

WORLD TRADE ORGANIZATION

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Committee on Trade and Environment

REPORT OF THE MEETING HELD ON 29 FEBRUARY - 1 MARCH 2000

Note by the Secretariat

1. The Committee on Trade and Environment (CTE) met on 29 February - 1 March 2000 under the Chairmanship of Ambassador István Major (Hungary). The agenda in WTO/AIR/1234 was adopted.

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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

2. The observer of the OECD presented the rapporteur's report of the OECD workshop on methodologies for the environmental assessment of trade liberalization agreements, held in Paris on 26-27 October 1999, with the participation of approximately 90 representatives from governments, international organizations, NGOs and academia (WT/CTE/W/133). The workshop had covered the lessons learned from past environmental reviews; current initiatives for assessments of trade liberalization agreements; sectoral approaches to assessments of agriculture, manufacturing, services and forests; case studies of assessments for natural resource sectors in Chile and Uganda; use of models as a tool for environmental assessments; the regulatory effects of environmental regulations and standards; and participation of civil society. Although there had not been any formal conclusions, several main points had been identified. As environmental assessments were at an early stage, work was needed to develop and improve data and methodologies. The final section of the rapporteur's report, which set out a list of proposals for action, identified gaps in current methodologies, including the need to develop methodologies to assess the environmental impacts of the GATS and investment provisions in trade agreements. It had also been considered important to increase capacity building in developing countries to facilitate the carrying out of reviews. It had been considered premature to develop multilateral guidelines on environmental assessment of trade agreements. It was considered, however, useful to set out best practices and common views on approaches of countries undertaking assessments. Copies of the published proceedings of the workshop could be consulted by interested delegations at the WTO Secretariat. The OECD Joint Working Party on Trade and Environment will be sharing experiences on assessments; and there would be a meeting in March, hosted by Ecuador, on sustainability assessments, organized by the World Wide Fund for Nature and Fundacion Futuro Latino Americano.

3. The representative of the United States said that his delegation had made presentations on its activities to carry out environmental reviews, such as for NAFTA and the Uruguay Round. In November 1999, the US had prepared a study of the economic and environmental effects of the proposed accelerated tariff liberalization (ATL) initiative for forest products. This report concluded that the ATL initiative was not likely to have a distinguishable impact on aggregate US timber harvests compared to what would be the case in the absence of this initiative, and minimal impact to aggregate global timber harvest levels. This report could be consulted at the Secretariat and on the USTR website (www.ustr.gov). Building on the experience gained in carrying out this and other reports, in November 1999 President Clinton issued an Executive Order (also available on the USTR

website), which committed the US Government to assess the environmental impacts of future trade agreements, including through written reviews of environmentally significant trade agreements. This Executive Order institutionalized the integration of environmental issues in the negotiating process. The review had to be taken sufficiently early in the process to inform the development of negotiating positions, although this was not a precondition for the tabling of negotiating proposals. USTR and the White House Council on Environmental Quality (CEQ) were jointly developing guidelines to implement this Executive Order with the participation of foreign policy, environmental and economic agencies. The goal was to issue final guidelines by mid-2000. USTR and CEQ requested public comment on general issues to be addressed in the guidelines, including such issues as the appropriate timing and process for conducting a written review, and methodologies for assessing environmental impacts in the context of trade negotiations. The US would keep the CTE informed of developments.

4. The representative of Canada said that her delegation was committed to integrating sustainable development into domestic and foreign policy. One instrument for promoting such policy coherence, on a national or international level, was the environmental review of non-environmental policies and programmes. The purpose of an environmental review was to inform policy makers, in advance of final decision making, of the environmental consequences of policy actions, and of options available to address them. Canada had begun a three phase national environmental review process of certain WTO Agreements and post-Uruguay Round developments in preparation for the next WTO negotiations. The first phase was completed in November 1999, prior to the Seattle Ministerial, and concluded with the release of Canada's Retrospective Analysis of the 1994 Environmental Review of the Uruguay Round, which was available on the Department of Foreign Affairs and International Trade website (www.dfait-maeci.gc.ca, under *Trade Negotiations and Agreements*). The second phase, the Environmental Review Framework, to be concluded at the end of 2000, will incorporate public comments on the Retrospective Analysis into a methodology for the review. The third phase, the Environmental Review itself, will apply the Framework or methodology to WTO negotiations.

5. The Retrospective Analysis evaluated the accuracy of the findings of Canada's 1994 review. Each of the WTO Agreements assessed in the 1994 Review had been examined, and two new sections had been added to review CTE work and the recent environment-related trade disputes involving GATT Article XX. The Retrospective, like the 1994 Review, focused on the "regulatory effects" of the Uruguay Round and did not estimate the actual physical environmental impacts of the Uruguay Round. The 1994 Review concluded that "the trade liberalizing effect of the Uruguay Round will promote the more efficient allocation and use of resources and thereby contribute to an increase in production and incomes, and to a lessening of demands on the environment". This conclusion was based on the assertion that Canada would retain the right to regulate for environmental protection. The Retrospective concluded that Canada, as other WTO Members, retained the right to maintain strong environmental policies and regulations. The Retrospective also examined two WTO disputes of an environmental nature involving GATT Article XX to illustrate the nature of a rules-based system and the importance assigned to fair and consistent application of domestic environmental protection measures. Some commentators argued that these cases limit the right of countries to enact environmental legislation. The Retrospective noted that the decisions do not question the right of WTO Members to establish and implement environmental protection measures, but underscore that such measures must be WTO-consistent. The Retrospective also noted that the WTO had made arrangements for effective cooperation with other intergovernmental organizations, and to consult and cooperate with NGOs. It noted that the CTE had emerged as the key institutional element within the WTO to explore comprehensively the trade and environment nexus.

6. Canada was in Phase 2, developing the Framework to be applied to future trade liberalization efforts. This Framework, developed in consultation with stakeholders, will adopt a broader approach than the Retrospective Analysis. Methods, tools and criteria will be developed to determine the probability and significance of sectoral environmental effects of the agreements under negotiation. This review will assist Canadian negotiators in taking environmental concerns into consideration in

future trade negotiations. It would be useful for Members performing environmental reviews to share their national experience regarding methodologies and findings with the CTE. In this respect, Canada requested the Secretariat to prepare a factual paper summarizing national approaches to assessing the environmental impact of trade liberalization.

7. The representative of the European Communities said that, in mid-1999, the EC awarded a contract to carry out a Sustainability Impact Assessment (SIA) to a consortium from the University of Manchester to assess the impact of future WTO negotiations on global sustainability. There was a considerable body of work on economic and environmental assessments, but little encompassing other elements of sustainable development. During Phase One of the SIA (June-September 1999), the Contractors carried out a literature review of impact assessment methodologies, and examined cases where these techniques had been used. The Contractors developed a SIA methodology to be used in Phase Two, which would be a broad qualitative assessment of the proposed negotiations (September-November 1999). The SIA methodology used a core group of sustainability indicators to measure the impact that further liberalization and changes in rule-making may have on sustainability. These indicators were balanced between economic, environmental and social and included average real income; employment; net fixed capital formation, equity and poverty; health and education; gender inequality; environmental quality; biodiversity and other natural resource stocks.

8. Phase One was a screening exercise to determine which measures required SIA, as they were likely to have significant impacts. In Phase Two, the Contractors had used their methodology to make a preliminary assessment of the sustainable impact of the New Round. The Contractors concluded that trade liberalization in all areas was likely to have some impact and all areas should thus be subject to a preliminary SIA. An assessment was then be made based on three scenarios incorporating the EU's proposals: "baseline" (the current situation, assuming implementation of the Uruguay Round commitments); "intermediate" (some further liberalization); and "liberalization" (more ambitious proposals for liberalization). This allowed the Contractors to test a series of possible activities, and provided guidance about those areas where attention should be paid to ensure a sustainable outcome. The Phase Two report made it clear that results varied depending on the sector, region and timescale. The assessment found that trade liberalization had a broadly, but not universally, positive impact on economic growth, with nuances between regions and over time. This was consistent with the results of the economic analysis carried out for the Commission. Trade liberalization also had a generally significant potential impact on sustainable development, in its social and environmental components. The Phase Two report had ideas for mitigating and enhancing measures to enhance the impact of the New Round on sustainability, i.e. the action that should be taken in addition to what was negotiated to mitigate harmful effects and exploit positive impacts. Such measures included proposals related to capacity building, and environmental or other policy developments outside the WTO.

9. The EC was preparing to let a contract for Phase Three of the SIA, to begin in late 2000. As the agenda for further negotiations had yet to be determined, details about the scope and nature of Phase Three had to be finalized. Given the mandated negotiations in the agriculture and services sectors, these are two of the sectors that will be assessed. The future study will likely also focus on those sectors where there may be a significant impact on sustainability, and where negotiations were likely. There may be refinements of the SIA methodology to integrate studies in progress, and adjustments to the scenarios, as detail emerged on the proposals for negotiations. The EC will continue in Phase Three with the public consultation process initiated at the start of the SIA, including the Council, EP, NGOs, business and consumer groups, and trade unions. Information on this project was available on the DG Trade website; interested parties could provide input to the Contractors' e-mail address, who also had a website on the SIA, which had received 2,500 "hits".¹

¹DG Trade web site: http://www.cc.cec:8082/comm/trade/2000_round/sia.htm; Manchester University website: <http://fs2.idpm.man.ac.uk/sia/>; and e-mail: chk@man.ac.uk.

10. The representative of Norway recalled that the objective of sustainable development was set out in the WTO preamble. Thus, the WTO should, in negotiations and its regular work, take into account trade and environmental concerns, as well as developing country interests. Sustainability assessment studies may be a useful tool in this regard. Such studies provided information that enabled the environmental consequence and effects on developing countries of activities in the WTO mandate to be gauged. Such information could help WTO Members shape national views that promoted sustainable development. Sustainability assessment studies/environmental reviews were a relatively new area. Valuable work had been done in the OECD to develop methodologies; UNEP and UNCTAD had undertaken a series of case studies. In the preparation for the Seattle Ministerial Conference, Norway had suggested that environmental reviews of further trade liberalization be carried out. To ensure that horizontal issues were properly considered, it was proposed that international organizations, including UNEP, UNCTAD and FAO, be invited to provide contributions.

11. In Norway, environmental analyses were being conducted for the fishing, agricultural and transport services sectors; additional sectors may be included later. The external research institutions undertaking the sector analysis were expected to be finished by June 2000. Norway intended to present its analysis at upcoming CTE meetings. The process was transparent and open, involving all relevant Ministries and consultation with NGOs. The OECD methodologies for environmental reviews and environmental indicators formed the basis for the sectoral analyses. The researchers will scrutinize local, regional and global environmental implications of further trade liberalization via the product, technology, scale, structural and regulatory effects. Environmental indicators included factors such as climatic change, ozone layer depletion, acidification and waste. Norway was pleased to learn that other WTO Members were conducting sustainability assessments, and hoped that others would do the same. Norway recognized that national authorities were responsible for such work being carried out and that there were capacity problems in many countries. Therefore, bearing in mind the usefulness of work to promote sustainable development, Norway was prepared to enter into talks with interested countries on such cooperation projects.

12. The representative of Argentina said it would be useful to categorize trade policies and measures, without necessarily referring to specific national policies, and determine the environmental effects of these categories of measures. The WTO's goal was to liberalize trade. This goal could be strengthened by finding additional reasons to liberalize trade. Thus, it would be helpful if existing trade restrictions and distortions were categorized by measures and their environmental impact analysed. There were environmental advantages of trade liberalization, basically related to the ability to correct market prices to reflect the real cost of production. When this was the case, free trade would foster more efficient production, which would in turn decrease the demand on the environment and the environmental impact of production. If this were the case, free trade would be not only compatible, but beneficial for the environment. Many existing trade policies distorted trade and thereby distorted prices, which led to environmental stress. Although Argentina felt that sharing national experiences on environmental assessments may be useful, these studies could be used to strengthen existing national trade policies and WTO negotiating positions, which may not necessarily be beneficial for the environment or the trading system. An assessment methodology that identified categories of measures, instead of national policies *per se*, could give a new impulse to CTE work.

