

Committee on Trade and Environment

REPORT OF THE MEETING HELD ON 13-14 JUNE 2002

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1. The Committee on Trade and Environment (CTE) met on 13-14 June 2002 under the Chairmanship of Ambassador Oğuz Demiralp (Turkey). The documents submitted for discussion at the meeting were set out in the Annotated Agenda, circulated to Members on 4 June in Job(02)/51. The agenda in WTO/AIR/1801 was adopted.

A. MEA INFORMATION SESSION

2. An Information Session with Secretariats of Multilateral Environmental Agreements (MEAs) was held in conjunction with the CTE meeting. The focus of the Session was on technical assistance and capacity building, as well as on enhancing information exchange and cooperation between UNEP, MEAs and the WTO.

3. The WTO and UNEP Secretariats, in cooperation with MEA Secretariats, prepared a background paper on technical assistance, capacity building and enhancing information exchange.¹ The representative of the UNEP summarized the discussion at the UNEP meeting on this topic in Geneva in March 2002 and circulated its report on synergies between MEAs and the WTO.² Representatives of the following Secretariats presented their technical assistance and capacity building activities and responded to questions from Members:

- the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- UNEP Chemicals (on the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants);
- the UN Framework Convention on Climate Change (UNFCCC);
- the Convention on Biological Diversity (CBD);
- the Basel Convention on Transboundary Movements of Hazardous Wastes and their Disposal;
- the International Tropical Timber Organization (ITTO);
- the UN Forum on Forests (UNFF); and
- the UN Division for Ocean Affairs and the Law of the Sea (on the Convention on the Law of the Sea and the Fish Stocks Agreement).

4. The following Secretariats were unable to attend the meeting: the Montreal Protocol on Substances that Deplete the Ozone Layer; the International Commission for the Conservation of Atlantic Tunas (ICCAT); and the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).

5. A separate Annex to this report contains the summary report of the MEA Information Session.

¹ WT/CTE/W/209, 5 June 2002, MEA Information Session on Technical Assistance, Capacity Building and Enhancing Information Exchange, Input from the WTO, UNEP and MEA Secretariats.

² WT/CTE/W/213, 12 June 2002, Enhancing Synergies and Mutual Supportiveness of MEAs and the WTO, A Synthesis Report, Contribution by UNEP.

B. PARAGRAPH 32(ii) OF THE DOHA MINISTERIAL DECLARATION (TRIPS)

The relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

6. The Chairman noted that, in order to provide Members with information on recent developments in the Convention on Biological Diversity (CBD), the CBD Secretariat had circulated the relevant decisions from its Sixth meeting of the Conference of the Parties held in the Hague in April 2002.³

7. The representative of India noted that Ministers had provided a mandate at the Doha Ministerial Conference to examine the relationship between the TRIPS Agreement and the CBD and that the issue was primarily being discussed in the TRIPS Council.⁴ While India believed that the TRIPS Agreement and the CBD had to be mutually supportive and promote the sustainable use of resources, at the implementation level, conflicts between the two agreements could arise. This was for instance the case where patents were claimed over genetic resources, which were protected by the CBD. Examples were well known to the general public and the representative of India referred to a paper submitted jointly in the CTE and the TRIPS Council.⁵ This raised the issue of potential conflicts with the principle of the sovereignty of the Contracting Parties of the CBD over their genetic resources. Currently, the TRIPS Agreement allowed Members to provide patents over genetic resources (plants, animals and microorganisms). The Agreement, however, contained no provisions preventing a person from claiming patent rights in one country over genetic resources that were under the sovereignty of another country. In particular, the TRIPS Agreement contained no provisions allowing a Member to enforce fair and equitable sharing of benefits from the patenting of its own genetic resources abroad. In the absence of clear provisions providing for a mutually supportive relationship of the TRIPS Agreement with Members' obligations under the CBD, the implementation of the former could allow for acts of biopiracy and thus result in systemic conflicts with the CBD. It was India's view that to avoid conflicts in the implementation, an amendment of the TRIPS Agreement to accommodate some essential elements of the CBD would be necessary. Failure to provide a solution to this relationship could be detrimental to both the objectives of the agreements themselves as well as to the objective of sustainable development.

8. India went on to note that several developing countries had proposed that the TRIPS Agreement be amended in order to require that an applicant for a patent relating to biological materials or to traditional knowledge: (i) disclose the source and country of origin of the biological resource and of the traditional knowledge used in the invention; (ii) give evidence of prior informed consent through approval of authorities under the relevant national regimes; and, (iii) give evidence of fair and equitable benefit sharing under the relevant national regimes. Such measures were fully in line with the provisions of the CBD and the recommendations of the *Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilisation*.⁶ An amendment to the TRIPS Agreement to include such provisions would prevent systemic conflicts with the CBD arising from the implementation of the TRIPS Agreement. In order to provide a mutually supportive relationship between the TRIPS Agreement and the CBD, one important step would be to ensure that the patenting of biological resources - plants, animals or micro-organisms -

³ WT/CTE/W/210, IP/C/W/347/Add.1, 10 June 2002, Review of the Provisions of Article 27.3(b), Relationship between the TRIPS Agreement and the Convention on Biological Diversity and Protection of Traditional Knowledge and Folklore, Information from Intergovernmental Organizations, Addendum, Convention on Biological Diversity.

⁴ For the mandate, see WT/MIN(01)/DEC/1, 20 November 2001, Ministerial Declaration, Ministerial Conference, Fourth Session, Doha, 9 - 14 November 2001, Adopted on 14 November 2001, paras. 12 and 19.

⁵ WT/CTE/W/156, IP/C/W/198, 14 July 2000, Protection of Biodiversity and Traditional Knowledge – The Indian Experience, Submission by India.

⁶ Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilisation, in Decision VI/24 on Access and Benefit-sharing as related to Genetic Resources, CBD, COP-6, April 2002, The Hague, Netherlands at www.biodiv.org/decisions/.

did not run counter to the provisions of the CBD, in particular those provisions recognizing the sovereignty of the Contracting Parties to the CBD over their genetic resources; the objectives of benefit sharing and of prior informed consent; and the protection of traditional knowledge.

9. The above requirements would represent an important step towards ensuring, although only to a limited extent, protection of traditional knowledge from unauthorised patenting by third persons without the prior informed consent of the traditional communities that held that knowledge. The incorporation of the proposed requirements in the TRIPS Agreement, however, would only provide defensive protection for traditional communities from misappropriation of their knowledge - associated or not to genetic resources - through unauthorised patenting. Consequently, the representative of India was of the view that it might be necessary to give further consideration to proposals regarding an international framework to provide positive protection of traditional knowledge, which would recognize protection of traditional knowledge at the national and regional levels.

10. The representative of Brazil supported and reiterated the main elements of the statement made by the delegation of India on the issue of the relationship between the TRIPS Agreement and the CBD. Brazil added that, in the context of the review of Article 27.3(b) of the TRIPS Agreement, a number of Members, in particular developing countries, had presented in the TRIPS Council their views on the relationship between the TRIPS Agreement and the CBD, which included a number of proposals to ensure compatibility between the two agreements. During a *Seminar on the Protection and Commercialization of Traditional Knowledge*,⁷ several developing countries had expressed support for the need to develop an internationally agreed instrument that would recognise the protection of traditional knowledge at the national level, as this would not only prevent misappropriation but also ensure that national level benefit sharing mechanisms and laws were respected worldwide.

11. Based on the mandate of the Doha Ministerial Declaration, a group of developing countries were currently discussing, in informal mode, the possibility of submitting to the next session of the TRIPS Council a specific proposal regarding the relationship between the TRIPS Agreement, the CBD and the protection of traditional knowledge. A number of provisions in the CBD were relevant to the implementation of the TRIPS Agreement, for instance: Article 1 on the objectives of the Convention itself, Article 3 which recognized the principle of sovereign right of its Contracting Parties to exploit such resources and Articles 15, 16(5) and 8(j). Moreover, the recently adopted *Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilisation*⁸ could serve as inputs when developing and drafting legislative, administrative or policy measures on access and benefit-sharing.

12. The representative of Pakistan supported India's and Brazil's statements on the relationship between the TRIPS Agreement and the CBD and the protection of traditional knowledge and folklore.

13. The representative of the United States introduced two papers which had been submitted to the TRIPS Council on the relationship between the TRIPS Agreement and the CBD. The first paper⁹ discussed four provisions of the CBD that had been referred to by some of those asserting that there could be inconsistencies between the provisions of the CBD and those of the TRIPS Agreement. These were CBD Articles 8(j), 15, 16 and 19, which concerned various aspects of access to genetic resources, including benefit sharing. The paper went into some detail on how, by using a contractual system, each of the cited articles of the CBD could be implemented effectively. The paper noted the

⁷ New Delhi, 3-5 April 2002. See WT/CTE/W/214, IP/C/W/350, 26 June 2002, Seminar on Systems for the Protection and Commercialization of Traditional Knowledge, Communiqué - New Delhi, 3-5 April 2002, Communication from UNCTAD, paragraph 32(ii).

⁸ Bonn Guidelines, *supra*.

⁹ IP/C/W/257, 13 June 2001, TRIPS Council, Views of the United States on the Relationship between the Convention on Biological Diversity and the TRIPS Agreement, Communication from the United States.

synergies that would exist between such implementation and the implementation of TRIPS obligations. The United States hoped that the suggestions made in the paper would stimulate a serious discussion in the CTE in which WTO Members that were also Parties to the CBD could describe their practical experience with implementation under both agreements. The paper demonstrated that the provisions of the TRIPS Agreement and those of the CBD were mutually supportive, to the degree that there was a relationship between the two.

14. The United States recalled Brazil's statement at the CTE meeting in June 2001¹⁰ when the representative of Brazil recognized that while nothing in the TRIPS Agreement prevented Members from implementing the CBD at the national level, further work was required to prevent conflicts at the implementation level. This work included the need to incorporate some elements of the CBD in Article 27.3(b) of the TRIPS Agreement, 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 it. The United States disagreed that such changes were needed.

15. The above-mentioned paper submitted by the United States described a system using contracts that protected sovereign rights to provide access to genetic resources or to traditional knowledge.¹¹ As part of such a contract, an obligation could be included that would require the party being granted access to genetic resources to report any invention to the appropriate authorities and to identify in the specification of any patent application the source of the resources and the contract that established the terms and conditions under which access was provided, thereby indicating prior informed consent. Such an arrangement would be far more effective than changes to patent law that Brazil and other countries were proposing. First, contract obligations established the rights and obligations of all parties prior to granting any access to genetic resources. This ensured that there was prior informed consent on all sides. A contract could, among other things, provide for an inventory of genetic resources taken with reporting on: (i) research involving those resources, (ii) inventions developed from those resources, or (iii) patent applications filed claiming those inventions. Such contracts could also provide for benefit sharing and transfer of technology, as appropriate, including through royalty free license to the parties granting the access to genetic resources. This was the case with contracts that the US National Cancer Institute (NCI) entered into with countries from which it collected plant genetic materials. Such contracts could also require that any licensee of the original party to which access had been granted would be required to assume the same obligations as the original party to the contract. Contracts could also establish the ways in which disputes regarding the contract would be resolved, including questions of jurisdiction and the use of arbitration. In the event of a dispute, a well-crafted contract was much easier to enforce than would be a provision in a patent law requiring identification of the source of genetic resources, and remedies such as specific performance and compensation would be available to the wronged party. The United States believed that these factors argued in favor of the CBD's Contracting Parties developing a contractual system for implementing the provisions of the CBD related to access to genetic resources and benefit sharing.

16. A second paper¹² described the NCI practices for collecting genetic resources in the form of plants from countries around the world. The Developmental Therapeutics Programme (DTP) was the NCI's drug discovery program, which, among other things, screened synthetic compounds and natural product materials derived from plants, marine macro-organisms and microbes as potential sources of novel anti-cancer drugs. Since 1986, the NCI-DTP had acquired 53,000 plant and 13,000 marine invertebrate samples, in addition to 3,000 marine plants and 25,000 fungal extracts from more than 30 tropical or sub-tropical source countries, or from organizations in those source countries. Most of these samples had been obtained by the NCI-DTP under negotiated Letters of Collection or Memoranda of Understanding with the source country or source country organization. The NCI

¹⁰ WT/CTE/M/27, 8 August 2001, Report of the Meeting held on 27-28 June 2001, Note by the Secretariat, para. 76.

¹¹ IP/C/W/257, *supra*.

¹² IP/C/W/341, 25 March 2002, TRIPS Council, Technology Transfer Practices of the US National Cancer Institute's Developmental Therapeutics Programme, Communication from the United States.

promoted conservation of biological diversity, and recognized the need to collaborate with source country organizations in developing medicines from organisms collected within countries' borders, or obtained from source country organizations and peoples.

17. These Letters of Collection and Memoranda of Understanding, among other things, provided for compensation or other benefits related to commercialization of any products developed from materials acquired from source countries or source country organizations. In addition, the NCI and the US National Institutes of Health-Office of Technology Transfer required any NCI licensee to negotiate its own agreement with the source country or source country licensee. That agreement had to address the concerns of both the licensee and the source country or source country organization to ensure that pertinent agencies, institutions and persons received royalties and other forms of compensation, as appropriate. The amount of royalties depended on the relationship of any marketed medicine to the original lead from the extract. NCI-DTP also made sincere efforts to transfer knowledge, expertise, and technology related to drug discovery and development to the source country organization, so long as mutually acceptable guarantees were provided for intellectual property associated with any shared technology. The paper provided considerable detail regarding the NCI practices and examples of the Letters of Collection and Memoranda of Understanding were included. The United States was willing to provide additional information to those with particular interests and it was hoped that Members would find these examples useful as models that could be used in developing contracts for governing access to genetic resources, or in reviewing such contracts for possible changes.

18. The representative of the European Communities noted that the Doha Ministerial Declaration instructed the TRIPS Council to continue the review of Article 27.3(b) and to examine the relationship between the TRIPS Agreement and the CBD and the protection of traditional knowledge and folklore. The new mandate under the Doha Development Agenda allowed Members to give a new impetus to this debate, within a proper framework. The European Communities welcomed this broader mandate, because it had always felt that the review process of Article 27.3(b) was too narrow a basis for dealing with the wide array of complex issues that had been raised under this review. However, the European Communities acknowledged that both processes, i.e. the review of Article 27.3(b) and the examination of the relationship between the TRIPS Agreement and the CBD, were by virtue of their numerous interconnections, inseparable.

19. The European Communities had always, since the run-up to Seattle, declared its openness to deal with these issues in a new round of negotiations, as a sign of its commitment to address developing countries' concerns. The link with development had obviously to be the red thread of this debate. This was emphasised by paragraph 19 of the Doha Ministerial Declaration which instructed the TRIPS Council to be guided by Articles 7 and 8 of the TRIPS Agreement and to take fully into account the development dimension. The European Communities was willing to develop positions and actions that were genuinely responsive to developing countries' concerns, without, however, affecting the level of intellectual property protection currently offered by the TRIPS Agreement and while preserving a favourable intellectual property environment for its biotechnology research.

20. The European Communities recalled that it had already expressed its views on the relationship between intellectual property and biodiversity and on traditional knowledge in a Communication to the TRIPS Council.¹³ The Communication was based upon two main premises. First, the European Communities believed that, from a legal perspective, the CBD and the TRIPS Agreement did not conflict with each other even though it acknowledged that there was considerable interaction between the rights referred to in the TRIPS Agreement and the subject-matter of the CBD. Secondly, the European Communities believed that the TRIPS Agreement and the CBD had to be implemented in a mutually supportive way in order not to undermine their respective objectives.

¹³ IP/C/W/254, 13 June 2001, TRIPS Council, Review of the Provisions of Article 27.3(b) of the TRIPS Agreement: The Relationship between the Convention on Biological Diversity and the TRIPS Agreement, Communication from the European Communities and their member States.

Therefore, the European Communities wanted to engage in this new process in a spirit of openness with a view to finding means to interpret and implement the TRIPS Agreement in a way that supported the objectives of the CBD, including the fair and equitable sharing of the benefits arising from the use of genetic resources.

21. To this effect, the European Communities was ready to examine the clarification of certain existing TRIPS rules, such as the obligation to provide for an effective *sui generis* protection regime for plant varieties under Article 27. However, any proposal to amend the TRIPS Agreement, such as those already put forward by certain Members, would need further careful examination. One such proposal concerned the disclosure of the origin, in patent applications, of genetic resources used in inventions. The European Communities was prepared to engage in a discussion on the modalities of any system that would allow Members to keep track, at the global level, of patent applications related to genetic resources or traditional knowledge to which they had granted access. The European Communities was also open to examine measures to better prevent the inappropriate patenting of traditional knowledge.

22. In order to take a fresh start to the wide debate on TRIPS and CBD in the TRIPS Council, the European Communities would welcome, from countries which had specific demands on these issues, a systematic presentation of their views, which would allow a structured and fruitful discussion. On its part, the European Communities was preparing a new Communication to the TRIPS Council on the issues falling under paragraph 19 of the Doha Ministerial Declaration.

23. The representative of Norway noted that in a Communication to the TRIPS Council in June 2001,¹⁴ Norway had presented a brief analysis on the relationship between the TRIPS Agreement and the CBD. At that time, Norway concluded that although there were no legal conflicts between the two agreements, potential existed. The key element in ensuring consistency between the two agreements would lie in the implementation of the CBD and the TRIPS Agreement in national legislation. There was still considerable scope for progress in this regard. Norway had started a process of systematically analysing the CBD in relation to Norwegian law in order to make the amendments that might be necessary. The objective of this was an effective implementation of CBD provisions in Norwegian law. So as to learn from others' experiences, perhaps an idea would be a compilation of national experiences on CBD implementation. Such a compilation could be useful for both the work of the CTE and the TRIPS Council. Norway noted with satisfaction the outcome of the meeting of the COP-6 of the CBD where the *Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilisation* were formally adopted.¹⁵ Some of these guidelines were clearly relevant for discussions in the CTE, particularly the recommendation to governments about disclosure mechanisms for genetic resources and traditional knowledge contained in products for which intellectual property rights protection was sought.

24. Regarding the view expressed by some in favor of amending the TRIPS Agreement so as to accommodate effective implementation of the CBD, it was interesting that some of the same delegations that had intervened in the more general debate on WTO/MEAs (see Annex) supporting WTO authority to decide upon the nature of trade measures in MEAs. Finally, Norway welcomed the finalization of the *FAO International Treaty on Plant Genetic Resources for Food and Agriculture*.¹⁶ This new treaty would have significant influence on the management of genetic resources and contribute to the implementation of the CBD in the field of agriculture.

25. The representative of Canada noted that while the CTE had a role to play in examining the effects of the TRIPS provisions on operation of MEAs, the fundamental intellectual property rights

¹⁴ IP/C/W/293, 29 June 2001, TRIPS Council, Review of Article 27.3(b) of the TRIPS Agreement: The Relationship between the TRIPS Agreement and the Convention on Biological Diversity, Communication from Norway.

¹⁵ Bonn Guidelines, *supra*.

¹⁶ See www.fao.org/ag/cgrfa/itpgr.htm.

issues and definitions needed to be left to the World Intellectual Property Organisation (WIPO).¹⁷ Moreover, discussions of the trade-related intellectual property obligations needed to be left to the TRIPS Council. Recognizing that many of the issues raised in the CTE and in the TRIPS Council would be similar, Canada encouraged Members to avoid duplication of discussion in various fora and to focus instead on the issues most relevant to the work of the respective WTO bodies. Canada believed it was the responsibility of parties to ensure respect of their international obligations. Hence, Canada was working to ensure that implementation decisions required as result of CBD commitments respected other international obligations, including those in the TRIPS Agreement. This had also been Canada's objective in the negotiations on the recently concluded *FAO International Treaty on Plant Genetic Resources for Food and Agriculture*.¹⁸ The Treaty contained access and benefit sharing provisions which also dealt with intellectual property issues. It was in harmony with the CBD and consistent with the TRIPS Agreement. It both facilitated the conservation of, and access to, genetic resources and respected intellectual property rights. Canada would ratify this new treaty in the context of the World Food Summit.¹⁹

26. Canada believed that the work of WIPO was critical to better understand the relationship between intellectual property rights, access to genetic resources and the protection of traditional knowledge. Holding such discussions at WIPO allowed parties to focus on fundamental intellectual property issues and to draw on the organisation's considerable expertise. Canada noted that the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) was currently at work and was expected to wrap up its deliberations in 2003. Canada believed that the result of these discussions would make the discussions of the relationship between the TRIPS Agreement and the CBD more meaningful in the future.

