

PRESS RELEASE

TRADE AND ENVIRONMENT BULLETIN

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**CTE ADDRESSES DOMESTICALLY PROHIBITED GOODS; CBD AND TRIPS
AGREEMENTS; MARKET ACCESS EFFECTS OF ENVIRONMENTAL MEASURES;
SECTORAL "WIN-WIN-WIN" OUTCOMES FROM TRADE LIBERALIZATION;
ENVIRONMENTAL REVIEWS; THE PRECAUTIONARY PRINCIPLE; AND A
CONSULTATIVE MECHANISM ON THE WTO-MEA RELATIONSHIP**

At the meeting of the Committee on Trade and Environment (CTE) on 13-14 February 2001, participation was particularly lively with several proposals and papers submitted by Members and the Secretariat on a broad range of issues. The focus was on market access issues, specifically market access implications of environmental measures and the "win-win-win" potential for trade, environment and development arising from trade liberalization in the fisheries, energy, agriculture, and non-ferrous metals sectors.

There was also constructive debate on domestically prohibited goods, protection of traditional knowledge, access to genetic resources and the TRIPs Agreement, environmental reviews of trade agreements, the precautionary principle, and New Zealand's proposal for an informal consultative mechanism related to the WTO-MEA relationship.

The Chair, Ambassador Biké emphasized the importance of addressing practical issues of particular relevance to developing countries, such as the export of domestically prohibited goods, as well as broadening the participation of developing and least-developed countries in the CTE. UNEP had helped to broaden the participation in the CTE by funding environmental experts from developing countries.

Several observer organizations (the FAO, OECD, UNCTAD, UNEP and WIPO) reported on their recent CTE-related activities. The Chairship was passed from Ambassador Yolande Biké (Gabon) to Ambassador Alejandro Jara (Chile). The CTE will hold its next meeting on 27-28 June 2001 (*see* attached Annex).

This Bulletin has been prepared by the WTO Secretariat, under its own responsibility. Papers referred to in this Bulletin can be accessed through the WTO website (www.wto.org), and are available from the Trade and Environment Division of the WTO Secretariat. An updated list of CTE documents from January 1995 to December 2000 can be found in WT/CTE/INF/3.

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SUMMARY OF MAIN POINTS

- The meeting focused on **market access issues**. Iceland presented the Nordic eco-labelling criteria for fisheries. India shared its national experience on the effects of environmental measures on market access. Members also addressed potential "win-win-win" outcomes for trade, environment and development in the fisheries, energy, agriculture and non-ferrous metals sectors.
- Discussions on the **fisheries sector** built on previous CTE debate and the constructive dialogue at the UNEP Fisheries Workshop on 12 February 2001. UNEP had provided funding to ensure the participation of environment and fisheries experts from developing countries. The FAO, OECD and UNEP reported on their respective fisheries work.
- The EC submitted a new paper on environmentally harmful and trade distorting measures and policies in the **energy sector**. Following the EC's request, the Secretariat will prepare a background paper in this area.
- The Chair, Ambassador Biké emphasized the importance to developing and least-developed countries, particularly in Africa, of addressing the issue of **exports of domestically prohibited goods** (DPGs). Based on Egypt's proposal, it was decided to invite the UN Consolidated List of banned or severely restricted products to inform the CTE about its activities at the June 2001 meeting.
- Concerning the linkages between the Convention on Biological Diversity (CBD) and the **TRIPs Agreement**, Members commented on Peru's paper on its legislation on the protection of traditional knowledge and access to genetic resources and Brazil's paper on issues arising from the review of Article 27.3(b) of the TRIPs Agreement.
- There was discussion of the **precautionary principle** based on a submission by the EC containing a European Council resolution adopted in December 2000. The EC called for a clear definition of this principle; several Members pointed out that WTO rules already accommodated the reasonable use of precaution.
- Canada circulated its new framework for undertaking **environmental assessments** of trade negotiations. Research institutions from Argentina and Senegal presented UNEP-sponsored papers on their national experience with assessing trade liberalization in the fisheries sector.
- On the **WTO-MEA relationship**, broad support was expressed for New Zealand's proposal for an informal consultative mechanism. Members welcomed the development of such a voluntary mechanism as representing a constructive step forward, while having questions as to how it would operate.
- The EC circulated an **informal discussion paper** entitled *The Non-Trade Impacts of Trade Policy* (www.cc.cec.8082/com/trade/index_en.htm), with respect to which the EC is holding discussion meetings with civil society.
- UNEP noted its **Environment Ministerial Meeting** on Environment, Sustainable Development and Trade in Berlin, 20-22 March. Members were invited to submit project proposals for the UNEP-UNCTAD Capacity Building Task Force on Trade, Environment and Development (www.unep-unctad.org/cbtf).
- Discussion of the requests for **observer status** was postponed pending developments in the General Council on this matter.

