coordination between relevant national ministries (environment, energy, economics). An overall synthesis of the outcomes of the workshops is available at http://www.unep.ch/etu.

138. The representative of the United States confirmed with the Secretariat her delegation's understanding that the update of the energy section of WT/CTE/W/67 would be done based on the structure of the original paper.

139. The observer of the UN Framework Convention on Climate Change noted that energy subsidies were addressed under the UNFCCC. Under Article 2 of the Kyoto Protocol, developed country Parties were required to implement policies, such as progressive reductions or phasing-out of market distortions, physical incentives, tax and duty exemptions and subsidies, in all greenhouse gas emitting sectors that ran counter to the objectives of the Convention and the application of the market instruments that had been developed therein.

140. The Secretariat noted that the intention was to provide an update of the energy section of WT/CTE/W/67, as it was structured in the original document.

Agriculture

141. The representative of Argentina requested that her delegation's submission on legitimate non-trade concerns in agriculture be included under Item 6 of the agenda of the October meeting.

Forestry

142. The representative of Cameroon noted the importance of technology and financial transfers, and capacity building to developing countries. Cameroon had one of the most important forested areas of the Congo basin; sustainable development of this area was essential. Sustainable forest management should take into consideration that forests were a natural resource which countries needed to guarantee their socio-economic development, whilst at the same time protecting the environment. Cameroon thanked UNEP for the assistance provided, which had enabled Cameroon to participate in the CTE and the UNEP meeting. This type of assistance would improve his delegation's capacity to ensure sustainable development.

143. The observer of UNCTAD said that an Expert Meeting on Ways to Enhance the Production and Export Capacity of Developing Countries of Agricultural and Food Products, including niche products such as environmentally preferable products on 16-18 July, including the export opportunities for organic products. Also, in response to the mandate on reducing vulnerability and protection the environment following the LDC III Conference in Brussels, UNEP and UNCTAD had decided to launch a special programme for LDCs within their joint Capacity Building Task Force on Trade, Environment and Development. This would consist of TrainforTrade courses and field projects at the national and regional levels, including in Burkina Faso in July 2001, in October 2001 in Angola, in Cambodia/Lao, and in Tanzania. The South Pacific Forum Secretariat had also agreed to organize a seminar on biodiversity and traditional knowledge at the end of 2001.

Other Business

144. The Chairman called attention to the fact that the Secretariat had been informed about the possibility of a request for input to the preparations of the World Summit on Sustainable Development (WSSD) to be held in Johannesburg in September 2002. Preliminary views were expressed on this matter. It was generally felt that this issue could be further considered after a formal invitation from the WSSD had been received and circulated. The Chairman noted that one possibility would be for the Secretariat, on its own responsibility, to prepare a factual report at the appropriate stage, as had been done for the UN Conference on Environment and Development in Rio in 1992, and that the CTE could return to this issue at a later stage.

**ANNEX**

**MEA INFORMATION SESSION**
**27 June 2001**

**Compliance and Dispute Settlement**

A. OPENING STATEMENT

1. The United Nations Environment Programme (UNEP) introduced the background paper on compliance and dispute settlement in the WTO and in MEAs, which had been prepared jointly by the WTO and UNEP Secretariats, in close cooperation with the MEA Secretariats (WT/CTE/W/191). UNEP thanked the WTO and the MEA Secretariats for their participation at the back-to-back UNEP meeting on Compliance, Enforcement and Dispute Settlement in MEAs and the WTO on 26 June.

2. A diverse range of MEAs existed due to the variety of environmental problems addressed. MEAs focused on assisting compliance and avoiding disputes. This was in contrast to the WTO where there was a stronger focus on dispute settlement. Dispute settlement provisions in MEAs followed a progression through negotiation, good offices, mediation, conciliation, arbitration and judicial settlement, with the latter two being last resorts. In the case of MEAs, some of which were long-standing, there had been no formal judicial settlement even though MEAs contained provisions in this respect. This reflected the nature of MEAs and the global environmental problems which they sought to address and which required broad cooperation to solve. Most MEAs had formal bodies, such as Implementation or Conciliation Committees or Commissions with a role in assisting compliance and avoiding disputes. Information on the specific regimes was set out in WT/CTE/W/191. Where trade measures were used in MEAs, they were mediated by a multilateral process. For example, in CITES, suspension of trade required consensus or a two-thirds majority of the Conference of the Parties (COP), and rarely had been used in the thirty-year history of CITES.

3. Compliance mechanisms in many MEAs were in the process of being developed, for example in the Basel, Climate Change and Biological Diversity Conventions, and the Kyoto and Cartagena Protocols. In their focus on assisting compliance, MEAs used a range of technical and financial assistance and capacity building to address multilateral environmental problems in a cooperative and facilitative manner. Non-compliance was often the result of an inability to comply, as opposed to wilful violation. This understanding underpinned mechanisms such as the Multilateral Fund for the Montreal Protocol and the Global Environment Facility (GEF), which between them had distributed US$1.4 billion in the last decade to reduce production and use of ozone-depleting substances.