27. The representative of the Czech Republic was convinced that there was no legal conflict between the TRIPS Agreement and the CBD. According to the Czech Republic, the CBD recognized the patentability of products issued from genetic resources and the TRIPS Agreement set the minimum standards of intellectual property rights protection, including patents. From this point of view, the Czech Republic supported the opinion of some Members of the WTO that both the TRIPS Agreement and the CBD had to be implemented in a mutually supportive way. To achieve this goal, effective cooperation among relevant WTO bodies and the CBD was necessary, and technical assistance provided to developing countries was of high importance.

28. The Czech Republic mentioned the example of the International Union for the Protection of New Varieties of Plants (UPOV)²⁰ in relation with the *Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilisation*.²¹ The effective protection of any invention was a very good incentive for further research and development in the area. However, access to genetic resources was a prerequisite for plant breeding and a fundamental requirement for sustainable development. Even if the new variety was protected, it had to remain fully available for further development of new varieties. Both conditions, the condition of protection and the condition of availability, were fulfilled in the concept of *sui generis* protection system which had been elaborated for plant varieties by UPOV. This concept contained also a benefit sharing mechanism which continued to be successfully used. As for the disclosure of the country of origin, or of the geographical origin of genetic resources, it could facilitate the examination of novelty, distinctness, uniformity, and stability of a new variety. Yet this went over the intellectual property rights protection system and could not become an additional condition for patentability and protectability of a new plant variety.

¹⁷ See www.wipo.org.

¹⁸ See www.fao.org/ag/cgrfa/itpgr.htm.

¹⁹ See www.fao.org/worldfoodsummit/english/index.html.

²⁰ See www.upov.int/eng.

²¹ Bonn Guidelines, *supra*.

29. The representative of Cuba supported the statements made by India and Brazil. Cuba's position was that the TRIPS Agreement as well as the CBD had to be mutually supportive and promote the sustainable use of resources. Cuba considered therefore that certain amendments to the TRIPS Agreement were required in order to ensure that it did not run against the objectives of the CBD.

30. The representative of Switzerland considered that the CBD and the TRIPS Agreement were mutually supportive and that there was no legal contradiction between the two. Switzerland was convinced that the same applied concerning the relation between the Cartagena Protocol on Biosafety²² and the TRIPS Agreement. Regarding the protection of traditional knowledge and folklore, the Swiss delegation had proposed, pursuant to its communication submitted to the TRIPS Council,²³ the creation of a database on traditional knowledge which could be useful for authorities granting patents in determining the novelty of an invention associated to traditional knowledge. Inscription in a database could assist these authorities since traditional knowledge was often transmitted orally. This could constitute an important step towards a better understanding of issues linked to traditional knowledge and to the sharing of benefits resulting from use of this traditional knowledge. Switzerland expressed the view that this international database should be set up by WIPO. At the TRIPS Council in March 2002, Switzerland had indicated that while the WIPO Intergovernmental Committee was the most suitable forum for dealing with issues relating to traditional knowledge and folklore, nothing could prevent the TRIPS Council from examining issues which were not fully dealt with at WIPO. Consequently, Switzerland believed that initially it would be better to wait for the outcome of the work done by the WIPO Intergovernmental Committee. The first results would be discussed at the Third Session of the WIPO Intergovernmental Committee which would be held from 13-21 June 2002. Subsequently, if these issues were to be discussed in the WTO, there would have to be close cooperation between the CTE and the TRIPS Council.

31. The representative of Australia also considered that the TRIPS Agreement and the CBD were not in conflict. If properly managed, the national implementation of the obligation under both agreements could result in a regime that substantially addressed concerns often raised about protection of traditional knowledge and benefit-sharing from genetic resources. Australia, as one of the world's megabiodiverse nations, had major interests in this issue. Australia was currently drafting regulations which would provide for the management of access to genetic resources for any bioprospecting, and require equitable benefit sharing agreements for any subsequent commercialisation. At the international level, fruitful discussions were taking place in the TRIPS Council and the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. Australia would be discussing these issues in more detail in these meetings in the coming weeks. If delegates in the CTE wanted more information on Australia's approach on these issues, they were invited to consult its communication submitted to the TRIPS Council in October 2001.²⁴

32. The observer of the CBD Secretariat indicated that it had been argued that intellectual property rights could encourage access and benefit-sharing as well as the protection of traditional knowledge if the application for such rights required the identification of the source of the genetic material, and the proof of prior informed consent of the competent national authority in the provider country. In line with this, COP-6 had invited Parties and Governments to encourage the disclosure of the country of origin of genetic resources and of relevant traditional knowledge, innovations and practices in applications for intellectual property rights.²⁵ However, COP-6 had also recognized the need for further work on this topic and had identified a list of issues which required further information gathering and analysis, in collaboration with a number of relevant organizations,

²² See www.biodiv.org/biosafety.

²³ IP/C/W/284, 15 June 2001, TRIPS Council, Review of Article 27.3(b): The View of Switzerland, Communication from Switzerland.

²⁴ IP/C/W/310, 2 October 2001, TRIPS Council, Review of Article 27.3(b), Communication from Australia.

²⁵ Bonn Guidelines, *supra*.

including the WTO. For instance, two items of this list were: consistency and applicability of requirements for disclosure of country of origin and prior informed consent in the context of international legal obligations; and efficacy of country of origin and prior informed consent disclosures in assisting the examination of intellectual property rights applications and the re-examination of intellectual property rights granted.

33. In regard to the role of *sui generis* systems for the protection of traditional knowledge, the Conference of the Parties had specifically requested the WTO to make relevant information provided through its notification system available to the CBD Secretariat. The CBD was of the opinion that this recognition of the need for further analytical work on the relationships between the TRIPS Agreement and the CBD offered an important opportunity for further cooperation and information exchange between the relevant bodies of the WTO and the CBD.²⁶

34. The observer of UNCTAD commented on its work relating to the protection of traditional knowledge. In February 2000, at UNCTAD's Tenth Conference, member States decided to address the protection of traditional knowledge as part of UNCTAD's work in the area of trade and environment. The emphasis was on exchanging national experiences on policies and measures to protect traditional knowledge in a broad sense and on identifying policies to harness traditional knowledge for trade and development.

35. Since then, there had been a number of activities. In October 2000, UNCTAD member States convened an *Expert Meeting on Systems and National Experiences for the Protection of Traditional Knowledge, Innovations and Practices*.²⁷ In March 2001, UNCTAD's Commission on Trade in Goods and Services and Commodities adopted recommendations in which UNCTAD, in cooperation with relevant intergovernmental organizations, had been called upon to undertake a number of activities, including to: conduct analytical work and organize regional workshops to exchange national experiences and examine strategies on traditional knowledge-related issues; to assist member States and local and indigenous communities in exploring policies to harness traditional knowledge for trade and development; and to assist interested developing countries in exploring ways to protect traditional knowledge.

36. In response to these recommendations, a capacity building project on *Harnessing Traditional Knowledge for Development and Trade* was under development. It was also envisaged to include capacity building on traditional knowledge as part of UNCTAD's work programme on post-Doha activities. Traditional knowledge had been given special attention in ongoing and recently-completed trade, environment and development capacity building projects, particularly the project funded by the UK Department For International Development (DFID)²⁸ on enhancing research and policy-making capacity in ten developing countries, as well as BIOTRADE and UNCTAD/UN Development Programme (UNDP)²⁹ country projects. Traditional knowledge was also a main topic considered by the UNCTAD/International Centre for Trade and Sustainable Development (ICTSD)³⁰ project on TRIPS and Development. A module on *Harnessing Traditional Knowledge for Development and Trade* had been added to the TrainForTrade³¹ and Capacity-building Task Force on Trade, Environment and Development (CBTF) training course series.³²

37. On 3-5 April 2002, the Government of India and UNCTAD convened a *Seminar on Systems for the Protection and Commercialization of Traditional Knowledge* in New Delhi. Representatives from Brazil, Cambodia, Chile, China, Colombia, Cuba, Egypt, Kenya, Peru, Philippines, Sri Lanka,

²⁶ See WT/CTE/W/210, IP/C/W/347/Add.1, *supra*.

²⁷ See for more detail: www.unctad.org/trade_env/test1/openF1.htm.

²⁸ DFID is a UK Government department working to promote sustainable development and eliminate world poverty (www.dfid.gov.uk).

²⁹ See www.undp.org.

³⁰ See www.ictsd.org.

³¹ See www.unctad.org/trainfortrade/index.htm.

³² See www.unep-unctad.org/cbtf.

Thailand, Venezuela and India, and a number of international experts and inter-governmental organizations participated. In the Communiqué issued by the meeting, participants expressed the need for understanding the viability of various instruments including national *sui generis* systems of protection and their recognition at the international level.³³ Participants had agreed that commercialization of traditional knowledge-based products and services, where appropriate, was to be promoted with an emphasis on equitable benefit-sharing with local and indigenous communities and with their prior informed consent. Particular attention needed to be paid to the sustainable use and management of biological resources in this process.

38. Finally, UNCTAD welcomed the adoption by consensus by the FAO Conference in November 2001 of the *International Treaty on Plant Genetic Resources for Food and Agriculture*.³⁴ This treaty represented an important bridge between agriculture, environment and trade. UNCTAD planned to organize a meeting in Geneva in the autumn of 2002 on this treaty and its implications for Geneva-based negotiations. This would be of particular relevance to the discussions and negotiations on TRIPS Article 27.3(b).

C. PARAGRAPH 32(i) OF THE DOHA MINISTERIAL DECLARATION (MARKET ACCESS)

The effect of environmental measures on market access, especially in relation to developing countries, in particular the least developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development.

1. The Market Access Aspect of paragraph 32(i)

39. The representative of India introduced a paper highlighting the problems being faced by developing countries in getting market access due to environmental measures in export markets.³⁵ The paper focused on market access for those products which were in themselves environment friendly but which nevertheless faced restrictions. Such environmental measures worked against sustainable development in that they *reduced* market access for developing country products. Sustainable development was a larger issue encompassing, *inter alia*, the efficient allocation of world resources, domestic environmental imperatives, poverty alleviation and the creation of additional wealth for environmental protection in developing countries. Jute, one of the most environment friendly packaging material, was one example. Another was requirements on packaging materials made from wood sourced from sustainable managed forests or plantations. A third was traditional farming practices. Farming without using chemical fertilizers and pesticides was quite common in developing countries, yet the resulting organic food products often failed to find market access in export markets due to multiple requirements of conformity assessment.

40. India's paper suggested a number of steps to take in order to ensure greater market access for environment friendly products from developing countries. These included the involvement of developing countries in the design of environmental measures, technical assistance, and longer time frames for compliance. It was also necessary to recognize equivalence of environmental measures in developing countries, as was provided for by the TBT Agreement. India's experience was that the results so far in achieving equivalence were not satisfactory.

³³ The papers and presentations from this meeting are available on the UNCTAD Web site (www.unctad.org) and the final communiqué was circulated in the CTE as: WT/CTE/W/214, IP/C/W/350, 26 June 2002, Seminar on Systems for the Protection and Commercialization of Traditional Knowledge, Communiqué - New Delhi, 3 – 5 April 2002, Communication from UNCTAD, paragraph 32(ii).

³⁴ See www.fao.org/ag/cgrfa/itpgr.htm.

³⁵ WT/CTE/W/207, 21 May 2002, The Effects of Environmental Measures on Market Access, Especially in Relation to Developing Countries, in particular the Least-Developed among them, Submission from India on paragraph 32(i) of the Doha Ministerial Declaration.

41. The representative of the United States noted that India's paper contained thoughtful analysis of the relationship between environmental measures and market access, and the means by which developing countries could avoid being disadvantaged. For example, the paper highlighted the importance of technical assistance and capacity building and access to information on environmental requirements. While the United States could take issue with some of the specific points raised in the paper, the United States viewed the paper broadly as seeking to reconcile environmental protection measures with the maintenance of an open and non-discriminatory trading system so that both could be pursued in mutually supportive ways. This was the crux of the provisions in the Doha Ministerial Declaration on trade and environment. Certain of the issues raised in the paper could already be addressed under existing provisions of the WTO agreements. The TBT Agreement specifically provided disciplines and other avenues for addressing many of the issues highlighted in the paper, such as: eco-labeling; the development and adoption of standards, technical regulations and conformity assessment procedures; access to information; participation in the development of environmental requirements; and equivalence.

42. The United States considered India's suggestion that the CTE examine some real-world situations, such as the case of jute, as constructive. It was noted that the OECD's Joint Working Party on Trade and Environment had already begun similar work examining the potential impacts on developing country exports of environmental measures and had developed a series of such case studies that, once finalized, needed to be shared with the broader WTO membership. Use of such studies would not only assist in better identifying and clarifying the issues, but could assist in determining potential areas for targeting assistance. In summary, the United States was fully prepared to engage in discussion on the questions put forth by India, as suggested in paragraph 17 of the paper.

43. The representative of the European Communities noted that India's paper was rich in its examples and strong in its analysis. The European Communities acknowledged the problems described in the paper, particularly those faced by small and medium sized enterprises (SMEs) in developing countries. In the context of the upcoming World Summit on Sustainable Development, the European Communities would suggest a partnership for the creation of sustainable trade centres which would help developing country exporters in being well and timely informed about new environmental requirements in order to be in a position to adjust their production methods. The European Communities looked forward to further discussions on the paper and, like the United States, noted that there were certain elements and conclusions in the paper which merited reflection in the context of the TBT Committee. The European Communities wondered whether it would be useful that the Secretariat do some further work and analysis on the nature of the various barriers as described in India's paper in order to enrich the discussions on this issue.

44. The representative of Norway noted that his country was in the process of identifying national policies and measures that could have detrimental effects on developing countries. One essential element in this context was trade policy, including non-tariff barriers. In Norway's view, national environmental policies were designed to improve the health and security for citizens and consumers. They were elaborated within the framework of – and in line with – international agreements such as the SPS and TBT Agreements. Nevertheless, they could have unintentional side-effects on imports from developing countries. Norway recalled the ongoing exercise in the OECD on the effects of environmental measures on developing country exports and welcomed further concrete examples of such cases.

45. Norway referred to the examples that India presented in its paper concerning packaging, recycling, refund systems and take-back obligations. Although importers in Norway had not raised these problems with the relevant authorities (they had raised others), Norway was considering whether national packaging legislation could have a negative impact on imports of jute and cardboard boxes. With respect to organically-produced food products by small farmers in developing countries, there was cooperation in Norway between producers, importers, wholesalers and retailers as well as with NGO's to promote sales of such products. This included certification and labeling. Such

cooperation needed to be encouraged in importing countries. As regards the Indian proposal that exceptions should be provided to environmental measures in exporting countries which were different but equivalent in effect to environmental measures in importing countries, this proposal raised a number of issues, such as the implementation of national laws and regulations, consumer concerns, the role of international standards as well as the applicability of mutual recognition. The issue needed to be reverted to. Finally, Norway agreed with India that the question of technical assistance for capacity building was important and Norway was open to consider, on a case by case-basis, technical assistance, in particular to Least Developed Countries (LDCs). Norway also supported more discussions on the proposal made by the European Communities to establish sustainable trade centres.

46. The representative of Korea shared India's view that SMEs in developing countries faced difficulties in coping with challenges arising from environmental measures of importing countries and that technical assistance, capacity building and technology transfer were part of the solution. It was especially important to ensure participation of developing countries in the process of developing environmental standards at the international level.

47. The representative of Canada noted that the TBT Agreement offered some possibilities for dealing with some of the concerns with respect to transparency and equivalency provisions. In some cases the measures had a mixture of health and environmental motivations and were not always clearly environment; health was, in some countries, more of a driving factor than environment and this brought the matter under different rules in the WTO. Canada was involved in a few projects in this area. Canada's International Development Research Center (IDRC)³⁶ was working on a project which dealt with standards as was the Canadian International Development Agency (CIDA).³⁷ Furthermore, Canada was one of the three members of the North American Commission on Environmental Cooperation³⁸ which had, along with the United States and Mexico, worked on issues relevant to coffee as an example of trying to help small producers dealing with some of the challenges in accessing markets in North American as well as other places.

48. The representative of Cuba noted, in his preliminary comments, that as was the case for many developing countries, Cuba had been affected by environmental measures in its export markets and that this had increased costs. Cuba agreed with the message in paragraph 5 of India's paper: there was a need for granting developing countries, and in particular LDCs, a longer time frame to achieve standards of sustainable development.

49. The representative of Malaysia noted that India's paper had enumerated a number of environmental measures both of a technical and non-technical nature that affected market access. Unfortunately, these effects were mostly felt by SMEs. Developing countries usually had very few choices and their responses seemed to be limited to either adapting to these requirements by modifying their production techniques or searching for alternative markets, or losing the market. The first two alternatives usually meant higher costs or lower profits while the latter was a loss of a market altogether. Malaysia appreciated that some countries had taken steps to provide adequate time for adjustment to measures and provided some justification for the imposition of these measures, and others had provided technical assistance or information – but this was only in the post-implementation phase.

50. In Malaysia's view, it would be more useful to place importance on the development phase of the measure so as to ensure that environmental requirements be *developed* and later applied in a manner so as to minimize trade effects. In this sense there was a need for a more participatory process. India's proposal in this regard bore merit. Account needed to be taken of financial and trade needs of developing countries; that measures be based on the criteria of transparency and equity and,

³⁶ See www.idrc.ca.

³⁷ See www.acdi-cida.org.

³⁸ See www.cec.org.

as pointed out above, that the affected countries be given opportunity to participate and give their views during the development phase.

51. In addition, Malaysia also stressed the importance of developing country participation and acceptance of international standards on which environmental measures were based. Malaysia wished that more attention be given to equivalence and mutual recognition arrangements so that countries were able to adapt to these measures in a short and painless way. Malaysia also noted the comments and proposals by the European Communities and Norway and agreed that there was a need to explore whether environmental measures could be designed in the least restrictive manner.

52. The representative of Japan noted that his country attached importance to sustainable development and, hence, would examine India's submission very carefully and come back with more detailed comments at a later stage. Japan had one preliminary question: Paragraph 16(g) of the paper suggested that the "negative effects of environmental measures on market access should be mitigated or eliminated altogether by providing additional market access to developing countries in these products". The representative of Japan wondered what the modalities would be for providing such additional market access. Would this be through increased allocation of tariff quotas, for example, or a change in duty rates for the products concerned? And if this was the case, how would consistency be ensured with respect to other relevant WTO principles and rules?

53. The representative of Pakistan noted that India's paper was comprehensive and highlighted the importance of technical assistance. It also addressed all aspects of environmental requirements, including requirements relating to products, standards, questions of eco-labeling, packaging and the effects on market access of SMEs in developing countries. Pakistan agreed with India in that while it was for the governments in developing countries to take advantage of the comparative advantage of their products (particularly environment friendly products in environmentally conscious markets), it was as important to safeguard the existing market access against unjustified environmental requirements. Pakistan concurred with the proposals put forward by India in paragraph 16 and the suggestion that further debate was required to address the negative effects of environment measures on market access of developing countries.

54. The representative of Brazil noted that in Part 2 of the paper, India signaled that developing countries needed to identify specific examples of environmental requirements impacting on export performance. This was what developing countries had to start doing and what the TBT Committee, in its work on Technical Cooperation, was undertaking through a survey addressed to developing countries. Brazil also found useful the suggestion that efforts be made in respect of information dissemination regarding new environmental requirements directed to the exporting units. If transparency on environmental requirements could be improved it would be useful, especially for developing country Members.³⁹ In general, Brazil was pleased to find good examples of trade measures that could actually impact on market access for products such as tropical timber and eco-packaging requirements and also marine turtles and jute. Jute was a good example. The representative of Brazil was surprised to learn about problems regarding export of products packed in jute.

