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UNEP-MEA MEETING ON ENHANCING MEA AND WTO INFORMATION EXCHANGE PALAIS DES NATIONS, GENEVA, 11 NOVEMBER 2002

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This background note was prepared and circulated as annotations to the agenda of the 11 November 2002 MEA-UNEP sponsored meeting entitled *Enhancing MEA and WTO Information Exchange*. The meeting was attended by trade and environment officials from capitals and the Geneva-based missions, and by representatives of the Secretariats of the Convention on Biological Diversity, its Cartagena Protocol on Biosafety, the UN Framework Convention on Climate Change, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, and the Ramsar Convention on Wetlands, the interim Secretariats of the Stockholm Convention on Persistent Organic Pollutants and the Rotterdam Convention on Prior Informed Consent, UNEP, the WTO, and other inter-governmental and non-governmental organizations. As background to the meeting, this note offered information on how UNEP and relevant MEAs, together with the WTO, can strengthen cooperation in two main areas - the development of procedures for regular information exchange, and realizing opportunities to promote reciprocal observer status in relevant MEA and WTO bodies. The annotations also provided questions to help structure the ongoing discussion of these issues. The annotated agenda can be found together with related background papers at http://www.unep.ch/etu/etp/events/MEA_WTO/11Nov2002.htm

I. INTRODUCTION AND BACKGROUND TO THE MEETING

1. The purpose of this background note is to examine how UNEP and relevant MEAs, together with the WTO, can strengthen cooperation in two main areas: the development of procedures for regular information exchange; and realizing opportunities to promote reciprocal observer status in relevant MEA and WTO bodies.
2. This meeting is part of a process sponsored by UNEP, in cooperation with a number of MEA Secretariats and the WTO, to enhance synergies and mutual supportiveness of MEAs and the WTO (see Synthesis Report WT/CTE/W/213). Underpinning this process is the belief that building a mutually supportive relationship between trade and environment policies, rules and institutions is required to maximize their joint contribution to sustainable development, and can yield significant benefits for MEA parties and WTO Members. This process is also contributing to information exchange between MEA Secretariats on these same issues.
3. The importance of increasing cooperation between trade and environmental organizations has been recognized in a number of important international negotiations:

- The WTO's Doha Ministerial Declaration welcomes "the WTO's continued cooperation with UNEP and other inter-governmental environmental organizations" and "encourage[s] efforts to promote cooperation between the WTO and relevant international environmental and developmental organizations" (paragraph 6).
- The Plan of Implementation adopted at the recent World Summit on Sustainable Development (WSSD) similarly calls for efforts to "promote mutual supportiveness between the multilateral trading system and the multilateral environmental agreements, consistent with sustainable development goals, in support of the work programme agreed through WTO, while recognizing the importance of maintaining the integrity of both sets of instruments" (paragraph 92). It also identifies the need to "strengthen cooperation among UNEP and other United Nations bodies and specialized agencies, the Bretton Woods institutions and WTO, within their mandates" (paragraph 136).

4. In light of these statements, this meeting seeks to explore opportunities to increase cooperation and information exchange. Following a short introduction, the afternoon session will explore approaches to enhancing information exchange and securing reciprocal observer status. It will commence with presentations by MEA and WTO staff, after which participants will be invited to identify areas where information exchange procedures could be regularized and strengthened, cooperation could be deepened and fully reciprocal observer status for MEAs and the WTO could be established in their respective bodies.

5. The aim of the meeting is to realize synergies and enhance the mutual supportiveness of MEAs and the WTO. Presentations are intended to encourage an open discussion among participants in the meeting. To facilitate the discussion, background information and suggested issues for discussion can be found in the attached annotations. Annotation I covers procedures for regular information exchange between MEA Secretariats and relevant WTO bodies, while Annotation II covers the issue of observer status. Focusing on concrete examples should serve to illustrate the issues, and increase the chances that the debate is less conceptual and more action-oriented. A non-exhaustive list of issue areas where information exchange and reciprocal observer status can enhance synergies between MEAs and the WTO can be found in Annex 1. Additionally, participants are encouraged to review the note prepared by the WTO Secretariat entitled "Existing Forms of Cooperation and Information Exchange between UNEP/MEAs and the WTO" (TN/TE/S/2).

