
Committee on Trade and Environment

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**COMMUNICATION FROM THE SECRETARIAT OF THE CONVENTION
ON BIOLOGICAL DIVERSITY**

The attached background paper¹ has been received from the Secretariat of the Convention on Biological Diversity. It is being circulated to Members of the CTE in preparation for the Information Session with Secretariats of Multilateral Environmental Agreements on 23 July 1998.

Comité du commerce et de l'environnement

**COMMUNICATION DU SECRÉTARIAT DE LA CONVENTION
SUR LA DIVERSITÉ BIOLOGIQUE**

La note d'information ci-jointe¹ a été reçue du Secrétariat de la Convention sur la diversité biologique. Elle est distribuée aux membres du Comité du commerce et de l'environnement en vue de la séance d'information avec les Secrétariats des Accords environnementaux multilatéraux qui aura lieu le 23 juillet 1998.

Comité de Comercio y Medio Ambiente

**COMUNICACIÓN DE LA SECRETARÍA DEL CONVENIO
SOBRE LA DIVERSIDAD BIOLÓGICA**

La Secretaría del Convenio sobre la Diversidad Biológica ha enviado el documento de base adjunto¹, que se distribuye a los miembros del CCMA como parte de los preparativos para la reunión de información con las Secretarías de Acuerdos Multilaterales sobre el Medio Ambiente, que se celebrará el 23 de julio de 1998.

¹ English only/En anglais seulement/En inglés solamente

THE CONVENTION ON BIOLOGICAL DIVERSITY

Note by the Executive Secretary of the Convention on Biological Diversity

I. INTRODUCTION

1. The fourth meeting of the Conference of the Parties (COP) to the Convention on Biological Diversity (CBD) was held in Bratislava, the Slovak Republic from 4 - 15 May 1998. The Convention is steadily making a progress in its implementation, as illustrated by the decisions adopted at the recent meeting. This brief note is intended to inform the delegates of the Committee on Trade and Environment (CTE) on this progress and to seek ways to enhance cooperation on issues which are of common interest to this Committee and the Convention in a mutually supportive manner.

2. In 1997, a communication was sent to the CTE (WT/CTE/W/64) on the relationship between the CBD and trade, highlighting key issues of immediate relevance for coordination between the WTO and the CBD, which included the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), agricultural biological diversity, biosafety, alien species and dispute resolution procedures. As the Convention strives to advance these issues, further areas of potential overlap and specific aspects of opportunities for cooperation between the provisions of the WTO and the CBD are becoming clearer. The Conference of the Parties has highlighted such areas and has instructed the Executive Secretary to communicate these to the CTE. It has also instructed the Secretariat to carry out relevant studies in a number of areas. This note is structured in line with the work programme of the CTE.

3. Section II of this paper will consider issues related to the cluster on the linkages between the multilateral environment and trade agendas:

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

Item 7: the issue of exports of domestically prohibited goods; and

Item 8: the relevant provisions of the TRIPS Agreement

4. Section III will consider the cluster on market access. The items included are:

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

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

Item 4: the provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects; and

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

5. Section IV includes the other items considered by the CTE. They are:

Item 9: the work programme envisaged in the Decision on Trade Services and the Environment;

Item 10: input to the relevant bodies in respect of appropriate arrangements for relations with intergovernmental and non-governmental organizations referred to in Article V of the WTO.

II. THE CLUSTER ON THE LINKAGES BETWEEN THE MULTILATERAL ENVIRONMENT AND TRADE AGENDAS

A. ITEMS 1 & 5: THE RELATIONSHIP BETWEEN THE PROVISIONS OF THE MULTILATERAL TRADING SYSTEM AND TRADE MEASURES FOR ENVIRONMENTAL PURPOSES, INCLUDING THOSE PURSUANT TO MULTILATERAL ENVIRONMENTAL AGREEMENTS; & THE RELATIONSHIP BETWEEN THE DISPUTE SETTLEMENT MECHANISMS IN THE MULTILATERAL TRADING SYSTEM AND THOSE FOUND IN MULTILATERAL ENVIRONMENTAL AGREEMENTS