55. Brazil supported all the proposals put forward by India in Part IV and, in particular, highlighted those contained in paragraph 16(b) and (c). Here it was stated that environmental measures should be based on the criteria of sound transparency and equity and that trade effects could be mitigated if foreign producers were given the opportunity to participate at an early stage in the design of environmental requirements and had been given adequate time to adjust to these. Brazil wished to add an 8th proposal. This concerned the importance of developing country participation in the work of international standard setting organizations such as ISO, Codex Alimentarius Commission

³⁹ In this regard, the delegate of Brazil referred to the a paper table by the European Communities on labelling (G/TBT/W/175, WT/CTE/W/212, 12 June 2002, Labelling, Submission by the European Communities) where, in para. 7, the European Communities proposed that the TBT Committee examined how to enhance the effectiveness of transparency provisions relating to voluntary labelling.

and others that related to environment requirements. Basing voluntary standards to the extent possible on international standards would be the best way to secure developing country participation in the elaboration of those standards. This proposal had, in fact, been presented by developing countries in the context of implementation discussion relevant to the TBT and SPS Committees and on which a decision had been reached.⁴⁰

56. The representative of Venezuela noted that India's document served as an example for developing countries on how to focus the discussion in the CTE. In particular, Venezuela stressed the importance of what was stated in paragraph 16(b), namely that "[e]nvironmental measures should be based on the criteria of sound science, transparency and equity". He asked MEA Secretariats to cooperate in the future with respect to scientific studies so that all countries, in particular developed countries taking environmental measures, based these on the work of MEAs. This was a way of achieving transparency and equity. Venezuela recalled that in the past, three products had been subjected to environmental measures that were neither transparent or equitable, such as was the case of reformulated gasoline and tunas. It was important that environmental measures be based on – or supported by – sound scientific criteria, or even better, by MEAs.

57. The representative of Indonesia felt that India's paper needed to be further debated in the CTE – in particular the proposals set out in paragraph 16 of the paper. Echoing what others had said, Indonesia emphasized that there was a need for environmental measures to be based on criteria of sound science, transparency and equity. Likewise, the issue of adjustment-time for new requirement was important. Indonesia stressed the importance of the principle of common but differentiated responsibility in order to achieve sustainable development.

58. The representative of Saudi Arabia fully supported India's paper. He noted in particular the importance of the message on sustainable development in paragraph 5 and echoed the remarks on the relevance of the work being done by the OECD. In Saudi Arabia's view, it was important to identify sector-specific examples of environmental requirements, and, in this light, Saudi Arabia was particularly concerned with the energy sector.

59. The representative of Mexico noted that India's submission brought the theoretic discussion in the CTE to something more concrete – and this after seven years. There was a need for Members to start giving concrete examples of environmental measures or measures with environmental objectives. Hence, Mexico would be contributing with a document for the next meeting. Mexico was encouraged by statements made by developed countries (European Communities, United States and Norway) to discuss concrete measures which affected market access on developed markets.

60. The representative of Djibouti noted that it was absolutely essential to have a close look at the technical capacity of developing countries and whether these countries, especially LDCs, fully understood the operation of this system. It was noted that the European Communities had just launched the idea of "sustainable trade centres" which could help developing country exporters being better and more timely informed about new environmental requirements. Information was key to understanding the rules of the game and the operation of the system. For instance, it was worth considering why there were so few LDC representatives in the room.

61. The representative of the OECD briefed the CTE on where it stood with its project on enhancing the capacity of developing countries to address environmental requirements in OECD countries. This was a project which was being carried out in three stages. The first stage consisted of putting together case studies of concrete examples of environmental requirements in OECD countries that had posed problems to developing countries. So far between 18 and 20 case studies had been put together. There were difficulties in finding real cases as opposed to cases where the problems turned

⁴⁰ WT/MIN(01)/17, 20 November 2001, Decision on Implementation-Related Issues and Concerns, Ministerial Conference, Fourth Session, Doha, 9 - 14 November 2001, Decision of 14 November 2001, paras. 3.5 and 5.3.

out not to be real. Hence, the OECD took the opportunity to welcome any additional examples, especially those originating from developing countries themselves. The second phase of the project would be a workshop to be held in November 2002, hopefully in a developing country, perhaps in India. This workshop would discuss the case studies with the countries concerned and with officials in ministries in OECD countries who were in charge of developing the measures at issue. Hopefully, the workshop would lead to some conclusions which would help the OECD to develop the final third phase which involved providing guidance on how to enhance the capacity of developing countries to address environmental requirements. This could take the form of "good practices" or guidelines or recommendations. No decision had been taken yet on the specific nature of the outcome, and the OECD relied on the conclusions of the November workshop to develop this third phase.

62. The representative of UNCTAD briefed the CTE on its work relevant to enhancing the capacities of developing countries to meet environmental requirements. In May 2002, UNCTAD held a 2-day meeting in Geneva to present the result of a project funded by the International Development Research Centre (IDRC) in Canada, on *Standards and Trade*.⁴¹ The project had commissioned a number of studies on environmental, sanitary and health requirements and developing countries experiences in dealing with these issues in a number of countries in South Asia, East Africa, and Central America. Three regional workshops had taken place to present the results of these studies. An overall study had been commissioned and presented at the *Standards and Trade* meeting. Looking ahead, the UNCTAD would be holding an expert meeting on environmental requirements and trade on 2-4 October 2002 and in the run-up to that meeting the UNCTAD would be getting in touch with a number of delegations for suggestions and contributions.

63. The representative of UNEP drew Members attention to the fact that under the auspices of the CBTF, UNEP and UNCTAD had held a workshop in Brussels in the ACP Secretariat in February 2002 on *Promoting Production and Trading Opportunities for Organic Agricultural Products*.⁴² The meeting was attended by experts from many developing countries as well as by the European Communities DG Trade and DG Environment. Papers were tabled and a useful technical exchange had taken place. That workshop was going to be followed by more regional activities focussing on organic agricultural products. UNEP believed that this was an important "win-win-win" opportunity which would require more particularly multi-stakeholder workshops developing practical actions to promote that trade.

64. The representative of India thanked all the delegations who had expressed their views on his country's paper. India had taken note of the valuable comments and would reflect on them. The idea of "sustainable trade centers" as mentioned by the European Communities was interesting, but more information on this was necessary. With regard to the question by Japan, India noted that compliance with additional environmental regulations would naturally increase costs. So as to offset such increases, constructive measures taken by importing countries would be needed; the issue needed further discussion and ideas were welcome. Noting that there was need for further work on this, India requested the Secretariat to catalogue work which had been done in this area and which could contribute to further deliberations in the CTE.

65. The Chairman took note of the requests to the Secretariat made by the European Communities and by India.

⁴¹ See www.unctad.org/trade_env/test1/openF1.htm.

⁴² See www.unep-unctad.org/cbtf/meetings/brussels.htm.

2. Sectoral analysis

(a) Agriculture sector

66. The representative of Canada noted that when free from distortions, international trade resulted in the most efficient and sustainable allocation of global resources. Trade in agricultural goods was no exception to this rule. As such, agricultural trade reform offered a "win-win-win" opportunity for trade, the environment and economic development. Agricultural trade distortions could be minimized by governments substantially improving market access and significantly reducing or eliminating trade distorting or production distorting domestic support and export subsidies. Canada emphasized that government's efforts to promote the positive and mitigate the negative environmental impacts of agriculture, should do so via policies that did not distort production or trade. Eliminating trade and production-distorting subsidies would have environmental benefits for both the reforming country as well as other countries, particularly developing countries. The elimination of such subsidies would allow international commodity prices to reach market levels, thereby increasing returns from agriculture and encouraging investment and production in developing countries. Increased returns would lead to higher incomes for developing country producers and would improve their financial capacity to maintain and pursue sustainable farming practices. Elimination of trade and production distorting subsidies would also have environmental benefits for the reforming country by eliminating incentives that encouraged intensive farming practices which were linked to environmental degradation - as recognized by the European Communities paper on non-trade concerns.⁴³

67. The representatives of Australia, Brazil, Colombia, Costa Rica and Djibouti supported Canada's statement.

(b) Energy

68. The observer of Saudi Arabia made a presentation on "Energy taxation in OECD countries and their potential economic impacts".⁴⁴ With respect to existing taxation of subsidies in OECD countries, it was noted that they were generally biased against petroleum products. There were negligible taxes on coal and gas, and, in addition, coal products in many OECD countries were being subsidized. In Saudi Arabia's view this was unfortunate as coal was known to produce more carbon dioxide than oil. Hence, while oil products were being heavily taxed, OECD countries were subsidising coal. Not only this, but many OECD countries were implicitly subsidizing nuclear energy under the excuse that nuclear energy did not emit green house gases, despite the known dangers of nuclear power. Hence, using the pretext of climate change, nuclear energy was not only being subsidized but many countries, including Japan, were planning to implement the Kyoto Protocol by building *more* nuclear plants.

69. The economic implications for developing countries were serious. Developed country policies to limit CO₂ emission would, according to Saudi Arabia, reduce the demand for oil and the volume of exports from oil producers. Higher prices would increase the cost of energy-intensive goods manufactured in developed countries and the cost of importing such goods in developing countries. According to modelling conclusions for oil-exporting developing countries, Kyoto implementation would lead to significant falls in revenues, GDP and welfare. Developing countries – those countries which were highly dependent on the exportation of fossil fuel – would be greatly impacted as a result of these environmental measures. Changes in terms of trade would produce a wealth transfer from developing oil-exporters to industrialized countries. The magnitude of the transfer would depend on how the Kyoto Protocol was implemented. Oil-exporting developing

⁴³ G/AG/NG/W/36/Rev.1, 9 November 2000, Committee on Agriculture Special Session, Note on Non-Trade Concerns, Revision, Submission to the Special Session of the WTO Committee on Agriculture by Barbados, Burundi, Cyprus, Czech Republic, Dominica, Estonia, the European Communities, Fiji, Iceland, Israel, Japan, Korea, Latvia, Liechtenstein, Madagascar, Malta, Mauritania, Mauritius, Mongolia, Norway, Poland, Romania, Saint Lucia, Slovak Republic, Slovenia, Switzerland, and Trinidad and Tobago.

⁴⁴ The slides of the presentation were distributed in the room at the time of the meeting.

countries would suffer GDP losses of between 3 per cent and 5.1 per cent by 2010 (relative to 1990 levels) and this would significantly impact on national development and social welfare gains. In the case of Saudi Arabia, by the year 2010, and as a result of these environmental measures, there would be net losses in revenues of about 20 billion in 1995 dollars.

70. Considering the above, Saudi Arabia recommended that Members considered the removal of subsidies and made taxation more carbon responsive. This could be done by removing coal subsidies and by restructuring fuel taxes to reflect carbon content. Those polluting sources that had higher content of carbon needed to be penalised more. This was clearly a "win-win-win" situation as removing subsidies on coal and nuclear energy would benefit not only trade and the environment, but also development.

71. The representative of Kuwait believed that Saudi Arabia had touched upon a sensitive and important issue for Kuwait, as well as for other developing countries. The question had to be asked whether WTO rules had a precedence over environmental objectives or the other way around. He recalled a recent visit to an OECD country made by his delegation where he had been amazed at what this country had proposed as a "climate change levy". Kuwait was concerned about activities that were discriminatory against fossil fuel products. The Kyoto Protocol did not deal with products, it dealt with emissions, and emission resources consisted of a wide range of activities. The representative of Kuwait sought clarification regarding how the CTE should deal with this issue. How could the "win-win-win" approach of minimizing the environmental impact of consuming fuel products and sustaining economic growth be reached in this sector?

72. The representative of Venezuela noted that Saudi Arabia's presentation was a clear example of how today's global energy market distortions were affecting the welfare of all cities in the world. It was an illustration of how developed countries used certain measures which benefited some fossil products to the detriment of others. Venezuela agreed with Kuwait's statement that there was discrimination against certain fossil products. In fact, the representative of Venezuela was quite sure that one of the reasons for the high cost of living in Europe, the United States as well as in Japan was exactly what had been pointed to by the delegate of Saudi Arabia. The citizens in these regions did not understand that high gasoline costs in their countries was due to high taxes. Like Kuwait, Venezuela asked the CTE to clarify, at some point, how this issue would be discussed at forthcoming meetings.

73. The representative of Jordan joined the other delegations to thank Saudi Arabia for its comprehensive presentation.

74. The observer of Saudi Arabia requested the permission of the CTE for the paper to be circulated as an official document. The Chair put the question to the floor and no Member objected.

(c) Forestry

75. The representative of Japan presented his delegation's paper on the forestry sector.⁴⁵ Recalling that at Doha, Ministers had reaffirmed their commitment to the objective of sustainable development, in the forestry sector, the key challenge was with respect to the concept of "sustainable forest management". As a major wood-importing country, Japan was particularly interested in the promotion of sustainable forest management and hoped that discussions in the CTE could show how the WTO could make a positive contribution to this goal. Japan raised three issues. First, on export restrictions, while Japan agreed with the objective of preserving forest resources, Japan questioned the rationale behind the measure, and particularly if it could be justified under WTO rules. The second issue was illegal logging. This was generally understood to be logging conducted in such a manner as

⁴⁵ WT/CTE/W/211, 11 June 2002, Issues on Forestry Products Trade and Environment, Submission by Japan. Note that the document was circulated only a few days prior to the meeting. Hence, many comments by delegations were of a preliminary nature.

being inconsistent with an individual country's own domestic legislation. Japan noted that the issue had been recently discussed in several international fora. While national domestic measures taken to combat illegal logging were important (as the issue was about a violation of a country's own domestic law), it was also important to examine a possible international approach from a trade perspective, taking into account discussions in other international fora. Third, on labelling, Japan felt that there was a need to respond to growing concern from civil society. Increasingly, in the forestry sector, attention was being drawn to the promotion of sustainable forest management. This was linked to "illegal logging" in that it was important that labelling did not turn into an unnecessary obstacle to trade. Japan intended to examine possible ways to proceed with the CTE discussion on forestry, based on comments and opinions from delegates.

76. The representative of the European Communities shared the concerns of – and importance attributed by – Japan on the issue of sustainable forest management. A number of recent reports, including from the FAO, had highlighted possible solutions which could promote sustainable forest management in the future. This was a priority for the European Communities. More substantive comments would follow.

77. The representative of Korea noted that Japan's submission underlined the importance of sustainable forest management for achieving sustainable development, and shared many of Japan's concerns. Korea noted that many issues had been well presented by the International Tropical Timber Organization (ITTO) and the United Nations Forum on Forests (UNFF) at the MEA information session the previous day (see Annex).

78. The representative of Canada was pleased to see the forestry debate reinvigorated in the CTE. The illegal logging issue was something that had been taken up by other fora, particular environmental fora. It was an issue that was within the mandate of the UNFF.⁴⁶ In Canada's view, it could be worth focussing more on trade in illegal products. Canada hoped that Japan and other Members involved would bring more information to the table for the next meeting.

79. In its preliminary response, the representative of the United States noted that Japan's paper raised several issues associated with sustainable management of forest resources. The United States shared the concern of Japan, and of many other countries, about illegal logging and the manner in which it undermined environmental, economic, and social goals. The United States was actively involved in many intergovernmental efforts underway to address illegal logging. The United States emphasized the point made by Japan that domestic actions were a critical starting point in combating illegal logging. In order to assist in such efforts, the United States was working to launch regional partnerships at the World Summit on Sustainable Development to help developing countries put a stop to illegal logging and to promote and advance sustainable forest management.

80. The representative of Brazil was primarily concerned with the issue of illegal logging. It was unclear to Brazil what Japan was proposing in this respect. What did Japan mean by proposing that the CTE examined a "possible international approach from a trade perspective when exploring solutions to this issue, taking into account the above discussion in international fora"? Should this be interpreted as meaning that Japan wanted the issue to be brought to the WTO, or that it should remain in other fora such as CITES? It was Brazil's belief that the issue of illegal logging was being appropriately and adequately dealt with in other fora, so the usefulness of debating it in the WTO was unclear. The representative of Brazil reserved the right to revert to the other two issues raised in the paper at a later stage (export restrictions and labelling).

81. The representative of Malaysia agreed with Japan that sustainable management of resources was an issue of concern to all countries. But this was so regardless of whether at issue were resources such as forests, land, or fish – and the concern applied irrespective of whether a country was an

⁴⁶ See www.un.org/esa/sustdev/forests.htm.

importer or exporter. On the issue of export restrictions on unprocessed logs, Japan appeared to agree with Malaysia that such measures were a necessary part of forest conservation programmes. In fact, Malaysia maintained that such measures constituted part of the country's sovereign right to protect its forest resources, consistent with Article XX(g) of the GATT. Malaysia did have some export restrictions on logs, enforced in conjunction with a reduction in the targeted annual crop of logs from natural forests; however, 80 per cent of the requirements from the domestic industries were filled by wood from rubber wood plantations. Hence, Malaysia was relying less and less on natural forests.

82. Like Japan, Malaysia was also concerned with the issue of illegal logging and had enacted stringent penalties to prevent the practice. A recent World Bank study had found that the problem of illegal logging had been reduced considerably and now accounted for less than 1 per cent of Malaysia's production. While Malaysia agreed with Japan that strong domestic measures and enforcement of these were important, it was felt that the paper did not go far enough to address the root causes of illegal logging. In many cases, the practice was motivated by circumstances such as poverty and high indebtedness. The international community could do more on the issue of tariff peaks affecting processed timber products. As Canada had mentioned, there were many opportunities to work with organizations such as the ITTO and the UNFF in this respect. These organization could provide assistance and capacity to reduce illegal logging. Also, assistance was needed to find *national* solutions which would always be the most effective way of containing this problem as they involved countries themselves in the conservation effort. Regarding Japan's mentioning of an "international approach", Malaysia stressed that punitive trade measures would be a self-defeating solution, at best. Many environmental agreements contained positive measures; this approach should be more aggressively pursued. Indeed, Malaysia welcomed the statement of the United States' delegation regarding the regional initiatives taken to assist countries in reducing illegal logging. Malaysia would have further comments at a later stage.

83. The representative of Norway noted that the paper raised a number of issues that needed to be considered by the CTE and looked forward to further contributions from Japan, as well as from other countries. Norway noted Canada's comment on the difference between illegal logging and illegal trade in the context of the CTE, as well as other comments concerning the particular responsibilities of the WTO versus other organization's responsibilities in this area (the UNFF and the ITTO). Norway would revert to this matter at the next meeting with more in-depth comments.

84. The representative of Canada wished to clarify a point he had made earlier on trade and illegal logging. Canada's intention had been to say that it was much harder to discuss illegal logging *per se* in the WTO. There was a need to narrow the focus on this issue so as to avoid getting into an immense area of domestic policy: The WTO ought to focus on *international* trade of illegally harvested timber and other forest products.

85. The representative of Djibouti noted that the issue of forestry conservation was very important to his country and needed to be considered in depth.

86. The representative of Venezuela informed the CTE that about 14 per cent of Venezuela's territory was considered as national parks. This was an indication of the importance his government attributed to this issue. There was a need to consider what kind of cooperation could be provided on an international basis in order to provide sustainable development for the forestry sector. As indicated by others, Venezuela believed that Japan's paper did not deal with the poverty aspect. Also, the relevance of CITES work was recalled, as well as the need to be clear on the respective responsibilities of each organization.

87. The representative of Chile noted that it was his understanding that Japan's paper was a preliminary submission to be further developed. While the paper made interesting links between sustainable development and forestry, Chile wished to reserve its position on some points. For instance, Chile was of the view that there were different ways of achieving sustainable forest

management. These needed to be looked at within a framework of international cooperation, as well as domestic measures. And while the value of domestic measures was understood, the trade measures referred to in the paper were not fully spelled out. Hence, like Brazil, Chile reserved its position. There was a certain amount of confusion regarding the solutions being advocated in respect of illegal logging, and on the linkage between illegal logging and labelling. Chile look forward to further developments of these proposals from Japan before making a more thorough response.

