

**Committee on Trade and Environment  
Special Session**

**REPORT BY THE CHAIRPERSON OF THE SPECIAL SESSION OF THE COMMITTEE  
ON TRADE AND ENVIRONMENT TO THE TRADE  
NEGOTIATIONS COMMITTEE**

1. The third meeting of the Committee on Trade and Environment Special Session (CTESS) was held from 10-11 October 2002. The report of the meeting is contained in document TN/TE/R/3.

**I. STATUS OF WORK**

**A. PARAGRAPH 31 (I)**

2. A number of new documents were circulated under this item: document TN/TE/W/9 from Saudi Arabia, TN/TE/W/10 from Japan, TN/TE/W/11 from Chinese Taipei, TN/TE/W/12 from New Zealand, and TN/TE/W/13 from Korea. The two approaches that had emerged at the last meeting for work under paragraph 31 (i) continued to be discussed. A large number of participants supported the idea of the "bottom-up" approach that had been proposed and which consisted of three-phases (see paragraph 5 of document TN/TE/2). One delegation listed six multilateral environmental agreements (MEAs) that could be taken as a starting-point for discussions. However, some participants recommended a more conceptual approach for the CTESS' work, arguing that it would not exclude the examination of STOs ("specific trade obligations"). One of them called for the Special Session to base its work on "modules" that would include: (1) issues of scope and definition, (2) the development of certain principles to address the WTO-MEA relationship (such as those of no hierarchy and of mutual supportiveness), (3) dialogue with MEAs, and (4) the development of options or solutions. Some suggested that the two approaches were not mutually exclusive, and could be pursued in parallel.

3. Much discussion took place on the concepts contained in the mandate. Participants discussed the terms (1) MEA, (2) STOs, and (3) "relevant WTO rules." On MEAs, while some were in favour of defining the concept, others were opposed. For some of those opposed, the reasoning was that the mandate was limited to the applicability of WTO rules to parties to an MEA. Those in favour of a definition advanced certain criteria for the Committee's consideration, such as that of "universality." A few participants argued that MEAs could be identified as opposed to defined. Discussion also took place on whether regional environmental agreements, and MEAs that had not yet entered into force, were covered by the mandate.

4. On STOs, discussion revolved around how broadly the term could be interpreted. While there seemed to be general agreement that mandatory trade measures explicitly provided for in MEAs that were in force constituted STOs, there was disagreement over other kinds of trade measures taken pursuant to MEAs and over Conference of Parties (COP) decisions. A view expressed was that STOs could not be judged in isolation, and that their context would need to be taken into account. That context would include other relevant provisions of the MEA, as well as COP decisions. A few participants stated that alternatives to trade measures, such as technology transfer, financial and technical assistance, could sometimes be more effective in achieving the environmental objectives of MEAs. On relevant "WTO rules," some participants believed that these extended beyond GATT Article XX, and could include other provisions of GATT or of WTO agreements.

5. The new papers tabled at the meeting were discussed in relation to some of these terms and to more conceptual issues advanced by some delegations, such as the reversal of the burden of proof. A number of participants argued that it was premature to discuss negotiating outcomes since the Committee was still in a preparatory phase. They reminded participants that the negotiations could not alter the balance of rights and obligations under WTO rules (paragraph 32 of the Doha Ministerial Declaration). Others countered that discussion would be needed on when a clarification of the rules could begin to constitute a change in that balance. The Committee was also reminded of the call that had been made by a participant for the drafting of negotiating guidelines prior to the start of the negotiations phase.

6. Several participants cautioned that it was important in these negotiations not to interpret or drift into renegotiating MEAs, not to create a disincentive for governments to join MEAs, or to neglect the importance of national coordination between trade and environment officials. It was agreed that the Secretariat would prepare a compendium of all the proposals tabled in the CTESS under this item for the first meeting of the Committee next year.