13. The representative of India recalled the Rio principle that environmental assessment was solely the prerogative of Governments to undertake at the national level. India was willing to go along with an exercise confined to the sharing of information, but anything which went beyond this would be a matter of concern. Concerning methodologies for environmental assessments, India was concerned about any move to develop a multilateral instrument in this area. This would be unacceptable to India. India was interested to hear other Members' views on the proposal for the Secretariat to prepare a background note on environmental assessments.

14. The representative of Hong Kong, China supported India's statement given that this issue should be approached with caution. Hong Kong, China felt that although Members were welcome to

share their national experiences on environmental assessment, any step which surpassed the factual exchange of information would be cause for concern. He wondered if there would be any value added for the Secretariat to prepare a summary of the various national environmental assessments carried out to date, given that Members were free to share these assessments on their own initiative in the CTE.

15. The representative of Malaysia shared India and Hong Kong, China's concerns. At this stage, there need not be any Secretariat papers, and discussions should continue to be Member-driven. Environmental assessments should be undertaken at the national level, if a Government felt it necessary in the context of the domestic processes, and if financial resources were available. Besides, as the CTE had an analytical mandate, it was inappropriate to consider any multilateral disciplines in this respect. There was no "one size fits all" approach to environmental assessments.

16. The representative of Mexico drew attention to the diversity of approaches and methodologies demonstrating that there were different ways of carrying out environmental assessments, which were all equally valid or equally imperfect. Mexico shared the concerns expressed by India, Hong Kong, China, and Malaysia. This type of exercise did not presuppose that, at a certain stage, multilateral guidelines would be established for environmental assessments. It was not a matter of whether it would be premature to develop multilateral guidelines, as noted in the OECD report, but whether it would be advisable to do so. Mexico did not see how the development of approaches and methodologies for environmental assessments would assist trade negotiations. Whether trade liberalization was good or bad for the environment would depend on the circumstances that existed in a given geographic area. Mexico inquired as to what would have been the result if a negative environmental impact had been identified by the US or Canada, for example, in their environmental assessments. Mexico did not think that the US would have withdrawn its accelerated tariff liberalization forestry initiative, or that Canada would have renegotiated the Uruguay Round Agreements. It was up to each Member to decide whether or not to carry out an environmental assessment. Mexico supported the proposal for the Secretariat to compile national experiences undertaken on environmental assessments, on the understanding that no conclusions would be drawn.

17. The representative of the Czech Republic informed Members that in 2000 the Czech Ministry of the Environment initiated, with funding of approximately 500,000 Czech crowns, an environmental assessment of trade agreements and a trade assessment of environmental agreements. The OECD workshop had contributed greatly to this exercise. The Czech Republic welcomed the proposals from Canada and Norway to share experiences in undertaking reviews, which would increase the capacity of countries, such as the Czech Republic, to carry out such reviews.

18. The representative of Japan said that as Japan had not yet decided to undertake environmental assessments, it would be useful to learn from other countries' experiences. Japan supported the proposal for the Secretariat to compile national experiences with environmental assessments, in cooperation with other relevant intergovernmental organizations. Japan understood the concerns raised by several countries, but felt that a Secretariat note would contribute to the discussions.

19. The representative of Brazil, in recalling the goal of the WTO to promote trade liberalization, said that her delegation supported Argentina's suggestion to focus the assessment on trade policies that led to trade distortions, and assess their environmental impacts. It would be difficult for one methodology used in an environmental assessment to fit all sectors, countries and regions. Therefore, at this stage, Members should exchange national experiences. As developing countries did not have sufficient financial resources to carry out environmental assessments, Brazil emphasized that technical assistance would be necessary.

20. The representative of the United States said that environmental reviews were an exercise to be carried out at the national level. There was no "one size fits all" approach. It was an interesting endeavour to figure out the best way to carry out such reviews, and for the US this was still a work in progress. The US found it useful to share information on experiences as this would assist countries in

determining the best way to carry out assessments in their national context. Mexico had raised an interesting question as to what would have happened if a review of the forest ATL had found the possibility of adverse environmental impacts of trade liberalization. It was difficult to speak hypothetically, but it would not be the instinct of the US to hold back on trade liberalization. However, the US would look into how to proceed to make both the trade and environmental aspects mutually supportive. If it were found that liberalization might cause stress on the domestic environment, the US would re-examine its systems for dealing with these stresses to see if they needed reinforcement. If it were found that there might be international problems, the US might look for ways in which to reinforce cooperative efforts that were ongoing in the forestry and other sectors. The answer should not be immediately to think in terms of not liberalizing. However, it was important to be vigilant of the environmental implications of trade liberalization, so that progress could be made to achieve sustainable development. In any event, progress should not be made on one aspect at the expense of the other. The US supported the proposal for the Secretariat to prepare a paper to reflect national experiences in undertaking environmental assessments. This paper would be a useful step towards addressing technical assistance, a matter of concern for developing countries raised by Brazil. One way to provide technical assistance was to share information on experiences. UNCTAD and UNEP were also undertaking work to help developing countries perform environmental assessments. The US was interested in other ideas for technical assistance in this area.

21. The representative of Australia said the CTE should be used as a forum to share information on national environmental assessments, and to examine environmental issues raised by trade reform. Australia suggested that the concept introduced by Argentina be taken up as part of a "building blocks" approach, based around national governments doing work and disseminating it in the CTE. This approach had much to recommend it, given the political and methodologies uncertainties in this area. Discussion of national assessments of the environmental/sustainability ramifications of trade policy reforms was an important topic and a logical extension of the CTE's overall work. Work was under way in several bodies to explore ways of doing environmental/sustainability assessments, including technical aspects of such assessments. This work should be monitored to see if there were insights that may contribute to CTE work. Australia welcomed Members sharing with the CTE their studies and methodologies. A variety of methodological approaches were used to assess and forecast the environmental ramifications of changes in economic activity brought about by changes in trade policies. While these approaches were marked by their potential usefulness as indicators and foci for debate and consideration of policy reform, there were also limitations.

22. Australia had established processes that incorporated consultation between government agencies to ensure that negotiating positions taken in fora, such as the WTO, reflected the "whole of government" positions, and allowed environmental issues raised in a trade policy context to be identified, studied, and factored into negotiating positions. Australia also had regular consultative processes on sustainable development, including specifically 'trade and environment' and 'trade and development' issues, which provided an avenue for environmental concerns held by the community to be factored into policy development. There was also a legal requirement for national interest analysis of treaty-level outcomes to be submitted to a parliamentary committee for review at the pre-ratification stage, which included environmental/sustainability factors. Integration of developing country perspectives involved environmental assessments of trade agreements being integrated into a broader assessment of the implications of trade negotiations for sustainable development, especially for natural resource sectors that were important to developing countries, and had significant trade distortions that should be incorporated in WTO negotiations. Exploration of an appropriate approach to sustainability assessment in these areas will be vital. Australia had explored the integration of trade, environment and development perspectives in its paper on "Trade liberalisation and the environment: A positive agenda for trade reform" (WT/CTE/W/105).

23. It was agreed that the Secretariat would prepare a factual compilation of the various approaches to environmental assessments at the national level prepared to date.

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

24. The representative of Japan said that measures, such as eco-labels, were effective policy tools to encourage the use of environmentally sound products and services, while ensuring that such measures were not used as disguised protectionism. It was also necessary to identify the relationship between eco-labels and the TBT Agreement. As information on standards should be available to all exporters and producers, coordination between standardizing bodies should be enhanced by exchanging information and setting up a national contact point. Analysis on the market access impacts of eco-labels indicated that environmental measures were not major obstacles to developing country market access. Case studies on the impact of eco-labelling should be conducted to illustrate which types of eco-labelling schemes were desirable. In Japan, the Eco-mark programme had been carried out by the Japan Environmental Association (JEA). Following the recently adopted ISO standards for Type I eco-labelling (ISO 14024), in November 1999 the process to develop environmental criteria for the Eco-mark was amended to allow for public review and participation by industry, consumers, and academia, so that the programme could be operated more transparently. The JEA was a member of the Global Eco-labelling Network (GEN), and contributed to the international harmonization of eco-labelling criteria, with a view to establishing mutual certification. The Eco-mark had been notified to the ISO, according to Annex 3 of the TBT Agreement.

25. The representative of the European Communities expressed an interest in having some input from the Secretariat, at some stage, with respect to the compatibility of eco-labelling schemes with the TBT Agreement, given the newly adopted ISO standards. The EC felt that the existence of the ISO standards was not only influential, but could also provide greater policy clarity with respect to whether to put in place schemes, and how these schemes would fit under the TBT Agreement.

26. The representative of Canada said that this topic reflected the reality and concerns faced by many companies in many sectors in a range of developed and developing countries. Canada suggested that the Secretariat should update work in WT/CTE/W/101-G/TBT/W/103, on the market access effects of eco-labelling programmes. Canada highlighted the utility of sharing national experiences with eco-labelling programmes in the CTE, such as the contributions on cut flowers by Colombia and on the forestry sector by Canada. There was a clear link between discussions on eco-labelling in the CTE and issues raised in the TBT Committee. Canada drew attention to the proposals for action from the fourth, and concluding, session of the Intergovernmental Forum on Forests. One of the proposals for action called for: "further cooperative work on voluntary certification and/or labelling schemes in line with the recommendations of the Intergovernmental Panel on Forests, 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 are consistent with international obligations, so as to promote sustainable forest management and not to lead to unjustifiable obstacles to market access." Canada felt there was merit in undertaking additional work in various forums, including the WTO, to promote equivalency of voluntary standards, and to examine the potential role of voluntary standards to be non-tariff barriers to trade.

27. The representative of India said that labelling was one of the issues on an open-ended list for the second Triennial Review of the TBT Agreement. The TBT Committee had been mandated to conclude this review by the end of 2000. India supported the request to study the market access impacts of eco-labelling, as these programmes had market access effects, particularly for developing countries. India believed that if eco-labels were based on non-product related process and production methods, which was the case for many eco-labels, these labels were not consistent with WTO rules.

28. It was agreed that the Secretariat should update WT/CTE/W/101-G/TBT/W/103, on the market access effects of eco-labelling. The Secretariat invited Members to bring to its attention any studies that could contribute to this update.

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

29. The representative of Japan requested the Secretariat to prepare an annotated list of CTE documents classified by Item of the work programme. Japan would appreciate if the Secretariat would keep Members informed of work undertaken in other international organizations, and continue to provide annotated bibliographies of literature of relevance. Japan felt CTE documents should be derestricted to the greatest extent possible. For example, Members' contributions should be issued as unrestricted, unless otherwise indicated by that Member. The CTE should also consider a shorter timeframe than six months for document derestriction, keeping in mind the General Council procedures in this respect.

30. The representative of Mexico said that annotated bibliographies were useful, but requested that there be an introductory note stating that the information contained did not necessarily mean that the WTO or its Members shared the views of these publications.

31. The Secretariat said that it had periodically prepared bibliographies of recent papers related to the CTE's work for the information of Members, such as the annotated bibliography of recent information on trade-related developments in MEAs (WT/CTE/W/129). The Secretariat invited suggestions from Members on literature, which had been found to be particularly useful, and said it would take into account Mexico's comments in this respect. The Secretariat would circulate a list of CTE documents prepared to date (WT/CTE/INF/2). The General Council procedures on document derestriction set out that any document containing publicly available information was to be issued as unrestricted. For example, the 1999 Environmental Database, which was a compilation of publicly available WTO notifications, would be unrestricted.