II. PROCEDURES FOR INFORMATION EXCHANGE (ANNOTATION I)

6. Communication between international trade, environmental and other institutions is an essential part of strengthening the institutional framework for sustainable development. Promoting communication requires enhanced procedures for regular information exchange between trade and environmental institutions. This session is designed to facilitate a dialogue between trade and environmental officials, and staff of the WTO, MEA Secretariats and UNEP on ways to enhance the mutual supportiveness of trade and the environment policies through procedures for regular information exchange. It will explore the role of information exchange, as well as ways that procedures for information exchange could be strengthened.

7. Strengthening procedures for regular information exchange offers a range of benefits to WTO Members and MEA parties. It complements efforts to promote more effective cooperation between trade and environmental officials at the national level. It can help to strengthen common understandings at all levels of the relationship between trade and environmental policies, rules and institutions. It provides a platform for more effective cooperation to realize synergies in areas such as capacity building, use of economic instruments and technology transfer. It can also help to avoid

potential tensions from arising in relation both to the implementation of existing commitments, and to the negotiation of future ones.

8. WTO negotiations on procedures for information exchange are established in paragraph 31 of the Doha Ministerial Declaration, which states:

With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudicing their outcome, on: ... (ii) *procedures for regular information exchange between MEA Secretariats and the relevant WTO committees*, and the criteria for granting observer status. (emphasis added)

9. Establishing procedures for regular information exchange is also supported by the encouragement of Ministers in Doha to “promote cooperation between the WTO and relevant international environmental and developmental organizations” (paragraph 6). It would also be a step towards fulfilling the call in the WSSD Plan of Implementation to “strengthen cooperation among UNEP and other United Nations bodies and specialized agencies, the Bretton Woods institutions and WTO, within their mandates (paragraph 136).”

10. Cooperation and information exchange between the WTO and MEAs has been on the multilateral agenda for some time. The Committee on Trade and Environment, in its 1996 Report to the Singapore Ministerial, stated:

In order to enhance understanding of the relationship between trade and environmental policies, co-operation between the WTO and relevant MEAs institutions is valuable and should be encouraged. The CTE recommends that the WTO Secretariat continue to play a constructive role through its cooperative efforts with the Secretariats of the MEAs and provide information to WTO Members on trade-related work in MEAs. (paragraph 175)

11. The UNEP meetings, including the 23 October 2000 meeting on ‘Enhancing Synergies and Mutual Supportiveness of MEAs and the WTO’ and the 26 June 2001 meeting on “Compliance, Enforcement and Dispute Settlement in MEAs and the WTO” re-emphasized the importance of increasing information exchange and cooperation between the WTO, UNEP and MEAs (see http://www.unep.ch/etu/etp/events/MEA_WTO/11Nov2002.htm, WT/CTE/W/184, WT/CTE/W/199).

12. Information exchange is especially important in the context of the WTO’s negotiations on “the relationship between existing WTO rules and specific trade obligations set out in MEAs” (paragraph 31(i) of the Doha Ministerial Declaration). Full and timely information exchange between the WTO, UNEP and all relevant MEAs will ensure that these negotiations enhance the mutual supportiveness of trade and environment policies, and maintain the integrity of both sets of agreements. Such a full and timely exchange of information would be greatly facilitated by an early harvest in negotiations on procedures for information exchange.

13. There are a variety of contexts in which procedures for information exchange could be further developed. To facilitate a dialogue, the following non-exclusive list of areas and issues are offered as a starting point for discussion by participants at this meeting.