88. The observer of CITES informed the CTE that certain timber species had been placed on CITES Appendices. Mahogany, for example, was a major one which had been included in Appendix 3 because a number of Parties to CITES had so requested. This allowed the CITES mechanism to track trade in this particular species through CITES documentation; something which in itself was a useful mechanism for dealing with illegal trade (trying to identify then to stop it). The experience with this initiative of having the species listed in Appendix 3 had been reviewed recently by a number of Parties in what was called the Mahogany Working Group. That group would be reporting to the CITES Conference of Parties in Santiago, later in 2002, on their findings.⁴⁷ A study would also be prepared by an NGO group on the monitoring of trade in CITES species (a joint effort between IUCN and WWF called "Traffic").⁴⁸ Finally, there would be a topic at the Santiago Conference on timber trade in general.

89. The observer of ITTO referred to paragraphs 3 and 4 of Japan's paper where it was stated that FAO estimated that around 9.4 million hectares of global forests had been lost annually over the past ten years and that forests could either be depleted through "reckless exploitation or poor management, or reproduced through the natural process under appropriate management". The ITTO noted that perhaps a more important factor in this regard was the conversion of forests to other land use. On forest degradation, the ITTO had recently adopted the *Guidelines for the Management of Secondary Tropical Forests, Tropical Forest Restoration and Rehabilitation of Degraded Forest*.⁴⁹ Illegal logging was a recognized problem. It was unfortunate that most of the references were to *draft* figures; these figures could only be indicative. In light of this, the ITTO had been given the authority to undertake a study to examine more closely import and export trade in forests products. This could give an indication of the extent to which illegal logging trade was taking place and facilitate a better understanding of the underlying factors contributing to it. In terms of capacity building and technical assistance, the ITTO had approved a recent project in Indonesia. With the assistance of the Indonesian Government and in collaboration with WWF in Indonesia, the ITTO would undertake a pilot study to control illegal logging in one or two places in Indonesia and use the result of that study as a basis to develop appropriate guidelines to combat illegal logging at source. With regards to labelling, the ITTO observed that Japan's delegation had mentioned the "effective contribution" of labelling and certification to the promotion of sustainable forest management. However, currently about 92 per cent of certified forests were located in developed countries and less than 8 per cent of certified forests were located in developing countries. This showed the importance of facilitating the participation of developing countries (those who wished to be part of it) in this process.

90. The observer of UNFF reiterated that the issue of illegal logging was a major emerging issue that was being addressed within the UNFF and would be an issue that would be looked into at the Third Session of UNFF.⁵⁰ The delegate noted that the last statement by Canada captured well the direction of the discussion which was emerging on international trade of illegally harvested forest products. That UNFF Secretariat stood ready to assist the CTE in further discussions.

91. The representative of Japan thanked delegations for their comments and noted that they would be reflected upon in capital. Regarding the question by Brazil, he indicated that Japan aimed at

⁴⁷ More information on the Twelfth meeting of the Conference of the Parties to take place in Santiago, Chile, from 3 to 15 November 2002 can be found at www.cites.org.

⁴⁸ See www.traffic.org.

⁴⁹ See www.itto.or.jp.

⁵⁰ See www.un.org/esa/sustdev/forests.htm.

pursuing the problem in the WTO. The Doha Ministerial Declaration had clearly reaffirmed WTO's commitment to the goal of sustainable development and the forestry sector was a good example of an area where a WTO effort was needed. Regarding the point made by the Malaysian delegation on justification under Article XX(g) of export restrictions, it was Japan's understanding that export restrictions in Malaysia were not imposed on processed lumber but on the raw material of that same lumber. Therefore, Japan was not yet convinced regarding the stated environmental objective of the measure. And if there was no justification under WTO rules, there was a need to look at the trade distortive effect of the measure and whether, in the global sense, the measure could have a negative impact on sustainable management of the forests. Regarding the confusion on "solutions", Japan stressed that it had no specific solutions yet. However, from a "trade perspective" some solutions could be explored. For example, the price-gap between two countries was a strong incentive for illegal logging. Japan's intention had been to initiate the discussion. Based on the comments and opinions expressed, Japan would consider an additional contribution to bring the discussion forward.

D. PARAGRAPH 32(iii) OF THE DOHA MINISTERIAL DECLARATION (LABELLING)

Labelling requirements for environmental purposes.

92. The representative of the European Communities presented his delegation's paper on labelling.⁵¹ It was noted that the scope of the paper was broader than the Doha mandate on labelling requirements and included many issues relevant to CTE work. Overall the paper, which drew heavily on Canada's submission at the last CTE meeting,⁵² set out *issues*; it did not propose solutions. It suggested ways to carry the discussion forward, including the involvement of the CTE where appropriate. The European Communities intended to submit another paper prior to the 8-9 October meeting of the CTE on paragraph 32(i) with particular emphasis on environmental labelling.

93. In general, the representative of the European Communities noted that while labelling tended to be less trade restrictive than many regulatory measures it could nevertheless have a significant impact on trade. Developing country exporters could face particular problems demonstrating compliance. And as there appeared to be increasing recourse to labelling, this led to concern and uncertainty regarding the application of relevant WTO provisions. Perhaps the most controversial issue in the labelling debate concerned the non-product-related process and production methods. Different Members had different interpretations on the applicability of the TBT Agreement and views varied on the scope for adopting and applying non-product related labelling schemes. The European Communities wished to clarify through agreement rather than through dispute settlement proceedings. This clarification should not undermine existing WTO provisions.

94. In introducing the paper, the European Communities highlighted two issues: international standards and developing country concerns. International standards for labelling had significant potential to facilitate trade by promoting harmonisation of labelling requirements. The TBT Agreement obliged Members to use relevant international standards except when such standards would be an ineffective or inappropriate means for the fulfilment of the objectives pursued. The existence of ISO standards for voluntary eco-labelling was significant and it was important for the CTE to gain an understanding of the implications thereof. Regarding developing country concerns, the CTE could look at ways of ensuring timely information on proposed or existing labelling schemes; the facilitation of compliance with labelling requirements; and the promotion of participation in international standard-setting. This issue had been stressed by Brazil earlier in the meeting.

⁵¹ G/TBT/W/175, WT/CTE/W/212, *supra*. Note that this paper was also discussed at the meeting of the TBT Committee held on 20-21 June 2002 (for a summary of that discussion, see G/TBT/M/27, 31 July 2002, starting at para. 175).

⁵² G/TBT/W/174, 12 March 2002, Labelling and Requirements of the Agreement on Technical Barriers to Trade: Framework for Informal, Structured Discussions, Communication from Canada. The paper was discussed at the 21 March 2002 meeting of the CTE (see WT/CTE/M/29, 7 May 2002, from para. 64).

95. Regarding future steps, the paper set out two specific ideas. First, with regard to a TBT Secretariat paper on labelling, the European Communities suggested that this should be a descriptive analysis, at least at the initial stage. It could provide an overview of the state of play of discussions, including WTO Secretariat and Members' submissions on labelling, relevant WTO decisions, and international labelling activities. Any such paper would be relevant also to the CTE. Secondly, the European Communities supported the Canadian proposal for the TBT Committee to organise an informal workshop on labelling. The CTE's participation in this workshop would be useful. From the CTE's perspective, the participation of the ISO, notably due to their work on environmental labelling, along with other international organizations active in this area, like UNCTAD, OECD and UNEP, would appear to be particularly relevant. The central theme of any workshop could be developing country concerns and interests in the labelling issue. Holding the workshop toward the end of 2002 would help the CTE to finalise its report on paragraph 32(ii) for the 5th Ministerial.

96. On a somewhat separate matter, the representative of Switzerland wished to bring the Secretariat's attention to a bibliography of publications relevant to trade and environment.⁵³ An update of this document could help identify the relationship between trade liberalization and the environment, and could be useful for CTE's discussions under paragraph 51.

97. Labelling for environmental purposes was also an issue of importance for Switzerland. The representative of Switzerland recalled a paper submitted by her delegation in June 2001.⁵⁴ This paper had, in particular, noted the significant uncertainty on the question whether the TBT Agreement applied to eco-labelling. An in-depth examination would contribute to eliminate part of these uncertainties. The paper had raised several issues relevant to the debate: the distinction between mandatory and voluntary requirements; the issue of production and processing methods; the issue of legitimate objectives and in particular the question whether "consumer information" could be considered a legitimate objective. These matters had to be dealt with in order to eliminate ambiguities and ensure that labelling was not used for protectionist purposes. It was necessary to take into account the fact that developing countries also had a great diversity of marking and labelling requirement – a reason for which Switzerland insisted on the importance of international harmonization.

98. Switzerland noted that while the TBT Committee dealt with labelling in general, the CTE needed to focus on eco-labelling in particular. As was stated in Doha, Switzerland proposed that the CTE start discussions on the definition of the term eco-labelling, and the pertinent rules of WTO agreements applicable to eco-labelling. Furthermore, in order to achieve a coherent result and avoid overlap, there needed to be close cooperation between the CTE and the TBT Committee.

99. The representative of Canada noted that the EC paper drew on many ideas that were contained in Canada's submission (referred to above by the European Communities). It was important to stress that the mandate of the CTE in paragraph 32 was to look at *labelling for environmental purposes*. A key difference between the Canadian paper, which had been submitted to the TBT Committee,⁵⁵ and the EC paper was that whereas it seemed quite clear from the EC paper that there was a specific outcome in mind (in terms of guidelines or interpretation on the TBT Agreement), the Canadian approach did not prejudge any specific outcome. In fact, Canada's emphasis was on implementation.

100. The representative of Japan found the EC paper particularly useful in that it emphasized developing country interests and concerns. Japan wondered about the time-line envisaged by the

⁵³ WT/CTE/W/49, 16 May 1997, Selected Bibliography on Trade and Environment.

⁵⁴ WT/CTE/W/192, G/TBT/W/162, 19 June 2001, Marking and Labelling Requirements, Submission from Switzerland.

⁵⁵ G/TBT/W/174/Rev.1, 31 May 2002, Labelling and Requirements of the Agreement on Technical Barriers to Trade (TBT): Framework for Informal, Structured Discussions, Communication from Canada, Revision.

European Communities, taking into account upcoming discussion on labelling to be held in the CTE in October as well as the discussions to be held the following week in the TBT Committee.

101. The representative of the European Communities looked forward to the more in-depth discussion in October. On Japan's question, the European Communities was looking at the association of the work of the CTE to that of the TBT Committee, particularly with respect to the proposed informal workshop. While there was perhaps a need to await the outcome of the discussion to be held in the TBT Committee itself, a decision that the CTE would be associated to this meeting could be useful at the current stage. On timing, holding such an event towards the end of the year would be fine.

102. The Chairman urged all delegations to study the issue in depth as this was one of the major issues that had emerged from the Doha declaration. In order to submit a satisfactory report to the next Ministerial Conference, there was a need to reconcile divergent views and find a common expression. This would be discussed in October.

E. OTHER ITEMS OF THE CTE WORK PROGRAMME

1. Item 4 (Transparency)

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.

103. The Chairman recalled that the Secretariat circulated the Environmental Database for 2001.⁵⁶ All notifications that were environment-related or included environmental references were listed in this document, as well as the trade policy reviews in which reference was made to environment-related measures or provisions.

2. Item 9 (Services)

The Decision on Trade and Services and the Environment.

104. The Chairman noted that the Secretariat was preparing a background note, as requested by delegations at an earlier meeting. It was the intention of the Secretariat to circulate this paper in advance of the October meeting.

F. PARAGRAPH 33 OF THE DOHA MINISTERIAL DECLARATION

We recognize the importance of technical assistance and capacity building in the field of trade and environment to developing countries, in particular the least-developed among them. We also encourage that expertise and experience be shared with Members wishing to perform environmental reviews at the national level. A report shall be prepared on these activities for the Fifth Session.

1. Technical assistance and capacity building for trade and environment

105. The Chairman invited delegations and intergovernmental organizations to share their work on capacity building activities and environmental reviews with the CTE on an ongoing basis, as they considered it appropriate. This experience sharing would better enable the CTE to prepare the report

⁵⁶ WT/CTE/EDB/1 (and Corr.1), 31 May 2002, Environmental Database For 2001, Note by the Secretariat.

that was mandated for the next Ministerial Conference in 2003. Also, in the Doha Declaration, Ministers had specifically welcomed the continued cooperation between the WTO, UNEP and other intergovernmental environmental organizations. Ministers had encouraged efforts to promote such inter-agency cooperation, especially in the lead-up to the World Summit on Sustainable Development to be held in Johannesburg, South Africa, in September 2002.

106. The representative of Switzerland recalled the importance that her delegation attributed to technical assistance in the field of trade and environment. Switzerland encouraged local capacity building in the field of ecological production methods for industry as well as for the introduction of environmental standards. Switzerland cooperated with university associations and private experts in countries such as India and Bulgaria. In addition, Switzerland was considering a project with UNCTAD for the purpose of promoting biological diversity in developing countries. Switzerland reaffirmed its support for the work of UNEP in this field and, as had been indicated in the Special Session, Switzerland believed that paragraph 33 would be supportive in the light of the contents of paragraph 31.⁵⁷

107. The representative of Canada noted that the Canadian International Development Agency (CIDA) was the organization in Canada most involved in the field of technical assistance relevant to CTE work. CIDA had provided a small amount of funding to the OECD project on the development dimension of trade and environment; this funding was for Phase 2 of the project, a workshop bringing environmental standards-setters together with developing country exporters in late 2002. CIDA had also funded an economic environment management project in Viet Nam aimed at increasing Viet Nam's ability to design and implement effective economic and environmental policy generally. It would also help to develop trade reform in natural resource management policy. This would enable Viet Nam to adjust efficiently to an open trade regime and compete effectively in the world markets, increasing productivity in particular as regards the sustainable exploitation of coastal resources. CIDA had also funded initiatives which examined the impact of trade liberalization on the environment in China. In its effort to make an inventory of other projects, Canada was discovering that in some cases, regulatory bodies were already routinely undertaking such projects around the world, especially in areas such as those involving sanitary and phytosanitary issues (SPS Agreement); this facilitated their own work by having more efficient partners in other countries.

108. The representative of the European Communities recalled that the implementation of a coherent program for capacity building was a priority for the European Communities in the context of the Doha Development Agenda. On specific activities, these were to a large extent based on the principles which were set out at the UNEP workshop on capacity building which took place in Geneva, in March 2002.⁵⁸ These included coherence, the definition of a long term approach, and a dialogue with the recipient countries themselves. The European Communities would ask developing countries to indicate what concerned them most in terms of their strategy to eradicate poverty and achieve sustainable development. Finally, the European Communities reiterated its support for UNEP's activities in this regard.

109. The representative of the United States assured his delegation's full support for focussing WTO technical assistance efforts – in particular for the 2003 plan – as a means of advancing the Doha Development Agenda. He urged the WTO Secretariat to work expeditiously to finalize its 2003 plan and in doing so to reach out to Members who had not yet provided their input. Members needed to begin thinking about trade-related technical assistance that would be of particular relevance to advancing the work of the CTE. This could include, for example, assistance to Members wishing to perform environmental reviews. Noting that pledges in support of the Global Trust Fund for technical assistance had exceeded the initial targeted responses, other creative ideas in support of WTO trade

⁵⁷ See para. 66 in TN/TE/R/2, 25 July 2002, CTE Special Session, Summary Report on the Second Meeting of the Committee on Trade and Environment Special Session (Meeting held on 11-12 June 2002), Note by the Secretariat.

⁵⁸ WT/CTE/W/206, 8 May 2002, UNEP Workshop on Capacity Building on Environment, Trade and Development, 19-20 March 2002, Geneva, Chairman's Summary, Contribution by UNEP.

related technical assistance were welcomed. These could be, for example, offers of in-kind contributions from Members. In organizing the CTE work in this area and looking ahead to the requirement that a report be made to the 5th Ministerial Conference, the United States believed it would be useful to begin identifying specific aspects of capacity building and technical assistance in the field of trade and environment, particularly since it was a relatively new area of focus in the WTO. In fact, the United States had noted, from a number of developing country delegations' remarks at the Special Session (previously in the week), that there appeared to be a need for more precision. Initial examples included assistance associated with the capacity to conduct environmental reviews; access to environmentally sustainable production technologies; and potential linkages to assistance on trade capacity that could promote environmental objectives such as customs reform which would in turn facilitate implementation of MEA obligations. Importantly, this kind of assistance and capacity building could help Members realize a bigger objective on the trade and environment front, namely what the United States had stressed throughout the week of meetings: increased communication and coordination at the national level between trade and environment officials.

110. The representative of Mexico stressed the need for discussions on capacity building and environmental problems to focus on trade issues related to the environment, not generally on issues or obligations relevant to the environment. Mexico was aware of the coordination between the WTO, UNEP and MEA Secretariats aimed at integrating trade and environment policies, and welcomed the success of the workshop organized by UNEP (March 2002). All the above contributed to strengthening coherence, integrating approaches and avoiding duplication. However, Mexico believed that a multilateral strategy in capacity development on trade and environment needed to include three components: (i) a diagnosis by national authorities and multilateral environmental bodies on the problems faced; (ii) concrete policies which would help solve the identified problems, and (iii) systems of follow-up and assessment. In the work undertaken so far there had been progress made in the first two components. But there was still an absence of proposals on follow-up and assessment. Mexico considered that this was a basic element for a strategy of strengthening capacities in a sustainable manner. Mexico wished to emphasise the need for the evaluation of the specific needs of each country.

111. The observer of UNCTAD draw the attention of the CTE to its *Progress Report on Technical Assistance and Capacity-building Activities on Trade, Environment and Development* aimed at enhancing developing countries' participation in the post-Doha work program. UNCTAD's technical assistance and capacity-building in the area of trade, environment and development fell in three clusters: activities that were part of the environmental component of UNCTAD's programme on technical assistance and capacity building for developing countries, especially LDCs, and economies in transition in support of their participation in the WTO post-Doha work programme; activities in the context of the joint UNEP-UNCTAD Capacity-building Task Force (CBTF) on Trade, Environment and Development;⁵⁹ and a new and fairly large UK DFID-funded project on building capacity for improved policy-making and negotiation on key trade and environment issues.

112. As regards the environment component of UNCTAD's general post-Doha capacity-building programme, the secretariat had been implementing the following main activities: Policy dialogues and briefings with Geneva-based delegations; regional seminars on specific issues; national policy dialogues to facilitate policy-coordination on key issues, preferably based on a multi-stakeholder process and with the active involvement of the private sector and other members of civil society; training seminars of three to four days; and specific national capacity-building projects. By way of illustration, at the end of February, UNCTAD and the Agency for International Trade Information and Cooperation (AITIC)⁶⁰ in Geneva had organized a first brainstorming session on environmental issues in the post-Doha work programme in close collaboration with UNEP and the WTO. A second brainstorming session, which would focus on specific issues, was planned on 17 July 2002.

⁵⁹ See www.unep-unctad.org/cbtf.

⁶⁰ See www.acici.org/aitic.

UNCTAD also held a TrainForTrade⁶¹ course in Benin on 22-26 April 2002. At the request of the Government of Costa Rica, UNCTAD would also organize a post-Doha trade and environment workshop for several central American and other countries in Costa-Rica on 1-3 July 2002.

113. Turning to post-Doha capacity-building activities in the context of the CBTF, two training workshops in Viet Nam and Cuba had been held in mid-December last year. Starting with the WTO regional seminar on trade and environment for Asian developing countries in Singapore in mid-May 2002, UNEP and UNCTAD were envisaging to regularly hold short CBTF events on specific issues of the post-Doha negotiating mandate and work programme on trade and environment back-to-back with future WTO regional seminars. These events would be shaped based on a need assessment questionnaire circulated among nominated participants. Besides governmental representatives attending the WTO seminars, the CBTF events would rally experts from the region, representatives of regional intergovernmental organizations and secretariats of MEAs as well as some regional and local NGOs that were selected as a function of the targeted subjects. The next event in this regard would be held back-to-back with the WTO regional seminar in Namibia for English-speaking African countries, on 10-11 July 2002.