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

Sectoral analysis

Fisheries

32. The representative of Iceland presented his delegation's proposal in WT/CTE/W/132 for the Secretariat to update the fisheries chapter of the Secretariat's document on the "Environmental benefits of removing trade restrictions and distortions" (WT/CTE/W/67), dated 7 November 1997. As part of the update, the Secretariat should conduct a factual study on the impacts of subsidies on fisheries. The Secretariat study could, *inter alia*, focus on the effects of subsidies on: (a) trade and trade distortions in the fishing sector; (b) fisheries management; (c) overcapacity and overfishing; and (d) environmental impacts of fisheries. The Secretariat should cooperate closely with FAO, regional fisheries management organizations and other organizations that could submit material for the study. This would be a factual study that compiled available information. This study should also take into account the importance of the fisheries sector for developing and least developed countries, and the effect of subsidies on their socio-economic development.

33. The representative of New Zealand said that his delegation, building on the momentum achieved in this area, had recently commissioned research to deepen the understanding of the relationship between fisheries subsidies, trade, development and the environment. A summary of the

results of this analysis was set out in WT/CTE/W/134. It was clear from the trade statistics quoted in paragraphs 2 to 5 that nearly all countries had some interest in the fisheries sector, whether as an exporter, importer or a consumer of fish products. New Zealand's work had focussed on the issue of financial transfers generally, rather than the effects of different categories of financial transfers. New Zealand's research aimed to review the levels and types of government transfers provided to global fisheries, as a starting point for more in-depth work in this area. Estimates of governmental support related to fisheries provided by three major players in the fisheries sector in 1996 had been set out in the paper, specifically in Annex 1. To a large extent, New Zealand had used data and material from existing analyses, particularly that prepared by Mr. Milazzo as part of his study for the World Bank.

34. Against the background of earlier CTE debates on the relative significance and prevalence of so-called "positive" and "negative" subsidies, it was worth noting that New Zealand's research tended to show that the category of subsidies aimed at reducing overcapacity appeared to be relatively small. Also included in New Zealand's paper was a brief round-up of recent work on fisheries subsidization underway in other international fora, specifically the OECD, FAO and APEC. In a recent UNEP publication, the "young people of the world" had drawn attention to environmental problems facing marine and coastal areas, including the problems posed by overfishing and overcapacity. New Zealand welcomed Members' comments on its paper, and encouraged others to share their analyses and national experiences in the fisheries sector. New Zealand felt that it was through the exchange of detailed information that the CTE could understand the issues underlying the discussion of fisheries subsidies and could consider issues related to WTO rules in this area. New Zealand also welcomed Iceland's proposal in WT/CTE/W/132, which contained a useful summary of WTO discussions on, and underlined the importance of, CTE work in this area.

35. The observer of the FAO presented an update of FAO fisheries-related activities in relation to the implementation of the International Plan of Action for the Management of Fishing Capacity, set out in WT/CTE/W/135. FAO was in the process of drawing up technical guidelines for the management of fishing capacity, which should be published in mid-2000. FAO was also initiating a study on the identification of factors contributing to overcapacity and unsustainability, that will be complemented by the outcome of the work undertaken on related issues, such as illegal, unreported and unregulated (IUU) fishing, fisheries management, and fisheries subsidies. FAO would also aim to provide increased support to Member states to promote sustainable fisheries, particularly to implement the Plan of Action. The FAO work plan on the role of subsidies in relation to fisheries resource sustainability and trade in fish and fish products included the preparation of several related studies to be reviewed by an Expert Consultation to be held in Rome, from 28 November to 1 December 2000. A report with findings, conclusions and recommendations will be submitted at the 24th Session of the FAO Committee on Fisheries (COFI).

36. The observer of the OECD said that the OECD had initiated a study in 1997 to review government financial transfers in OECD Member countries, and to assess the impact of these transfers on fisheries resource sustainability. The study had involved information collection and analysis, with the participation of approximately 24 Member countries and the EC. OECD countries had been asked to provide information on government financial transfers, fishing capacity, and the status of fish stocks. The analysis had been conducted to determine the relationship between: (i) transfers and the capacity and activities of fishing fleets; (ii) fishing capacity and the possible effects on fish stocks. The scope of the study was limited to government financial transfers and their effects on resource sustainability and fish stocks in OECD countries. Effects of other types of transfers had not been explored, such as the effect of transfer-induced changes on trade flows; on investment; and on high sea stocks and stocks in other countries' exclusive economic zones.

37. There were different types of subsidies, such as government support to fisheries infrastructure, management, research, and enforcement; access to other countries' waters; decommissioning of vessels and license retirement; investment and modernization; income support

and unemployment insurance; taxation exemptions; and improved economic performance. The results of this study would be finalized at the OECD Fisheries Committee meeting on 20-22 March. The fisheries study illustrated that fisheries subsidies were generally lower, also as a percentage, in comparison to the agricultural sector. Support to producers that could encourage the expansion of production capacity was significantly lower than support to general services (i.e. management, research and enforcement). The OECD also was embarking on a study on market liberalization to describe global fish markets, and examine tariff and non-tariff barriers to trade in fish and fish products, as well as cross border investments in this sector. The possible effects of government financial transfers to the fisheries sector on fisheries trade would also be included.

38. The representative of Argentina asked whether the OECD's assessment included foregone revenues, which stemmed from uncollected tariffs as a result of the exchange of preferential market access for access to fisheries resources. Many access agreements provided foreign fishing fleets with access to the economic zones of developing countries, including preferential access for fish from these zones. This preferential access meant low or no tariffs. It also meant revenue foregone for the country providing the access as part of the agreement that opened up the possibility for foreign vessels to capture fish in the economic zones of developing countries. The observer of the OECD responded that, in principle, it would be preferable to include the type of support Argentina had mentioned, but that the actual OECD figures did not include them. For some countries, the data included direct payments for access to third countries' economic zones.

39. The representative of Egypt asked the FAO to outline the main elements of the programme it was developing to assist developing countries to implement the Plan of Action. Egypt welcomed the FAO's initiative, in cooperation with Japan, to organize workshops for developing countries. The observer of the FAO responded that the programme was undergoing formulation and details in this regard will be made available in the near future.

40. The representative of the European Communities asked the OECD and FAO when their respective studies related to fisheries subsidies would be available. The observer of the OECD responded that, if agreement were reached at the OECD Committee on Fisheries at its 20-22 March meeting, the OECD study could be published by mid-2000. The observer of the FAO responded that the timeframe established in the Fisheries Department for the presentation of its study to Member countries was February 2001, at the 24th Session of the FAO Fisheries Committee.

41. The representative of Australia welcomed the initiatives taken by Iceland and New Zealand to progress activity on subsidies that contributed adversely to global fisheries' sustainability. The proposed work programme demonstrated that there was a clear role for the WTO in complementing the efforts underway in other fora, particularly the FAO. It was critical to understand the level of production and trade in fisheries products and trends over the last two decades. Australia thanked New Zealand for its continuing efforts to ensure that the CTE had up to date information by tabling WT/CTE/W/134. Australia welcomed New Zealand's analytical work highlighting the importance of trade in fisheries products, and noted that about 40 per cent of production was traded; a significant number of countries were involved in this trade; and developing countries were net exporters and account for about 50 per cent of total exports. Estimates of the size of subsidies provided by the EC, US and Japan in WT/CTE/W/134, and the estimated breakdown down of these subsidies into various categories was of particular interest. Conservation subsidies formed only a small part of total subsidies provided, although Australia recognized that at least some of the resource rent category could comprise expenditures, which contributed to improved fisheries management. Given that the size of the transfers identified, particularly for the EC and US, were significant, Australia believed that this resource rent category should be investigated further. The cross-sectoral category also included some significant funding and included subsidies that may not be "fisheries subsidies" in the sense that they were not given directly to the fishing industry or aimed at fishing activities. This was a useful reminder of the importance of keeping an open mind as to which subsidies may contribute to excess fisheries capacity and overfishing, and that it was important, not to narrowly define the scope

of future work on this issue. Australia noted, in particular from WT/CTE/W/126, that the FAO would undertake a review of fisheries subsidies to clarify concepts and review analytical difficulties and alternative approaches for the measurement and assessment of the impact of subsidies on trade and sustainability. The conceptual issues were important. The limitations of existing studies were differences in categorizing subsidies. Categorization was important in helping to: (i) identify subsidies; (ii) assess their impact on production, trade and the environment; and (iii) develop adequate measurement tools.

42. Australia supported Iceland's proposal in paragraph 9 of WT/CTE/W/132. A Secretariat factual paper based on previous analysis of the effects of subsidies on fisheries management, overcapacity and overfishing, and environmental impacts of fisheries, would help provide the necessary analytical underpinning for future discussions. Given the international interest and diverse sources of activity on this issue, an update on research recently published in other international fora, including the FAO and OECD, would also be useful for all CTE Members. Australia welcomed the commitment in the proposal to ensure ongoing communications with other relevant agencies. Australia also welcomed the proposal's reference to the needs of developing and least developed countries. This was one issue where there was great potential for "win-win-win" synergies in trade reform of benefits for economic growth, development and the environment. As noted in New Zealand's paper, developing countries accounted for approximately half the value of total exports. Subsidies which affected the fisheries sector raised important development as well as environment issues, as trade in fisheries products was a significant source of foreign exchange for many developing countries. Ensuring that developing countries can compete fairly in international fisheries trade was essential to promote the goal of sustainable development in relation to the fisheries sector.

43. The representative of Thailand enquired as to whether Iceland would consider expanding its initiative in the fisheries sector to the agricultural sector. While Thailand recognized that fisheries subsidies could lead to overcapacity in fisheries and overfishing, some subsidies promoted fisheries sustainability. Fisheries subsidies and fisheries management could not be dealt with separately. Thailand understood that the elimination or reduction of fisheries subsidies was aimed at those related to the harvesting of transboundary, straddling, highly migratory and high seas stocks, which were significantly overfished. Thailand asked Iceland to confirm whether this understanding was correct. The fisheries sector played an important role in the socio-economic development in most developing countries. In certain conditions, flexibility concerning fisheries subsidies in developing countries was unavoidable, particularly the needs of artisanal and off-shore fisheries. Thailand's understanding was that these types of subsidies were excluded from Iceland's proposed study. Thailand supported Iceland's proposal in WT/CTE/W/132 for the Secretariat to conduct a factual study on the impact of fisheries subsidies, and suggested that this study include the value and form of fisheries subsidies, and the effects of fisheries subsidies on the socio-economic development of developing countries.

44. The representative of Peru said that different studies illustrated that subsidies that contributed to overfishing and overcapacity had negative impacts on trade in fish and fish products, as well as on the sustainability of fisheries resources. It was thus necessary to continue discussions on this matter in the WTO. Peru supported Iceland's proposal to update the fisheries section in WT/CTE/W/67, with emphasis on the importance of this sector for many developing countries and LDCs.

45. The representative of Chile supported Iceland's proposal in WT/CTE/W/132, as a basis on which to examine eliminating fisheries subsidies, which undermined fisheries sustainability. This study should not duplicate FAO work, and should focus on trade distortions and be based on the fact that trade liberalization was essential for sustainable development. As Chile noted in Seattle, eliminating fisheries subsidies could also be approached through the Subsidies Committee. Chile felt New Zealand's paper made a valuable contribution to CTE discussions in this area.

