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Committee on Trade and Environment

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## UNEP MEETING ON COMPLIANCE, ENFORCEMENT AND DISPUTE SETTLEMENT IN MULTILATERAL ENVIRONMENTAL AGREEMENTS AND THE WTO, GENEVA, 26 JUNE 2001

### CHAIRMAN'S SUMMARY

#### Communication from UNEP

#### I. OBJECTIVES AND STRUCTURE OF THE MEETING

1. This meeting, convened by UNEP in cooperation with MEAs and the WTO Secretariat on 26 June 2001, was intended to provide a constructive, open and informal dialogue between trade and environment officials, representatives of intergovernmental organizations and civil society on compliance, enforcement and dispute settlement systems in MEAs and the WTO. It built on a process of UNEP meetings on the MEA-WTO relationship, initiated in June 1999, which included the High Level Panel Discussion at the 8<sup>th</sup> Commission on Sustainable Development in New York in April 2000, the meeting on "Enhancing Synergies and Mutual Supportiveness of MEAs and the WTO" in Geneva in October 2000, and the "High Level Meeting on Environment, Sustainable Development and Trade" in Berlin in March 2001. This process responds to UNEP's mandate formulated at its 21<sup>st</sup> Governing Council, which includes further analysis of the relationship between MEAs and the WTO, with a view to making trade and environment policies mutually supportive (GC 21/14).

2. The meeting was attended by representatives from around 55 countries, and by representatives of intergovernmental organizations, including the WTO and UNCTAD, and by non-governmental organizations. MEAs represented at the meeting included the Convention on Biological Diversity (CBD); the Basel Convention on Transboundary Movements of Hazardous Wastes and their Disposal (BC); the Convention on Trade in Endangered Species of Wild Fauna and Flora (CITES); the Montreal Protocol on Substances that Deplete the Ozone Layer; the Rotterdam Convention on Prior Informed Consent; the Stockholm Convention on Persistent Organic Pollutants; the UN Fish Stocks Agreement and the UN Framework Convention on Climate Change (UNFCCC). An opening statement was made by Ambassador Alejandro Jara, Chairman of the CTE. Presentations were made by officials from the WTO Legal Affairs and Trade and Environment Divisions, from the UNFCCC, Montreal Protocol, CITES and the UN Fish Stocks Agreement, as well as UNEP's Divisions of Environmental Policy and Implementation (DEPI) and Environmental Conventions (DEC). The meeting was chaired by Mr. Hussein Abaza, Chief of the Economics and Trade Unit of UNEP's Division of Technology, Industry and Economics.

3. The objectives of the meeting were to identify complementarities and synergies and examine the relationship between compliance and dispute settlement mechanisms in MEAs and the WTO. It also sought to contribute to other processes, including the CTE and preparations for the World Summit on Sustainable Development (WSSD) in 2002, and to generate ideas that would contribute to implementing UNEP Governing Council decisions on developing guidelines on compliance and enforcement in MEAs (GC 21/27), and on strengthening international environmental governance (GC 21/21). The advice of trade and environment officials and other meeting participants

was sought on activities that could be undertaken, individually or collectively, by UNEP, MEAs, and the WTO to enhance synergies between these regimes in the area of compliance and dispute settlement. The meeting was structured to provide an open and informal forum, removed from a negotiating context, to explore options for increasing the mutually supportive nature of global economic and environmental governance.

4. This Chairman's Summary contains points made in the meeting's formal presentations and in the discussions which followed, and is not a consensus document agreed by governments. It is offered by the Chair as a source of information for the meeting's participants, and to secure further guidance on this collaborative process to enhance synergies between trade and environment institutions and rules.

## **II. MAIN POINTS ARISING FROM THE MEETING**

5. The meeting's presentations and discussions drew substantially on the paper prepared by the WTO and UNEP Secretariats on "Compliance and Dispute Settlement Provisions in the WTO and Multilateral Environmental Agreements" (WT/CTE/W/191). This paper, prepared in close cooperation with MEA Secretariats, also served as a background document for the MEA Information Session that took place in the CTE on 27th June 2001. A number of governments and intergovernmental organizations commented on the clarity and utility of the paper in informing these discussions, and elements of the observations and analysis contained within it were reiterated in the formal presentations and the subsequent discussions.