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DETAILED DESCRIPTION OF THE ISSUES ADRESSED

Issues postponed from the 24-25 October 2000 meeting

Item 7 – Domestically prohibited goods

Members welcomed a new Secretariat paper updating information on the coverage of international instruments dealing with domestically prohibited goods (DPGs) (WT/CTE/W/161). The Chair, Ambassador Biké emphasized the significance to developing and least-developed countries, particularly in Africa, of addressing the DPG issue. Egypt, the EC and others noted the importance of the United Nations Consolidated List of Products Whose Consumption or Sale have been Banned, Withdrawn, Severely Restricted and said it was vital to increase information on these products, such as soap containing mercury (*see* PRESS/TE/034). India recalled the need to take into account the right of countries to regulate imports based on domestic considerations.

Based on Egypt's suggestion, the CTE decided to invite the Secretariat of the UN Consolidated List to brief the CTE at the June meeting. Reference was also made to the report circulated by the Basel Convention Secretariat of the First Continental Conference for Africa on the environmentally sound management of hazardous wastes (Morocco, 8-12 January 2001).

Argentina said the EU's exports of bonemeal, a product that had been banned for sale within some EU countries, should be considered to constitute a DPG export and that the CTE should address this issue. Canada noted the reference to the Cartagena Protocol on Biosafety in the Secretariat's DPG paper and emphasized that biotechnology products were new and that their environmental impacts had yet to be determined.

Item 8 – Trade-related aspects of intellectual property rights (TRIPs)

Members addressed Peru's submission on its *Experience with the Protection of Traditional Knowledge and Access to Genetic Resources* (WT/CTE/W/176), and Brazil's paper, initially submitted in the TRIPs Council, on issues arising from the *Review of Article 27.3(b)* (WT/CTE/W/186). Members appreciated Peru's readiness to share its experience with legislation in this important area. India, Kenya, Colombia, Costa Rica, Cuba, Guatemala, Thailand and Venezuela emphasized the increasing importance of biodiversity-related issues. Kenya and Côte d'Ivoire underscored the African proposal on traditional knowledge and genetic resources in the TRIPs Council. Brazil said it was necessary to promote biotechnology in a balanced and sustainable manner, avoiding biopiracy.

The EC noted that this was one of the CTE items where debate had been the richest. Brazil, India, Peru, Norway, Thailand, and the EC favoured international action to address the relationship between biodiversity and intellectual property issues, such as traditional knowledge and access to genetic resources. The EC also referred to the issue of geographical indications, an issue which has similarities with environmental protection. Brazil, Peru, India and others expressed appreciation for the constructive and flexible approach of the EC and Norway (at a previous meeting, *see* PRESS/TE/034) to address these issues in the current review of Article 27.3(b) of the TRIPs Agreement. Japan said traditional knowledge had yet to be well defined in intellectual property terms. The US said that the CBD and the TRIPs Agreement are compatible and that this discussion should take place in the TRIPs Council. Switzerland said discussions on traditional knowledge should take place in WIPO, not the WTO.

Several delegations said the discussion demonstrated the practical linkages between the WTO and MEAs, specifically the CBD, and how implementation of both needs to be sufficiently flexible and mutually supportive. Thailand and Brazil and others said Article 27.3(b) of the TRIPs Agreement provides flexibility for countries to put in place *sui generis* systems. This flexibility should be a step

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forward and, thus, supported the introduction of such an obligation in the TRIPs Agreement during a new round of WTO negotiations. India and Brazil have made proposals in this respect (*see* PRESS/TE/033). India appealed to Members to grant the CBD observer status in the TRIPs Council.

WIPO reported on its new Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, established in October 2000 (WT/CTE/W/182-IP/C/W/242). UNCTAD referred to its Expert Meeting on Systems and National Experiences for Protecting Traditional Knowledge, Innovations and Practices in November 2000 (papers available at www.unctad.org/trade_env/index.htm).

Members took note of a letter from the Convention on Biological Diversity (CBD) informing the relevant WTO bodies of Decision V/26 taken by the CBD Parties in May 2000. This Decision invites the WTO "to acknowledge the relevant provisions of the CBD, and to take into account the fact that the provisions of the TRIPs Agreement and the CBD are inter-related and to further explore this inter-relationship." It was decided that the Secretariat would respond by sending the most recent Secretariat papers related to the CBD.