B. PARAGRAPH 31 (II)

7. A new document was circulated under this item, document TN/TE/W/15 from the EC. Some delegations supported the call for early action on this part of the mandate. Discussion then revolved around (1) procedures for information exchange between MEA Secretariats and relevant WTO Committees, and (2) the question of observer status. A number of ideas were floated on how information exchange could be enhanced, such as the regularization/institutionalization of existing MEA Information Sessions, the creation of a two-way information flow between the WTO and MEAs, the organization of WTO side-events at the COPs of MEAs, and documents exchange. Some discussion was held on the kinds of documents covered by the mandate and the need to respect document confidentiality. A call was made for the identification of the WTO bodies that could benefit from information exchange with MEAs.

8. On the question of observer status, two issues were discussed: (1) observer status in the CTESS itself, and (2) the criteria for the granting of observer status called for under the paragraph 31 (ii) mandate. With respect to the former, a suggestion was made that observer status in the CTESS be granted to UNEP and MEAs on an ad hoc basis, without prejudice to the consultations which the Trade Negotiations Committee (TNC) was conducting. In general, there was significant support for an expeditious resolution of the observer status question in the CTESS. On observer status under the paragraph 31 (ii) mandate, a new proposal was floated calling for a positive presumption to be established in favour of MEA and UNEP observership, and for the CTESS Chair to consult MEAs and UNEP on the WTO bodies they could contribute to. However, no decision was taken. A view was expressed that since observer status could enhance information exchange, it was the more vital aspect of the paragraph 31 (ii) mandate. It was suggested that criteria would need to be developed for what constituted an MEA to serve as basis for the granting of observer status. Some delegations argued that the observer status issue was before the TNC and the General Council, and that the CTESS had to await their decision. However, others countered that it was important not to empty the paragraph 31 (ii) mandate, insisting that the CTESS had a role to play. It was agreed that a new document would be prepared on observer status in the different negotiating bodies established pre and post-Doha.

C. PARAGRAPH 31 (III)

9. Participants were briefed on the consultations that had taken place between the Chairs of the Negotiating Group on Market Access for Non-Agricultural Products (NGMA), the Council for Trade in Services Special Session (CTSSS) and the CTESS. The consultations were designed to avoid the duplication of work under the paragraph 31 (iii) mandate and to enhance information flow between the three negotiating bodies. Two new documents were circulated under this item, documents

TN/TE/W/8 from the US and TN/TE/W/14 from Qatar. At the meeting, several participants opposed the use of the process and production method (PPM) criterion in the identification of environmental goods. A number of participants referred to the work that had been conducted by the Organization for Economic Cooperation and Development (OECD) and the Asia Pacific Economic Cooperation forum (APEC) on environmental goods, with some suggesting that it could be taken as a starting-point for work under this mandate. A number of participants supported the proposal made for energy efficient technologies and systems to be considered under paragraph 31 (iii). Finally, the point was also made that technical assistance would help identify the environmental goods of export interest to developing countries.

#### D. TECHNICAL ASSISTANCE

10. The importance of technical assistance during the course of the negotiations on trade and environment was highlighted by some participants. Participants were urged to engage actively in the discussion of the WTO Technical Assistance Plan for 2003, so that their needs in this area of the negotiations could be duly considered.

### II. OUTSTANDING ISSUES

11. One of the most pressing outstanding issues before the CTESS is that of observer status. While the TNC and the General Council are consulting on the matter, it would be useful for participants to reflect on the proposal made to grant ad hoc observer status on a meeting-by-meeting basis to the organizations that have applied in the CTESS. This proposal would be without prejudice to any TNC or General Council decision that would in future be taken.

### III. FUTURE WORK

12. Given the differences of views on how to pursue the mandate under paragraph 31 (i), the Chair decided to consult delegations. Informal consultations on the structure of work under the paragraph 31 (i) mandate were held on 12 November 2002. It was decided that the CTESS would focus on STOs in relevant MEAs, and that this would not preclude addressing any definitional or other issues.

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