114. UNCTAD also briefly informed delegates that it had just launched a six-month planning phase for a new project on building capacity for improved policy-making and negotiation on key trade and environment issues, entirely funded by the UK DFID. The project would be jointly implemented with the Foundation for International Environmental Law and Development (FIELD).⁶² The project would assist a cluster of developing countries in each of the three geographic regions in building national and regional capacities to (i) effectively participate in WTO negotiations and discussions on trade and environment; and (ii) deal with specific trade, environment and development issues. As regards the latter, an attempt would be made to move beyond mere national dialogue and assist key beneficiary countries in developing and implementing practical and meaningful legal and policy initiatives. The project would undertake the following main activities: national policy dialogues, sub-regional workshops and training workshops.⁶³

115. The representative of Norway welcomed the activities that had been organized by the Secretariat and its cooperation with other organizations – in particular the UNCTAD and the UNEP. As Norway understood that there were plans being formed for 2003, it expressed the wish to be informed about these plans. In Norway's view, the CTE should not forget the point made by Mexico on follow-up; this was essential to determining what resulted from technical assistance. Finally, Norway reiterated its support for UNEP's work on environmental reviews.

2. Environmental reviews

116. The Chairman indicated that an updated information concerning technical assistance activities of the WTO Secretariat was contained in a document submitted to the Special Session of the CTE.⁶⁴

117. The representative of the European Communities presented a paper on sustainability impact assessment.⁶⁵ The paper was a methodology developed in 1999 during the preparations for Seattle. It was completed with pilot studies in 2002 and, in line with paragraph 33, it was currently being circulated to give Members an opportunity to comment.⁶⁶ Members interested in further information were invited to contact either the consultants directly, or the EC delegation. The underlying objective

⁶¹ See www.unctad.org/trainfortrade/index.htm.

⁶² See www.field.org.uk.

⁶³ For more information on this project see www.unctad.org/trade_env/test1/openF1.htm.

⁶⁴ TN/TE/S/2, 10 June 2002, Existing Forms of Cooperation and Information Exchange Between UNEP/MEAS and the WTO, Note by the Secretariat, paragraph 31(ii).

⁶⁵ WT/COMTD/W/99, WT/CTE/W/208, TN/TE/W/3, 3 June 2002, Sustainability Impact Assessment, Communication from the European Communities. Additional information is available at idpm.man.ac.uk/sia-trade.

⁶⁶ The second sentence of paragraph 33 states: "We also encourage that expertise and experience be shared with Members wishing to perform environmental reviews at the national level".

was to improve quality and coherence of EC trade policies by informing negotiators about the impact of the negotiations on the environment, social development and the economy. It was noted that the identification of these impacts concerned the entire geographic territory susceptible, whether within or outside the European Communities. The studies proposed flanking measures aimed at reducing the negative impacts or reinforcing positive ones. They had been carried out by external independent consultants in a transparent manner (all documents could be found on the Internet).⁶⁷ These consultants had based their analysis mainly on literature reviews and expert opinion. The European Commission had committed itself to carrying out impact assessments for each trade negotiation - multilateral or regional. The program entailed more than 2.7 million Euro over the next four years and would include WTO negotiations, bilateral negotiations and those which were now taking place between the European Commission and MERCOSUR, Chile, the ACP and the Gulf countries. The final results of the general study would be ready by the end of 2002. Furthermore, there were sectoral studies concerning environmental services and market access. The latter focussed in particular on three sectors: textiles, pharmaceuticals and non-ferrous metals. Finally, a special sectoral study on competition was also being conducted.

118. The representative of Canada recalled his country's framework for conducting environmental assessments of trade negotiations, released in February 2001.⁶⁸ The framework committed Canada to undertaking national and environmental assessments of multilateral, regional and bilateral trade liberalizing negotiations. In keeping with this, notice of intent had been issued in the Canada Gazette, which was the official Federal Government publication with legal notices, on 8 June 2000, announcing that a domestic environmental assessment of trade negotiations at the WTO was formally underway. Public comments were sought before 31 July 2002 (there would be additional opportunities for public comments). An inter-departmental committee of the Canadian Government would undertake the Canadian assessment of the domestic environmental impacts. The first report in this process, an initial environmental assessment, would be released for public comments in the fourth quarter 2002, followed by a second or draft environmental assessment early in 2003 (the dates were not set in stone). Canada would make these reports available to CTE Members. Furthermore, the Government of Canada had prepared a handbook to assist officials engaged in undertaking environmental assessments. Members wishing to view the handbook could do so on the Government of Canada's website.⁶⁹

119. Regarding the presentation by the European Communities, it was noted that Canada's approach to impact assessment of trade negotiations was domestic, whereas the EC approach included analysis of the extra-territorial impacts of trade liberalization. Canada's preference was that assessments focus on national level analysis and that countries chose methodologies which best met their needs. It appeared to Canada that consideration of impacts in countries or regions external to the country or region undertaking the analysis was problematical for a number of reasons which had already been identified in the recent EC study. For example: conditions and impacts were highly site-specific; aggregated studies tended to lose much critical information; and, assumptions underlying economic modelling of liberalization impacts might not hold up in reality. These, as well as other factors, could mean that useful and accurate analysis would be very expensive to obtain.

120. Canada acknowledged that assessments were a valuable contribution to national policy making and recognized the need to develop capacity to undertake such assessments. In this regard, Canada was encouraged by the work of UNEP and other organizations such as the WWF which undertook country and/or regional studies on the invitation and participation of national governments. Canada welcomed sharing of impact assessment information between countries and would consider including relevant information on impact assessment from these and other sources in its own decision-making processes.

⁶⁷ See <http://idpm.man.ac.uk/sia-trade>.

⁶⁸ WT/CTE/W/183, 15 March 2001, Framework for Conducting Environmental Assessments of Trade Negotiations, Communication from Canada.

⁶⁹ See www.canada.gc.ca.

121. The representative of the United States noted that his intervention was along the same lines as that of Canada. The United States had initiated an environmental review on 15 May 2002 by the publication in the Federal Register of a request for public comments on the scope for the review. This notice requested views on the potential environmental aspects of the negotiations. The deadline for the submission of comments was 26 July 2002. On the EC paper, the United States noted the usefulness of sharing information and welcomed such initiatives from others. Canada had raised an interesting issue in respect of measuring or analysing extra territorial effects as opposed to domestic. The United States noted that it would be useful to have some background to the EC decision to use private contractors to undertake the assessment rather than draw upon policy and analytical expertise within the Commission. Additionally, the United States asked for the EC's view on the qualitative differences between a sustainability assessment as opposed to a more traditional environmental assessment.

122. The representative of Australia considered that the EC document contained a number of flaws and inaccuracies. For example, the EC pilot study and its conclusion were based on a fundamental misunderstanding of the relationship between social and environmental outcomes. With appropriate responsive environmental and social policies, liberalization could enhance environmental outcomes. For example, trade reform improved resource allocation in agriculture. Conversely, high levels of agricultural protection could cause serious negative environmental and social consequences. Protection grossly distorted returns to farming and, where agriculture was heavily supported, could beat up the price for agricultural land. This encouraged the substitution of non-land agricultural inputs causing overly intensive forms of agriculture which degraded land and rural environment. It was important that the right policies were used in targeting environmental and social problems and that these policies were not deliberately trade distorting. Australia could have further comments to make on this issue at another time.

123. In responding to the comments made, the representative of the European Communities noted that the selection of outside consultants contributed to transparency as this entailed an open bidding procedure. In fact, considering Australia's comments, the idea was *not* to put forward the Commission's views in these studies; the consultants would come up with their own conclusions. The Commission's main concern was with their transparency and credibility. Regarding the choice of studying social and environmental aspects, the European Communities pointed at the need for coherence and having a holistic approach. This was valid for the approach to the studies themselves (economic, environmental and social), as well as with respect to their geographical coverage. Having a holistic approach made it possible to attain coherent conclusions.

124. The Chairman noted that the CTE would continue the discussion of this Item at future meetings.

G. PARAGRAPH 51 OF THE DOHA MINISTERIAL DECLARATION

The Committee on Trade and Development and the Committee on Trade and Environment shall, within their respective mandates, each act as a forum to identify and debate developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected.

125. The Chairman reported on the informal consultations on paragraph 51, held on 15 May 2002. The discussion had been based on the statement of the European Communities at the CTE's last meeting on 21 March, as well as several other elements put forward by various delegations at that meeting. While many delegations had felt that it was useful to have an initial exchange of views on the structure of the debate, it was also felt that it would be premature to engage in substantive discussions at this early stage in the negotiations. In general, there was overall agreement on the importance of paragraph 51 to a successful outcome of the negotiations. It was also noted that

paragraph 51 was a standing item on both the CTE and the Committee on Trade and Development (CTD) agendas.

126. While Members were still at an early stage of reflection on paragraph 51, there were several observations on points of convergence that emerged at the meeting. These observations had been circulated in advance of the meeting in the Annotated Agenda.⁷⁰ The Chairman highlighted three points:

- (a) There was general agreement that the approach to address paragraph 51 should be Member-driven in order to identify elements from the negotiations for debate, with inputs from the Secretariat as appropriate.
- (b) Informal discussions indicated that the CTE could start substantive discussions not earlier than October, with the suggestion put forward to focus on agriculture and services.
- (c) While the possibility of holding a joint CTE-CTD meeting should not be excluded, many delegations felt it was too early to consider. In this respect, the Chairman would continue to be in contact with the Chairman of the CTD.

127. At the end of the above-mentioned informal discussion, the Chairman felt that there was scope for deciding on three issues at the current meeting:

- (a) First, to start the substantive discussion of paragraph 51 at the October 2002 meeting;
- (b) Second, to divide up discussions by area of negotiation and to start in October with agriculture and services, respectively; and,
- (c) Third, to pose the question whether the Secretariat should prepare any factual documentation at this stage prior to the October meeting or at a later stage.

128. The representative of Canada reiterated the importance his country attached to paragraph 51. As he felt that the note circulated by the Chairman summarizing the discussions of 15 May 2002 was good and accurate, he focused on the three questions. First, Canada was of the view that substantive discussions should start at the October meeting. Second, Canada agreed, in principle, to try to identify in advance of the meeting a small number of sectors to focus on at each meeting. However, at the same time, there was a need not to be too rigid, i.e., delegations who felt they needed to say something on a sector not identified for discussion at a particular meeting ought to be able to do so. The suggestion of focusing on agriculture and services was one that Canada would be prepared to go along with if other delegations were comfortable with it. Nevertheless, it was still early days and there was a need to be realistic about the extent to which the CTE could get into substance in October. Third, in terms of what the Secretariat might prepare, Canada was very conscious of the fact that there were limited resources in the Secretariat. Also, WTO Members already did have access to various documents prepared in all of the negotiating fora. Nevertheless, it could be quite useful if the Secretariat could, with relatively minimal effort, put together a document that would summarize the state of play in the various negotiations. This could be done by simply packaging some reports that were already being prepared in the respective negotiating groups. For instance, the Chairs prepared a report for the TNC. Perhaps this would simply be a matter of stitching together work already done elsewhere. Such a compilation could help the CTE discussing paragraph 51.

129. The representative of the European Communities noted that the upcoming World Summit on Sustainable Development made the mandate and objective of paragraph 51 particularly relevant. In

⁷⁰ JOB(02)/51, 4 June 2002, CTE, Meeting on 13-14 June 2002, Annotated draft agenda.

the view of the European Communities, it was not too early to identify relevant issues for the CTE in line with this mandate. The European Communities was positive to all three points made by the Chairman. There should be a substantive discussion starting in October. The discussion could easily be divided into the areas of negotiations and starting with agriculture and services seemed a good choice given that these negotiations had been going on for some time. The European Communities agreed that it would be useful if the Secretariat could prepare factual documentation on the environmental elements of papers circulated in negotiations under the Doha Development Agenda up until now, perhaps until the end of September.

130. The European Communities wished to comment on two other elements of the Chairman's summary. First, on the question of a joint CTE-CTD meeting the European Communities was of the view that at some stage such a meeting should take place. Second, the European Communities had, at the last meeting of the CTE, floated the idea of having an "out-reach event" connected to this joint event. This would give the opportunity to civil society to comment on how they saw sustainable development reflected in the work of the WTO. Such an out-reach event taking place *after* Members had had time to digest the results of the World Summit on Sustainable Development, but timely *before* the 5th Ministerial Conference, would be particularly useful.

131. The representative of Malaysia noted that her country had no difficulty with starting discussions at the October meeting on this subject. But the division by sectors had to be seen as *one* way to proceed. Looking at the two proposed sectors for October (agriculture and services), Malaysia noted the vast number of papers on the table. She wondered if her country had the resources to go through these two big sectors at one meeting. Hence, Malaysia suggested that discussions start with one sector, whether agriculture or services. Based on this experience, ways of becoming more efficient during the 2003 meetings could be explored.

132. The representative of Chile noted that his delegation was willing to start discussion on substance in October. But as Malaysia had stated, Chile was not quite sure that both agriculture and services could be dealt with at the same time. Also, Chile agreed with Canada to the effect that the Secretariat should not be over-burdened. It was suggested that perhaps the Chairman could send a communication to the Chairs of agriculture and services indicating that at the October 2002 meeting the CTE would be discussing their areas of work. The objective of this would be to get input from them on issues of relevance to the CTE. Like the European Communities, Chile was positive to a joint meeting with the CTD and invited the Chairman to contact the CTD Chair to further explore how to implement paragraph 51.

133. Like others, the representative of Brazil agreed with previous speakers that discussions should commence in October 2002. Although Brazil was flexible on the idea of dividing up discussions by area of negotiation, it was felt that delegations needed to be free to raise any item – among those under negotiations – which they found deserved attention. This was especially relevant in the initial phase of negotiation where Members were still establishing the negotiating dynamics. At this stage, it would be premature to try to establish an overview of what was taking place in individual sectors. On the issue of a joint session, this would be desirable at some point. On the other hand, the delegation of Brazil did not see paragraph 51 as one that lent itself to out-reach initiatives. It was rather one that was inward looking in nature: that is, an opportunity for WTO Members to look at how the negotiating process was proceeding, and to try to mainstream sustainable development into these discussions.

134. The representative of the United States considered paragraph 51 as a serious responsibility for the CTE. While the United States was in a position to begin substantive discussions in October and was flexible with respect to the second issue, the United States supported Canada's statement to the effect that there had to be an opportunity for any delegation to refer to any part of the negotiations. Concerning a possible input of the Secretariat, the United States was also concerned about overloading. It could be useful for the Secretariat to compile a listing of documents which had been

circulated in the various negotiating bodies. However, the United States understood the EC suggestion as one where the Secretariat might undertake to identify environmental elements or aspects of what had been put forth in other negotiating groups. This was, in the US view, not appropriate. It would be an unfair burden on the Secretariat as this would introduce some element of subjectivity. In fact, it was Members' job, in undertaking a paragraph 51 assessment, to identify what they considered important environmental aspects of the negotiations. However, it could be useful for the responsible Secretariat Division to provide the CTE at the outset of such discussion with a summary of what had been going on in the various areas. For example, the Director of the Trade in Services Division could provide his assessment, or his summary of negotiations, to date in the services area. This would be a useful role for the Secretariat. On the issue of a joint CTE/CTD session, there was a wide agreement that it was premature. The United States did not understand the merits of the idea at this point in time, particularly given the heavy agendas before each Committee. There were also feasibility considerations to be taken into account. There was a need to study this issue closely in terms of what it might accomplish, and how it might add to the burden of delegations.

135. The representative of Venezuela requested the Secretariat to clarify the objective of the following question listed in the Annotated Agenda: "What is the linkage between Special and Differential Treatment for developing countries and paragraph 51?".⁷¹

136. The Chairman responded that all questions in the Annotated Agenda had been raised by Members, not by the Secretariat, nor by himself.

137. The representative of Venezuela recalled that it was in fact his delegation that had raised the question and wished to present it in a different manner, as he was not satisfied with the current phrasing. For Venezuela it was very important to consider the relationship between the way the CTE dealt with the issue of Special and Differential Treatment and how it was being dealt with in the CTD. There was a need to see if the Committees approached the subject differently. Regarding the three issues, his delegation's replies were in the affirmative. Furthermore, Venezuela agreed with Chile's suggestion that the Chairman should consult with the Chairs of the Committee on Agriculture and the Council for Trade in Services, and agreed with Brazil that the floor be left open for other subjects if delegations wished to mention other issues besides these two areas. Going back to Special and Differential Treatment, the representative of Venezuela requested that the Secretariat should find out from MEA Secretariats how they dealt with Special and Differential Treatment.

138. The representative of Australia began by expressing his delegation's agreement with most of what the United States had said on this issue. However, Australia was concerned with the idea of selecting two themes for the first session of substantive discussion under this item. This had to remain a Member-driven process, not a process-driven process. Hence, there was a need to follow regular CTE procedures where Members themselves would decide, by tabling their own papers, what they thought would be a relevant theme for discussion. Therefore, Australia preferred to defer a decision on what to discuss until the CTE had a better idea of how its discussions under paragraph 51 would proceed in the future.

139. The Chairman noted that the idea of focussing on agriculture and services had not come from the Chair nor from the Secretariat. It had been a proposal of a Member. At the informal consultations, there had been an emerging consensus on this.

140. In response, the representative of Australia noted that it was his impression that although there were two areas identified, and a suggestion had been made by one delegation and supported by a few others, other delegations had not considered it appropriate to take that decision at that time. And, Australia was of the view that it was not appropriate to take a decision at this point in time either.

⁷¹ JOB(02)/51, supra, 4th indent, p.5.

There was a need to consider what sort of documentation would appear, and perhaps to return to this issue if need be, before the October meeting.

141. The representative of Korea shared the views of the Australian delegation. The scope of the of the Doha Development Agenda and the negotiations was so broad that the CTE's review needed to have a good structure. Discussions under paragraph 51 was unknown land for the CTE; this was the first time that the CTE engaged in this kind of exercise. In the interest of efficiency it would be desirable to have a clear idea on how to proceed in executing the mandate under paragraph 51, and in particular with respect to the scope of the CTE's work and its relation to other negotiations.

142. The representative of the United States noted that Australia had raised a fair point. Also, he did not think that in the informal consultations there had been a clear emerging consensus on what might be the agenda for the October discussions. The Australian and Korean interventions suggested that perhaps the October meeting could start off with discussions on essentially everything up for review. This could then provide the CTE with a basis for subsequently sub-dividing up the areas depending on where initial interest was being shown. In other words, by covering all areas at the next meeting the CTE was not precluding a subsequent sub-division.

143. The Chairman, noting the change in tendency, suggested that the CTE have an overview at the next meeting in October. Delegations would therefore be free to raise or to identify environmental aspects as they wished. This would entail a general discussion on the environmental aspects of the negotiations as a whole. Starting from this general discussion, the CTE could then focus on specific subjects at the next stage. In light of the discussion, there was no need to ask the Secretariat to prepare documentation.

144. The representative of Canada, reflecting on those who were less knowledgeable about how to access documents relevant to other negotiations, suggested that some effort by the Secretariat to identify the relevant summary documents would help preparations in capital.

145. The Chairman suggested that in the Annotated Agenda for the next meeting, the Secretariat could indicate such information. Regarding the few other issues addressed in the informal consultations, there had been no further progress. On the joint meeting with the CTD, the Chair had been in contact with the Chairman of the CTD and apparently there was neither consensus nor the right conditions for convening such a meeting. Likewise, with respect to a possible public event, it was too early. The Chairman concluded the meeting by posing one last key question for Members to think about: what form should the end-product of paragraph 51 take?

ANNEX

MEA Information Session 13 June 2002

Technical Assistance, Capacity-Building and Information Exchange

A. OPENING STATEMENTS

146. The Chairman noted that MEA Information Sessions were a tool to increase understanding of the trade-related aspects of MEAs on the one hand, and the rules of the multilateral trading system on the other hand. The CTE had been holding such sessions since September 1997 with those MEA Secretariats whose agreements related to trade. These sessions offered a constructive and practical way forward in forging synergies between the WTO, UNEP and MEAs, as well as fortifying information exchange. This Seventh Information Session was essential in light of the recognition, in the Doha Ministerial Declaration of the importance of technical assistance in the field of trade and environment to developing countries, as well as the importance Members attached to continued cooperation between the WTO, UNEP and MEAs, particularly in the lead-up to the World Summit on Sustainable Development.