4. The UNEP meeting on Compliance, Enforcement and Dispute Settlement in MEAs and the WTO on 26 June was intended to stimulate a constructive, open and informal dialogue between trade and environment officials, intergovernmental organizations and civil society. The back-to-back UNEP-WTO meetings on compliance and dispute settlement were proceeded by coordination meetings between UNEP, the WTO and MEAs. The Chairman's summary was contained in WT/CTE/W/199, which included potential next steps, such as enhanced joint UNEP-WTO-MEA capacity building activities related to compliance and dispute settlement so as to build synergies and enhance implementation of both sets of agreements.

B. PRESENTATIONS

**1. The UN Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol**

5. The UNFCCC Secretariat said the joint WTO-UNEP paper on compliance and dispute settlement provided a good basis for discussion, and that the collaboration between the WTO, UNEP

and MEA Secretariats had been useful. This cooperation should continue, and be further strengthened. Her presentation focused on the development of the compliance regime under the Kyoto Protocol. The first part was an overview of the Kyoto Protocol. The second part set out the policy instruments employed by the Protocol to induce compliance, and the final section described the Protocol's comprehensive compliance regime. As the political debate on the Protocol was on-going, the presentation did not intend to make an assessment on whether the Protocol was effective or flawed, which would be left for the Member states to decide.

6. Central to the Protocol was its legally-binding emissions reduction targets. Developed country Parties, as a whole, had committed to reduce greenhouse gases by at least 5 per cent below 1990 levels from 2008 to 2012. This overall target was allocated to 39 developed countries. For example, Australia was allowed to increase its emissions up to 8 per cent above 1990 levels; the EU would have an 8 per cent reduction; Japan 6 per cent; and the United States 7 per cent. On average, it was a reduction of around 5 per cent, which might not seem very impressive. However, if this was compared with business as usual, i.e. no additional measures taken, emissions would increase as high as 10 per cent to 13 per cent for some countries. Thus, the real reduction was around 15 per cent to 18 per cent. The Kyoto targets posed a tremendous challenge to countries, and the costs of compliance could be high. Critics worried that implementation of the Protocol would have harmful impacts on market competitiveness and thus hinder economic development.

7. The Kyoto Protocol used two main policy instruments to address the possible high compliance costs and to induce compliance. The first were market-based mechanisms, as well as sinks, i.e. forest management, to reduce the compliance costs. "Sinks" were not discussed in the presentation due to the complex methodological issues involved. The second policy instrument was the approach used by most MEAs.

8. The most creative part of the Kyoto Protocol was to allow parties to comply with the Kyoto targets through market instruments. Based on the cost-effective principle, the Protocol created three market mechanisms to enable developed countries to achieve their targets offshore: the Clean Development Mechanism (CDM), joint implementation (JI) and emissions trading. The CDM allowed developed countries to invest in projects in developing countries to obtain emissions credits for the purpose of compliance. This mechanism was not only cost-effective, it also created a new North-South partnership, and offered new sources of foreign investment, bringing climate-friendly technologies and additional resources to developing countries.

9. Capacity building applied to developing countries and countries with economies in transition. Capacity building was particularly important to countries with economies in transition as they undertook the Kyoto targets that challenged their existing capacity for implementation. The donor countries were called upon to provide financial and technical support to developing countries and economic transitional countries through multilateral agencies, such as the GEF, as well as bilateral agencies and the private sector. Technology transfer was an important element in capacity building. A series of actions was initiated to identify technology needs and barriers to technology transfer.

10. Policy instruments alone are not sufficient to promote compliance. The Kyoto Protocol uses a managerial approach to handle compliance through establishing a comprehensive compliance system. Some approaches or principles are explored in designing the compliance system. For example, transparency of the compliance regime would foster compliance, building confidence in both Parties and the public. The system should provide as much certainty as possible. Parties needed to know in advance which actions or inaction would lead to which kind of consequences. Due process was important, particularly where the potential consequences for the Party concerned were more serious. It was important to ensure that the Party concerned was able to participate in any discussions on its own compliance.

11. A comprehensive compliance regime contained three steps. The system started with a Party's self reporting. The greenhouse gas inventory data and its quality was the backbone of the compliance system. Parties were required to report information that was transparent, comparable, complete and accurate. In order to assess compliance, Parties were provided with clearly defined requirements that indicated which requirements were mandatory and which were advisory. The second step was the review of the reported information, which could take the form of a country visit. This process served two purposes: as a forum to carry out a constructive dialogue with Parties to clarify issues and assist them to fix problems at an early stage; as a fact-finding mechanism. As defined in the Protocol, the review was intended to provide a comprehensive technical assessment of implementation. To have a timely review, which was important for the operation of emissions trading, a strict timetable was provided for each step in the review, such as the duration of the review and the time permitted for the Party to respond to questions raised by the review teams.

12. The final steps are the compliance assessment and non-compliance response, which will be performed by a standing compliance committee. The compliance committee is composed of two branches, namely the facilitative branch and the enforcement branch. The facilitative branch will provide its advice, assistance or recommendation to the party concerned. For the enforcement branch, if non-compliance is determined, a set of consequences will be imposed on the non-compliant Party. Member states still had divergent views on the types of consequences for breach of the emissions targets applied by the enforcement branch (at the time when this presentation was made).