46. The representative of the European Communities felt that this was an area where the WTO could make a contribution to environmental protection. Fair and full developing country participation in fisheries trade should be a key objective of a future round. The issue was how to deal with these issues in the CTE at this stage. The EC wished to pursue this aim in a broad negotiating context. The EC welcomed FAO and OECD work, and endorsed the need for concepts under discussion in relation to the fisheries sector to be clear. Thailand and Argentina's comments demonstrated that differences of opinion existed as to what the CTE should be discussing. In this respect, when OECD work emerged in mid-2000, there would be much more data on which to base the CTE's discussion. With respect to New Zealand's reference to momentum in this area, and Iceland's reference to the Seattle texts, it was clear since Seattle, that attempts to take part of what any given delegation liked in the Seattle discussions and re-inject this text into WTO work would break, rather than build momentum. The EC was keen to get on with this debate based on more detailed work. There was no point in the Secretariat producing a compilation on the eve of the appearance of major new work in other fora. The EC felt New Zealand's paper may not be as complete an analysis as some of the other studies that would emerge. For example, data on the EU showed an amount of US\$124 million as aid to shipbuilding under the category of cross sectoral aid. Further research would have established that EU rules for shipbuilding explicitly excluded aid for the construction of fisheries vessels. The EC felt that the WTO should look at the economics of this sector of human activity. Preferential access for fish, which implied revenue foregone for the importing government, but which created access to resources for its own industry, was part of the economics of this sector. Concerning Argentina's comment, it would be difficult to quantify revenue foregone and consider it to be an advantage for the exporting industry. Concerning other aspects which were more directly trade-related and could be addressed by negotiations, it was necessary to look at the framework of the Subsidies Agreement.

47. The representative of Hong Kong China supported Iceland's proposal for a factual study on the impact of subsidies in the fisheries sector. New Zealand's paper had contributed to the CTE's analysis on how the removal of trade distorting measures, including subsidies, may benefit the environment. Hong Kong, China saw merit in the "win-win" arguments in New Zealand's paper, and expressed support for future analytical work in this respect. The SCM Agreement already provided certain disciplines for non-agricultural subsidies, and notifications of fisheries-related subsidies had been made, as required under that Agreement. It was appropriate to identify possible gaps in the SCM Agreement in relation to fisheries subsidies, before considering the need for additional rules in this sector. Hong Kong, China felt that the APEC study, noted in New Zealand's paper, was a step in this direction, and looked forward to the results of this study.

48. The representative of Norway said that government transfers to the fisheries sector in many cases contributed to overcapacity and overexploitation. However, fisheries subsidies were only one of several elements that may have a negative impact on sustainable development of the fisheries sector. Lack of fisheries management regimes, along with rapid technological development, had been an unfortunate combination resulting in unsustainable development of fisheries resources and excess fishing capacity over the past decades. Nevertheless, a responsible management regime had been introduced in many economic zones. Eliminating subsidies that contributed to overcapacity will have several positive effects; it will provide for a more sustainable management system; accommodate a higher output from fisheries resources on a global scale; and have a positive economic effect on efficiency and economic performance, as well as trade. Support that contributed to overcapacity may include direct payments (income support) based on levels of catches or number of vessels, and cost reducing transfers, such as tax exemptions or interest support on capital. Norway recognized that government transfers may contribute to ensure sustainability of fisheries and the aquatic ecosystem. Expenditures on general services, such as fisheries management and research, were positive. Certain subsidies may also contribute to reduce overcapacity, such as transfers to withdrawal of excess capacity through decommissioning schemes, or to ease transition to other work for fishermen. It was important, in a global perspective, that such incentives did not facilitate any transfer of excess capacity from one area to another, by relocating the problem of excess capacity.

49. Norway supported Iceland's proposal for the Secretariat to update the fisheries chapter of WT/CTE/W/67. Norway felt that work on fisheries subsidies in the FAO and OECD was important, and supported the EC's comments on the need for CTE discussion to be based on precise information. A more comprehensive picture of fisheries subsidies was needed as a basis for reducing environmentally damaging fisheries subsidies on a global basis. The aquaculture sector had brought a new dimension into the dynamics in the fisheries sector on a national and global level. Figures from the FAO from 1997 showed that aquaculture production, as a percentage of total global production, had increased from 13 per cent in 1990, to 23 per cent in 1997. Norway's aquaculture sector represented 40 per cent of total export value from fish trade in 1999. The growing importance of the aquaculture sector had to be included when discussing fisheries issues. Aquaculture may ease pressure on fish stocks and represent a positive environmental effect.

50. The representative of the Philippines said that fisheries subsidies were receiving increased attention in various international organizations. The FAO Plan of Action included a call for the elimination of all factors, including subsidies, which led to excess fishing capacity. The Philippines suggested that the OECD fisheries study include market price support, which was trade distorting. The Philippines agreed with Norway that effective fisheries management was a fundamental requirement for sustainable fisheries. Sustainable management also involved effective reform of fisheries subsidies. New Zealand's paper illustrated the wide discrepancy in fisheries subsidies between developed and developing countries. The magnitude of fisheries subsidies in developed countries was cause for alarm in view of their negative effects on sustainable development, including trade competitiveness, productivity, and resource conservation in developing countries. This concern was made more relevant by the fact that there were almost no fisheries subsidies in developing countries. The Philippines supported the proposal to review the state of fisheries subsidization and to identify subsidies that distorted trade and led to environmental degradation, in order to work towards their elimination. As set out in Iceland's paper and noted by Thailand, the vital role of the fisheries sector in the developmental strategies of developing countries should also be kept in mind.

51. The representative of Japan said that the FAO was identifying all the factors that contributed to overexploitation of fisheries resources. Japan would contribute to further progress, so that the WTO could take into account this work in the next round of comprehensive negotiations. Japan wished to wait for the FAO study. Japan did not object to Iceland's proposal for a factual Secretariat study on fisheries subsidies, if this entailed a collection of available information. Japan wondered how the Secretariat could take into account the importance of the fisheries sector in developing countries through the collection of information. Japan noted that much of New Zealand's paper had been based on a World Bank study. As Japan noted in the General Council in September 1999, that study represented the opinion of an individual, not the World Bank, and had many problems, including rough estimates or "guesstimates". Some figures for Japan were incorrect, e.g., the study indicated that Japan had US\$245 million foreign access subsidies, but Japan had none. Japan felt that any future work should not be based upon this World Bank study. Japan would like to obtain the paper by Mr. McLeod in order to better analyse New Zealand's paper. Japan would make more detailed comments on Iceland and New Zealand's papers at the CTE's next meeting. Japan felt that subsidies other than "good" subsidies were not necessarily "bad", and could be "neutral". Japan felt that government expenditure to ensure sustainable use of fisheries resources, such as enforcement and research, was necessary and not a subsidy. This category should be excluded from the fisheries study. Japan noted that a combination of "bad" subsidies and the lack of appropriate fisheries management was likely to cause overexploitation of fisheries resources.

52. The representative of Canada recognized the threat that overcapacity in the fish harvesting sector posed to the sustainability of marine resources. Canada had been involved in the ongoing work in international fora, including the FAO, the OECD and the Asia Pacific Economic Cooperation forum, relating to financial assistance to the fisheries sector. Canada's role in the FAO Plan of Action demonstrated its commitment to controlling global fishing capacity. Canada encouraged Members to participate in, and lend their support to, ongoing work in these fora, the results of which would help to

understand this issue and to support future WTO discussions on the possible need for new disciplines in this area. Canada recognized that the sustainability of fish stocks can be adversely affected by subsidies that encourage excessive capacity in the fish harvesting sector; such subsidies should be eliminated. As noted in New Zealand's paper, certain subsidies, such as the Canadian federal licence retirement programme and assistance to displaced workers, can be an effective tool to reduce fishing capacity and pressure on marine resources. Canada felt that the elimination of subsidies that contributed to overcapacity should be addressed in the context of broad-based negotiations on improvements to subsidy disciplines under the WTO Agreement on Subsidies and Countervailing Measures, rather than on a sector-by-sector basis. Concerning Iceland's proposal for a Secretariat study, Canada did not wish to detract from, or duplicate ongoing work in the FAO and the OECD.

53. The representative of Hungary supported the OECD's work on fisheries subsidies and felt that it would be better to wait until the OECD study had been completed, so that its findings could be included in any Secretariat work on fisheries.

54. The representative of Malaysia supported Iceland's proposal for the Secretariat to update the fisheries section of WT/CTE/W/67. Malaysia welcomed the EC and Japan's clarification of data, as it was important to have correct statistics when embarking on any future negotiations in this area. Malaysia thanked Norway for its comments on the contribution of aquaculture to sustainable development. As noted by Thailand and the Philippines, work in this area should also take into account socio-economic aspects, which were particularly relevant to developing countries. Malaysia inquired as to why price support measures had not been included in the OECD and FAO studies, and whether there were plans to include this aspect.

55. The representative of the United States supported Iceland's proposal for the Secretariat to update the fisheries section of WT/CTE/W/67, including Thailand's suggestion to include the development dimension. Thailand's suggestion would help respond to Japan's question as to how the development dimension fits into the analysis. In conducting a survey of existing work in this area, the Secretariat could pay attention to work on the development dimension. Although the FAO and OECD studies would make an important contribution, the US did not feel that it was necessary to wait until these studies had been completed. The Secretariat should draw on the work being undertaken in different forums. There should not be any presumption that all subsidies were "bad". Japan was correct to note that subsidies could have "good", "bad" or "neutral" effects on fisheries management. The CTE should avoid any simplistic approaches, and consider which types of subsidies led to overcapacity in this sector. Fisheries data would benefit from further elaboration and clarification. The US was willing to make a contribution in this regard. As noted in New Zealand's paper, there were a few countries that accounted for the majority of fisheries subsidies. These Members could provide information to the CTE on the types and amounts of subsidies to deepen the understanding of the issues. Although some of this information would be provided through notifications to the Subsidies Committee, some information went beyond the definition of subsidies in the SCM Agreement and could be expanded upon. The US welcomed that the EC and Japan had provided information on their practices; this could be done in a systemic manner to inform the CTE debate.

56. The representative of Mexico reaffirmed that the elimination of subsidies was beneficial not only for the environment, but for trade, particularly for developing countries. Mexico recalled that the paragraph on fisheries included in Iceland's paper, containing the Chairman's text from the Seattle Ministerial Conference, had not been agreed and should be bracketed. Mexico considered that subsidies were not "good" or "bad", but that they were either allowed or prohibited under WTO rules. It was not necessary to enter into value judgements in this respect. It was not for the CTE to define whether a certain type of subsidy were "good" or "bad". Mexico did not care to enter into an exercise of characterizing subsidies in the CTE; this should be taken up in the Subsidies Committee. Work in other organizations in this area should not be duplicated. Mexico supported Iceland's proposal to update the fisheries section of WT/CTE/W/67, with the reservation that this study be a factual update,

not a revision. With respect to Thailand's proposal to include the socio-economic aspects of fisheries subsidies, Mexico reiterated that social issues were not part of the WTO or the CTE's mandate.

57. The representative of India expressed his delegation's interest in this subject, although its position was still evolving. India supported Thailand's proposal to include the socio-economic implications of fisheries subsidies in developing countries. India looked forward to contributing to work in this area.

58. The representative of Argentina supported Iceland's request in WT/CTE/W/132 for a Secretariat update on fisheries subsidies. This would enable the CTE to move forward in an area that demonstrated that trade liberalization promoted environmental protection and conservation. Eliminating fisheries subsidies also had advantages for developing countries with artisanal fisheries that suffered from competition from high sea fleets, which received subsidies from countries that had the means to subsidize their fleets. New Zealand and Iceland's papers noted the objective of promoting the responsible use of economic incentives for the exploitation of natural resources. The point was not to say that these incentives, in this case subsidies, were "bad" *per se*. It was necessary for the CTE to analyse their impact on sustainable development, particularly the sustainable exploitation of fisheries resources. According to the WTO rules on subsidies, foregone revenue should also be considered a subsidy. Tariff reductions offered as part of the "payment" to accede to a Member's exclusive economic zone should also be considered a subsidy since they were a foregone revenue of the importing country. This foregone revenue was normally part of access agreements signed between developed and developing countries. Developing countries provided preferential access to their markets and consequently paid lower fees to developing countries that provided access to their fisheries. Fees collected by developing countries could be used to monitor the capture and implement fisheries legislation. Instead, preferential market access was mainly for the benefit of the fishing fleet. Consequently, he asked New Zealand whether foregone revenue, often covered in access agreements, was included in the data in its paper.