147. At the CTE meeting in March 2002, Members had decided to focus the current session on technical assistance and capacity building on trade, environment and development, as well as on enhancing information exchange between the WTO, UNEP and MEAs. The objective was to build on the valuable Workshop on Capacity-Building convened by UNEP back-to-back with the last meeting of the CTE in March 2002.⁷² The Chairman indicated that UNEP had circulated a synthesis paper on *Enhancing synergies and mutual supportiveness of MEAs and the WTO*.⁷³ In order to guide this Information Session, Members had also before them a background paper on technical assistance and capacity-building activities on trade and environment in UNEP, WTO and various MEAs.⁷⁴

148. After a brief introduction on technical assistance and capacity-building on trade, environment and sustainable development by the UNEP and WTO Secretariats, each MEA Secretariat would be invited to comment on trade-related technical assistance and capacity-building activities, as well as on ways to increase information exchange and cooperation between MEAs, UNEP and WTO.

149. The observer of the United Nations Environment Programme (UNEP) indicated that UNEP attached great importance to enhancing information exchange and cooperative capacity building activities between the WTO, MEAs and itself. Both these processes had a crucial role to play in increasing the mutual supportiveness of the multilateral environment and trade regimes, and could offer real benefits to WTO Members and Parties to MEAs. The relationship between trade provisions in MEAs and WTO rules had moved into a new and more intensive phase with an open and continuous flow of information between officials in the secretariats of UNEP, MEAs and the WTO. The governing structures of these bodies were more important than ever.

150. In the last few years, information exchange sessions had informed trade officials on the progress in the implementation of MEAs and had given several MEA Secretariats exposure to the trade and environment debate in the WTO. This had contributed to opening a dialogue between the secretariats of the two regimes. With the developments at Doha, and the inclusion of the environment

⁷² The Chairman's summary of this meeting had been circulated in document WT/CTE/W/206.

⁷³ WT/CTE/W/213, 12 June 2002, *Enhancing Synergies and Mutual Supportiveness of MEAs and the WTO*, A Synthesis Report, Contribution by UNEP.

⁷⁴ WT/CTE/W/209, 5 June 2002, *MEA Information Session on Technical Assistance, Capacity Building and Enhancing Information Exchange*, Input from the WTO, UNEP and MEA Secretariats.

as a negotiating item on the WTO agenda, it was necessary to move the interaction between UNEP, MEAs and the WTO beyond simply information exchange. Such interaction needed to be focused on key issues related to the implementation of both trade and environment agreements. Information also had to be delivered at a time and in a form that would ensure its relevance to policy-making and the integration of environment, trade and development objectives. Effective interaction and information exchange should enable the transfer of substantive analysis and research on the relationship between multilateral environment and trade policies to the WTO negotiations. This information exchange process should also be a two way process where the Conference of the Parties of the various MEAs were not only kept informed of developments in the WTO negotiations but also contributed to these developments.

151. In order to achieve these objectives, UNEP believed that it was essential to undertake the following actions. First, to undertake an assessment and examination of the existing mechanisms for information exchange to see whether they achieved timely and useful information transfer, which contributed to environment and trade negotiations, policy-making and integration. Second, to define the content, form, periodicity, as well as level of interaction and information exchange between secretariats, governing bodies of UNEP, MEAs and the WTO, Members and trade and environment officials. Third, to exchange experience, information and knowledge on some specific policy tools, such as the use of economic instruments to achieve environmental and trade objectives and work on integrated assessment of trade-related policies, both to clarify and assess the effectiveness of these tools for environment and trade policy integration. Fourth, to explore the potential for further collaboration between the WTO, MEAs, UNEP, and UNCTAD already initiated on specific topics such as enhancing synergies between MEAs and the WTO, integrated assessment, fisheries subsidies, compliance and dispute settlement, and capacity building.

152. Effective information exchange mechanisms should aim to complement, support and guide development of collaborative capacity building activities by the WTO, MEAs and UNEP. UNEP, MEA, and WTO sessions could focus on such issues as: assessment of the impacts of trade liberalization on the environment and the realization of the objectives of MEAs; trade and economic implications of MEAs and the role of trade in sustainable development; effectiveness of trade measures in achieving environmental objectives; the role of technology, particularly environmentally sound technologies in achieving environmental and trade objectives; the role of economic instruments in internalising environmental costs and promoting trade; public-private sector partnerships, including the role of financial institutions and transnational corporations in contributing to more sustainable trade flows; capacity building to enable governments to develop and implement integrated national policies on environment, trade and development, and engage effectively in WTO negotiations.

153. UNEP had developed a specific approach for capacity building activities on the trade, environment and development policy interface that had been applied successfully in a number of countries. This approach focused on the empowerment of national institutions and experts through a "learning-by-doing" approach. It ensured proper coordination and interaction between ministries of environment, trade and other relevant sectoral ministries, the private sector and NGOs. Partnerships for this kind of work needed to extend to include WTO and MEAs, as well as regional and sub-regional institutions.

154. UNEP, together with the MEAs, looked forward to contributing and engaging effectively in this crucial phase of the relationship between the environment and trade regimes. UNEP was confident that in their resolution to secure complementarity and mutual supportiveness of environment and trade policies and agreements, WTO Members would ensure that the environment regime would be engaged as a full partner in the WTO negotiations. Exploration of these issues would contribute to developing a focused and action-oriented agenda for the expert meeting that would take place in the CTE Special Session in late 2002, as had been agreed at the Special Session on 11-12 June.

155. The representative of the WTO Secretariat welcomed the MEA and UNEP secretariats who had accepted to participate in this Information Session. The session came at an opportune moment for WTO Members in light of the work programme that had been put in place at the Doha Ministerial Conference.

156. Coordinated and effective technical assistance was a priority for WTO Members. In the Doha Declaration, trade Ministers had strongly reaffirmed their commitment to the objective of sustainable development. They had welcomed the WTO's continued cooperation with UNEP and other inter-governmental environmental organizations and had encouraged efforts to promote cooperation between the WTO and relevant international environmental and developmental organizations, especially in the lead-up to the World Summit on Sustainable Development to be held in Johannesburg from 26 August to 4 September 2002. In order to address the development dimension of the multilateral trading system, technical assistance and capacity building had been highlighted throughout the Doha Ministerial Declaration. In addition, the Doha Declaration contained specific reference to the importance of technical assistance and capacity building in the field of trade and environment to developing countries, particularly the least-developed among them.

157. Since the establishment of a framework for WTO-UNEP cooperation at the Third Ministerial Conference in Seattle in 1999, the WTO Secretariat had strengthened cooperation with UNEP and MEAs in WTO regional seminars. On the basis of requests from Governments, the WTO Secretariat had established an ambitious schedule to hold 7 regional seminars in 2002. The most recent seminars had been held for Caribbean countries in Saint Lucia in January, for Latin American countries in Colombia in March and for Asian countries in Singapore in May. Participants at the regional seminar in Saint Lucia had particularly appreciated the presence and inputs of MEA secretariats, namely the CITES, the Montreal Protocol on Substances that Deplete the Ozone Layer and the Basel Convention's Regional Centre, in addition to UNEP and UNCTAD. The next regional seminar, for English speaking African countries, would take place in July. Other seminars would be held later in the year for Central/Eastern European countries, French speaking African countries and countries from the Pacific region. For capacity building purposes, the agenda of these seminars had been adapted to the Doha Declaration, which allowed countries to better identify areas of interest and concern in the context of the negotiations.

158. With respect to enhancing synergies between MEAs, UNEP and the WTO, an important step forward had been made. The Information Sessions in the CTE combined with joint papers had allowed for greater mutual understanding of the policy interlinkages between trade and environment. The back-to-back meetings facilitated by UNEP had explored concrete actions to enhance synergies and mutual supportiveness between the WTO and MEAs. These synergies had formed the basis for cooperation on technical assistance activities in the area of trade and environment.

159. Furthermore, with respect to future MEA-related capacity building activities, the WTO Secretariat would be organizing side-events at meetings of the Conference of the Parties of selected MEAs on trade-related aspects of relevance to those MEAs. The first side events had been held at the meetings of the Second Session of the UN Forum on Forests, in New York in March 2002, and the Sixth Conference of the Parties of the Convention on Biological Diversity, in the Hague in April 2002. The Secretariat intended to hold side-events at the COP meetings of the CITES and the Montreal Protocol on Substances that Deplete the Ozone Layer later in the year.

160. UNEP had added a unique element to CTE discussions through its funding of environmental negotiators from developing countries. The policy-making processes in the field of trade and environment were complex and multidisciplinary, requiring coordination at the domestic as well as international levels. This was a challenging and important element of achieving policies that could contribute to sustainable development. In this respect, it was hoped that UNEP would continue to secure funding to build upon the useful practice of facilitating policy coordination by holding back-to-back meetings with the CTE.

161. In order to ensure that trade contributed to sustainable development, the WTO and UNEP, along with other intergovernmental organizations such as UNCTAD, as well as MEAs, had to continue to build on existing cooperation. As was often pointed out by UNCTAD, it was necessary to develop a positive agenda on trade and environment that included development. In this regard, the UNEP-UNCTAD Capacity Building Task Force on Trade, Environment and Development (CBTF) was an important pillar for post-Doha activities in this area. A solid basis for dynamic cooperation had been established between the various organizations, and the WTO Secretariat looked forward to more insights from MEAs, UNEP and delegations at this Information Session on how to enhance the value of technical assistance and capacity building activities in this field of policy-making.

B. PRESENTATIONS BY MEAS

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

162. The Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)⁷⁵ noted that CITES was a convention on international trade with specific trade obligations. Virtually all of its technical assistance and capacity building was related to trade in wild animals and plants covered by the convention. The aim of the convention was the regulation of legal trade and the reduction of illegal trade in the animals or plants covered. CITES followed a three-pronged approach based on the legal, scientific and institutional capacity dimensions of its work, each of which was covered by a different unit within the Secretariat.

163. Some of the specific areas of work of CITES included the clarification of national trade policies and legislation; the determination of the impacts of national policies, both environmental (including resources shared with neighbouring countries) and socio-economic; the scientific basis for trade-related decisions; and institutional capacity for implementation.

164. CITES had been increasingly looking at expedited processes for trade that was unlikely to cause environmental impacts. For instance, work was ongoing in relation to biological samples, trade samples, personal effects, captive bred and artificially propagated specimens. It had also been increasingly concentrating on better analysis and use of trade data; a comprehensive review of economic and trade aspects of the Convention, drawing on partners like WTO with useful expertise and experience; a comprehensive review of compliance and non-compliance measures, including trade measures; and the economics of natural resource management.

165. CITES had appreciated its participation in the regional seminar in Saint Lucia and was seriously considering participating in a second WTO regional seminar on trade and environment in Namibia in July, as certain countries had requested its presence.

166. With regard to information exchange and cooperation, it was noted that the WTO Secretariat had recently contacted CITES to inquire about the necessary steps to obtain observer status in CITES meetings. The WTO had been advised that as an intergovernmental body, it already had such a status and simply had to inform the CITES Secretariat that it wished to participate in meetings. As the WTO had also been permitted to attend meetings for the negotiations of MEAs, it seemed unequal for the WTO not to follow similar practices. Observer status would allow CITES to follow the debate and to better support and advise the governments that it served. Moreover, sustainable wildlife trade could be a powerful tool for development and could constitute itself an important economic instrument for the conservation of certain species.

167. CITES and the WTO should continue to identify key interfaces, to explain to each other their respective approaches and to consider how they could best support one another. The purpose was to go beyond general information exchange and towards more practical synergy between the two

⁷⁵ See for more information, www.cites.org.

secretariats. CITES was interested to learn about the discussions at the CTE Special Session on 11-12 June 2002, and how it could better contribute to future discussions.

168. The 12th meeting of the CITES Conference of the Parties would be held in Santiago de Chile from 3-15 November 2002 and CITES was still anticipating a WTO side event at that meeting. The Secretariat would issue a press statement on 14 June in relation to COP 12 concerning the proposals received from Parties to include new species in the Convention, amend the CITES Appendices and resolve various trade-related implementation issues.

Comments and questions

On information exchange between MEAs that had responsibilities and expertise in the same areas

169. The MEA Secretariats were in the process of building a network and strengthening contacts among themselves. For instance, on economic and trade issues, the CITES Secretariat had made contact with the Convention on Biological Diversity (CBD) to build on their work on economic instruments, as well as the sustainable use of biological resources. With regard to species-specific treaties, CITES had been working more closely with the Convention on Migratory Species to develop a Memorandum of Understanding and a joint Work Plan to identify areas where the two conventions covered the same species and where the two secretariats could complement each other's activities. Recently, both organizations had participated in a workshop on the Saiga Antelope and worked together to develop a regional approach and action plan for this species which was increasingly threatened by unrestrained trade.

170. The Secretary General of CITES had also attended meetings of the International Whaling Commission to examine how this Convention was dealing with the whales species that the two secretariats shared in common. The text of CITES also addressed the relationship with other instruments. A project was under way to identify the linkages with various legal instruments that dealt with CITES species. Such information could be made available to CITES Parties and serve to identify agencies that CITES could consult with in future activities.

On technical assistance and capacity building activities undertaken by CITES in the context of the Doha mandate

171. The CITES had been working with other MEAs and UNEP to identify issues in the Doha Declaration that affected the activities of CITES. CITES was in the process of restructuring its capacity building programme, trying to incorporate the trade and economic aspects into its work. For instance, CITES had held a series of legislative workshops geared at helping CITES Parties improve their legislation. Another project had been to evaluate the legislation of CITES Parties to classify them in various categories based on whether they met basic requirements of the convention. CITES had been working with all Parties whose legislation did not fully meet basic requirements to help them upgrade their legislation. In that context, CITES had incorporated a module on economic and trade issues in relation to CITES legislation to open up debate with its Parties on the types of economic instruments, legislative provisions and policies on wild life trade that they had currently in place.

172. The key now was for CITES Secretariat to become more familiar with the WTO agreements and the interfaces with CITES and see how these could be usefully incorporated into ongoing technical assistance and capacity building activities. In this respect, the WTO regional seminars on trade and environment had provided CITES with a better understanding of the Doha elements that should be taken into account.

On the balance between trade and environmental interests in CITES

173. The CITES Secretariat noted that the balance between trade and environmental interests in CITES was still something that the Secretariat was trying to fully develop. There was a common misconception that CITES was a convention that banned trade in wild life. In fact CITES regulated such trade. The majority of species covered by CITES were part of Appendix 2, which allowed trade while trying to monitor it through a system of permits and certificates. Appendix 1 species were the ones that were endangered and for which commercial trade was not allowed. The role of CITES had been to explain to countries this distinction and to ensure that trade took place in an environmentally sound manner. Countries that chose to make use of their natural resources and to trade in them had to do it in a proper manner and on a scientific basis, with proof of legal acquisition and the relevant accompanying documentation. This was the balance that CITES was trying to reach.

174. A paper on economic and trade issues would be distributed at the COP 12 explaining what the Secretariat had done so far to guide the parties in deciding a way forward. The Secretariat would propose certain steps forward and seek to have discussions on this. There had not been a substantive and comprehensive discussion internally in CITES on these matters yet. However, these issues were highlighted in the Strategic Plan for CITES until 2005, which had been adopted by the Parties and efforts were being made to implement this Plan.

On the implementation of decisions taken pursuant to CITES

175. The Secretariat played a monitoring role with regard to compliance with the convention. It gathered information from annual reports on trade submitted by the Parties, as well as biannual reports on the legislative, administrative, and regulatory measures taken. CITES Secretariat reviewed these reports and tried to identify issues for the parties to address. As the level of implementation varied from one country to another, the Secretariat tried to take from the countries that had a good implementation structure in place some of their practices that could be useful for others. For example, the Secretariat tried to identify the parties that had rich biodiversity but did not yet seem to have the practices in place to manage this diversity. CITES took a holistic approach to these countries, it did not just look at one species as had been done in the past, but at all species. How were their species being handled? How were they being harvested and traded? Where did they end up?

176. In the process of looking at certain enforcement issues, CITES had gone into some countries to see how they handled permits and studied procedures used so as to find out which aspects of the process needed more attention. When countries had problems with fraudulent permits, CITES would examine what the cause was, and how it could be stopped. A comprehensive review of compliance and non-compliance, initiated by the Parties, was under way within CITES.

177. CITES stressed that serious measures, including trade measures, were only a last resort option in case of persistent or even wilful non-compliance.

On cooperation with the World Customs Organization (WCO)

178. It was noted that the Executive Secretary of CITES was at the WCO on World Environment Day to launch the "Green Customs" concept. CITES had been working closely with WCO and INTERPOL to share relevant expertise.

2. The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants

179. The representative of the UNEP Chemicals Secretariat recalled that UNEP Chemicals was acting as Executive Secretary of two conventions, the Rotterdam Convention on the Prior Informed

Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, which was handled jointly with FAO, and the Stockholm Convention on Persistent Organic Pollutants (POPs).⁷⁶ The Rotterdam Convention had been adopted in September 1998. It had been signed by 73 countries and ratified by 22 parties. It was not yet in force, as 50 ratifications were required for this convention to enter into force. It contained a resolution on interim arrangements and an interim programme was currently in place to (i) handle the preparations for the first meeting of the Conference of the Parties, which was expected to take place approximately in three years time and (ii), to implement a voluntary procedure for the prior informed consent. Since 1989, a voluntary procedure administered jointly by UNEP and FAO had been followed. In effect, UNEP and FAO would administer and implement the Convention on a voluntary basis until its entry into force.

180. The Stockholm Convention on POPs had been adopted in May 2001. It had been signed by 151 countries and ratified or acceded to by 11 parties. The Convention was not yet in force as 50 ratifications were required. Both conventions related in some way to trade in hazardous chemicals or pesticides. In fact, the Rotterdam Convention had a trade focus, as it addressed hazardous chemicals and pesticides in trade. The Stockholm Convention also contained provisions governing import and export of persistent organic pollutants, but these were within the overall objective of moving towards the elimination of production and use of intentionally produced POPs. These controls had to be implemented consistently in conjunction with measures concerning, for instance, domestic production. Both conventions had active programmes to support ratification and implementation.

181. In the case of the Rotterdam Convention, UNEP Chemicals had been providing a series of training workshops at the regional and subregional levels to inform people on the new amended PIC procedure and to encourage ratification of the convention. Because of funding shortfall, most of these activities had taken place only during 2002 and this had been one of the barriers to the entry into force of the convention as it had not been possible to get the word out to countries about the benefits of this convention. Another drawback regarding entry into force was that UNEP Chemicals was already implementing the procedure voluntarily and many countries were thus receiving the same sort of protection that they might get upon entry into force. Moreover, 165 countries were actively participating in the voluntary procedure. The Convention contained an article on technical assistance that facilitated bilateral cooperation. However, the potential of that article had not yet been fully explored. A number of countries had been supporting financially these workshops but progress in this area had been limited. Other than some continuing financial support for the operation of the voluntary procedure from the UNEP and FAO, all the work so far had been donor funded, i.e. the cost of operating the Secretariat, holding meetings and conducting these workshops.

182. The Stockholm Convention was somehow more robust in all areas. It contained an article on technical assistance, which included technology transfer, and a financial mechanism established within the convention. There was also an interim financial mechanism that would be in place between the entry into force of the convention and either the first meeting of the Conference of the Parties, or until such time as the Conference of the Parties decided which financial mechanism would be decided upon.