**2. The Montreal Protocol on Substances that Deplete the Ozone Layer**

13. The Ozone Secretariat of the Montreal Protocol said the compliance regimes operating under various MEAs, such as that set out by the UNFCCC Secretariat, were similar to those in the Montreal Protocol. The features were similar because Parties to these agreements had been building on previous experience. Compliance under the Montreal Protocol was premised on cooperation, and was a non-confrontational, non-punitive approach to facilitate implementation to protect the global environment. Given that it was the environment and the global commons that gained from MEA implementation, it was difficult to quantify the monetary value of the consequences of non-compliance in MEAs in the same way that non-implementation could be determined in the WTO. The trend in MEAs was to enhance the capacity of Parties to address issues related to non-compliance, such as through technology transfer, financial assistance, training, awareness raising and monitoring compliance. These elements had helped MEA Parties to implement their commitments and in a cooperative manner in pursuit of solving the common environmental problem.

14. In 1995, under the non-compliance regime of the Montreal Protocol, a group of countries approached the Meeting of the Parties concerning the fact that they were overwhelmed by the requirements of implementing their commitments to phase out ozone-depleting substances under the Protocol. These countries sought assistance to build capacity to implement the Protocol. Given that this group of countries included one of the largest producers and one of the largest consumers of ozone-depleting substances, if the capacity of these countries had not been enhanced, their non-compliance would have undermined the effectiveness of the Montreal Protocol to combat the global environmental problem associated with ozone layer depletion. If this matter had been dealt with in a confrontational manner, such as through the dispute settlement provisions available under the Protocol, the result may have been counter-productive. Thus, MEAs required a cooperative approach to resolving issues of non-compliance given the unique and common problem they were designed to address.

15. It was worthwhile to reflect on how to enhance the common ground between the WTO and MEAs, which applied different approaches to resolving non-compliance and settling disputes. From the experience with implementing the Montreal Protocol, there were some lessons which could be learned for the WTO and MEAs upon which to forge cooperation. It was important to focus on mediation and conciliation, less on judicial settlement, combined with capacity building for

implementation. Joint programmes could be contemplated that were geared, for example, towards curbing illegal trade in ozone-depleting substances and products containing such substances that affected the environment and were linked to trade.

16. The Montreal Protocol Secretariat proposed reciprocal observer status between MEAs and the WTO to allow for transparency and participation in addressing common issues of concern. MEA Secretariats could be consulted for non-binding expert opinions whenever environment-related disputes arose in the WTO. MEAs and the WTO were separate, but equal bodies of international law. The Montreal Protocol Secretariat looked forward to continuing to cooperate with the WTO.

### 3. The Basel Convention on Transboundary Movements of Hazardous Waste and Their Disposal

17. The Basel Convention Secretariat recalled that the Basel Convention had been adopted in 1989 and entered into force in May 1992. At present, 146 countries and the European Union were Parties. The primary goal of the Basel Convention was to protect human health and the environment from the harmful effects of hazardous wastes. It upheld three basic principles: hazardous wastes should be treated and disposed of as close to where they are produced as possible; transboundary movements of hazardous wastes should be reduced to a minimum consistent with their environmentally sound management; and hazardous waste generation should be minimized at source.

18. The Basel Convention focused on the development of procedures and mechanisms to assist Parties to comply with the Convention and thereby to avoid disputes. To date, none of the formal dispute settlement provisions in the Convention had been invoked. Specific procedures against non-compliance with the Convention were still being developed. Existing provisions dealt only with national reporting and verification of alleged non-compliance through the submission of relevant information, namely, if a Party believed that another Party was in breach of its obligations, it was required to inform the Secretariat and the Party against whom the allegations were made. As yet there was no established procedure to ensure compliance. However, if illegal traffic arose due to conduct by an exporter, the State of export was generally required to take back the wastes concerned.

19. Parties to the Convention had recognized the need to develop the compliance system further. A mechanism for monitoring the implementation of, and compliance with, the Convention's obligations was being developed by the Legal Working Group for adoption at the next meeting of the COP. The compliance mechanism would be non-confrontational, preventive in nature, flexible and oriented to helping Parties to implement the Convention, with particular attention to the needs of developing countries and countries with economies in transition.

20. Complementary to the system of monitoring of implementation and compliance being developed, a number of supporting tools existed to facilitate compliance. They included the technical guidelines on environmentally sound management of hazardous wastes, adopted in critical domains of the Convention, aimed at assisting Parties to fulfil their obligations; there were annexed lists of wastes characterized as hazardous (Annex VIII) and those not hazardous (Annex IX). These annexes had been developed to assist Parties in better controlling transboundary movements of hazardous wastes and preventing illegal traffic; the Basel Protocol on Liability and Compensation, once it became operational, would assign responsibilities and provide a mechanism in support of the control system of the Basel Convention.