59. Argentina supported Mexico's comments on classification of subsidies. However, the point was not whether subsidies were "bad" or "good", but the CTE's mandate, which was to analyse the environmental benefits of removing trade restrictions and distortions. The CTE should contribute to increasing the compatibility between trade liberalization and environmental protection by identifying which trade restrictions and distortions had a negative environmental impact. Concerning the EC's comment that all trade liberalization agreements involved foregone government revenue, Argentina felt that in this case it was just one government provided preferential access to its market in exchange for the exploitation of natural resources. Foregone revenue was a subsidy under the WTO definition. Argentina stressed that this practice also had consequences for resource management in the developing country involved in a fisheries access agreement.

60. The representative of Switzerland said that while fisheries may not be one of the most sensitive issues for his delegation, CTE work and Members' approach to this work was important, independent of the specific topic. Switzerland noted with concern the statement that the CTE should not discuss whether subsidies were "good" or "bad", but whether subsidies were permitted under WTO rules. The CTE's task was to better understand, through analysis and discussion, the interrelationship between trade and environment. The CTE should analyze trade measures, such as trade liberalization or measures limiting trade, to determine if they promoted the goals in the preamble of the WTO Agreement. Trade liberalization was not in itself a goal of the WTO; it was the means to reach these goals. The CTE's task was to analyse subsidies, for example, in order to determine whether they were "good" or "bad" with respect to advancing these goals.

61. The representative of New Zealand thanked Members for their comments on his delegation's paper. The message emanating from the discussions was that Members were interested in accurate information on the current situation in this area. Although its paper had been based on the 1998 World Bank study, New Zealand was refining this analysis as information became available, such as

from the FAO and OECD. In response to Argentina, he said that categories of subsidies in the Annex to New Zealand's paper followed closely those in the 1998 World Bank study. In terms of budgeted financial transfers and foreign fishing activities, the data referred to direct budgetary assistance. The concept of foregone revenue may be difficult to assess, for example in relation to various tariff preferences that may be part of a package deal regarding access to the zone of a coastal state. It would be useful to hear from the OECD on the extent to which this issue has been examined in the OECD study. Concerning the EC's comment on the figure on shipbuilding in the comparative chart in New Zealand's paper, it was helpful to have such comments. New Zealand would look into this issue, but he inquired as to whether the EC Directive was focused only on assistance directed specifically to the fisheries sector in the shipbuilding area, or was more general. Concerning Japan's comments on the relatively small percentage of "good" subsidies, the percentage referred to in New Zealand's paper related to subsidies aimed at reducing overcapacity, and not to other categories. In past CTE discussions, reference had been made to national initiatives aimed at reducing overcapacity. Mexico was correct in noting that it was difficult to make value judgements that could be collectively shared by CTE Members. Based on information on the nature of financial transfers in the fisheries sector, Members would be better placed to assess which categories were relevant to WTO work, given the WTO's focus on trade-related effects of subsidization. New Zealand supported Iceland's proposal for the Secretariat to update the fisheries section of WT/CTE/W/67.

62. The representative of Iceland said that the support for his delegation's proposal illustrated the interest in the CTE in this area. Iceland felt that Thailand's suggestions to include the development dimension was valuable. The issue of fisheries subsidies had received growing attention in various international organizations, including FAO, OECD, CSD and APEC, as well as the CTE. While it was known that fisheries subsidies promoted overcapacity and thereby encouraged overfishing, distorted trade and undermined sustainable development, there was a lack of accurate assessments on the nature and extent of global fisheries subsidies, and their implications, especially for trade. Such factual analysis was important to advance an understanding of the negative implications of fisheries subsidies and to facilitate negotiations in this area. New Zealand's paper contributed to filling the information gap, and demonstrated the need for a comprehensive factual analysis of fisheries subsidies in the WTO. Iceland welcomed New Zealand's invitation to others to share their analysis and national experiences.

63. The Chairman noted the desire of Members to continue discussions in the CTE on fisheries subsidies. In this respect, it would be useful if the studies under preparation in the FAO and the OECD could be made available to the CTE so as to fully inform the discussions. Duplication of work with other intergovernmental organizations should be avoided.

64. It was agreed that the Secretariat would update the fisheries section of WT/CTE/W/67 for the 24-25 October meeting of the CTE, in cooperation with other intergovernmental organizations and taking into account the development dimension.

Agriculture

65. The representative of Argentina presented the results of an FAO/Netherlands Conference on the Multifunctional Character of Agriculture and Land, in Maastricht, on 12-17 September 1999 (WT/CTE/W/127). This report reflected the efforts of participating experts to analyse the concept of multifunctionality in agriculture, particularly to determine how it could be promoted through trade policy. Argentina felt that the concept of multifunctionality did not add to Article 20 of the Agreement on Agriculture; it was similar to sustainable development and rural development in *Agenda 21*. During the preparations for the Seattle Ministerial Conference, several countries had referred to the concept of multifunctionality and commented on how trade policies could promote it. Multifunctionality established a clear link between environmental objectives and trade policies. As noted in the Maastricht report, all human activities are multifunctional, including agriculture. The importance of targeted, transparent, cost-effective policies that did not distort production and trade

had been confirmed in the report. The Maastricht Conference had recognized that there were different perceptions on definitions, scope, utility, value added and coverage of the concept of multifunctionality. Agriculture had multiple functions in the context of sustainable development and rural development. The Maastricht report noted the importance of ensuring that policy measures did not unfairly limit market access, particularly for developing countries. Given previous statements in the CTE that agriculture had functions beyond producing food and fibre, which should be pursued for their social benefit, this report was useful in determining how these objectives should be pursued.

66. The representative of Australia welcomed Argentina's circulation of the Chairman's report of the Maastricht Conference, which offered insights for the consideration of agricultural sustainability and land use, and a perspective on its current place in relation to development issues and the international policy environment. These perspectives provided guidance to the CTE on Item 6 and agricultural issues. The report noted the relevance of *Agenda 21* and the World Food Summit plan. There was agreement amongst the seminar participants on a number of important ideas, which were worth highlighting: a "range" of appropriate policies can be used to promote sustainable agriculture and rural development, which should be "targeted, cost-effective, transparent and ... not distort production and trade"; a coherent analytical framework should be developed for measuring economic, environmental and social costs and benefits of the interlinkages, taking into account different circumstances in regions; there was a need for intensified cooperation between regions in the world in achieving sustainable agriculture, especially in the field of institution building, information sharing, technology transfer, capacity building and market access; there was a need for a "fair and market-oriented agricultural trading system and the avoidance of unjustifiable trade barriers, which together with other policies will facilitate the further integration of agricultural and environmental policies so as to make them mutually supportive"; there was the necessity to "ensure that policy measures do not unfairly limit market access nor distort markets for food and agricultural exports", particularly for developing countries. The report also identified an array of policies at the national, regional and international level that would assist countries to improve sustainability. Australia recommended that Members take note of this report, as a reminder of the importance of this area to developing countries. This report could also be taken into account in consideration of policy efficiency and effectiveness.

67. The representative of Switzerland said that the Chairman's report of the Maastricht Conference addressed issues of interest to the CTE concerning agriculture. The report summarized aspects of the multifunctional character of agriculture and noted that agriculture could contribute to societal welfare. The report acknowledged that the goal of agriculture was not only to produce food, but to fulfil other objectives, and underlined the importance of targeted and transparent policies to reach these objectives. Given its multifunctional character, agriculture contributed to the policy objectives of rural development and decentralized settlement of the territory; public goods or positive externalities provided by farmers, such as environmental services, natural resource and landscape management; food security, food safety and food quality; preservation of cultural heritage, including regional specific knowledge on landscaping and farming methods. Agricultural multifunctionality also played a role in combatting global hunger and promoting sustainable development. These policy objectives, which varied between countries and regions, clarified that environmental aspects were only one element of the multifunctional character of agriculture. Although the benefits of agriculture were not limited to producing food, a liberalized agricultural market would honour only this aspect.

68. In order to maintain incentives for benefits of agriculture that were not reflected in the market price of agricultural products, such as social or ecological benefits, specific measures should be adopted. Studies discussed in the CTE had clarified that some measures adopted for this goal may be ineffective, or even harmful, by rewarding negative externalities, such as accelerated natural resource depletion and environmental degradation. Support measures that were linked to input and output levels could lead to resource misallocation, promoting inefficient production and environmental depletion. Specific production methods produced certain positive environmental externalities, which were not compensated for by the market. It might be helpful to develop criteria to distinguish

beneficial from harmful measures. The issue of the multilateral verification of such criteria and their application also should be discussed. Switzerland agreed that trade liberalization, if accompanied by sound environmental policies, can play a key role in the promotion of sustainable development. Trade liberalization was a means to achieve global welfare; this goal can only be reached through a range of measures, which should be verifiable. This was the goal of the forthcoming agricultural negotiations. This approach would prevent "lose-lose" scenarios, and enable "win-win-win" situations, with gains for trade, development and environment.

69. The representative of New Zealand considered the Maastricht report relevant to CTE work, and had supported this report in other fora, such as the Commission on Sustainable Development. Members' attention was drawn to several points in the report: that "all human activities are multifunctional", thereby belying the argument that agriculture was "unique" in this regard. Set directly alongside references to the "non-food functions of agriculture" was the importance of "targeted, transparent and cost-effective policies that do not distort production and trade." There was also a reference to "the need for a fair and market-oriented agricultural trading system and the avoidance of unjustifiable trade barriers, which together with other policies will facilitate the further integration of agricultural and environmental policies so as to make them mutually supportive". New Zealand's opinion of the "multifunctionality" concept was strengthened by these outcomes. As a country that relied heavily on agricultural exports, but also on income from eco-tourism, New Zealand placed great emphasis on the mutually supportive nature of agriculture and environment, as referred to in paragraph 20 of the report. Policies to protect the environment or promote sustainable management practices in agriculture should be directed specifically to, and limited in scope by that objective, to ensure that the most effective means to achieve the objective was used. Policies to pursue environmental objectives must also be decoupled from production because policies involving payments coupled to production, encouraged farmers to expand production. This may lead to increasing livestock intensity, increasing the arable area or intensifying input use, which were more likely to harm the environment.

70. New Zealand felt that under the Green Box of the Agreement on Agriculture, there was ample scope for decoupled support to be paid to farmers to pursue landscape, environmental, socio-economic and other "multifunctionality"-related goals in a non-trade distorting manner. As the Maastricht report noted, agriculture was not unique in providing multiple functions. While governments were free to design their domestic policies to support the multiple functions of agriculture, they should not be permitted to pass the costs of their policy choices onto the rest of the world through trade-distorting practices. New Zealand thanked Argentina for submitting the Maastricht report, which had made a valuable contribution to the CTE's discussions.

71. The representative of the European Communities welcomed the tabling of the Maastricht report, which represented the Chairman's conclusions. This report confirmed the importance of the discussions in an area subject to the negotiations under the WTO's built-in agenda, and an open approach to papers that could stimulate the debate.

72. The representative of South Africa felt the Maastricht report was relevant to the CTE's work and underscored important aspects of the concept of multifunctionality. Concerning the multifunctional character of agriculture, the report made the point that so far there was no internationally agreed definition of this concept. Even when addressing non-food functions of agriculture, the report noted that policies should distort production and trade in agriculture.

73. The representative of Norway believed that the various food and non-food functions of agriculture were important dimensions to take into account in policy design and implementation. Norway's views were well known through its four papers in the Committee on Agriculture. For all practical purposes, the concepts of multifunctionality and non-trade concerns were identical. Non-trade concerns were explicitly contained in the Agreement on Agriculture. Multifunctionality had been explicitly referred to in the 1996 World Food Summit Plan of Action, and by Agricultural

Ministers at the OECD 1999 Ministerial. Norway agreed with the EC that the Maastricht report represented the Chairman's conclusions.