6. The text of the Convention does not explicitly refer to “international trade and biological diversity” nor to specific “trade measures”. However, a number of articles in the Convention address the issue by way of guiding the Parties to take certain measures, which are not meant to be “trade measures” as such but may have trade consequences under certain circumstances. First, the Convention defines its judicial scope as “in relation to each Contracting Party, in the case of processes and activities, regardless of where their effects occur, carried out under its jurisdiction or control, within the area of its national jurisdiction or beyond the limits of national jurisdiction” (Article 4(b)). Then under general measures for conservation and sustainable use, the Convention provides that “each Contracting Party shall, in accordance with its particular conditions and capabilities, integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies” (Article 6(b)). In order to identify underlying causes, Article 7(c) of the Convention provides that “each Contracting Party shall identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques.” Articles 8(c), (l) and 10(b) provide that the Contracting Party shall regulate or manage relevant biological resources or processes and categories of activities identified under Article 7 or adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity.

7. The consideration of all these Articles (6, 7, 8 and 10) can include processes and activities related to trade. Further, there is concern that through trade, alien species which threaten ecosystems, habitats or species may become invasive. Article 8(h) provides for the prevention of the introduction of, control or eradication of these alien species. In addition, Article 11 provides that “each Contracting Party shall, as far as possible and as appropriate, adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity.” Where potential impact may occur, Article 14.1(a) provides that “each Contracting Party, as far as possible and as appropriate, shall introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effect on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation to such procedures.” Another set of articles of relevance are those dealing with release of living modified organisms and their transboundary movements, namely Article 8(g) on

in-situ conservation and Article 19, paragraphs 3 and 4 on the biosafety protocol. In case of disputes, Article 27 contains the provisions for their settlement.

8. A number of these issues were addressed in the fourth meeting of the COP and relevant decisions have been adopted. The most important aspect is that the Convention is proceeding with the assessment of the status and trends of biological diversity and identification of their uses and threats in all thematic areas so far considered. This includes inland water biological diversity (Decision IV/4), marine and coastal biological diversity (Decision IV/5), agricultural biological diversity (Decision IV/6) and forest biological diversity (Decision IV/7). The Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) assisted by its ad hoc technical expert groups will carry out the assessment and report to the fifth meeting of the COP. It is considered that these assessment will develop scientific bases for taking actions and measures for conservation and sustainable use of components of biological diversity. While assessments are being carried out, however, it is noted that under the CBD process, it is encouraged to employ the precautionary approach where there is a threat of significant reduction or loss of biological diversity. Thus, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat. In this regard, there is a need to develop common understanding on the importance and mechanisms for application of the precautionary approach.

9. In addition, Decisions IV/4 and IV/6 call for case studies by Parties and relevant organisations on the sustainable use of the components of the inland water and agricultural biological diversity respectively. In regard to inland water biological diversity, case studies are invited on watershed management, water resources development projects, impact assessment and other methodologies that address inland water biological diversity issues in an adaptive management framework. In regard to agricultural biological diversity, case studies are invited on sustainable agricultural practices, integrated landscape management of mosaics of agricultural and natural areas and appropriate farming systems based on socio-economic and ecological analyses of different land use management options. The SBSTTA will synthesize and analyze such case studies and make recommendations to the fifth meeting of the COP.

10. The process of Biosafety Protocol is advancing at a fast pace. At the latest meeting of the Open-ended Ad Hoc Working Group on Biosafety, the consolidated draft text of the Protocol was further refined and greater clarity was added. In addition, several key issues were resolved. The COP adopted Decision IV/3, whereby it decided to hold two more meetings of the Open-ended Ad Hoc Working Group on Biosafety to complete the work by February 1999. The same decision provides for the meeting of Extraordinary COP to immediately follow the sixth meeting of the Open-ended Ad Hoc Working Group on Biosafety which is scheduled to adopt the Protocol.

11. As the negotiation process progresses, it is reiterated that the CTE is invited to consider how the relevant principles of the international trade regime can be most effectively integrated in this process of finalizing a protocol on biosafety.