21. The 12 Regional Centres of the Basel Convention around the world could play a key role in promoting the Convention's regional implementation. Their functions in awareness raising and training would improve the quality of information, as well as understanding of its objectives, assisting all stakeholders at the regional and sub-regional level. If the Convention's first decade had been dedicated to developing an operational framework for controlling transboundary movements of hazardous wastes, the second decade would place an increasing emphasis on the implementation of,

and assistance in compliance with, the commitment to promote environmentally sound management of hazardous wastes.

22. The Ministerial Declaration adopted at the COP in 1999 called for further capacity building and technology transfer, especially for developing countries and countries with economies in transition, to support their efforts to effectively implement and comply with the Convention. Ministers had placed the Basel Convention Regional Centres high on the agenda for the Convention's second decade of operation, seeing them as a logical and efficient means for raising awareness of the Convention and assisting in its implementation. The objective of the Regional Centres' programmes was to improve hazardous waste management and promote waste minimization, including through developing a legislative framework for wastes and hazardous wastes management; an administrative structure for the implementation of legislation; enforcement mechanisms; information dissemination and exchange; exchange of best practice; and capacity building and technology transfer. Examples of some of the current activities of the Regional Centres included the development of regional programmes for enforcement officers to curb illegal traffic. A series of regional training seminars for the training of enforcement officers had been held in Hong Kong, China in December 2000 organized jointly with the Ozone Secretariat, CITES, Interpol, the World Customs Organization and the Organization for the Prohibition of Chemical Weapons. There were also regionally coordinated project activities on monitoring and control of transboundary movements of hazardous wastes to strengthen cooperation between environment enforcement authorities, customs and port authorities at the national level. The Basel Convention Secretariat was looking into the possibility of holding regional programmes in other regions.

23. The Basel Secretariat, together with the Parties, would explore the possibility of the Basel Convention Regional Centres providing support for regional capacity building in the context of the implementation of the Stockholm and Rotterdam Conventions, as well as regional hazardous wastes conventions. The Centres could thus become main vehicles for the implementation of global and regional hazardous wastes and chemicals conventions, as well as fora for joint activities with other MEAs and organizations. However, the progressive development of the Regional Centres required adequate resources to provide technical, legal and institutional assistance to build regional capacity. A broader partnership among the Parties and multilateral financial institutions as well as the development of activities in partnership with other stakeholders such as industry would be a necessary prerequisite for the successful operation of the Regional Centres.

**4. The Rotterdam Convention on Prior Informed Consent**

24. The Rotterdam Convention Secretariat said the WTO-UNEP joint paper provided a good basis for discussion. The objective of the Rotterdam Convention was to promote shared responsibility and cooperation in international trade in chemicals in order to protect human health and environment. This was mainly achieved by facilitating information exchange about the characteristics of these chemicals and by providing for a national decision-making process on imports and exports of chemicals included in the Convention, as well as disseminating the decisions to all Parties. The Convention was adopted in 1998, and needed 50 ratifications to enter into force. To date, 14 ratifications had been deposited. The development of the compliance regime was only beginning. The Convention was being operated on an interim basis, based on the previous voluntary prior informed consent procedure, with a joint UNEP-FAO Secretariat.

25. The Convention provided for dispute settlement procedures as described in WT/CTE/W/191; work had started to develop annexes on arbitration and on the Conciliation Commission for discussion at the next Intergovernmental meeting in October 2001. The Convention also required the development of non-compliance procedures, a draft outline of which had been presented at the last meeting, with comments from Parties requested. Analysis of the comments suggested that Parties favoured a non-confrontational non-compliance procedure, which would take into consideration the principle of common but differentiated responsibilities with the objective of assisting Parties that

experienced difficulties in meeting their obligations. All proposals to date had suggested the establishment of a compliance body. The procedure would include consultations with the Party concerned, development of a plan to deal with non-compliance, recommendation of this plan to the COP, and monitoring its implementation. Some proposals included a provision on joint compliance procedures with one or more Conventions on similar issues.

26. As no reporting mechanism was foreseen in the compliance mechanism, Parties requested the development of a draft mechanism for discussion at the October meeting. The compliance system would be a precursor to a dispute settlement procedure, should the latter be required. In order to improve compliance and facilitate enforcement, the Convention mandated that a specific Harmonized System (HS) of customs codes be assigned to chemicals included in the Convention. Presently, consultations were under way with the World Customs Organization on the inclusion of the PIC chemicals into the HS. Capacity building under the Convention was based on regional workshops, focusing on support for implementation of the interim PIC procedure and ratification of the Convention, and including customs training, with respect to which WTO cooperation was welcome.

### 5. The Stockholm Convention on Persistent Organic Pollutants

27. The Stockholm Convention Secretariat said that the Convention had been adopted in May 2001 by 127 countries, with 93 signatories. To date, there was one ratification. Several countries had indicated their commitment to ratify prior to the World Summit on Sustainable Development in 2002. Thus, it was expected that the Convention could enter into force in late 2002. The objective of the Stockholm Convention was to protect human health and environment from persistent organic pollutants (POPs). To achieve this goal, Parties were obliged to avoid the production and further use of POPs, which were mainly industrial chemicals or pesticides, by using alternatives, including limiting the import and export of POPs; identifying chemicals with POPs characteristic; avoiding new POPs; and limiting the use of DDT to disease control. There were also provisions to eliminate existing POPs by disposing of obsolete and unwanted POPs.