14. ***Information exchange through formal meetings.*** Meetings, such as the CTE’s MEA Information Sessions, have increased understanding of critical trade and environment issues.

- Six CTE MEA Information Sessions have been conducted during the five years since late 1997. Could such meetings be formalized as part of the WTO agenda? Should the regularity of such meetings be increased?

- With the support of donor countries, UNEP has enabled developing country environmental officials to participate at UNEP-sponsored and CTE meetings. How could participation by developing country environmental officials be assured and enhanced in future meetings?
- Some WTO Members have noted that issue-specific meetings - such as those on fisheries subsidies and compliance - have advanced trade and environment discussions. Should future WTO information meetings be focused on specific themes (e.g. developing countries' capacity building needs, technology transfer, or use of economic instruments to promote mutually supportive implementation of MEA and WTO obligations)?
- The WTO and MEA Secretariat and UNEP have prepared papers, either individually or jointly, to support past information sessions. How can papers, such as the joint WTO-UNEP background note on *Compliance and Dispute Settlement Provisions in the WTO and MEAs* (WT/CTE/W/191, available at web address above), be best used to support future meetings?

15. **Information exchange through exchange of documents.** Sharing documents provides an important vehicle for information exchange between MEA Secretariats and the relevant WTO bodies.

- What kinds of written documents are currently shared between MEA Secretariats and the relevant WTO bodies? Is there a need to make WTO and MEA documents more easily available to trade and environment officials in both governments and secretariats? What procedures might facilitate more effective document exchange?

16. **Information exchange between trade and environmental officials at national level.** Information exchange and cooperation at the national level is a most important part of ensuring policy coordination and promoting a mutually supportive relationship between trade and the environment.

- How can information exchange between MEA Secretariats and relevant WTO bodies enhance information exchange between trade and environmental officials at the national level?
- Could governments use information sessions to share best practices of modes of cooperation at the national level? How could such experiences be fed into capacity building exercises conducted by WTO/UNCTAD/UNEP and others?

17. **Secretariat-to-Secretariat Cooperation.** National-level cooperation, and cooperation between Secretariat staff and government officials, could be supported by enhanced information exchange and cooperation between secretariats:

- What are the opportunities to further strengthen cooperation between officials representing the secretariats of the WTO, MEAs and UNEP? What are the benefits of more understanding by trade and environment officials in WTO, MEAs and UNEP? How can officials deepen their understanding of others' institutions? What areas would benefit from greater cooperation?

III. THE ROLE OF OBSERVER STATUS IN INFORMATION EXCHANGE (ANNOTATION II)

18. An important means for increasing cooperation between trade and environmental institutions is the granting of reciprocal observer status. Discussions should aim to explore ways to enhance opportunities for securing reciprocal observer status, with the goal of realizing synergies between MEAs and the WTO.

19. WTO negotiations on criteria for observer status in the context of trade and environment are established in paragraph 31 of the Doha Ministerial Declaration, which states:

With a view to enhancing the mutual supportiveness of trade and environment we agree to negotiations, without prejudicing their outcome, on: ... (ii) procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, *and the criteria for granting observer status*. (emphasis added)

20. Securing reciprocal observer status for the WTO, MEAs and UNEP is an essential part of realizing complementarities between trade and environmental institutions. Reciprocal observer status complements and facilitates national level cooperation between trade and environment officials. It provides MEA Secretariats with an opportunity to deepen their knowledge of trade issues and to more effectively serve their parties. It also ensures that MEA negotiations and processes touching on mandates of the WTO have relevant information, enabling parties to MEAs to identify ways to avoid tensions and realize synergies between MEAs and the WTO. Finally, it helps to ensure that WTO trade and environment negotiations - particularly those directly affecting the mandates of MEAs - have access to accurate and relevant information.