12. Regarding the issue of alien species, the COP in its Decision IV/1, Part C has requested the SBSTTA to develop guiding principles to the prevention, introduction and mitigation of impacts of alien species. The fourth meeting of the SBSTTA to be held in May 1999 is to consider the issue.

13. As regards the settlement of disputes, no consideration has taken place under the Convention process. The only place where this issue is being specifically addressed is under the Biosafety Protocol negotiation. The draft consolidated text includes an article on liability and compensation as well as an article on monitoring and compliance, both of which include several options for respective issues. As assessments and analysis under the CBD process proceed, "trade measures" or measures that may have consequences on trade may develop in response to the identification of underlying causes and the implementation of incentive measures as well as other appropriate measures. The

elaboration of the ecosystem approach may also result in such measures. It is therefore important that the CTE be kept informed of the development at the CBD process, and at the same time these two bodies should seek ways to collaborate in promoting sustainable development. In this context, it is worth repeating the possibilities that were suggested in the last year's communication (WT/CTE/W/64) to explore with the relevant WTO bodies ways in which the WTO dispute resolution process could draw on the expertise of the SBSTTA and the CBD Secretariat, and to establish a joint roster of experts in this area together with the WTO.

B. ITEM 7: THE ISSUE OF EXPORTS OF DOMESTICALLY PROHIBITED GOODS

14. The relevant articles regarding this issue are again those dealing with release of living modified organisms and their transboundary movement, Article 19, paragraphs 3 and 4. The progress on the process of Biosafety Protocol is referred to above.

C. ITEM 8: THE RELEVANT PROVISIONS OF THE TRIPS AGREEMENT

15. This is the area where much of the discussion has taken place between the two bodies regarding their compatibility. As the CTE was informed by the CBD Secretariat last year, the third meeting of the COP considered this issue and adopted Decision III/17. Rather than continuing the discussion on the intellectual property rights (IPRs) *per se*, the fourth meeting of the COP considered the issue of access and benefit-sharing. The related consideration was also made under the agenda item on the relationship of the Convention with the Commission on Sustainable Development and biodiversity-related conventions, other international agreements, institutions and processes of relevance. The COP adopted Decisions IV/8 and IV/15 respectively.

16. In Decision IV/15, the COP stressed the need to ensure consistency in implementing the CBD and the WTO Agreements, including the TRIPS Agreement, with a view to promoting increased mutual supportiveness and integration of biological diversity concerns and the protection of IPRs. In this regard, the COP specifically invited the WTO to consider how to achieve these objectives in the light of Article 16.5 of the CBD, taking into account the planned review of Article 27 (b) in 1999.

17. Through Decisions IV/8 and IV/16, the COP decided to hold an open-ended meeting on implementation of the Convention and to include the consideration of access to genetic resources in its agenda. The open-ended meeting will be held from 1-3 June 1999 and will explore options for access and benefit-sharing mechanisms and to develop a common appreciation of the relationship between intellectual property rights and the relevant provisions of the TRIPS Agreement and the CBD as contained in Decision IV/15, paragraph 10. In addition, the mandate arising out of Decision III/17 still applies. Thus, the Secretariat continues to invite submissions of case studies on the impacts of IPRs on the achievement of the Convention's objectives, including relationships between IPRs and the knowledge, practices and innovation of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.

18. In parallel to this process, the COP decided in its Decision IV/8 to establish a regionally balanced panel of experts to develop a common understanding of basic concepts regarding access and benefit-sharing and to explore all options on mutually agreed terms, including guiding principles, guidelines, and codes of best practice for access and benefit-sharing arrangements. The detailed options for consideration are included in the annex to the decision. The expert panel is expected to be held from 4-8 October 1999.

19. Another relevant decision regarding this issue is Decision IV/9 on the implementation of Article 8(j) and related provisions. In order to further the progress on this issue, the COP decided to establish an ad hoc open-ended inter-sessional working group. The working group will provide advice on, *inter alia*, the application and development of legal and other appropriate forms of

protection for the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity. In this regard, the COP requested the Executive Secretary to seek ways to enhance cooperation between the CBD and the World Intellectual Property Organization (WIPO). The possibility of establishing a joint work programme is being sought with WIPO.