28. Provisions to promote compliance with the Convention were set out in WT/CTE/W/191. There was provision for research on POPs and their alternatives so that Parties might adopt alternatives more easily. The Convention provided for technical and financial assistance. To assess compliance, there would be periodic reporting and an evaluation of the effectiveness of the Convention by the COP four years after it entered into force, and thereafter on a regular basis. An interim Secretariat had been established at the Diplomatic Conference with a mandate to focus on capacity building to assist countries to ratify and implement the Convention. The Basel, Rotterdam and Stockholm Conventions and the Regional Centres would hold awareness-raising seminars on the measures necessary to ratify and implement the Rotterdam and Stockholm Conventions. The Convention Secretariat noted the likelihood that it would request observer status in the CTE.

### 6. The Convention on Biological Diversity (CBD) and the Cartagena Protocol on Biosafety

29. The CBD Secretariat said that, as a result of close collaboration between the WTO, UNEP and MEAs, a balanced paper had emerged from the cooperative process reflecting the diverging approaches to compliance and dispute settlement in the WTO and in MEAs, and even among MEAs. Although MEAs contributed to environmental protection as a whole, their objectives, the problems they addressed and the approaches adopted differed in many respects. The procedures for compliance and dispute settlement in the CBD and the Biosafety Protocol were set out in WT/CTE/W/191. The CBD promoted cooperation to conserve biodiversity, the sustainable use of its components, and the equitable sharing of benefits arising out of the utilization of genetic resources. In conformity with Article 26, the level of compliance of Parties was measured through their national reports on domestic measures taken to implement the CBD objectives. At COP 5 in May 2000, guidelines were endorsed for national reporting, as a means by which the status of national implementation could be measured.

These guidelines included a series of questions based on the Convention's provisions and on decisions of the COP. The responses would help the COP to assess the overall status of implementation of the Convention. Parties had been requested to submit their second national report by 15 May 2001 for consideration at the 6th meeting of the COP in April 2002 in The Hague.

30. In view of assisting Parties to implement the CBD, the financial mechanism, operated by the GEF, had supported biodiversity-enabling activities in over 140 developing country Parties and Parties with economies in transition. Several initiatives had been undertaken for capacity building; for example a biodiversity planning support programme had been established by UNDP and UNEP, with financial support from the GEF, to respond to the needs of Parties to strengthen national capacity to prepare and implement national biodiversity strategies and action plans.

31. The Cartagena Protocol on Biosafety sought to protect biodiversity from the potential risks posed by living modified organisms (LMOs) resulting from modern biotechnology. Compliance and dispute settlement were more relevant with respect to the Protocol, which would regulate the import and export of certain LMOs. However, it may be premature to discuss these issues since the Protocol had not yet entered into force. The Protocol would enter into force ninety days after date of deposit of the 50th instrument of ratification. As of 22 June 2001, 104 countries had signed the Protocol and five countries had ratified. In contrast to the CBD, the Protocol provided explicitly for the development of procedures and mechanisms to ensure compliance; these provisions were set out in WT/CTE/W/191.

32. Compliance had been addressed at the first meeting of the Intergovernmental Committee of the Protocol in December 2000 which considered relevant precedents in other MEAs. Parties had been invited to present their written views by 30 March 2001 on elements and options for a compliance regime for discussion at an open-ended expert meeting to be held in Nairobi, from 26-28 September 2001. The recommendations of this meeting would be considered at the second meeting of the Intergovernmental Committee, 1-5 October 2001. With respect to capacity building, an expert meeting would be held in Cuba, 11-13 July 2001 to identify the needs and priorities of countries in implementing the Protocol once it has entered into force.

33. The dispute settlement mechanism of the CBD applied to the Cartagena Protocol. Although a dispute was difficult to envisage in the CBD, it was more likely under the Cartagena Protocol, which would affect trade in certain LMOs. If an MEA-related dispute were to be brought to the WTO Dispute Settlement Body, an issue for consideration was whether a mechanism for cooperation could be established between the WTO and the relevant MEA. It was crucial to extend observer status to the CBD in WTO Bodies addressing issues of relevance to the CBD, such as the TRIPs Council.

### 7. The UN Fish Stocks Agreement

34. The Secretariat of the UN Fish Stocks Agreement indicated that the 1995 Fish Stocks Agreement was not yet in force; however, it had already gathered 29 out of the 30 ratifications needed for its entry into force. Part VIII of the UN Fish Stocks Agreement contained provisions for the peaceful settlement of disputes arising out of its implementation. The Agreement provided that all disputes should be settled by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means chosen by the parties to such disputes. In order to prevent disputes, the Agreement mandated States to cooperate with a view to agreeing on efficient and expeditious decision-making procedures within subregional and regional fisheries management organizations and arrangements and to strengthen existing ones as necessary. Concerning disputes of a technical nature, the Agreement stipulated that such disputes might be referred to an ad hoc expert panel established by the States concerned, without resorting to binding procedures for dispute settlement.