21. The WTO Secretariat has broad access to international environmental negotiations and deliberations. The WTO is an observer in UNEP's Governing Council. It also regularly attends the meetings of major MEAs. Its participation in these meetings is facilitated by the open approach to observer status adopted by MEAs. Many MEAs, such as the Basel Convention and the Convention on Biological Diversity, allow any governmental or non-governmental body qualified in the relevant field to be represented as an observer unless at least one third of Parties present object.

22. Currently, a number of MEAs as well as UNEP have access to some WTO bodies (see TN/TE/S/2 for a summary). The following requests for observer status, however, remain outstanding:

- The Convention on Biological Diversity's request for observer status in the Committee on Agriculture, the TBT Committee, the SPS Committee, and the TRIPS Council;
- The International Tropical Timber Organization's request for observer status in the CTE; and
- UNEP's request for observer status in the General Council and TRIPS Council.

23. Additionally, UNEP and the MEA Secretariats have not yet been granted observer status to special sessions of the CTE. Consequently, they are excluded from observing negotiations on "the relationship between existing WTO rules and specific trade obligations set out in MEAs". The absence of MEA Secretariats and UNEP from these discussions is a matter of concern for many WTO Members and for the parties of many MEAs, and seems unlikely to produce results that best promote the mutual supportiveness of the two systems.

24. Negotiations under paragraph 31(ii) could help to address the current asymmetry in the reciprocity of access to trade and environment processes. Paragraph 31(ii) provides a mandate for negotiations in the context of "enhancing the mutual supportiveness of trade and environment". In paragraph 31(ii), the phrase preceding the reference to observer status refers to "MEA Secretariats and the relevant WTO committees". Consequently, this mandate would seem to address negotiations on criteria for observer status for environmental institutions such as the MEAs and UNEP in relevant WTO bodies, and not to extend to the more general issue of observer status for international organizations in the WTO, which is being discussed in the General Council and the Trade Negotiations Committee.

25. The importance of observer status for environmental institutions in relevant WTO bodies was recognized in the 1996 Report of the CTE to the Singapore Ministerial, which noted “observer status of relevant MEAs in WTO bodies, as appropriate, can play a positive role in creating clearer appreciation of the mutually supportive role of trade and environment policies. Requests from the appropriate bodies of MEAs for observer status should be considered in this light” (paragraph 217). The report also stated that the “CTE should also consider extending invitations to appropriate MEA institutions to attend relevant discussions of the CTE” (paragraph 175). More recently, the Chairman’s summary of the 23 October 2000 UNEP meeting on “Enhancing Synergies and Mutual Supportiveness of MEAs and the WTO”, noted “UNEP, MEAs and the WTO should provide substantive input into each other’s work and workshops, including through participation by WTO staff at MEA meetings, and through observer status for UNEP and MEAs in WTO Committees and Councils” (see www.unep.ch/etu/etp/events/recent/chairsum_mea.pdf also released as WT/CTE/W/199).

26. The session is designed to encourage discussion of ways to enhance reciprocal observer status in MEAs and the WTO. Participants are invited to consider the following non-exhaustive list of questions:

- How can criteria for observer status for MEAs and UNEP build from Annex 3 of the Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council (WT/L/161) in a manner that enhances access for relevant environmental institutions to WTO bodies?
- Can observer status be granted on an ad hoc basis to CTE normal and special sessions, pending conclusion of negotiations under paragraph 31(ii)? What is the relevance of paragraph 5 of Annex 3 of the Rules of Procedure, which states that relevant WTO bodies may offer specific invitations to intergovernmental organizations to attend their meetings to follow particular issues within a body in an observer capacity?
- Should there be a presumption in favour of participation by environmental institutions as observers at the WTO, to complement the favorable access given by MEAs to governmental and non-governmental institutions including the WTO? What kind of characteristics could constitute a basis for presuming that MEAs have an appropriate interest in matters before particular WTO bodies? How can procedures be developed in a manner to ensure that both current requests for access to relevant WTO bodies, as well as requests from MEAs that may be negotiated in the future, are reviewed on an expedited basis?