183. The Global Environment Facility (GEF) had been designated as the principal entity of the financial mechanism. However, there were other sources of financial support currently available. For instance, Canada had established a trust fund at the World Bank specifically to assist countries in meeting their obligations under the Convention. The GEF had been active in supporting the objectives of the Convention. At its last meeting, the GEF Council had agreed to recommend a focal area on POPs that would go forward to the GEF Assembly for decision, and had also agreed to figures for about US\$170 million for the 2003-2005 period for the next replenishment, subject to the final decision of the GEF Assembly. Furthermore, the GEF had been providing funding for enabling activities under the convention. These had predominantly been to support developing implementation

⁷⁶ See www.pic.int and www.chem.unep.ch/sc.

plans. The GEF had agreed to expedited procedures for funding GEF eligible countries at up to US\$500,000 per country. So far, approximately 50 countries had been approved to receive this financial support. The GEF had also funded other supporting activities beyond the implementation plan including a series of training workshops on support for implementation and ratification that had been taking place around the world. UNEP had facilitated these workshops jointly with the GEF Secretariat.

184. The Sixth Intergovernmental Negotiating Committee (INC) for the Stockholm Convention would meet from 17-21 June 2002 in Geneva. This would be the first INC meeting following the adoption of the Convention. The main focus of this meeting would be the preparation for the first meeting of the Conference of the Parties. The INC had been authorized to continue the preparatory work until the first session of the Conference of the Parties.

185. There were a number of items of mutual interest for both of these conventions and the WTO. Although the two conventions had not yet entered into force, and implementation of the core provisions of the instruments was only just starting, joint or collective training for countries on their trade-related obligations could be useful in a number of areas. Some form of engagement of UNEP Chemicals in dispute settlement processes and the resolution of trade disputes would also be useful.

Comments and questions

On cooperation between the various conventions dealing with chemicals

186. In the course of discussions within UNEP on the issue of governance, the idea of grouping conventions with similar objectives to make them work more closely together in a variety of areas had received support. One of the "clusters" considered in these discussions was that of the Rotterdam, Stockholm and Basel Conventions. The Secretariats of these conventions had been working together on this idea, and would be seeking advice on this question from the INC for the Stockholm and Rotterdam Conventions, as well as from the Conference of the Parties for the Basel Convention which would meet later in the year. The Secretariats had also greatly improved their working relationship, namely through joint training workshops which included presentations on the various conventions. This form of cooperation was likely to increase as Parties moved forward on the implementation of the Convention, particularly since the Basel Convention was essential for the implementation of a number of the provisions of the Stockholm Convention.

187. In the context of the preparations for the World Summit on Sustainable Development, the question of overlap and duplication of efforts in providing technical assistance and capacity building within the international environmental system had been raised. One of the main solutions was that of clustering. As far as the area of chemicals was concerned, it was indispensable that the secretariats of the different conventions work jointly in extending solid technical assistance. A number of useful capacity building activities had already taken place in Latin America and the Caribbean region where all conventions in the field of chemicals were represented.

On the interest of UNEP Chemicals in WTO dispute settlement

188. The preamble of the Rotterdam Convention stressed that "nothing in the Convention should be interpreted as implying in any way a change in the rights and obligations of a party under any existing international agreements applying to chemicals in international trade or to environmental protection". Therefore, there could be circumstances where UNEP Chemicals would want to follow closely how disputes concerning international trade in PIC chemicals or related chemicals might be resolved.

On the evaluation of technical assistance activities organized by UNEP Chemicals

189. The UNEP Chemicals Secretariat stated that in the case of the Rotterdam Convention, during the one year period since the Convention had been open for signature, financial considerations had made it impossible to hold any training workshops. At the end of the signature period, there were 73 signatures, which was slightly more than the number of countries that had signed the Convention initially in Rotterdam. In the case of the Stockholm Convention, the training and support for ratification workshops had started immediately following the adoption of the Convention and the opening of the signature period. There had been more than 60 new signatures within this one year period, as opposed to 9 or 10 in the case of the Rotterdam Convention. Therefore, this training programme had been successful in terms of early awareness raising. The next step would be to move into actual implementation of the articles of the Convention.

190. The Stockholm Convention contained an article on reporting, which would allow the Secretariat to measure countries' progress in implementing each of the provisions. This gave a tool to measure the impact of the training and capacity building programmes. Unfortunately, the Rotterdam Convention did not contain a similar article. Negotiators themselves had recognized that this could be a potential weakness and were considering taking a decision on this matter that could include reporting.

On cooperation between UNEP Chemicals and the World Customs Organization (WCO) for the training of customs officers

191. The Rotterdam Convention called for requesting the WCO to assign a harmonized system custom code to all chemicals covered by the Convention. UNEP Chemicals had approached the WCO Secretariat and worked out preliminarily acceptable series of codes that could be applied to these chemicals. The matter would then have to be considered in various WCO committees and sub-committees. Several countries were actively supporting this initiative. In addition, UNEP had been organizing training for custom officers and the MEAs and UNEP Chemicals had actively participated in this process. It was noted that Chapter 19 of Agenda 21 highlighted illegal trafficking as an important issue in relation to chemicals,⁷⁷ and the Intergovernmental Forum on Chemical Safety had made this matter one of its priorities.⁷⁸

On the ratification process

192. The ratification process for the Rotterdam Convention had been slow and relatively disappointing. One of the reasons was that the voluntary procedure had offered a similar level of protection. The start of the negotiations of the Stockholm Convention immediately upon adoption of the Rotterdam convention had distracted parties from working through the ratification process. A number of countries preferred to wait until both Conventions were adopted in order to go through the process of amending their legislation in one go for both conventions. With regard to the Stockholm Convention, 11 ratifications after one year was good progress. At a rate of one signature per week or two weeks, the convention could enter into force by 2003.

On the classification of POPs

193. POPs corresponded to products listed under Annexes A, B or C of the Convention, which currently listed 12 chemicals or groups of chemicals. A process to add new chemicals was also in place, and Parties could make proposals for the addition of certain chemicals to the Convention. The proposals were reviewed by the Persistent Organic Pollutants Committee, which made recommendations on the addition or non-addition of chemicals to the Convention, and the final decision was taken by the Conference of the Parties. Specific criteria contained in an Annex to the

⁷⁷ See www.un.org/esa/sustdev/agenda21text.htm.

⁷⁸ See www.who.int/ifcs.

Convention guided the Committee in the review of the proposals. These criteria related, for instance, to how persistent the chemical was in the environment, the degree to which it bio-accumulated in living organisms, its potential for long range transport in the environment, and its toxicity.

3. The UN Framework Convention on Climate Change

194. The representative of the UN Framework Convention on Climate Change (UNFCCC)⁷⁹ wished to focus his presentation on enhancing information exchange and cooperation. While two provisions in the UNFCCC and in its Kyoto Protocol (yet to be ratified) had a reference to trade, UNFCCC did not contain any specific trade obligations. The UNFCCC stated clearly in the principles and in key articles that parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties. Article 3 also required, in a language that had been taken from the GATT, that measures to combat climate change "should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade". This was carried forward in the Kyoto Protocol but it also went a step further. Article 2.3 of the Kyoto Protocol required parties to implement policies and measures dealing with climate change in such a way as to minimize adverse effects on international trade and gave the Conference of the Parties the authority to take further action to promote the implementation of the provisions of this paragraph.

195. The multilateral consensus in the Convention supported the general thrust of the WTO. Existing means of technical cooperation and information exchange had been essentially at the technical level to explore synergies. There was a question as to whether this exchange was sufficient in the new context or whether there was a need to explore further modalities. If it was recognized that a more substantive form of cooperation was required, then one could look at the more traditional modes of cooperation between agencies. For instance, a Memorandum of Understanding between the WTO and each MEA would have the advantage of focusing attention of the political bodies on the need for cooperation. Also, it would be important to raise the cooperation between both secretariats to the level of heads of institutions.

196. Furthermore, the Kyoto Protocol contained provisions setting up a compliance committee with a quasi judicial role, somewhere along the lines of the WTO Dispute Settlement Body. The initial focus of this compliance committee was likely to be on facilitation, but other issues similar to those brought under the WTO dispute settlement procedure could be brought up before that committee. One suggestion was that some form of cooperation between the two adjudicative bodies could be useful in order to ensure coherence between the decisions of both mechanisms.

197. UNFCCC finally noted that the value of the Information Session with MEAs would be enhanced if there were prior discussions organized with MEAs on the agenda for the session, as there might be additional elements that MEA Secretariats would want to share with the CTE Special Session. Recalling the discussion following the CITES presentation, the representative of UNFCCC noted that CITES was not the only MEA to be opened to other Intergovernmental Organisations (IGOs), but that this was a general feature of MEAs which derived their authority from the UN General Assembly that any IGO was welcome as an observer. UNFCCC was looking forward to observer status in the CTE Special Session.

Comments and questions

198. Regarding the Kyoto Protocol, the representative of Venezuela noted that there were concerns among departments of his government about how countries that had emissions reduction targets would take measures domestically to reach those targets. There were no compulsory measures in the Kyoto Protocol and countries themselves had to take the appropriate measures to reach the target they

⁷⁹ See <http://unfccc.int>.

had set. However, the measures taken could run afoul of trade rules and raise trade concerns. While some countries had done this exercise of looking at the likely implications, not all countries had done so. It might be useful to have a discussion on this issue.

On special and differential treatment in the UNFCCC

199. The UNFCCC noted that the premises for special and differential treatment related to the way parties themselves would take on the responsibility. The environmental treaties negotiated at or after Rio were based on this principle. The conventions dealing with very specific issues probably reflected more closely the special and differential treatment as it featured in the WTO agreements. The UNFCCC had an impact on the economy and the emissions of greenhouse gases occurred from a range of economic activities.

200. There were two different approaches to international cooperation in the field of environment and in the field of trade. Unlike the WTO, which was an agreement that was directly implemented, in the case of environmental treaties such as the UNFCCC, countries first negotiated a framework convention where parties agreed on a common concern that needed to be addressed at a multilateral level. Then, parties would agree on protocols and on further measures to implement the objectives agreed upon in the framework convention.

201. There was now a evolution in the area of expertise of delegates attending meetings of the UNFCCC. When the UNFCCC was negotiated in 1992, the majority of delegates were from a natural sciences background coming from the Meteorological department. Gradually, delegations were composed of representatives of the ministry of environment, and then of the ministries of foreign affairs, economic affairs, and energy.

4. The Convention on Biological Diversity

202. The representative of the Convention on Biological Diversity (CBD)⁸⁰ noted that the Sixth meeting of the Conference of the Parties (COP-6) to the Biodiversity Convention, recently held in The Hague, had achieved major advances in implementing the three objectives of the Convention, namely the conservation of biological diversity, sustainable use of its components and the fair and equitable sharing of the benefits of the utilisation of genetic resources. The accomplishments of COP-6 that were most relevant to the work of WTO and its committees included the adoption of the *Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilisation*⁸¹, which represented a set of mutually agreed principles to assist countries in implementing national regimes governing access to genetic resources and sharing of the benefits of their utilisation. In its decision, COP-6 had underlined that the provisions of the Convention on access and benefit sharing and those of the TRIPS Agreement were interrelated. At the Conference, the Parties had also adopted *Guiding Principles for the Prevention, Introduction and Mitigation of Impacts of Alien Species that Threaten Ecosystems, Habitats or Species*.⁸² These principles endorsed the precautionary approach in regard to the unintentional or intentional introduction of species, and were of relevance to the work of the WTO, especially to the work of the SPS and TBT Committees.

203. The CBD recalled that the Cartagena Protocol on Biosafety⁸³ set out procedures for notification and decision-making on imports and exports of living modified organisms, which included, *inter alia*, an advance informed procedure, provisions on risk assessment and management, and requirements on safe handling, transport, packaging and identification of living modified

⁸⁰ See www.biodiv.org.

⁸¹ Bonn Guidelines, *supra*.

⁸² Guiding Principles for the Prevention, Introduction and Mitigation of Impacts of Alien Species that Threaten Ecosystems, Habitats or Species, in Decision VI/23, Alien species that threaten ecosystems, habitats or species, at www.biodiv.org/decisions/default.asp?lg=0&dec=VI/23.

⁸³ See www.biodiv.org/biosafety.

organisms. These requirements were again of relevance to the work of the WTO and its SPS and TBT Committees.

204. With regard to technical assistance, the CBD noted that since the Convention and its Biosafety Protocol did not prescribe specific trade measures, the CBD Secretariat did not undertake technical assistance activities that were directly trade-related. However, both the Convention and the Protocol contained a number of provisions that could require trade-related measures by Parties and a number of activities related to technical assistance and capacity building were carried out under the umbrella of those provisions. For instance, COP-6 requested the Secretariat to support the development and dissemination of technical tools and related information on the prevention, early detection, monitoring, eradication and control of invasive alien species.

205. Several mechanisms were also in place to promote and facilitate the implementation of the Convention. First, the GEF, which served as the financial mechanism of the Convention, had played an important role in addressing the needs of developing countries and providing incentives to countries to join and implement the Convention. Furthermore, the Conference of the Parties had integrated capacity building considerations within the thematic and cross-cutting areas of the Convention. For instance, in its decision on access and benefit-sharing, the Conference of the Parties had envisaged the development of an action plan for capacity building and had identified several key capacity-building needs. They included, *inter alia*, the assessment and inventory of biological resources, information management, contract negotiations and legal drafting skills.

206. An action plan had also been adopted by the Intergovernmental Committee for the Cartagena Protocol (ICCP) to develop the capacities of developing country Parties to effectively implement the Protocol and participate in its development. The GEF had implemented an *Initial Strategy for Assisting Countries to Prepare for Entry into Force of the Cartagena Protocol on Biosafety*. This strategy included, *inter alia*, the establishment of national biosafety frameworks in more than 100 countries.

207. Some trends could be derived from the analysis of the national reports on the implementation of the Convention that had been submitted to the Secretariat so far. Reporting Parties had given increasing importance to the implementation of the Convention, which they regarded as an effective instrument to achieve progress towards sustainable development. A second important trend was the increased exchange of and access to relevant information for biodiversity-related issues, at national, regional and global levels. Third, the information provided by developed country Parties in their national reports indicated that the level of financial support provided bilaterally to developing country Parties was several times that provided through the GEF.

208. With regard to information exchange and cooperation, the first area of cooperation related to systems of information sharing among Parties to the Convention and with the WTO. Information required under the Biosafety Protocol was to be made available by Parties through the Biosafety Clearing House. Discussions were under way on designing operational systems and information-management policies. As the underlying logic and objectives of the information sharing systems under various WTO agreements and the Biosafety Protocol were broadly the same, the WTO could become more involved in this work of the Convention and its Protocol, in order to increase efficiency and share relevant expertise.

209. The second area involved the links between the TRIPS Agreement and the provisions in the Convention related to access to genetic resources and benefit-sharing, as well as to traditional knowledge. The Conference of the Parties to the CBD had repeatedly underlined the relationship between the TRIPS Agreement and the CBD, and had also invited the WTO to further explore this relationship. The CBD Secretariat therefore welcomed the mandate given to the CTE in the Doha Declaration, to give particular attention to the relevant provisions of the TRIPS Agreement in pursuing the work on its agenda items.

210. The third area related to the sharing of technical knowledge and expertise. The Conference of the Parties to CBD had repeatedly emphasized the need for analytical work to further explore the linkages between biodiversity loss and its underlying causes. Staff and funding constraints called for enhanced cooperation in this regard in order to fully make use of the comparative advantages of organizations in terms of technical knowledge and expertise. The CBD Secretariat stood ready to provide any information, data or expertise to the WTO within its mandate.

211. The fourth area was capacity-building to develop awareness of the subject-matter of the MEAs and WTO agreements, their interrelationships and their implications for the countries concerned. The regional capacity-building exercises that had involved UNEP, UNCTAD, the WTO and various MEA secretariats were very useful and should continue.

212. It was noted that the CBD Secretariat had recently renewed its request for observer status both in the TRIPS Council and in the Committee on Agriculture. In addition, the CBD had recently requested observer status in the SPS Committee and the TBT Committee in light of the relevance of the Biosafety Protocol to the work of these committees. The positive consideration of these requests would contribute to strengthening cooperation and understanding between the two regimes, thus providing a better basis for further enhancing the mutually supportive role between trade and environmental agreements.

Comments and questions

213. The representative of Australia said that his delegation took note of the statement by the CBD Secretariat concerning the *Guiding Principles for the Prevention, Introduction and Mitigation of Impacts of Alien Species that Threaten Ecosystems, Habitats or Species*⁸⁴ and the action taken at the recent Conference of the Parties to the CBD. Australia had lodged a formal objection to the adoption of the Guidelines, notwithstanding its support for the substantive environmental content of the Guidelines. This was because Australia had serious concerns about language on precaution and risk analysis, which Australia believed could be used to undermine existing international guidelines and standards, including those recognized in WTO agreements. In Australia's view, there continued to be a question about the procedural decision taken to adopt the text and hence the status of the Guidelines.

214. The representatives of New Zealand, the United States and Canada supported the statement made by Australia.

5. The Basel Convention on Transboundary Movements of Hazardous Wastes and their Disposal

215. The Secretariat of the Basel Convention on Transboundary Movements of Hazardous Wastes and their Disposal⁸⁵ said that the Convention and in particular its 1995 Ban Amendment, contained a number of provisions that were widely understood to require measures by Parties that could have consequences for trade. These provisions, which were described in the WTO Matrix on trade measures pursuant to selected MEAs,⁸⁶ included for instance: notification procedures; restrictions on import and export of hazardous wastes, including outright import and export bans; and packaging, labelling and transport requirements for hazardous wastes.

216. It was generally recognized that the Basel Convention, including through its trade related measures, had been instrumental in the reduction of dumping of hazardous wastes in developing countries. Moreover, this had enabled the Convention to enlarge its original scope of controlling transboundary movements of hazardous wastes towards minimizing hazardous wastes at source.

⁸⁴ Supra.

⁸⁵ See www.basel.int.

⁸⁶ WT/CTE/W/160/Rev.1, 14 June 2001, Matrix on Trade Measures Pursuant to selected MEAs, Note by the Secretariat, Revision.

217. With regard to capacity building activities and technical assistance, the Basel Secretariat provided assistance to developing countries and countries with economies in transition through activities designed to increase the capacity of Parties to effectively implement the Convention. A number of technical assistance and capacity building activities were carried out concerning those provisions requiring measures with possible consequences for trade. Many of the technical assistance and capacity building activities were carried out through the 13 Basel Convention regional centers around the world. Since 1997, more than US\$7,3 million had been allocated to these centers.

218. The Secretariat had held training seminars focused particularly on the implication of the implementation of the Basel Ban Amendment. In addition to the coordination of workshops and seminars, the Secretariat also monitored and reviewed the submission of national annual reports on the implementation of the Basel Convention, which included extensive import and export data.

219. The Basel Convention Secretariat worked to enhance capacity, knowledge and experience of developing countries, and countries with economies in transition, in enforcing the Basel Convention. In this regard much efforts were made to prevent illegal traffic in hazardous wastes. The Secretariat of the Basel Convention had participated in one WTO regional seminar on trade and environment and had expressed interest in working with the WTO Secretariat and other partners to jointly plan and implement similar seminars in the future.

220. The Secretariat of the Basel Convention hoped, like other MEA secretariats, to draw on the WTO experience in trade policy reviews, trade data analysis and economic incentives to further develop its technical assistance and capacity building program in areas relating to the harmonious development and implementation of trade and environment policies and measures. It also looked forward to opening discussions with WTO on possible joint efforts to identify or develop economic instruments for reducing illegal traffic or trade in hazardous wastes.

221. With regard to information exchange and enhanced cooperation, the Secretariat of the Basel Convention believed that the time was ripe to move beyond the general exchange of information and wished to explore with the WTO what kinds of substantive data could be shared and what concrete activities could be undertaken jointly. In this regard the Secretariat supported the proposal to discuss in advance the agenda for the next MEA Information Session of the CTE.

222. The ongoing negotiations pursuant to the Doha mandate offered a major opportunity for enriching the collaboration between the Basel Convention, other MEAs and the WTO. Both the trade and environment regimes would benefit from a two-way dialogue on relevant provisions of the Doha Ministerial Declaration. The Basel Convention Secretariat shared the view that it was regrettable that UNEP and MEA Secretariats had not been invited to the formal discussions within the WTO negotiation process, a process which had potential major implications for the interaction and relationship between the trade and environment regimes.