35. The Agreement provided that the procedures for dispute settlement set out in Part XV of the United Nation Convention on the Law of the Sea (UNCLOS) applied *mutatis mutandis* to any dispute

between Parties to the Fish Stocks Agreement concerning the interpretation or application of the Agreement, whether or not they were also Parties to UNCLOS. To this end, States, which were not Parties to UNCLOS, were entitled, by means of written declaration, to choose one or more means indicated in UNCLOS for the settlement of disputes arising out of the interpretation or application of the Agreement. Moreover, they were entitled to nominate conciliators, arbitrators, and experts for the purposes of conciliation and arbitration provided for in the relevant annexes of UNCLOS. Applicable law for the settlement of such disputes were the provisions of UNCLOS, those of the Agreement, any relevant subregional, regional or global fisheries agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law not incompatible with UNCLOS.

36. The dispute settlement provisions were set out in detail in WT/CTE/W/191. As noted in paragraph 89, there were limitations and exceptions in Part XV, Section 3, of UNCLOS to the applicability of procedures entailing binding decisions. Accordingly, where no settlement had been reached by recourse to Part XV, Section 1 (procedures entailing non-binding decisions), disputes relating to the sovereign rights of the coastal State with respect to, *inter alia*, marine living resources in the exclusive economic zone (EEZ) were to be submitted to the compulsory submission to the conciliation procedure established under Annex V, Section 2. Under such a procedure, only the submission to the proceedings was compulsory, whereas the report of the Commission of Conciliation, including its conclusions or recommendations, remained non-binding upon the parties to the dispute.

37. In addition, the UN Fish Stocks Agreement Secretariat expressed the view that, when a dispute arising out of the application of port State measures provided under article 23 of the UN Fish Stocks Agreement was referred to the Dispute Settlement Understanding (DSU) of the WTO by a member State pursuant to the Trade Barriers Regulation (TBR), the Dispute Settlement Body (DSB) should bear in mind that port States may take enforcement measures under the Agreement, including prohibition of landing and transhipment of catches, if a fishing vessel was found to have undermined conservation measures for straddling or highly migratory fish stocks. Thus, it was important for the WTO to take due account of the provisions of the Agreement governing the conservation and management of straddling fish stocks and highly migratory fish stocks and to be fully aware of the fact that the restrictions being challenged under the DSU, as a violation of the 1994 GATT rules, were in fact legitimate measures allowed to be taken by a port State under the relevant provisions of the UN Fish Stocks Agreement.

### 8. The Convention on International Trade in Endangered Species of Wild Fauna and Flora

38. The CITES Secretariat said that CITES was one of the older Conventions dealing with the environment and biodiversity, adopted in 1973. If CITES did not exist to provide a multilateral framework in which species conservation measures could be taken, dispute settlement in the WTO involving measures taken for the protection of wild animals and plants would have been intensive. Even with CITES, there were many stricter national measures that went beyond CITES and may be a reason for dispute. CITES had had many differences of opinion and disputes concerning the level of protection that must be afforded to species. These differences could be scientific, where scientists disagreed on the level of threat to a species, or economic, where Parties proposed species which were of higher economic value, such as commercial fish and tropical timber species. In the latter case, the debates were politically intense, such as on the resumption of ivory trade, on whether to list sharks, and on whether to reopen certain trade in sea turtles. Differences of opinion were resolved by concensus or a two-thirds majority of the Parties. Where Parties disagreed with decisions taken by the COP, there was the possibility of entering a reservation or taking stricter measures. None of the decisions regarding listings or implementation of the Convention had been subject to dispute settlement procedure, although such provision existed under CITES. Thus, the question of whether Parties would have accepted the decision of the International Court of Justice had not been posed. There had never been a challenge to CITES in the GATT/WTO. CITES concerned the regulation of

trade in affected species. Thus, in the case of tuna-dolphin or shrimp-turtle, the trade restrictions concerned the trade in the other species and not the endangered one.

39. In a review undertaken about ten years ago, it had been determined that approximately 80 per cent of CITES Parties had inappropriate implementing legislation. There were many cases where Parties issued permits for levels of exports of certain species that did not ensure their sustainable exploitation as set out in CITES. The provision of annual trade statistics was important and many Parties did not implement this. Control of illegal trade was lacking and the lack of sanctions to punish illegal poachers and traders was absent in CITES. For these reasons, the COP had created remedies based on an Article in CITES that set out that if implementation problems arose, the Secretariat should bring it to the attention of the concerned Party, try to solve it with that Party, and carry out inspections if necessary. If the Secretariat did not find a solution, it must bring the case to the attention of the COP. The Secretariat had done so in certain cases and, in each case, the COP had created a mechanism to deal with the issue, sometimes reserving the final decision, but in most cases delegating this responsibility to the Secretariat in cooperation with the Standing Committee. The recommendations following from the processes in every case implied trade restriction. When a Party exploited a species unsustainably and did not intend to implement the recommendations of the scientific bodies and the Secretariat, the Standing Committee could recommend that importing Parties suspend trade in that species from that country. The recent decision of the Standing Committee concerning caviar was a successful example, as the Parties subject to the recommendations had agreed to their implementation.