ANNEX 1

I. SUBSTANTIVE ISSUES RELATED TO INFORMATION EXCHANGE AND OBSERVER STATUS

1. A number of issues identified in the Doha Ministerial Declaration, the WSSD Plan of Implementation, and/or this UNEP-sponsored process on enhancing synergies between the WTO and MEAs (see WT/CTE/W/213) could provide useful topics for further discussion in the context of enhanced cooperation, procedures for information exchange, and observer status. These include, but are not limited to:

- **Capacity building.** The Doha Ministerial Declaration recognizes the importance of technical assistance and capacity building in the field of trade and environment (paragraph 33) and states “capacity-building programmes have important roles to play” in ensuring “developing countries ... secure a share in the growth of world trade commensurate with the needs of their economic development” (paragraph 2). The WSSD Plan of Implementation similarly calls for efforts to “continue to enhance the mutual supportiveness of trade, environment and development with a view to achieving sustainable development” by *inter alia* encouraging “efforts to promote cooperation on trade, environment and development, including in the field of providing technical assistance to developing countries, between the secretariats of WTO, UNCTAD, UNDP, UNEP and other relevant international environmental and development and regional organizations” (paragraph 91(c)). It also calls to “enhance the delivery of coordinated, effective and targeted trade-related technical assistance and capacity-building programmes, including to take advantage of existing and future market access opportunities and to examine the relationship between trade, environment and development” (paragraph 45(e)). These recommendations are relevant to capacity building activities conducted under both the Integrated Framework for Least Developed Countries, and the WTO’s Technical Cooperation Programme. At a UNEP workshop in March 2002, on Capacity Building on Environment, Trade and Development, some participants requested the design and implementation of collaborative capacity building activities on enhancing synergies between MEAs and the WTO. Presentations by secretariats of MEAs and the WTO at this meeting highlighted the potential for collaboration in areas such as capacity building for customs and control agencies; regional workshops on the managements of dangerous chemicals and hazardous waste, including in a trade context; and the promotion of trade in sustainably produced products from wetlands (www.unep.ch/etu/etp/events/Capacity_Building/19March_CB.htm, also available as WT/CTE/W/206).
- **Technology transfer.** The WTO’s Working Group on Trade and Technology Transfer, established pursuant to paragraph 37 of the Doha Ministerial Declaration, is examining the relationship between trade and transfer of technology, and any possible recommendations on steps that may be taken within the mandate of the WTO to increase flows of technology to developing countries. Technology transfer is important in the context of many MEAs, and has also been noted as an area of potential synergy between MEAs and the WTO (WT/CTE/W/213). Synergies could be realized between technology transfer and technical assistance provisions that exist in MEAs and the WTO, such as Article 66.2 of the TRIPS Agreement and specific provisions in the Basel Convention, the Montreal Protocol, the Climate Change Convention and the Convention on Biological Diversity. The WSSD Plan of Implementation also includes many references to technology transfer.
- **Assessment.** The Doha Ministerial Declaration notes “efforts by Members to conduct national environmental assessments of trade policies on a voluntary basis” (paragraph 6), and “encourages expertise and experience to be shared with WTO Members wishing to perform environmental reviews and assessments at the national level” (paragraph 33). The WSSD Plan of

Implementation, similarly, calls on governments to “encourage the voluntary use of environmental impact assessments as an important national-level tool to better identify trade, environment and development interlinkages. Further encourage countries and international organizations with experience in this field to provide technical assistance to developing countries for these purposes” (paragraph 91(d)). The use of assessment at a national level as a tool to identify trade, environment and development interlinkages, and associated technical assistance needs, could be the subject of future information exchange. UNEP is already collaborating with the CBD Secretariat on its study of the effects of trade liberalization on agricultural biodiversity, which is being undertaken in conformity with decisions passed at the Fourth and Fifth Conferences of the Parties of the CBD. Ongoing UNEP country projects on integrated assessment of trade liberalization in the rice sector will inform the work that the CBD Secretariat is undertaking, and is also of relevance to the ongoing WTO negotiations aimed at extending the Agreement on Agriculture.