Comments and questions

On capacity building in relation to technology transfer

223. Technology transfer was an important tool to fulfil the objectives of the Basel Convention with regard to the sound disposal of hazardous waste. It was also noted that Parties had recognized the importance of this matter in the Ministerial Declaration adopted at the last meeting of the Conference of the Parties in December 1999, and that this had been the basis for the regional centres to become the forum for such technology transfer. Much remained to be done in this respect, and the matter had been taken up in the discussions on the Strategic Plan for the Basel Convention for the next ten years.

On the issue of recycling of hazardous wastes

224. The Basel Secretariat had been working within the mandate given by the Parties on analyzing the possible implications of the entry into force of the Ban Amendment in relation to this matter. A number of technical guidelines had been developed on recyclables, and the Secretariat was working closely with other organizations including UNCTAD on specific projects.

On cooperation between the Basel Convention Secretariat and the World Customs Organization (WCO) on technical assistance and capacity building programs

225. Regional workshops had been organized in coordination with other MEAs for custom officers and other enforcement officers around the world. Custom officers had also been invited to certain technical assistance activities organized by the various regional centres of the Basel Convention Secretariat on issues such as the identification of hazardous waste and control mechanisms.

On the implementation of trade-related decisions taken pursuant to the Basel Convention

226. No substantive discussion had taken place between the Parties on this matter. The question of the relationship between the Basel Convention and WTO rules had arisen only recently in working groups. It was possible that the matter would be addressed at the forthcoming COP meeting in December 2002.

6. The International Tropical Timber Organization

227. The representative of the International Tropical Timber Organization (ITTO)⁸⁷ recalled that the International Tropical Agreement (ITTA) was a developmental intergovernmental commodity agreement to promote the international trade in tropical timber, the sustainable management of tropical forests and the development of tropical forest industries through international cooperation, policy work and project activities. Therefore, most of technical assistance and capacity-building activities conducted by the ITTO were trade-related. In particular, Members had reaffirmed through the ITTO *Objective 2000* their full commitment to moving as rapidly as possible towards achieving exports of tropical timber and timber products from sustainably managed sources. The significance of ITTO *Objective 2000* was the fact that it constituted one of the earliest attempts to operationalize the concept of integrating trade and environment and making these mutually supportive, as had been agreed at the UN Conference on Environment and Development in 1992.

228. The realization of ITTO *Objective 2000* was not an easy task. In most fora such as the United Nations Forum on Forests (UNFF) and the CTE, there was a tendency to overstate how mutually supportive trade and environment could and should be, without taking into account the fact that integrating trade and environment through the principle of sustainable development inevitably involved some trade-offs. The complexity of ITTO's work and the resulting implications for technical assistance and capacity-building were compounded by the fact that it primarily involved tropical forests, and developing countries were encountering most of the pressing challenges and constraints in promoting sustainable forest management. Indeed, ITTO started its work in 1987 at a time when very little of the world's tropical forests were sustainably managed.

229. The ITTO did not rely on trade measures to achieve its objectives, but on supportive and enabling measures covering capacity-building, training, technical and financial assistance as well as international cooperation. These measures had been taken through ITTO policy work and project activities under its three principal fields of activities, namely: economic information and market intelligence; reforestation and forest management; and, forest industry. These measures covered key and critical areas such as: criteria and indicators; auditing systems and certification; development of

⁸⁷ See www.itto.or.jp.

conservation areas and reserves; forest law enforcement and illegal logging; sustainable forest industries and downstream processing; promoting tropical timber from sustainably managed sources; improving transparency of the international timber market; addressing undocumented and illegal trade; and enhancement of national forest statistical systems.

230. One of the most significant contribution of ITTO was its normative work on a series of guidelines covering relevant aspects of sustainable forest management, criteria and indicators for sustainable management of natural tropical forests, and framework for the development of auditing systems. Collectively, these had become very useful and essential tools in strengthening forest management in ITTO producing member countries through imparting knowledge and know-how.

231. ITTO policy was reinforced by its project activities on the ground. The ITTO had provided grants worth some US\$220 million to fund some 500 projects and activities of which 150 were currently under implementation. These grants had been given by donor consuming member countries through ITTO's own financial mechanisms, namely the ITTO Special Account and the Bali Partnership Fund.

232. Some interesting features of ITTO projects, which had made them quite appealing to recipient member countries, included their country-driven character; the initiation and ownership of projects by recipient countries; funding in the form of grants; and, the relatively short duration of the project cycle (of approximately 6 months). These were meant to address some of the well-known concerns related to technical assistance and capacity-building such as meeting beneficiary national needs and priorities and minimizing tied-aid and excessive donor conditionalities.

233. The impact of these ITTO efforts had been reflected in, *inter alia*: the establishment of some 10 million hectares of totally protected transboundary reserves; engagement of some 500 full time professionals in ITTO projects; and benefits of training and participation enjoyed by forest, industry and conservation workforces. Continuing improvement of these efforts was being pursued through monitoring and evaluation of completed and on-going projects, as well as technical appraisal of new project proposals.

234. Turning to the issue of enhancing information exchange between MEAs and WTO, it was noted that such information exchange in itself was highly beneficial to the WTO and MEAs. But, information sharing needed to result in actual strengthening of cooperation, collaboration and partnership between the WTO and MEAs through concrete and planned joint activities which addressed relevant and substantive issues. In this regard, time and resources constraints had to be taken into account, as measures towards this end had to be realistic, practical and taken on a priority basis. Enhancing information exchange and strengthening cooperation between the WTO and MEAs could be pursued bilaterally between the WTO and each of the relevant MEAs, as well as within the existing framework involving the WTO and the CTE on the one hand, and a group of MEAs coordinated by UNEP on the other.

235. At the bilateral level, the need for enhanced information exchange and strengthened cooperation between ITTO and WTO was driven by at least four important considerations, namely the emphasis placed by ITTO members on ensuring that ITTO trade-related activities were consistent with WTO rules; avoiding duplication of efforts by the two organizations; the role of the focal agency for the UNFF's element on international trade and sustainable forest management that had been assigned to ITTO within the framework of UNFF and the Collaborative Partnership on Forests (CPF) and the importance of close and continuous monitoring of developments in relation to the follow-up to the Doha Ministerial Conference. Thus far, efforts to promote relations between the WTO and ITTO had come from the ITTO side, as mandated by the International Tropical Timber Council (ITTC), the governing body of the ITTO. The ITTO had participated in a number of WTO meetings particularly CTE meetings in conjunction with its MEA Information Sessions. In an attempt to further strengthen cooperation with the WTO, the ITTO had submitted a request for observer status in the CTE. The

request, which was still pending, had been submitted prior to the Doha Ministerial Conference, but the ITTO was hoping to be admitted as observer in both the regular and special sessions of the CTE.

236. The ITTO believed that reciprocity should be the basis for nurturing a meaningful relationship between itself and the WTO. The ITTA contained provisions on cooperation and coordination with other organizations, which specifically mentioned UNCTAD and GATT/WTO. It also contained provisions on the admission of observers which facilitated WTO's involvement in the meetings of the ITTC and in some of the trade related activities of ITTO.

237. The quality of interactions between the WTO and ITTO and other MEAs would depend on the relevance of the issues to be taken up. The ITTO was interested in working closely with the WTO on some of the pressing issues, particularly the promotion of trade in forest products and services from sustainably managed forests, the possible impact on exports of forest products from forests that had yet to be sustainably managed, as well as illegal trade in forest products.

Comments and questions

On sustainable tropical forests management

238. The representative of ITTO noted that the role of the ITTO in promoting sustainable tropical forests management was an enabling one and that each ITTO member had a responsibility in this respect. The ITTO was not directly involved in any form of assessment of the sustainability of tropical forest management by its members, so as not to be misconstrued in the context of the evolving issue of forest certification and labelling. The issue of recognition was better left to the market forces, as well as to internationally recognized voluntary certification schemes. The ITTO also faced resource constraints to meet its objectives.

7. UN Forum on Forests

239. The representative of the UN Forum on Forests (UNFF)⁸⁸ Secretariat noted that unlike other MEAs participating in this meeting, the UNFF was not an international legally binding instrument, but rather a soft legal instrument in the form of a voluntary "International Arrangement and Mechanisms to Promote the Management, Conservation and Sustainable Development of All Types of Forests". This Arrangement had been adopted at the Fourth Session of the Intergovernmental Forum on Forests (IFF) on 11 February 2000. The same meeting had recommended the establishment of the intergovernmental body – now called the UNFF – whose main objective had been to promote the management, conservation and sustainable development of all types of forests based on the Forest Principles adopted at the Rio Conference in 1992, Chapter 11 of Agenda 21 and on the outcomes of the Intergovernmental Panel on Forests (IPF) and the IFF process. The UNFF had been formally established by ECOSOC as a new permanent body in October 2000. As a voluntary agreement, the UNFF had universal membership.

240. The Program Elements addressed by the Forum's multi-year program of work and Action Plan number 16, included *Program Element 15* on international trade and sustainable forest management. As part of this new international arrangement on forests, ECOSOC had also invited the heads of relevant international organizations to form a Collaborative Partnership on Forests (CPF) to support the work of the UNFF and to enhance cooperation and coordination on forest-related issues. Thirteen international organizations participated in the CPF, with ITTO taking the lead on *Program Element 15* on trade and sustainable forest management. Trade was recognized within the UNFF as having an important role in the achievement of sustainable forest management.

⁸⁸ See www.un.org/esa/sustdev/forests.htm.

241. Substantial progress had been achieved at the Second Session of the UNFF in New York in March 2002 concerning the establishment of an "Ad Hoc Expert Group on Consideration with a View to Recommending the Parameters of a Mandate for Developing a Legal Framework on All Types of Forests". Further discussions on the terms of reference and composition of this and other ad hoc expert groups would take place at the Third Session of the UNFF in Geneva from 26 May to 6 June 2003.

242. The Third Session of the UNFF would also address progress in the implementation of the Program Sub-element on economic aspects of forests, including the issue of trade. The work of the UNFF in this area emanated from the IFF mandate to consider matters left pending on trade and environment, including: (i), to "analyze the mutually supportive roles performed by international trade and sustainable forest management and, in that context, issues related to non-discriminatory international trade in forest products from all types of forests, including the role that tariff and non-tariff barriers [might] perform in relation to sustainable forest management, certification issues where relevant and improved market access, taking into account the needs of developing countries, in particular those of the least developed among them"; (ii), to "consider the question of the relationship between obligations under international agreements and national measures, including actions imposed by sub national jurisdictions, recognizing that those matters [were] also considered in forums whose primary competence [was] to address trade issues; the relative competitiveness of wood versus substitutes; valuation; market transparency and the related issue of illegal trade in wood and non-wood forest products".

243. Substantial discussions on trade and environment had been held at IFF II in Geneva from 24 August to 4 September 1998 and IFF III at the same venue from 3 to 14 May 1999. It had not been possible to reach consensus at IFF II and the Forum had decided to continue discussions on this issue. At IFF IV in New York, from 31 January to 11 February 2000, consensus had been reached on eight proposals for action.

244. One proposal "urged countries, international organizations, including WTO, and other interested parties to undertake, as appropriate, further cooperative work on voluntary certification and/or labeling schemes, in line with the recommendations of IPF, while seeking to enhance their international comparability and considering their equivalence, taking into account the diversity of national and regional situations, and to ensure adequate transparency and non-discrimination in the design and operation of such schemes, and [were] consistent with international obligations so as to promote sustainable forest management and not to lead to unjustifiable obstacles to market access".

245. A second proposal "called upon countries to consider appropriate national-level actions and promote international cooperation to reduce the illegal trade in wood and non-wood forest products including forest related biological resources, with the aim of its elimination".

246. Regarding capacity building on trade issues, while the UNFF at the moment functioned as a forum for continued policy development and dialogue, the UNFF multi-year Program of Work and Plan of Action for the implementation of the IPF/IFF proposals for action took into account the need in the future for capacity building in all programmatic elements, including trade and environment. This was clearly reflected in the Ministerial Declaration and message from the UNFF at its Second Session to the World Summit on Sustainable Development. Priority, however, within five years was the consideration of parameters of a mandate for developing a legal framework on all types of forests. The UNFF would also, as a matter of priority, take steps for addressing more effectively approaches towards appropriate financial and technology transfer support to enable implementation of sustainable forest management. Nonetheless, capacity-building in critical areas such as voluntary bilateral arrangements and certification strategies for controlling products of illegal logging entering into international trade would, among others, need to be looked into.

247. As noted by the Secretary-General of ITTO, "as a market-based tool to promote sustainable forest management and to promote trade in forest products from sustainably managed forest resources, voluntary certification of forest management and labeling of forest products had made notable progress in recent years. However, there was a clear indication of the trend that certification and labeling was progressing particularly in developed countries and that tropical and developing countries [were] lagging behind. There [was] thus a need to support the efforts by developing countries which want[ed] to engage in voluntary certification and labeling to enhance market acceptance of their forest products. This [was] also applicable to small and medium forest-owners and enterprises in developing and developed countries".⁸⁹

248. The UNFF was moving forward on the issue of national reports and it was expected that UNFF III would complete its deliberations on the establishment of an Ad Hoc Expert Group on Approaches and Mechanisms for Monitoring, Assessment and Reporting. National reports would be instrumental in identifying the specific capacity-building needs of member states.

249. A decision of the Conference of the Parties of the CBD held recently in The Hague had called for close collaboration and cooperation between UNFF and the CBD in addressing the conservation and sustainable use of forests. The problem of illegal trade in forest products covered by UNFF and illegal trade of endangered species in Appendices 1 and 2 of CITES, while separate issues, were closely related. Closer collaboration between the UNFF and the UNFCCC would be desirable on issues such as carbon sinks and emissions trading. The role of forests in soil management and in combating desertification also linked the work of the UNFF with the United Nations Convention to Combat Desertification (UNCCD).⁹⁰ The sustainable management of forests needed to be addressed in concert with regional seas conventions and action plans such as the Cartagena Convention for the Wider Caribbean, the Antigua Convention for the Northeast Pacific, the Nairobi Convention for the Marine and Coastal Environment of East Africa, the South Asian Seas Action Plan, the East Asian Seas Action Plan, the Northwest Pacific Action Plan and the Noumea Convention for the South Pacific.

250. With regard to the work of MEAs in relation to capacity-building activities for custom officials, an important project had been put in place largely under the coordination of UNEP. In the context of the discussions on international environmental governance, clustering of conventions was identified at three levels: sectoral (chemicals, biodiversity, etc), functional and regional. At the functional level, a lot was held in common by trade-related MEAs, in particular on the subject of capacity building of national authorities in the customs field.

251. One initiative had brought together five conventions: CITES, Basel Convention, the Montreal Protocol, the Chemicals Conventions, and the Convention on Biological Diversity. This initiative had been undertaken in partnership with the World Customs Organization (WCO) and INTERPOL, but had also obtained support from national authorities that had been involved in the process. Program elements to be developed included an Integrated Training Module, a green customs manual on MEA trade-related agreements that could be used by custom officials, the development of an experienced professional pool of trainers, workshops, educational tools such as distance learning techniques and fact sheets, a model for integrated training addressing enforcement and compliance issues for all MEAs and the WCO fellowship program to build capacity of custom officers from developing countries on environmental issues.

⁸⁹ Trade and Sustainable Forest Management: Note by the Secretary General, prepared by ITTO. United Nations Forum on Forests, Second Session, 4-15 March 2002, New York, para. 16.

⁹⁰ See www.unccd.int.

8. UN Fish Stocks Agreement and the UN Convention on Law of the Sea

252. The representative from the UN Division for Ocean Affairs and the Law of the Sea⁹¹ recalled the process that had been established by the UN General Assembly to enhance coordination and cooperation among all international organizations and agencies involved in marine affairs. In 1999, the General Assembly, in its resolution 54/33 (1999) had decided to establish an open-ended informal consultative process in order to facilitate its review of overall developments in ocean affairs. Such informal consultative process, within the legal framework by the UN Convention on the Law of the Sea (UNCLOS) and the goals of chapter 17 of Agenda 21 had been entrusted to discuss the annual report of the Secretary General on oceans and the law of the sea and suggested particular issues to be considered by the General Assembly, with emphasis on identifying areas where coordination and cooperation at the intergovernmental and inter-agency levels should be enhanced.

253. The first and second meetings of the Informal Consultative Process in 2000 and 2001 had dealt with, *inter alia*, coordination and cooperation in combating piracy and armed robbery at sea; the issue of illegal, unreported and unregulated fishing; and the transfer of marine science and technology. At the third meeting, which had taken place in April 2002, discussions had focused on the protection and preservation of the marine environment; capacity-building, including regional cooperation and coordination; and integrated ocean management. The Process over the last three meetings had seen the participation of many international organizations and agencies with a mandate in marine affairs. Their overall contribution and expertise had added a new dimension in the debate on ocean affairs and the law of the sea. At its 57th session, the General Assembly would review the effectiveness and usefulness of the Process.

254. In addition to this information on the Informal Consultative Process, the representative of the DOALOS noted that the UN Fish Stocks Agreement had entered into force on 11 December 2001, thirty days after the deposit of the 30th instrument of accession by Malta.⁹² UN General Assembly Resolution 56/13 (2001) requested the UN Secretary-General to consult with the States Parties to the Agreement for the purposes and objectives of, *inter alia*, considering subregional, regional and global implementation of the Agreement and preparing for the review conference to be convened by the Secretary-General four years after the entry into force of the Agreement. In view of this, an informal meeting of the Parties would be held on 30-31 July 2002 in New York. Another possible agenda item for the consultation would be the facilitation of the establishment of a programme of assistance to developing countries pursuant to Part VII of the Agreement.

C. CONCLUSION

255. The observer of UNEP noted that while UNEP's work was originally focused on raising awareness for the environment and assisting in the development of sound environmental policies, the linkage between environment and trade had gained increasing importance on UNEP's agenda over the last years. The core of the work in this area had been centred around capacity-building with the aim of meeting the needs, priorities and concerns of developing countries. Capacity-building needed to involve national experts and institutions, it should be process-oriented and geared towards policy formulation and development. The main objectives of current capacity-building programs had to assist and work closely with governments to identify their needs, be participatory and ensure national coordination between trade, environment and sectoral ministries. It needed to aim at enhancing the awareness and capacity of trade and environment negotiators as well as involving NGOs, academics and the private sector.

⁹¹ See www.un.org/Depts/los/index.htm.

⁹² See www.un.org/Depts/los/convention_agreements/convention_overview_fish_stocks.htm.

256. The question of capacity also arose for UNEP and MEAs in responding to the demand for technical assistance, particularly now that the environment was part of the WTO agenda. There was also a need for UNEP and MEAs to develop a common position on a range of issues.

257. As had been highlighted at a UNEP workshop in March 2002, there were a number of gaps in the delivery of capacity-building services. These gaps included the lack of coordination among the various capacity-building providers, the absence of a consistent approach on capacity-building activities in the areas of trade and environment as a whole. There was therefore a need for a long term integrated and coordinated program on trade, environment and development.

258. While MEAs were oriented to address a global environmental concern, the WTO negotiating process was not so much geared towards this. At this stage, it was not clear how the current negotiating process would contribute to sustainable development. A number of questions remained open such as, for instance, how trade could contribute to MEAs implementation and to sustainable development. There was a need to put in place a two-way mechanism for information exchange between MEAs and the WTO, so that MEAs could also share their views and concerns in relation to these questions. The WTO and the various MEAs needed to prepare jointly an action oriented agenda with specific issues to work on in order to try to produce concrete results. MEAs also needed to play a proactive role in the context of the negotiations by presenting their views to trade negotiators.

259. The Chairman concluded by stressing that capacity-building was one of the key issues for the WTO, and, for achieving the objectives of the Doha Development Agenda, capacity-building was a must. In the field of trade and environment, cooperation among MEAs and the WTO was also necessary. However, for this cooperation to be successful, coordination at national level was necessary since MEAs were not independent bodies, but rather represented state parties of their respective agreements and the same state parties were equally represented in this room. Hence, any criticism to MEAs was a criticism against oneself. Both MEAs and WTO Secretariats were at the service of their Members, therefore a better coordination at national level could enable better coordination among these organizations.

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