Items related to market access

Item 2 – Environmental and trade principles

Members commented on a new submission by the European Communities containing the *Resolution of the European Council on the Precautionary Principle*, adopted in Nice, 7–9 December 2000 (G/SPS/GEN/225-G/TBT/W/154-WT/CTE/W/181). The precautionary principle is underpinned by the need to be cautious in situations where scientific information is incomplete, preliminary or in other ways uncertain. This Resolution states that measures taken based on the precautionary principle should be science-based, transparent, proportional, not arbitrary, unwarranted or discriminatory and use the least trade-restrictive approach available. The EC noted agreement on shared principles on precaution would ensure that it was not an excuse for protectionism. Japan, the US and Brazil asked for clarification from the EC as to the definition of this principle. There was discussion on the status of this principle in public international law. Several delegations noted that WTO rules can accommodate the reasonable use of the concept of precaution. Australia, Malaysia, Brazil, and Norway were among the delegations that noted that the application of precaution would vary depending on a case-by-case analysis and, that its use was context specific.

As described in a recent Secretariat paper on *Environmental (Sustainability) Assessments of Trade Liberalization Agreements at the National Level* (WT/CTE/W/171), several countries are conducting assessments of the impact of trade negotiations on the environment. Canada presented its new *Framework for Conducting Environmental Assessments of Trade Negotiations* (WT/CTE/W/183). The Czech Republic referred to its environmental assessments of trade liberalization in the agriculture, energy, and environmental services sectors (www.env.cebin.cz). Norway supported further efforts to develop methodologies for environmental reviews and said it was currently conducting assessments in several sectors. UNEP briefed Members on its reference manual for integrated assessments of trade-related policies and the country projects under preparation. The participating institutions from Argentina and Senegal presented their national experiences with assessing trade liberalization in the fisheries sector.

Several delegations noted that it would be difficult to develop a multilateral "one-size-fits-all" method of assessing environmental impacts, but that national experience case studies were useful. India, Argentina and others said it was important to encourage trade liberalization to bring economic dividends to help developing countries devote more financial resources to environmental protection.

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Item 3(b) – Eco-labelling

Iceland presented the *Report of the Nordic Technical Working Group on fisheries eco-labelling criteria* (available at <http://fisk.norden.org/fisk/sk/kriterier.pdf>), which recommended that the process for the development of criteria for the voluntary certification and eco-labelling of products of marine capture fisheries should be transparent, based on scientific grounds, use verifiable criteria and avoid technical barriers to trade and the proliferation of labels and expensive certification processes. Iceland also noted that eco-labelling can be regarded as both a threat and as an opportunity in terms of market access; it was important to ensure equal opportunities for developing countries to benefit from new market trends for fish products, while providing consumers with clear information on the sustainable use of fisheries resources.

Members also commented on the Secretariat's paper entitled *Information Relevant to the Consideration of the Market Access Effects of Eco-Labelling Schemes* (WT/CTE/W/150). Several delegations said voluntary eco-labelling can contribute to sustainable resource management if based on scientific and objective criteria. Japan and others said criteria would differ reflecting the various conditions in each country and the fish species involved. New Zealand, Thailand, India and Korea highlighted the concept of equivalency, whereby consideration could be given to recognizing schemes from other countries.

Concerning the potential trade implications of labelling, several Members said due regard should be given to the provisions of the TBT Agreement during the development and implementation of eco-labelling schemes. India, Malaysia, Thailand and Indonesia were among the delegations that noted the possible trade effects of eco-labelling and said consideration should be given to the timeframe for implementation and consequences for developing countries. Citing its practical experience, Venezuela said eco-labels could be trade distorting and could become a condition for market access even if they were voluntary. The EC called for the clarification of the definition of standards in the TBT Agreement with respect to the production and processing (PPM) issue in the context of labelling.

Item 4 – Trade measures for environmental purposes and environment measures with trade effects

The Secretariat is preparing the WTO Environmental Database containing the environment-related measures or provisions notified by Members in 2000; it will be circulated at the June meeting.

