

**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 fifth meeting of the Committee on Trade and Environment Special Session (CTESS) was held on 12 and 13 February 2003.¹

I. STATUS OF WORK

A. PARAGRAPH 31(I)

2. New documents were circulated under this item by the United States², Switzerland³, Canada⁴ and India⁵. The Secretariat had also prepared a document entitled "Compilation of Submissions under Paragraph 31(i) of the Doha Declaration".⁶

3. Following the informal consultations held in November 2002 on the structure of work dealing with Paragraph 31(i), the delegations agreed that the Special Session would focus on the specific trade obligations set out in multilateral environmental agreements (MEAs) but that this would not preclude participants in the negotiations from addressing any definitional or other relevant issues. The Note by the Secretariat entitled "Matrix on Trade Measures Pursuant to Selected MEAs" was suggested as a possible starting-point for discussions.⁷

4. The Special Session thus conducted a more thorough analysis of the trade measures contained in the various MEAs, identifying those qualifying as "specific trade obligations". Several delegations used concrete examples *inter alia* to draw a distinction between MEA provisions containing explicit trade obligations and those leaving a measure of discretion as to the selection of measures to be taken.

5. Some delegations confined their analysis to existing MEAs, while others also considered MEAs that had not yet entered into force, such as the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the Stockholm Convention on Persistent Organic Pollutants, and the Cartagena Protocol on Biosafety.

6. To the extent that certain decisions taken by Conferences of Parties to MEAs might include trade measures, reference was made to the question of the relevance and legal status of such decisions. In this connection, attention was drawn to the need for a better understanding of the decision-making and general operating mechanisms of the different MEAs.

¹ The meeting was announced in convening notice WTO/AIR/2016.

² TN/TE/W/20.

³ TN/TE/W/21.

⁴ TN/TE/W/22.

⁵ TN/TE/W/23.

⁶ TN/TE/S/3.

⁷ WT/CTE/160/Rev.1.

7. It was agreed that the Secretariat would revise the "Matrix on Trade Measures Pursuant to Selected MEAs" and would regularly update the "Compilation of Submissions under Paragraph 31(i) of the Doha Declaration".

B. PARAGRAPH 31(II)

8. The Information Session with MEAs on 12 November 2002 had led to a constructive exchange of views on Paragraph 31(ii). Specific proposals had been made, in particular regarding procedures for information exchange between the WTO and the MEA Secretariats.⁸

9. The delegations emphasized that such information sessions directly contributed to enhancing the mutual supportiveness of trade and environment and to securing greater predictability in the implementation of trade measures set out in MEAs. Several delegations reverted to the proposals put forward during that session, and in particular to the suggestion of institutionalizing MEA information sessions.

10. Under the title "Observer Status", the Secretariat had prepared a document containing factual information on the question of observer status in the various negotiating groups and on observership applications made to date by UNEP and some MEAs to the different WTO Committees.⁹ Several delegations recalled that the issue of observer status was considered horizontally by the Trade Negotiations Committee (TNC) and the General Council, thus raising the question of the linkage between the Paragraph 31(ii) negotiating mandate and a possible solution to the question of observer status in the TNC and the General Council. Linkages between this aspect of the mandate and Paragraph 31(i) were also discussed. The delegations should continue giving thought to the criteria for the granting of observer status to MEAs and to the identification of WTO Committees concerned by the mandate.

C. PARAGRAPH 31(III)

11. The Special Session examined two new documents under this item, tabled by Japan¹⁰ and Qatar¹¹. The Secretariat also circulated the APEC and OECD lists of environmental goods.¹²

12. The Special Session used these documents as a basis for discussing the definition and identification of environmental goods within the meaning of Paragraph 31(iii). Some Members reiterated their preference for the product end-use criterion over the process and production method criterion. The delegations also raised the question of incorporation, in a list of environmental goods, of environmentally preferable, but nonetheless environmentally harmful, products.

13. While some delegations considered that the APEC and OECD lists of environmental goods provided an adequate working basis, others were of the opinion that a WTO list should be drawn up in the light of the Doha mandate. In this connection, attention was also drawn to the need to take into account the interests of the developing countries.

D. MEA AND UNEP PARTICIPATION IN CTESS WORK

14. The Special Session agreed that UNEP and the following MEAs would be invited to its next meeting on 1-2 May 2003: The Basel Convention on the Control of Transboundary Movements of

⁸ See TN/TE/4 and TN/TE/R/4.

⁹ TN/TE/S/4.

¹⁰ TN/TE/W/17 and Corr.1.

¹¹ TN/TE/W/19 and Corr.1.

¹² TN/TE/W/18. This document was also circulated in the Negotiating Group on Market Access as TN/MA/S/6.

Hazardous Wastes and their Disposal; the Convention on International Trade in Endangered Species of Wild Fauna and Flora; the Convention on Biological Diversity; the Montreal Protocol on Substances that Deplete the Ozone Layer; the International Tropical Timber Organization; and the United Nations Framework Convention on Climate Change.

15. The decision was taken on an ad-hoc basis, without prejudice to ongoing negotiations, *inter alia* on Paragraph 31(ii), within the CTESS and to settlement of the question of observer status in the TNC or the General Council.

16. The decision was a significant development that would undoubtedly help the CTESS advance in its work. Indeed, the participants emphasized the importance of UNEP and MEA expertise in view of the complexity of some of the questions raised.

II. OUTSTANDING ISSUES

17. Some delegations again reverted to the issue of technical assistance in the negotiating context, and in particular to the possibility of providing financial support for delegates from the developing countries to participate in CTESS discussions.

III. FUTURE WORK

18. The CTESS is due to hold two further meetings prior to the Cancun Ministerial Conference, on 1-2 May and on 8 July 2003. The July meeting will provide an opportunity for Members to take stock of work done in the CTESS, possibly with a view to a report to the Ministerial Conference.