- ***Trade-related obligations in MEAs.*** The Doha Ministerial Declaration establishes negotiations on “the relationship between existing WTO rules and specific trade obligations set out in MEAs” (paragraph 31(i)). The WSSD Plan of Implementation also calls for efforts to “promote mutual supportiveness between the multilateral trading system and the multilateral environmental agreements, consistent with sustainable development goals, in support of the work programme agreed through WTO, while recognizing the importance of maintaining the integrity of both sets of instruments” (paragraph 92). Ways to promote mutual supportiveness between obligations in trading and environmental agreements, in a manner that maintains the integrity of both sets of agreements, could be the subject of future information exchange.
- ***Compliance, enforcement and dispute settlement.*** The Chairman’s summary of 26 June 2001 UNEP meeting on “Compliance, Enforcement and Dispute Settlement in MEAs and the WTO” noted “greater information exchange in the area of compliance and dispute settlement may assist both MEA and WTO officials in understanding the objectives of their different agreements. In the context of the WTO, it may assist officials to understand the utility of conservation measures under MEAs, in the event of an MEA-related dispute in the WTO”. Participants in this meeting also raised the possibility that cooperation between the secretariats of MEAs and the WTO in the context of potential disputes, could help to prevent them becoming formal ones, and would in any case enhance exchange of relevant information between the competent bodies within these organizations.
- ***Economic instruments.*** The application of economic instruments for environmental protection has the potential both to advance implementation of MEAs, and with appropriate design, minimize trade distortions. A workshop convened by the CBD in October 2001 (report UNEP/CBD/SBSTTA/7/11/Add.1) highlighted the importance of developing cooperation with international organizations focused on economic policies, including “in particular, trade policies under the WTO”. UNEP has established a Working Group on Economic Instruments, which is currently undertaking a focused exploration of how economic instruments can contribute to the implementation of MEAs. The CITES Secretariat has prepared a paper on “Economic Incentives and Trade Policy” which is currently under discussion at its Twelfth Meeting of the COP, in Santiago de Chile (COP 12, Doc. 18). The Conference of the Parties to the Convention on Biological Diversity, in its programme of work on incentive measures, has underlined the need for further work on positive incentives as well as on perverse incentives and their removal or mitigation, and has requested the CBD Secretariat to elaborate proposals for application of ways and means to remove or mitigate perverse incentives. These substantive initiatives would be served by more detailed information exchange between these bodies and the WTO Secretariat, raising the potential for closer collaboration.

- ***Environmental goods and services.*** Liberalization of trade in environmental goods and services, negotiations on which are mandated under paragraph 31(iii) of the Doha Ministerial Declaration, is also of relevance to the implementation of MEAs. For example, liberalization of goods and services related to environmentally sustainable technologies (ESTs) could, by lowering the cost or otherwise increasing the availability of these goods and services, contribute to implementation of MEAs. Furthermore, the definition of what is an environmental good or service, which is proving to be an important issue at the start of these WTO negotiations, is an area where MEAs may have relevant information and expertise. Trade in environmentally preferable products may also be covered by these negotiations, which trade could also support MEA implementation, as noted by some MEA Secretariats in the March 2002 workshop. Information exchange and collaboration between the relevant secretariats on the issue of environmental goods and services could therefore yield information which enhances the mutual supportiveness of the trade and environment.
2. Other issues upon which cooperation and information exchange may be considered by WTO Members and MEA parties to be beneficial include, *inter alia*, market access, labelling for environmental purposes; and exploring means to enhance cooperation between trade and environment officials at the national level.
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