20. Finally, with regard to the environmental impact of certain technologies, the COP in its Decision IV/6, reiterating the precautionary approach, requested the SBSTTA to consider and assess whether there are any consequences for the conservation and sustainable use of biological diversity from the development and use of new technology for the control of plant gene expression, such as that described in United States patent 5723765. In the same decision, the COP urges Parties, Governments as well as civil society and public and private institutions to consider the precautionary approach in its application. The possible outcome from this decision in terms of the collaboration between the two bodies could include consideration of ways in which the environmental soundness of a technology can be properly assessed in the process of granting a patent and enhancement of the understanding regarding the use of precautionary approach with a view to regulating the development and application of potentially harmful and/or high risk technologies.

III. CLUSTER ON MARKET ACCESS

A. ITEM 2: THE RELATIONSHIP BETWEEN ENVIRONMENTAL POLICIES RELEVANT TO TRADE AND ENVIRONMENTAL MEASURES WITH SIGNIFICANT TRADE EFFECTS AND THE PROVISIONS OF THE MULTILATERAL TRADING SYSTEM

ITEM 3 (A): THE RELATIONSHIP BETWEEN THE PROVISIONS OF THE MULTILATERAL TRADING SYSTEM AND CHARGES AND TAXES FOR ENVIRONMENTAL PURPOSES

ITEM 3 (B): THE RELATIONSHIP BETWEEN THE PROVISIONS OF THE MULTILATERAL TRADING SYSTEM AND REQUIREMENTS FOR ENVIRONMENTAL PURPOSES RELATING TO PRODUCTS, INCLUDING STANDARDS AND TECHNICAL REGULATIONS, PACKAGING, LABELLING AND RECYCLING

21. The most relevant Article of the Convention addressing all these issues is the one on incentive measures (Article 11). The Article provides that “each Contracting Party shall, as far as possible and as appropriate, adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity.” Incentive measures include a wide range of options, from charges and taxes (Item 3 (a)) to eco-labelling and certification (Item 3(b)).

22. The Conference of the Parties adopted an exchange of information as a way to implement this provision. In Decision III/18 adopted at its third meeting, the COP invited Parties to submit case studies and relevant information on incentive measures. The Secretariat received several submissions from Parties and prepared a background document on design and implementation of incentive measures to the fourth meeting of the COP (UNEP/CBD/COP/4/18). In Decision IV/10, Part A, the COP requested the Executive Secretary to further analyze the design and implementation of incentive measures in collaboration with OECD, the World Conservation Union (IUCN) and other relevant organizations.

23. The Secretariat is keen to collaborate in this area in order to develop a common appreciation of the two processes and to elaborate options that truly address long-term sustainable development. Possible areas of collaboration may include consideration of potential guidelines relating to these measures and standards that may be applied to eco-labelling, certification and any other relevant measures.

B. ITEM 4: THE PROVISIONS OF THE MULTILATERAL TRADING SYSTEM WITH RESPECT TO THE TRANSPARENCY OF TRADE MEASURES USED FOR ENVIRONMENTAL PURPOSES AND ENVIRONMENTAL MEASURES AND REQUIREMENTS WHICH HAVE SIGNIFICANT TRADE EFFECTS

24. This issue is linked to Items 1, 3, 6, 7, 8 and 9. The WTO Secretariat has been recommended to compile from the Central Registry of Notifications all notifications of trade-related environmental measures and collate these in a single database. Through Decisions III/18 and IV/10, the Secretariat of the CBD is instructed to gather information on incentive measures and disseminate the findings through appropriate means such as the clearing-house mechanism. The Secretariat is in the process of establishing a home page on incentive measures and in posting relevant information. However, the intention of this exercise is to continually make available as many relevant examples as possible and is different from creating a database on existing measures. It must also be noted that not all incentive measures will have impacts on trade.