### **A. GENERAL POINTS**

- The WTO Agreements and MEAs are representative of the efforts of the international community to pursue shared goals in their respective areas. In the development of a mutually supportive relationship due respect must be afforded to both.
- Several participants noted that sustainable development was an overarching goal shared by many trade and environment agreements; and that it is therefore an important task to identify and build synergies between them to achieve sustainable development.
- The obligations in different MEAs – including those relating to compliance and dispute settlement – reflect differing environmental, economic, social, institutional and technological factors.
- MEAs and the WTO agreements are separate but equal bodies of international law.
- MEAs and the WTO emphasize different approaches to securing effectiveness of their respective agreements: the MEAs focus primarily on promoting all parties' compliance with their provisions and avoiding disputes; the WTO focuses primarily on resolving disputes in a timely and binding manner.
- The fact that MEAs are designed to protect human health and the environment, including in areas of shared environmental concern, requiring broad international cooperation, whereas the WTO has a major role in the settlement of trade disputes which arise from perceived injury to commercial interests, helps to explain their differing emphasis on compliance and dispute settlement.
- Given the varied objectives of MEAs, a number of participants noted that "one-size-fits-all" solutions to compliance and dispute settlement issues are neither appropriate nor practical.
- A number of participants emphasized the need to make progress on discussions regarding the relationship between MEAs and the WTO. The importance of making

progress on clarifying this relationship at the WSSD meeting was also emphasized. Others, in contrast, noted that they saw no need to clarify this relationship.

**B. ROLE OF COMPLIANCE MEASURES IN MEAS AND THE WTO**

- The overarching goal of compliance measures in both MEAs and the WTO is to secure effective implementation of treaty obligations.
- Obligations in MEAs are tailored carefully to achieve different objectives and their provisions, including those relating to compliance and dispute settlement, reflect this. MEA provisions relating to compliance vary according to the various conception, objectives and approaches of individual MEAs.
- Parties to MEAs have explored innovative, constructive approaches to promote compliance, with the objective of preventing non-compliance in advance, and of assisting countries, particularly developing countries and those with economies in transition, to comply through financial and technical assistance, capacity building and technology transfer.
- In many cases, non-compliance with MEAs arises not because of wilful violation, but rather because of difficulties in achieving compliance; therefore the best way to address non-compliance is often through the provision of assistance, rather than through punitive measures.
- MEAs and the WTO agreements share many common elements in their compliance systems. For example, WTO agreements contain notification requirements, and provide for monitoring and transparency as well as review mechanisms by WTO collective bodies.
- Transparency, notification requirements and reviews constitute an important dispute avoidance mechanism in the WTO. Some MEAs rely on elaborated compliance and dispute avoidance mechanisms. Some participants suggested that, based on the MEA experience, it might be useful in the WTO to put less emphasis on dispute settlement, and more on measures to promote compliance.

**C. ROLE OF DISPUTE SETTLEMENT MEASURES IN MEAS AND WTO**

- While MEAs generally focus on promoting compliance, they may also include provisions for settling disputes, should they arise.
- MEA dispute settlement provisions generally follow a progression including negotiation, good offices, mediation, conciliation, arbitration and judicial settlement.
- The dispute settlement system of the WTO was set up as a central element in providing security and predictability to the multilateral trading system. Its aim is to secure a prompt resolution of disputes, with a view to finding mutually acceptable solutions to the Parties to a dispute, which is consistent with the covered agreements.
- The compulsory nature, exclusive jurisdiction, and binding effect of the WTO dispute settlement process was noted. It was also noted that these characteristics could lead to the WTO attracting disputes it was not properly equipped to resolve.
- It was suggested that disputes between two MEA parties would be very unlikely ever to be addressed in WTO dispute settlement. It was also suggested that this might not necessarily be the case for disputes between a party and a non-party to an MEA, both of which are parties to the WTO, though such a case has yet to occur.