40. In CITES, supportive measures were the initial tools used to provide technical and financial assistance to establish quota systems and to train experts. If these were not effective, the ultimate remedy was trade suspension. As decisions were agreed with a two-thirds majority of the Parties, CITES decisions were multilateral.

41. It was important to continue to exchange information between the trade and environment communities at the international, and importantly the national levels. It was also crucial to discuss practical, concrete issues related to compliance and implementation, not theoretical problems and potential disputes. Whenever strengthened mechanisms were discussed for compliance and dispute settlement, it should be taken into account that MEAs were different in nature and history. MEAs should learn from each other's mechanisms and best practices. When discussing voluntary or obligatory consultative mechanisms by MEAs involving the WTO, there was no need to scrutinize existing measures that had been working for some time and had not been subject to dispute to date. New measures involving trade restrictions in the context of existing MEAs were primarily subject to the COP, which in CITES was comprised of 154 Parties, most of whom were also WTO Members. Thus, if collaboration between trade and environment officials within Governments was effective, new measures should not be problematic.

42. The CITES Secretariat underlined the request by MEAs for observer status in the relevant WTO Bodies. The WTO and MEAs should take advantage of the World Summit on Sustainable Development in 2002, which would include discussion of international environmental governance. As part of that discussion, it would be useful to agree on the WTO-MEA relationship in a way that did not reduce the effectiveness of MEAs and made the WTO and MEAs mutually supportive.

### C. COMMENTS AND QUESTIONS

43. Members welcomed the MEA Secretariat presentations, the cooperative initiative in the joint UNEP-WTO-MEA background paper on compliance and dispute settlement in the WTO and in MEAs (WT/CTE/W/191), and the back-to-back MEA Information Sessions in the CTE and UNEP, focusing on compliance and dispute settlement. Cooperation between the WTO, UNEP and MEAs would facilitate synergies and enhance policy coordination on trade and environment.

44. The format of the back-to-back UNEP-WTO meetings was specifically noted by several Members. The cooperative efforts between the WTO, UNEP and MEAs, including through the paper on compliance and dispute settlement and the Matrix on Trade Measures in Selected MEAs (WT/CTE/EW/160/Rev.1) had equipped Members with the relevant information to generate a greater understanding of the multilateral environment regime in the trade community and would lead to improved cooperation and coordination at the policy level. These documents should be distributed as widely as possible, including to officials who attended UNEP and MEA meetings to generate greater understanding of the WTO compliance and dispute settlement provisions in these fora.

45. The process to strengthen compliance and enforcement in MEAs following the UNEP Governing Council decisions was encouraged by several Members. In this respect, it was pointed out that there were better ways to encourage compliance than by resorting to dispute settlement.

46. Several Members noted that the best forum for the resolution of MEA-related disputes was within the MEA concerned. It was noted that MEAs dealt with compliance and dispute avoidance, whereas the WTO had given more focus to dispute settlement. The focus of MEAs was on enhancing the capacity of Parties, particularly developing countries, through financial and technology transfer. The question was posed as to whether the MEA Secretariats considered their current dispute settlement procedures to be sufficient and effective.

47. The representatives of Iceland, Chile, New Zealand, Australia, Switzerland, India, the European Communities, and Hong Kong, China requested their statements in this MEA Information Session to be included as part of the discussion under Items 1 and 5 of the agenda.

*On strengthening the compliance and dispute settlement mechanisms in MEAs*

48. The CITES Secretariat said that if there had been a need for dispute settlement in MEAs, this issue would have already been dealt with in that MEA. The possibility of resorting to dispute settlement existed both within MEAs and the WTO, yet neither had been used to date with respect to an MEA-related trade measure. In CITES, disputes had not arisen as Parties had the possibility to make reservations and to continue to trade in the species concerned. In addition, the COP took decisions about compliance-related issues with a two-thirds majority, or by concensus. Thus, the dispute was not between two Parties, but, rather a Party versus the broad CITES membership. The ultimate remedy to enforce compliance was to recommend trade suspension. This mechanism had been developed by the full CITES membership through negotiation. Thus, it was not that the dispute settlement provisions in MEAs were weak, but that they were not necessary.

49. The UNFCCC Secretariat said the compliance and dispute settlement mechanisms in MEAs and the WTO differed in many ways. The fundamental problem facing most MEAs was not to resolve disputes, but to deal with issues of implementation of, and compliance with, MEA obligations. There were two main reasons why disputes in MEAs were rare. Most MEAs dealt with issues related to the global commons, such as climate change, biodiversity and desertification. It was difficult to imagine a dispute in these cases and to find a causal link between injury and specific activities caused by this injury. In addition, the judicial process, such as at the International Court of Justice (ICJ), was time-consuming and confrontational.