C. ITEM 6: THE EFFECT OF ENVIRONMENTAL MEASURES ON MARKET ACCESS, ESPECIALLY IN RELATION TO DEVELOPING COUNTRIES, IN PARTICULAR TO THE LEAST DEVELOPED AMONG THEM AND ENVIRONMENTAL BENEFITS OF REMOVING TRADE RESTRICTIONS AND DISTORTIONS

25. Under this item, the CTE has considered the ways in which the WTO can contribute to making international trade and environmental policies mutually supportive through trade liberalization and appropriate development and environmental policies determined at the national level for the promotion of sustainable development. Consideration also included the effects of removal of trade restrictions and distortions, in particular high tariffs, tariff escalation, export restrictions, subsidies and non-tariff measures on trade and environment. In this context, it is most appropriate that in its Decision IV/6, reinforcing paragraph 24 of Decision III/11, the COP requested the Executive Secretary to report on the impact of trade liberalization on the conservation and sustainable use of agricultural biological diversity in consultation with relevant bodies, such as the WTO. This is another area where the CBD Secretariat should work closely with the WTO Secretariat.

26. In addition, these measures can also be addressed in the context of incentive measures under the CBD process. The work underway on incentive measures as described above is, therefore, also relevant in this regard.

IV. OTHER ELEMENTS OF THE WORK PROGRAMME

A. ITEM 9: THE WORK PROGRAMME ENVISAGED IN THE DECISION ON TRADE IN SERVICES AND THE ENVIRONMENT

27. The CTE has been requested by the Council for Trade in Services to examine the relationship between services trade and the environment including the issue of sustainable development. It is also requested to examine the relevance of intergovernmental agreements on the environment and their relationship to the General Agreement on Trade in Services. Under the CBD process, these issues are addressed, *inter alia*, under Article 8 on in-situ conservation and Article 10 on sustainable use of components of biological diversity. Specific issues include shipping, in particular, with regards to ballast water and potential introduction of alien species through shipping, and sustainable tourism.

28. Regarding sustainable tourism, in response to the Programme for the Further Implementation of Agenda 21 adopted at the nineteenth special session of the United Nations General Assembly, which invited the CBD to cooperate with the CSD along with other organizations to develop an action-oriented international programme of work on sustainable tourism, the COP decided in its Decision IV/15 to initiate a process of exchange of experiences, knowledge and best practices regarding sustainable tourism under the SBSTTA. The Parties are requested to provide relevant

information and the fourth meeting of the SBSTTA will initiate consideration of this issue within the broader theme of sustainable use. This is another specific area where collaboration between the two bodies may be fruitful in establishing guiding principles and guidelines.

B. ITEM 10: INPUT TO THE RELEVANT BODIES IN RESPECT OF APPROPRIATE ARRANGEMENTS FOR RELATIONS WITH INTERGOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS REFERRED TO IN ARTICLE V OF THE WTO

29. This item addresses directly the issue of cooperation between the two bodies. The Conference of the Parties in its Decision IV/15 took note of the observer status of the Executive Secretary in the CTE for the purpose of representing the CBD in meetings whose agendas have relevance to the Convention as in the present occasion. However, the COP also expressed its concern in the same decision that some Parties to the CBD, particularly many developing countries, are not Members of the WTO, and are therefore limited in their abilities to present their concerns regarding biological diversity at the WTO. The Secretariat, therefore, intends to represent the CBD, as required, in conveying the messages between the two bodies and in seeking further collaboration with the CTE to enhance mutual understanding and to promote the implementation of the objectives of the two process in a mutually supportive manner.

30. In this context, it is also relevant to inform the CTE that the Conference of the Parties has requested the Executive Secretary in its Decision IV/6 on agricultural biological diversity to apply for observer status in the Committee on Agriculture of the WTO for the purpose of representing the CBD in meetings whose agendas may influence implementation of Decision III/11 on agricultural biological diversity and related decisions of the Conference of the Parties.

31. As it has been elaborated above on the basis of the outcome of the fourth meeting of the COP, with the continuous progress being made in the implementation of the CBD, many issues of relevance for these two bodies will continue to arise. Specific areas of cooperation opportunities based on the current programme of the CBD have been highlighted above. It is the intention of the Secretariat to work closely with the CTE and the WTO Secretariat to further the cooperation and collaboration between the two bodies with a view to contributing to the progress in the implementation of the objectives of both processes in a mutually supportive manner.