D. STRENGTHENING COMPLIANCE AND ENFORCEMENT IN MEAS

- Some participants noted that strengthening of compliance measures in some MEAs may provide an important way to reduce potential for environmental disputes to arise in the context of the WTO.
- There was discussion about what was meant by "strengthening" of MEAs compliance and enforcement measures. Some participants focused on enhancing the measures available for addressing non-compliance after it has occurred, others on deepening the facilitative compliance-building and dispute avoidance aspects of MEAs.
- Some participants noted that increasing the capacity of governments to implement MEAs and the WTO agreements – and realizing the synergies between trade and environment capacity building efforts – could help avoid trade and environment disputes.
- Increasing the number of parties to MEAs could decrease the likelihood of MEA-related disputes arising in the WTO, especially those involving a non-party to an MEA.

E. IMPORTANCE OF CAPACITY BUILDING

- Capacity-building was seen as a crucial element in the implementation of MEAs and a number of participants remarked on the need for the MEAs, the WTO and UNEP to undertake more joint activities in this area. WTO regional seminars on trade and environment are one important context in which this could be done.

F. ROLE OF COOPERATION AND INFORMATION EXCHANGE BETWEEN MEAS AND WTO

- Greater policy coordination at the national level is important to ensure that all relevant rights and obligations in international agreements have been considered during the implementation of existing agreements and the negotiation of new ones, thereby reducing the likelihood of conflicts, and increasing the mutual supportiveness of both trade and environment institutions.
- More cooperation and information exchange between MEAs and the WTO, and more meetings such as this one will contribute to enhanced coordination between these agreements.
- The value of securing observer status for MEAs in WTO bodies, and vice versa, in enhancing information exchange was emphasized by a number of participants. One MEA official asked if these agreements could secure automatic observer status at relevant WTO bodies.
- Greater information exchange in the area of compliance and dispute settlement may assist both MEA and WTO officials in understanding the objectives of their different agreements. In the context of the WTO, it may assist officials to understand the utility of conservation measures under MEAs, in the event of an MEA-related dispute in the WTO.
- Some participants thought that parties to WTO disputes could usefully select, and may have already selected, dispute panels with environmental experience in the case of environment-related disputes in the WTO.
- There was discussion of the potential for MEA Secretariats, and/or MEA provisions, to inform WTO dispute settlement processes. The possibility of doing this under Article 13 of the WTO Dispute Settlement Understanding, which allows panels to seek information from any relevant sources, was mentioned by some participants.

- The possibility of MEAs securing observer status in the WTO Dispute Settlement Body was also raised, but it was noted that the WTO's guidelines on observers does not seem to allow for observers to the DSB.
- It was noted that Article 31 of the Vienna Convention on the Law of Treaties, and the ruling of the WTO Appellate Body in the US-Venezuela Gasoline case that WTO law should not be read "in clinical isolation" from other public international law, are supportive of efforts to build coherence between MEA and WTO dispute settlement processes.

### **III. POTENTIAL NEXT STEPS FOR UNEP, MEAs AND THE WTO**

- Enhance joint capacity building activities between the WTO, MEAs and UNEP on these and related issues, which include improving national level coordination between trade and environment officials, building synergies between WTO agreements and MEAs.
  - Enhance information exchange, cooperation, and joint analysis on concrete issues on the interface between the compliance and dispute settlement systems of MEAs.
  - Explore ways to advance pending requests for observer status in various WTO bodies.
  - Explore cooperation in the context of potential disputes, with the aim of avoiding formal disputes, and/or enhancing exchange of relevant information by competent bodies.
  - Continue informal cooperation on the interface between international environmental and trade governance between UNEP, MEAs and the WTO.
  - Some participants noted the work already being undertaken through UNEP's compliance and enforcement guidelines process, and suggested continued support and involvement by states in it.
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