74. The representative of Uruguay said that the Maastricht report was relevant to the CTE's discussions. This report reflected the conclusions reached by the Chairman of the Conference, Mr. Hans Alders, which had been negotiated with the participants.

75. The representative of Costa Rica said the Maastricht report was a useful basis for CTE discussions. As noted in the report, there were examples of successful ways of implementing sustainable agriculture and rural development that did not distort trade and harm the environment.

76. The representative of Japan said that the concept of multifunctionality had been recognized in the OECD and the FAO. Japan's position on this concept was well known. As agriculture varied according to the specific conditions in each country, it was not possible to single out only one standard to regulate agriculture. The multifunctionality of agriculture was closely related to agricultural production, and policy intervention could not be completely decoupled from production.

77. The representative of the United States appreciated Argentina's submission of the Maastricht report. The US supported the Chairman's conclusions in the report. The issue was not whether, but how countries pursued the multifunctional character of agriculture. There were many risks of pursuing multifunctional benefits in a way that undercut the efforts of other countries to achieve sustainable development and sustainable agriculture. The Green Box of the Agreement on Agriculture provided ample scope for countries to pursue the multifunctional benefits of agriculture.

78. The representative of Canada thanked Argentina for submitting the Chairman's report on the Maastricht Conference and associated her delegation with the comments made by Australia, New Zealand, South Africa, Uruguay and the US.

79. The representative of Brazil said that the Maastricht report reaffirmed the objectives of the Cairns Group. Agricultural multifunctionality should not be pursued in a way that was trade distorting. Brazil felt that there were different types of subsidies. Each country would like to give subsidies to areas in which it was not so competitive, and to liberalize sectors in which it was competitive. For example, while some countries may wish to liberalize the fisheries sector, they did not wish to liberalize the agriculture sector. Policy coherence should be pursued with respect to the consideration of subsidies. Multifunctionality applied to all economic sectors of human activity.

80. The representative of the Philippines said that the multifunctional character of agriculture should not be used as a justification to put in place trade distorting measures.

81. The representative of Hong Kong, China felt that discussions on agriculture should be seen in context. The CTE was not the Committee on Agriculture. It was necessary to reflect on how the concept of agricultural multifunctionality can contribute to trade liberalization, environmental protection and sustainable development.

82. The representative of Argentina felt that the Maastricht Conference provided an opportunity to discuss the concept of multifunctionality prior to Seattle. Progress had only been possible once it had been agreed to assume that participants were discussing in good faith a concept that was not going to be used as a cover for old protectionist practices and subsidies. Although this report had been made under the Chairman's responsibility, it was a good reflection of what had been discussed. For fisheries, overcapacity of fishing fleets was the issue, whereas in agriculture, the main trade and environmental problem was overproduction. Overcapacity and overproduction had similar causes related to economic incentives. The consequences were also similar. Overproduction was related to the accumulation of massive stocks that were dumped onto international markets, competing unfairly with developing countries, but also generating price distortions that made developing country

producers particularly face a difficult choice: either reduce production costs or leave the market. This prevented producers from implementing sound environmental practices, and governments from enforcing adequate environmental regulations.

Environmental Services

83. The observer of the ITC said that the environment-related activities of the ITC concentrated on assisting recipient country exporters and importers to adapt to the challenges and opportunities emerging from the greening of international markets. In 1997, ITC had conducted research on the implications of the WTO Agreements for environmental industry exporters from developing countries. At the October 1999 CTE meeting, the ITC made available its publication on "Implications of the WTO Agreements for International Trade in Environmental Industries". To increase awareness among developing country exporters of liberalization in the environmental industry sector, the ITC organized Business Roundtables in several developing countries, including India, Thailand, Pakistan, Malaysia and the Philippines, with participation from over 400 representatives of the environmental industry, governments, and NGOs.

84. Based on the positive response to these roundtables, the ITC was finalizing a proposal for cooperation with the WTO Secretariat to launch a project on "Market Prospects for Environmental Industries from Developing Countries and Economies in Transition". The aim was to further the possibility of achieving "win-win-win" opportunities for trade, environment and development, which could flow from removing trade restrictions and distortions in environmental technologies and services. The project's objectives were: (i) to examine the extent to which trade barriers exist in the environmental industry, particularly in developing countries; (ii) to strengthen developing country capacity to develop their environmental industry through the participation of small and medium-sized industries in developing and developed countries; and (iii) to explore opportunities in emerging, liberalized global markets for environmental technologies, products and services, including through joint ventures. The private sector had a key role to play with respect to transfer of environmentally sound technologies, which would be facilitated by liberalization. The main outputs of the project would be to: (i) develop country and regional profiles on the export potential of environmental industries; identify possible trade barriers; organize a series of workshops for developing country government officials and industry representatives; and prepare a WTO-ITC publication on global environmental technologies, services and product markets. Given the CTE's discussion to explore "win-win-win" situations, the ITC felt this initiative may be timely and useful, and would be pleased to discuss the project proposal with interested delegations.

General comments

85. The representative of Canada said that it was unfortunate that the Article 8 provisions for certain environmental subsidies had lapsed under the terms of the Agreement on Subsidies and Countervailing Measures (SCM). This was a step backwards in efforts to make progress on categorising subsidies as either trade distorting or non-trade distorting, and to further refine WTO rights and disciplines. It may also raise broader questions about the ability of the SCM Agreement to accommodate environmental concerns. The research and development provisions of Article 8 were important to address environmental objectives. A key challenge for governments was to encourage research on new technologies to address environmental problems. Canada supported efforts to reinstate Article 8 of the SCM Agreement, as well as other provisions, which had terminated on 31 December 1999. This should be a priority for the SCM Committee.

86. The representative of India said that discussions had focused on one aspect of market access, namely removing trade restrictions and distortions. There were two other aspects: (i) safeguarding existing market access of developing countries; and (ii) granting additional market access to developing countries. It had been well recognized that if developing countries were to put in place better environmental protection, they needed financial resources, which should be available to them

through increased market access. For example, if a particular firm in a developing country were faced with trade restrictions for a product it was exporting if this product did not meet the importing country's environmental standards, the resulting situation was the opposite of what was intended, i.e. that firm was deprived of crucial resources, and the chance of this firm meeting those environmental standards would be nullified. Indian firms had faced such barriers. At a minimum, existing market access for developing country exports should be safeguarded. Otherwise, the ability of developing countries to provide for environmental protection would be undermined. Additional market access should be made available to developing countries to enhance their potential to deal with environmental concerns. India said it intended to submit a paper in this regard.

OTHER ITEMS

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

87. The representative of Canada appreciated the Secretariat's notes on recent developments in the Montreal Protocol and the Basel Convention (WT/CTE/W/130); and the Conventions on Prior Informed Consent Convention (PIC) and Persistent Organic Pollutants (POPs) (WT/CTE/W/128); as well as the annotated bibliography on selected literature on the use of trade measures in MEAs (WT/CTE/W/129). Based on the concerns it had expressed, Canada also appreciated the corrigendum to WT/CTE/W/130. Canada recalled its position on the relationship between the provisions of the multilateral trading system and trade measures in MEAs. Canada remained of the view that the WTO should be a proactive organization that fostered a legal environment based on rules and predictability. In this respect, clarification of the relationship between WTO rules and trade measures in MEAs would be an effective way to avoid the perception of potential conflict. Canada felt that a principles and criteria approach to MEAs could assist WTO panels in assessing the MEA trade measures and international negotiators contemplating the use of trade measures in an MEA. Canada was undertaking further work on how the MEA-WTO relationship might be clarified, based on the principles and criteria approach, the results of which Canada would provide for the 5-6 July CTE meeting.

88. The representative of the European Communities welcomed the conclusion of the Cartagena Protocol on Biosafety, which contributed to strengthening the body of international environmental law and marked a small, but significant step forward in integrating and balancing trade and development. The relationship between the Protocol and other international agreements had been settled in what could be characterized as a softened version of the PIC Convention's preambular language, which emphasized mutual supportiveness and had not attempted to change rights and obligations under existing agreements. The Protocol was not subordinated to other international agreements. The EC welcomed the precautionary element in the Protocol. This was the first time that international environmental law had explicitly recognized the precautionary principle, and made it an operational article in an MEA. The EC had recently adopted a document on how to implement precaution in EC law, which was available with the Secretariat for consultation. When MEAs would be discussed at the July CTE meeting, the EC may come back to the issue of precaution. If the EC's paper on the precautionary principle was read from a trade perspective, there were many reassuring principles related to aspects recognized in the WTO, such as proportionality, science and objectiveness.

89. The representative of the United States welcomed the adoption of the Cartagena Protocol on Biosafety, which would provide for the environmental objectives of the Protocol to be met, while not unduly interfering with international trade. It may in fact provide additional confidence in genetically modified products. The US did not consider the language in the Protocol to be a softened version of the PIC Convention, but language that was tailored to the Protocol. The key aspect was that the

language made the point that the Protocol was not intended to change the rights and obligations under the WTO. Discussion during the negotiations on precaution revolved around which kind of controls to insert to ensure against abuse of a concept that was still in its infancy. Work was needed to articulate how to implement this concept. US fisheries experts had noted that the Protocol was not the first effort to operationalize the precautionary principle; fisheries agreements had done so in the past.

90. The representative of Australia said that the adoption of the Cartagena Protocol on Biosafety was a significant development, which Australia looked forward to discussing at the July CTE meeting. As the Protocol's provisions required careful consideration, Australia's comments reflected some preliminary observations. As one of the world's most biologically diverse countries with a significant dependence on the agriculture sector, Australia had particular interests in the Protocol. Australia noted the affirmation in the Protocol's preamble that trade and environment agreements should be mutually supportive, with a view to achieving sustainable development. This and other aspects of the preamble were consistent with the principle that those countries which will be a Party to both the Protocol and the WTO could, and should, implement their commitments under each agreement in ways fully consistent with the other. Articles 10 and 11 of the Protocol recognized the need to address situations where there was a lack of scientific certainty, due to insufficient relevant scientific information. Such situations were also explicitly recognized and catered for in the SPS Agreement. Ensuring that there was coherence between international legal regimes was an important means of advancing the goal of sustainable development.

Item 7 The issue of the export of domestically prohibited goods

91. The representative of Egypt recalled that, at the 12 October CTE meeting, her delegation had raised the issue of the export of domestically prohibited cosmetics and soaps containing mercury, manufactured in European countries for marketing mainly in developing countries. Information in this regard had been provided in a letter to the WTO from the World Health Organization. Egypt had also been provided with a study on this matter from the WHO prepared by an NGO, Anamed. Egypt referred to its bilateral discussions with the EC on this matter, and hoped that the EC would provide the CTE with supplementary information, which Egypt would forward to its capital for follow-up.

92. The representative of Nigeria associated his delegation with Egypt's statement.

93. The representative of the European Communities said that the issue of soaps containing mercury was an interesting case study of domestically prohibited goods. Although current EC legislation had prohibited the sale in the EC of such products since 1976, it did not ban their manufacture or export. Since 1992, however, exporters were required to notify the importing country of the intention to export. The EC added that, when checking the EC companies cited as exporting mercury soaps, virtually all were found to no longer exist, or to have ceased production of the goods in question. The EC understood that the PIC Convention did not cover such exports. The EC felt that the issue of the export of domestically prohibited goods could be further explored in the CTE.