50. The Ozone Secretariat of the Montreal Protocol said that the non-compliance procedures in the Protocol had been established in 1990 on an interim basis, strengthened in 1992, and reviewed by Parties in 1998. They would be further reviewed in 2003. Each time a review had been undertaken, Parties had examined the issues that needed to be addressed in the procedures and had taken appropriate action with respect to compliance. Thus, there had been a self-evaluation of the adequacy of the compliance regime of the Protocol by the Parties, with the necessary improvements adopted. As a result, the current measures were adequate to address existing compliance issues.

51. The Basel Convention Secretariat said that compliance was being discussed in the Convention as a development, as opposed to a trade issue. Many countries hoped that by becoming a Party to the Convention, they could have access to capacity building. Breaches in obligations, such as with respect to illegal trade, were to be addressed through national implementing legislation.

52. The Convention on Biological Diversity Secretariat said that, due to the nature of the CBD, to assist Parties to take measures to conserve and sustainably use biological diversity, it was difficult to envisage a dispute. Thus, it would not appear to be necessary to strengthen the dispute settlement mechanisms in the CBD. Under the Cartagena Protocol on Biosafety, the issue may be premature, given that Parties had yet to elaborate the compliance mechanism. Thus far, the focus had been on assisting Parties, for example under Article 34.

*On the Stockholm Convention pilot projects and GEF funding*

53. The Stockholm Convention Secretariat said the interim financial arrangements in the Convention involved the Global Environmental Facility (GEF). The first step was to set up a national implementation plan, which could be achieved through UNEP with GEF funding. The GEF had set up eligibility criteria for enabling activities and had restricted the finances in this respect to signatories to the Stockholm Convention; it was necessary to sign the Convention to be eligible for support.

*On how the Stockholm Convention would facilitate the process for countries seeking viable alternatives to DDT use for disease vector control.*

54. The Stockholm Convention Secretariat said UNEP and WHO were developing a programme on integrated vector management to address the malaria and DDT issue, together with the World Bank malaria programme. There would be regional and sub-regional workshops on this issue for concerned countries. There was a guidance document on selecting alternatives to pesticide POPs, which was about to be published. A register had been established by the Convention where countries could make specific exemptions, such as for DDT.

*On expert consultations under Article 13 of the WTO Dispute Settlement Understanding*

55. In the event of a dispute that involved an issue of relevance to an MEA, it was noted that pursuant to Article 13 of the WTO Dispute Settlement Understanding (DSU), MEAs could be consulted during the panel process. This provision gave a panel the right to seek information and technical advice from any individual or body which it deemed appropriate.

*On whether countries had agreed to compulsory arbitration under MEAs.*

56. It was noted that there had not been any acceptance of compulsory arbitration or jurisdiction of the ICJ by Parties to the MEAs.

*On how the WTO could facilitate the work of countries which had customs systems that could not deal with illegal exports of ozone-depleting substances (ODS), as set out in the Montreal Protocol.*

57. The Ozone Secretariat of the Montreal Protocol said that Parties had been dealing with this issue since 1987 and had been working with the World Customs Organization to allocate codes to the major ODS. Where these substances were traded in mixtures it was an area which still needed to be addressed. The possibility was being considered of allocating customs codes for equipment and products that were using ODS and which were being dumped in developing countries.

## D. CONCLUDING COMMENTS

58. UNEP said that the discussions in the Information Session of the CTE had continued the dialogue that had taken place at the UNEP meeting on compliance, enforcement and dispute settlement in MEAs and the WTO, Geneva, 26 June 2001. Noting Members' appreciation of the UNEP-WTO-MEA cooperation, including the joint paper, he hoped that this process could be continued. UNEP intended to continue this type of analysis to enhance the understanding of the WTO-MEA relationship. The Chairman's summary of the UNEP meeting had been circulated for Members' comments. He acknowledged the financial contribution of the European Commission which had enabled the participation of 19 representatives from developing countries to the back-to-back meetings. Clearly, many of the issues related to conducting these discussions in a context in which trade and environment officials were present. UNEP appreciated the cooperation with the WTO in facilitating these back-to-back meetings. He noted the international processes under way in UNEP to develop guidelines for compliance and enforcement of MEAs and to assess and strengthen the current framework for international environmental governance. Both global economic and environmental governance were enormous challenges for Governments, particularly as they had been largely constructed in isolation from each other, yet were now increasingly intertwined. In order to ensure synergies between the two, there needed to be a more systematic study of their interlinkages. There would be an opportunity to address the issues surrounding global economic and environmental governance at the World Summit on Sustainable Development in Johannesburg in September 2002.

59. The Chairman noted that the CTE had before it a solid background paper prepared cooperatively by the WTO and UNEP Secretariats, which had facilitated a constructive dialogue. Through the presentations of the MEA representatives, whose engagement was appreciated, the CTE had moved a step further and had built on the paper by bringing actual experience into the debate on compliance and dispute settlement. This was a valuable contribution. As noted by the representative of CITES, it was necessary to look at more practical issues, from which lessons could be drawn. This type of dialogue would help to increase the understanding of both the trade and environment communities, enhance convergence and anticipate conflicts.

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