Item 6 – Effects of environmental measures on market access and environmental benefits of trade liberalization

Concerning the market access part of this Item, Members commented on India's recent paper entitled *The Study on the Effects of Environmental Measures on Market Access* (WT/CTE/W/177). The paper sets out India's experience and suggests ways to minimize the market access effects of environmental measures. While noting the lack of technical, human and financial resources to take advantage of the increasing demand for environmentally friendly products, India acknowledged that developing countries can take steps to increase domestic coordination and make information available on environment-related requirements, to small and medium size enterprises in particular. India called for international cooperation on several issues to move the debate forward, including transparency of the range of environment-related measures currently in force. Members said it would be necessary to find ways in which to put these suggestions into effect.

Several Members made reference to the increasing tendency for environmental measures to be based on life cycle analysis and production and processing methods that were not necessarily degradation and poverty. Cuba, Indonesia, the Philippines, Thailand and Venezuela called for capacity building and technology and financial transfer, as well as increased participation of

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developing countries in standards-making bodies. Norway, the EC and others recognized that certain measures may have a negative impact on the exports of developing countries, even if these measures were taken to address genuine environmental concerns.

Switzerland, the EC and India referred to the emerging market opportunities for developing countries in green products, such as environmentally friendly tropical products. Citing the development of a multistakeholder dialogue in a new European Sustainable Trade Centre, the EC said one way forward may be for the private sector and NGOs to provide information on standards and to address obstacles such as lack of capacity. Switzerland said the Cleaner Production Centres in developing countries were a cost-effective way to reduce environmental degradation. Kenya and Cuba emphasized the need for special and differentiated treatment to integrate developing countries into the world economy and ensure predictable market access for their exports.

With respect to the sectoral analysis of the environmental benefits of trade liberalization, statements were made on agriculture, energy, fisheries, non-ferrous metals, and environmental services. Members noted that the way forward in the CTE was to focus on "win-win-win" initiatives that demonstrate the benefits to environmental protection, trade liberalization and development. Chile, Peru and others referred to the importance of solving any problems that may arise through bilateral and regional cooperation.

– Energy – The EC submitted a new paper on environmentally harmful and trade distorting measures and policies in the energy sector (WT/CTE/W/185). The EC noted that the market failures in the energy area affect the use of best available and environmentally sound technology. Removing energy subsidies had the potential to result in "win-win-win" outcomes. UNEP reported on its regional workshops on the economic and environmental effects of energy subsidy reform. Following the EC's request, it was agreed that the Secretariat would prepare a background paper on this sector.

– Fisheries – The FAO reported on the results of its expert consultation on economic incentives on 28 November – 1 December 2000, which will be presented to the 24th session of the FAO Committee on Fisheries, 26 February - 2 March 2001. The OECD briefed Members on its preparations for the OECD Committee on Fisheries meeting on 5–7 March, particularly related to the on-going Study on Market Liberalization. UNEP reported on the results of its Workshop on Fisheries Subsidies on 12 February, noting the need to notify subsidies to the SCM Agreement, apply a matrix approach to categorize fisheries subsidies and their effects, ensure developing country concerns and enhance collaboration between the relevant intergovernmental organizations. Japan noted that the APEC study on fisheries subsidies had been finalized and was available on the APEC website.

Members welcomed the constructive dialogue at the UNEP workshop. The EC, Japan and Korea emphasized the lead role for FAO in dealing with sustainable fisheries management. Iceland, New Zealand, the US, and the Philippines said the WTO should continue work on the trade dimension of fisheries subsidies in coordination with other relevant bodies, whose work focused mainly on sustainable fisheries management. New Zealand, Iceland, the Philippines, Norway and others said that subsidy reform represented a "win-win-win" outcome for trade, environment and development; this was an issue in which the WTO had competence and should be fully involved. The Philippines and Thailand were among the delegations that said the development dimension had to be taken into account when assessing subsidies. New Zealand said trade distortions caused by subsidies inhibited sustainable development, particularly in developing and least-developed countries. Korea recalled the importance of socio-economic impacts. Canada, Norway and others recalled that subsidies could not be viewed in isolation from sustainable fisheries management; subsidies were only one of several elements that may have a negative impact on fisheries resources.

Canada was among the delegations that said the starting point of the discussions should be a definition of fisheries subsidies. Iceland and New Zealand said it was necessary to move beyond the abstract definition of subsidies. By defining the trade impact of subsidies in the real world, it would
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be possible to identify the benefits that reform would bring to sustainable fisheries, particularly for developing countries. Japan asked why trade distorting subsidies could not be dealt with in the framework of the WTO Agreement on Subsidies and Countervailing Measures (SCM). The EC joined New Zealand in appealing to countries to notify fisheries subsidies under that Agreement.