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

94. The representative of Costa Rica presented her delegation's Biodiversity Law as a contribution of its national experience related to discussions under this Item. This Law had also been referred to in WT/CTE/W/125. This Law was under review in the Constitutional Court of Costa Rica. Costa Rica, together with 157 other countries participating in the Earth Summit, had signed the Convention on Biological Diversity (CBD) in 1992. In signing the CBD, Costa Rica assumed international obligations in an effort to reduce the rate of depletion of the earth's biodiversity. Costa Rica shared the CBD's objectives, namely the conservation of biodiversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. The CBD considered that to achieve these goals it was necessary to guarantee access to

genetic resources, to encourage transfer of relevant technologies, taking into account rights over those resources and technologies, and to ensure funding. Costa Rica's Biodiversity Law had been adopted pursuant to its commitments under the CBD. The Biodiversity Law, No. 7788 of 30 April 1998, published in the Official Gazette ("La Gaceta") No. 101 of 27 May 1998, came into force as of that date. The Law defined biodiversity as the variability among living organisms from all sources, including those found in terrestrial, aerial, marine and aquatic ecosystems, or in other ecological complexes. The term covered diversity within species, as well as between species and the ecosystems of which they form part. For the purposes of this Law, the definition of biodiversity included intangible elements, such as knowledge, innovation and traditional practice, both individual and collective, with current or potential value associated with biochemical and genetic resources, whether or not protected by intellectual property regimes or *sui generis* registration systems.

95. The purpose of the Law was to conserve biodiversity and maintain the sustainable use of resources, as well as to distribute fairly the derived benefits and costs. To that end, Costa Rica shall exercise full and exclusive sovereignty over elements of its biodiversity. Article 10 contained the following objectives of the Law: (i) to integrate the conservation and sustainable use of the elements of biodiversity into the development of social, cultural, economic and environmental policies; (ii) to promote the active participation of all sectors of society in the conservation and ecologically sustainable use of biodiversity, in order to achieve social, economic and cultural sustainability; (iii) to regulate access and thereby facilitate the equitable distribution of the social, environmental and economic benefits to all sectors of society, with special attention to local communities and indigenous peoples; (iv) to improve the administrative framework for effective and efficient management of the elements of biodiversity; (v) to recognize and compensate the knowledge, practices and innovations of indigenous peoples and local communities for the conservation and ecologically sustainable use of the elements of biodiversity; (vi) to recognize the rights arising from the contribution of scientific knowledge to the conservation and ecologically sustainable use of the elements of biodiversity; (vii) to promote access to the elements of biodiversity and associated technology transfer; (viii) to foster international and regional cooperation for the conservation, ecologically sustainable use and distribution of the benefits derived from biodiversity, especially in frontier areas or areas of shared resources; (ix) to promote the adoption of incentives to and compensation for environmental services for the conservation, and sustainable use of the elements of biodiversity; and (x) to establish a system of conservation of biodiversity which achieves coordination among the private sector, citizens and the State, in order to guarantee implementation of the Law.

96. The Biodiversity Law contained ten chapters. Chapter I set out the Law's general provisions. Chapter II set out the efficient management of the elements of biodiversity, whereby the Ministry of the Environment and Energy shall coordinate the administrative functions involved in managing and conserving biodiversity through the National Biodiversity Management Commission (CONAGEBIO), with support from a technical office and the National Conservation Area Scheme (SINAC). CONAGEBIO would formulate national policies on the conservation, ecologically sustainable use, and restoration of biodiversity, subject to the requirements of the CBD and other relevant international treaties, as well as national interests. The Commission's membership was comprised of a representative from the Ministry of the Environment and Energy; Ministry of Agriculture; Ministry of Health; the National Conservation Area Scheme; the Institute of Fisheries and Aquaculture; the Foreign Trade Ministry; the National Peasant Farmers' Association; the National Indigenous People's Association; the National Council of Rectors; the Federation for Environmental Protection; and the Union of Private Enterprise Associations.

97. Chapter III provided that, in order to avoid and prevent present or future damage or injury to human, animal or plant health or to the integrity of ecosystems, the Law shall establish mechanisms and procedures for access to the elements of biodiversity, for purposes of research, development, production, application, release or introduction of genetically modified or exotic organisms. These rules were still being drafted. Chapter IV laid down rules on the conservation and sustainable use of ecosystems and species to enable the competent authorities to adopt suitable technical standards and

introduce conservation mechanisms such as environmental legislation and evaluations, impact assessment studies and environmental audits, authorizations, environmental licences and incentives.

98. Chapter V laid down the basic requirements for access to genetic and biochemical elements and protection of associated knowledge, namely: (i) prior informed consent by the representatives of the place to which access is granted; (ii) endorsement of such prior informed consent by the Technical Office of the Commission; (iii) terms for technology transfer and equitable distribution of any profits agreed in the authorizations, agreements and licences, as well as the type of protection of associated knowledge required by the representatives of the place to which access is granted; (iv) definition of the ways in which such activities will contribute to the conservation of species and ecosystems; and (v) appointment of a resident legal representative in Costa Rica in the case of natural or legal persons domiciled abroad. Access permit was required for any programme of research or bioprospecting on genetic or biochemical components of biodiversity intended to be carried out on Costa Rican territory. As regards IPRs, decisions that had a bearing on biodiversity must be consistent with the objectives of the Law.

99. Chapter VII established regulations on environmental impact assessments, specifically regarding the submission of assessments, guidelines for their preparation, environmental auditing and other rules. Under Chapter VIII, concerning rules on incentives, the Ministry of the Environment and Energy and the other public entities, in cooperation with the private sector, including civil society organizations, shall promote investments for the sustainable utilization and conservation of biodiversity. Chapter IX contained regulations on administrative procedures, judicial proceedings in administrative matters or matters relating to agrarian jurisdiction (in disputes between individuals which involve no administrative measure or measure relating to public land), and administrative or criminal penalties for offences defined in the Criminal Code and special legislation. A noteworthy feature of these rules was the public right of action, which entitled any individual to institute administrative or judicial proceedings for the defence and protection of biodiversity.

100. On 18 September 1998, the Office of the Attorney-General of the Republic of Costa Rica had instituted proceedings in the Constitutional Court to establish the unconstitutionality of certain articles of the Biodiversity Law. The Office of the Attorney-General considered that the Law granted greater powers to CONAGEBIO and SINAC, with regard to their establishment, nature and functions, than was permissible for a decentralized body, thereby infringing constitutional principles governing the powers of the Executive. It also questioned the financial administration of CONAGEBIO and SINAC. As a result of these pending proceedings, neither of the two bodies was able to issue final decisions or receive funding, which hampered the Law's application. The Law will also be subject to certain amendments to improve the compatibility of obligations under the CBD and the TRIPs Agreement. No draft text had been formally submitted as yet, but some of the points that will be subject to review concerned IPR protection, particularly the form and limits of protection and licences. These possible amendments will be examined by the Executive, farmers, indigenous groups, business associations, environmental groups, the academic community, and civil society.

101. The representative of Thailand, on behalf of Indonesia, Malaysia, the Philippines and Thailand, commented on plant variety protection. As indicated in paragraphs 11 to 16 of WT/CTE/W/125, the International Undertaking on Plant Genetic Resources recognized the importance of farmers' and plant breeders' rights. States had the sovereign right over their genetic resources and to recognize farmers' rights, including the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources. These rights were not protected in UPOV 1991. While Thailand recognized the compatibility of both the International Undertaking and the CBD, there were areas where the TRIPs Agreement and the CBD were incompatible. The TRIPs Agreement dealt with patents of new plant varieties and monopoly rights of individual firms. In this particular area, the TRIPs Agreement did not recognize the concept of fair and equitable sharing of benefits. Thailand believed that TRIPs Article 27.3(b) should explicitly recognize States' sovereign rights over their resources, as well as the rights of indigenous communities and farmers.

Article 27.3(b) stipulated that WTO Members shall provide for the protection of plant varieties either by patents, or by effective *sui generis* system, or by any combination thereof. Thailand felt that Article 27.3(b) must remain open for each Member to choose a patent system, and that this was an appropriate regulatory mechanism to ensure protection of a State's sovereign right. Thailand thanked those Members who had provided information on their *sui generis* systems based on the UPOV model, and the Secretariat for preparing WT/CTE/W/125 in response to ASEAN's request. Thailand asked for a clarification from the FAO on paragraph 16 of WT/CTE/W/125, concerning the progress of the International Undertaking on Plant Genetic Resources. He asked whether the revised text of the Undertaking would become a legally-binding instrument, and what were the advantages and disadvantages of this Undertaking being a stand-alone text, or a protocol to the CBD.

102. The representative of the European Communities said Costa Rica's presentation of its Biodiversity Law contributed to deepening the CTE's understanding. Costa Rica's approach to take legal measures to control access to its genetic resources was a productive route for biodiversity-rich countries to follow. It was another issue, however, whether this right should be emphasized as part of the TRIPs Agreement, or whether the TRIPs Agreement should set out aspects with which Members all agreed. The EC felt that there was no conflict between the CBD and the TRIPs Agreement. The fair and equitable objective was accommodated within the TRIPs Agreement.

103. The representative of India said that the first part of this Item dealt with access to, and transfer and dissemination of technology. In WT/CTE/W/66, India had set out why this aspect constituted market access as discussed under Item 6. India had proposed that in cases where environmentally sound technologies and products (EST&Ps) were mandated by national or international laws, these should be provided on fair and most favourable terms to developing countries. India endorsed Thailand's statement on the relationship between the TRIPs Agreement and the CBD. India noted that paragraph 23 of WT/CTE/W/125 set out that, out of 18 Members who had responded to the information collection exercise on systems that were maintained to address Article 27.3(b), 17 followed the UPOV model, aside from the US and Korea who had patent systems in place. This may create the incorrect impression that Article 27.3(b) needs to be implemented either through patents or a UPOV system. The information collection exercise also was confined to developed countries. India's interpretation of a *sui generis* system was that it was one of a kind, unique, and was tailored to meet the particularities of a developing country.

104. The representative of Norway said that the role of the multilateral trading system in achieving sustainable development should be a starting point when this Item was discussed. All relevant multilateral agreements should contribute to this goal and be mutually supportive. The issue of mutual supportiveness was an underlying theme in WT/CTE/W/125, which discussed the linkages between the CBD and the TRIPs Agreement, and presented case studies of *sui generis* IPR systems and CBD legislation. The CBD aimed at the conservation of biodiversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources. These were crucial goals to ensure sustainable production and sustainable development. To implement the CBD, constructive North-South cooperation was needed. Compatibility should be ensured between measures to implement the TRIPs Agreement and the CBD. One important issue before the CTE was whether the TRIPs Agreement allowed sufficient flexibility for countries to enact measures for effective CBD implementation.

105. Consideration of CBD-TRIPs interlinkages was under way in the TRIPs Council. At the last meeting of the TRIPs Council, Norway stated that it maintained a restrictive attitude as regards patents on plants and animals, and on cells which can develop into plants and animals. Norway found it preferable not to alter the delicately balanced text of TRIPs Article 27.3(b). There should be sufficient flexibility for Parties when implementing *sui generis* options for plant variety protection, and no explicit reference to any other international agreement in this field was needed. Compatibility between the CBD and the TRIPs Agreement must be ensured with regard to benefit sharing. Proposals to incorporate a provision in the TRIPs Agreement, which required disclosure of the origin

of genetic resources and associated knowledge, should be seriously considered. Norway felt TRIPs-CBD should not be viewed in isolation from general trade-environment issues, and was related to the debate on the relationship between the WTO and MEAs. If CBD provisions were considered relevant when implementing the TRIPs Agreement, the same logic should be followed when looking at the relationship between MEA provisions and WTO rules in general. The debate on TRIPs-CBD strengthened the view that environmental reviews were helpful when conducting trade negotiations, to avoid conflicts and achieve mutual supportiveness of legal instruments in trade and environment.

106. The representative of the United States said that his delegation did not see any conflict between the TRIPs Agreement and the CBD. No one had presented a case indicating that there were CBD obligations that could not be met because of the TRIPs Agreement. Suggestions that the TRIPs Agreement be changed to support CBD objectives were unsubstantiated. Although any Member could think of ways in which to change WTO rules to support other worthwhile objectives, this was not the same as saying that because ways of using trade rules to complement efforts of other international bodies could be contemplated, that the failure to do so suggested there was a conflict.

107. The representative of Brazil said that the CBD and the TRIPs Agreement should be mutually supportive. For biodiversity rich countries, such as Brazil, it was important to implement CBD provisions, and to incorporate the relevant provisions into the TRIPs Agreement. In the context of the review of Article 27.3(b), additional elements had been proposed for inclusion, such as access to genetic resources, and the protection of traditional knowledge.

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

108. The representative of the United States appreciated the Secretariat's work to improve the WTO website pages on trade and environment, as set out in WT/CTE/W/131. The WTO website was useful in capital in responding to the increasing number of questions on the WTO. The best way to combat misunderstandings about the WTO was through information. The US welcomed efforts under way in the General Council to explore ways of improving the WTO's image, and its relations with civil society. Progress in this area was critical to maintain public support for WTO work.

109. The representative of Norway said that the improvement of the WTO website was important, and the Secretariat's efforts in this regard were appreciated. It was important to enhance information on the WTO. Norway was contributing constructively to work in this regard in the General Council.

110. The representative of Canada welcomed the Secretariat's improvements to the WTO website; a well-designed website was an indispensable tool of communication. It was important to make available reports of WTO symposia and linkages to other relevant sites. It should also be easier for users to obtain derestricted WTO documents. Canada welcomed the announcement of enhanced cooperation between the UNEP and WTO Secretariats that was made at Seattle. This kind of closer cooperation complemented, at the international level, the efforts Canada and others were making to promote greater cooperation between trade policy and environmental officials at the national level to ensure that trade liberalization and sustainable development continue to be mutually supportive. It also began to respond to the need for greater institutional coherence between the WTO and the UN system, which Canada strongly advocated. Canada looked forward to the General Council discussions on transparency of WTO operations. Canada had proposed allocating a portion of the WTO regular budget to fund outreach initiatives; circulating as unrestricted documents Secretariat working papers, Members' formal contributions, draft meeting agendas and minutes, when available in all WTO official languages; and pursuing efforts to increasing transparency in the dispute settlement process. Past NGO symposia on trade and environment provided an opportunity to promote a mutual understanding among groups with varied outlooks on these issues. Canada would welcome a similar

event to be held later this year, perhaps back-to-back with the July and October CTE meetings. Canada supported the Secretariat's plans to hold regional seminars on trade and environment.

111. The representatives of Japan and Australia supported the Secretariat's continued efforts to improve the WTO website and to hold regional seminars and NGO symposia.

112. The representatives of Costa Rica and Peru said that it would be important to hold a regional seminar on trade and environment in Latin America, and hoped Members would make financial contributions so this seminar can take place.

113. The representative of the European Communities enquired how the Secretariat determined which documents to put on the website, and which linkages to make to other websites.

114. The Secretariat said that the improvements to the website pages on trade and environment were part of a broader Secretariat exercise to re-design and re-organize the WTO Internet site as a whole, so that it is better placed to meet the needs of its growing number of users. The main objectives were to adjust to the increasing amount of material available on the site; to make the site easier to navigate; and to make the content easier to understand for the general public. The documents available on the trade and environment pages were derestricted CTE working papers. Links from the WTO website to other relevant websites were being considered, such as to work in UNEP and UNCTAD on trade and environment. Input from delegations would assist the Secretariat to continuously update the website. The Secretariat had received several informal requests from delegations for regional seminars on trade and environment. Seven regional seminars on trade and environment in the WTO were planned for 2000, with the participation of other relevant international organizations, such as UNEP and UNCTAD. Attention will be given to issues of interest to the respective region in which the seminar was held. For each of the seminars, an invitation will be extended to two representatives from each of the countries invited, so as to include a representative from the Ministry of either Trade or Foreign Affairs, and from the Ministry of Environment. Amongst the seminars under consideration, at this stage, was one for English speaking African countries in South Africa in April, and one for Mediterranean countries in Malta in May. Further seminars would be dependent on financial contributions from Members.

MEA Information Sessions

115. It was agreed that the CTE would hold two Information Sessions with Secretariats of multilateral environmental agreements (MEAs) relevant to its work, back-to-back with the CTE's meetings on 5-6 July and 24-25 October. The following representatives will be invited to participate at the 5th July MEA Information Session: the Convention on Biological Diversity on the Cartagena Protocol on Biosafety; the Climate Change Convention on the Kyoto Protocol; the International Commission for the Conservation of Atlantic Tunas (ICCAT); the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR); and the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES). The following representatives will be invited to the 24th October MEA Information Session: the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; the UNEP Chemicals Secretariat on the Prior Informed Consent (PIC) and Persistent Organic Pollutants (POPs) Conventions; the Montreal Protocol on Substances that Deplete the Ozone Layer; the Intergovernmental Forum on Forests (IFF); and the International Tropical Timber Organization (ITTO).

116. The Chairman said UNEP, as a CTE observer, would be present at both Information Sessions. As requested by Members, the Compliance and Enforcement Unit of UNEP will be invited to give a presentation on the Working Group of Experts on Compliance and Enforcement of Environmental Conventions at one of the MEA Information Sessions. Flexibility will be necessary with respect to the organization of these two sessions, based on the availability of the MEA Secretariats. The Chairman informed Members of the database on the use of trade measures in MEAs, which the

Secretariat, in cooperation with the MEA Secretariats, planned to present as background information for the July Information Session.

117. The observer of UNEP presented its programme on trade and environment, which is set out in WT/CTE/W/137; and presented the UNEP-UNCTAD Task Force on Capacity Building on Trade, Environment and Development, which is contained in WT/CTE/W/138.

118. The observer of UNCTAD reported on UNCTAD X, held in Bangkok on 12-19 February 2000; the intersessional meeting of the Commission on Sustainable Development (CSD), held in New York on 22 - 25 February 2000; and UNCTAD capacity building activities. UNCTAD X, which focused on development strategies in the context of globalization, adopted the Bangkok Declaration and Plan of Action. The Plan of Action set out a mandate for UNCTAD's work for the next four years to promote the integration of developing countries in the world economy (see Annex). UNCTAD was in the process of translating the Plan of Action into a work programme of intergovernmental work, research and technical assistance. At UNCTAD X, UNEP and UNCTAD launched a joint Task Force on Capacity Building on Trade, Environment and Development. UNCTAD also was implementing a project with the Foundation for International Environmental Law and Development to strengthen capacity on trade and environment in ten developing countries, financed by the UK Department for International Development. With the support of the Canadian International Development Research Centre, UNCTAD was initiating a project on environment and SPS measures and trade, so as to strengthen developing country capacity to meet environmental standards. UNCTAD was participating in the WTO regional seminars on trade and environment.² In preparation for the Eighth Session of the CSD, 24 April – 4 May, the intersessional Ad Hoc Working Group on Finance, Trade, Investment and Economic Growth, under the co-chairship of Mr. Ahmed Ihab Gamaleldin (Egypt) and Mr. Choi-Seok-Young (Korea), produced a Co-Chairs' summary of the discussions and possible elements for CSD draft decisions in these areas.³ Advance unedited copies were available for Members' consideration; these decisions touched on issues of interest to the CTE. CSD-8 will also prepare for the ten-year review, in 2002, of progress since the UNCED.

119. The representative of Japan appreciated the efforts by UNEP and UNCTAD, and stressed the importance of capacity building for developing countries on trade and environment. The CTE should give inputs to international and national aid agencies on how to offer appropriate assistance in the area of trade and environment, including related to eco-labelling, the export of domestically prohibited goods and TRIPs. Japan proposed that the Secretariat present a paper with relevant international organization, such as UNEP and UNCTAD, regarding technical assistance on trade and environment.

Chairman's concluding remarks

120. The Chairman, reflecting on work in the CTE in 1999, said that the Committee had continued to make an important analytical contribution to work on trade and environment, which served to deepen Members' understanding of all the items on the CTE's agenda and built confidence among Members. Progress also had been made in building coherence with, and broadening participation in CTE work with respect to other intergovernmental organizations. The MEA Information Session at the July 1999 meeting had made a valuable contribution to increasing the awareness of trade-related developments in multilateral environmental agreements. The CTE also benefitted from the High Level NGO Symposium on Trade and Environment in March 1999, which included over 800 participants, many from developing countries. The Chairman thanked delegations for their continued cooperation and active participation, which had facilitated his work as Chairman, and was confident that this harmonious environment would continue throughout the Committee's deliberations this year.

²See http://www.unctad.org/trade_env/index.htm.

³See the Report of the Secretary General (E/CN.17/2000/4).

121. The CTE expressed its appreciation for the excellent guidance provided by Ambassador István Major throughout his Chairmanship of the Committee, and for the motivated and intellectual contribution of Mr. Hector Torres (Argentina) since the outset of discussions in the CTE.

122. The CTE welcomed Ambassador Biké (Gabon) to the Chair of the Committee.

Annex

PLAN OF ACTION⁴

II. UNCTAD's ENGAGEMENT

C. International Trade

(x) Trade and environment

146. UNCTAD's work, in cooperation with other relevant organizations, should focus on helping to ensure balance in the trade and environment debate by highlighting issues of concern to developing countries and strengthening the development dimension. This in turn would require special attention being paid to the following areas of work:

- Identifying policies to address major constraints faced by many developing countries in responding to environmental challenges, such as lack of technical, financial, institutional and supply capacities, taking into account the environmental and developmental conditions of each country;
- Enhancing understanding of the economic and social implications of trade measures for environmental purposes for countries at different levels of development, including the effects of environmental requirements on developing countries' exports;
- Identifying specific capacity-building needs of developing countries and promoting a broad programme of capacity-building on trade, environment and development.

147. UNCTAD should also, in full cooperation with other relevant organizations, in particular and where appropriate WIPO and WHO, promote analysis and consensus building with a view to identifying issues that could yield potential benefits to developing countries, including the link between public health and development. This should focus on:

- An examination of the economic and developmental implications of multilateral environment agreements and identification of ways to promote the effective implementation and use of enabling measures to achieve global environmental objectives;
- Examining ways to promote the indigenous development and transfer of environmentally sound technologies (ESTs) to developing countries, including through the implementation of relevant provisions in the TRIPs Agreement, for example articles 7 and 66.2 of that Agreement, in order to contribute to the promotion of technological innovation and to the transfer and dissemination of technology to the mutual advantage of producers and users of technological knowledge in a manner conducive to social and economic welfare and to a balance of rights and obligations;
- Taking into account the objectives and provisions of the Convention on Biological Diversity and the TRIPs Agreement, studying ways to protect traditional knowledge, innovations and practices of local and indigenous communities and enhance cooperation on research and development on technologies associated with the sustainable use of biological resources;
- Examining the potential trade and developmental effects and opportunities of environmental measures, taking into account the concerns of developing countries, particularly as regards potential effects on small and medium-sized enterprises;

⁴TD/386, 18 February 2000.

- Supporting developing countries' efforts in promoting production of and trading opportunities for environmentally preferable products;
 - Ways to promote and support investment and trade contributing to trade and sustainable development, *inter alia* in biological resources, such as the Biotrade Initiative;
 - Examining ways and means to address developing country concerns in the area of exports of domestically prohibited goods;
 - Strengthening the importance of adequately valuing natural resources with a view to enhancing the competitiveness of goods and services generated by those resources;
 - Helping developing countries in enhancing understanding of the trade, environmental, including biodiversity, and developmental implications of biotechnologies;
 - Supporting R&D capacity-building and legal and regulatory systems, in support of the work programme of the United Nations Commission on Science and Technology for Development; and
 - Continuing its work as task manager on trade and sustainable development for the United Nations Commission on Sustainable Development.
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