– Agriculture – Argentina referred to its submission for the 22-23 March meeting of the Agriculture Committee on the legitimate non-trade concerns to be taken into account in the agriculture negotiations. The paper dealt with three non-trade concerns: rural poverty, unemployment and environmental degradation, which were related to trade and price distorting subsidies and tariff escalation (G/AG/NG/W/88).

– Non-ferrous metals – Chile noted the importance of sustainable resource management in the non-ferrous metals sector and highlighted current international initiatives to develop an action plan for the sustainable development of non-ferrous metals.

Items relevant to the linkages between the multilateral environment and trade agendas

Items 1 & 5 – Relationship between MEAs and the WTO

Clarification of the WTO-MEA interface is very much at the center of the intergovernmental public policy debate with respect to trade and environment. As a follow-up to its submission in WT/CTE/W/162 and in response to the discussions at the last meeting, New Zealand elaborated its proposed informal consultative mechanism (WT/CTE/W/180). The main tenets are: (i) to establish a consultative mechanism to ensure consultation between countries prior to use of trade measures under MEAs. The mechanism would be voluntary and informal in nature. It would seek to find the most economically efficient solution to addressing an environmental problem. The mechanism would apply between Parties to an MEA, as well as Parties and non-parties; (ii) to create an informal mechanism for broad dialogue between WTO, MEAs, UNEP, and NGOs; and (iii) to encourage the clear drafting of trade measures in MEAs, to avoid disputes over interpretation.

Members welcomed this proposal as a creative and practical way forward and broad support was expressed for New Zealand's approach. It was noted that mechanisms such as that proposed by New Zealand could usefully serve to minimize trade-related MEA disputes, particularly between MEA Parties, from arising.

The US supported the clear drafting of MEAs and had some questions about the practicalities of New Zealand's approach to a consultative mechanism. The EC and Switzerland found this approach to be useful, while acknowledging that there may still be a need to accommodate MEAs in WTO rules. Switzerland reiterated its proposed approach to develop an interpretative understanding based on the mutual supportiveness approach (*see* PRESS/TE/033). UNEP referred to potential next steps to enhance the mutual supportiveness of and synergies between UNEP, MEAs and the WTO in light of the forthcoming World Summit on Sustainable Development in South Africa in 2002.

Item 10 – Relations with IGOs and NGOs

In order to enhance transparency and inform the public of activities in the WTO, Canada, supported by the US, EC, Peru and others, noted the importance of public outreach on trade and environment, suggesting that the Secretariat continue its outreach efforts with the public so as to promote a constructive dialogue on trade and environment issues and further understanding of WTO work. Canada also confirmed its funding for the WTO regional seminar on trade and environment for the Caribbean scheduled to take place later this year.

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COMMITTEE ON TRADE AND ENVIRONMENT

Revised Work Programme and Schedule of Meetings for 2001

1. The 2000 Report of the Committee on Trade and Environment (WT/CTE/5) sets out that the CTE will continue to analyse all the items on its work programme based on the "cluster approach" under the themes of market access and the linkages between the multilateral environment and trade agendas. Building on the contribution of Members, including where possible their national experience, on the items of the work programme, the following tentative schedule of meetings is proposed. At each meeting, time will be allotted for Members, if they so wish, to return to Items discussed at the previous meeting, and to raise other issues of relevance to the fulfilment of the Committee's mandate.

2. At a meeting to be held on **13–14 February**, the Committee will address those Items relevant to the theme of market access, including:

- Item 2: the relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system;
- Item 3: the relationship between the provisions of the multilateral trading system and:
 - (a) charges and taxes for environmental purposes;
 - (b) requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling;
- Item 4: the provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects; and
- Item 6: the effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions.

3. On **27–28 June**, the CTE will meet to discuss the Items related to the linkages between the multilateral environment and trade agendas, including:

MEA Information Session;

- Item 1: the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements;
- Item 5: the relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements;
- Item 7: the issue of exports of domestically prohibited goods; and
- Item 8: the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

4. Discussions at the CTE meeting on **3–4 October** will include:

- Item 9: the work programme envisaged in the Decision on Trade in Services and the Environment;
- Item 10: input to the relevant bodies in respect of appropriate arrangements for relations with intergovernmental and non-governmental organizations referred to in Article V of the WTO;

Review of the two thematic clusters of market access (Items 2, 3, 4 and 6) and the linkages between the multilateral environment and trade agendas (Items 1, 5, 7 and 8); and adoption of the 2001 Report of the CTE.

END