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Committee on Trade and Environment
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SUMMARY REPORT ON THE EIGHTH MEETING OF THE COMMITTEE ON TRADE AND ENVIRONMENT IN SPECIAL SESSION

19 APRIL 2004

Note by the Secretariat

1. The Committee on Trade and Environment Special Session (CTESS) held its eighth meeting on 19 April 2004 on the basis of the agenda set out in the convening airgram WTO/AIR/2282. It confirmed Ambassador Toufiq Ali as the new Chairman of the CTESS. It also agreed to reverse the order of business at this meeting, starting with Paragraphs 31 (iii), 31 (ii) and then 31 (i).

I. PARAGRAPH 31 (III) – ENVIRONMENTAL GOODS AND SERVICES

2. The United States (US) reverted to a proposal which it had previously submitted to the CTESS under this item, document TN/TE/W/38, entitled *Market Access for Non-Agricultural Products; US contribution on an Environmental Goods Modality*. While the Negotiating Group on Non-Agricultural Market Access (NAMA) was addressing the broader framework of issues related to market access, the US felt that the CTESS could add value on environmental goods. Its paper proposed a framework that would allow flexibility in defining environmental goods, through the development of a core and a complementary list of goods. This would accommodate the variety of views expressed by participants. The core list would comprise the products on which there was consensus, while the complementary list would comprise products on which consensus could not be reached, but for which there was a "high degree of acknowledgement" that they could have significance for environmental protection, pollution prevention or remediation, and sustainability. For the core list, the participating Members would be required to reduce tariff and non-tariff barriers (NTBs), or, as appropriate, eliminate them altogether, within a certain time. The discussions on NTBs could also take place in other relevant WTO bodies. For the complementary list, however, participating Members would be required only to identify specific products representing a certain percentage of the total tariff lines on the list – with that percentage still to be determined, and then subject these products to the same reduction or elimination agreed for the core list.

3. The US believed that Members should strive for a core list that was as comprehensive as possible, to maximize the positive outcomes for environment, trade, and development, but to the extent that consensus could not be reached for particular goods, individual Members could nominate these goods for inclusion in the complementary list. If such an approach were pursued, the CTESS would need to develop procedures and criteria for nominating products. In the interest of both clarity and practicality, however, the US urged delegations to refrain from nominating goods based on non-product related process and production methods (PPMs). Additionally, it believed that goods ought to have at least modest support among a group of Members, as opposed to being simply on the "wish list" of a single Member. The proposal would also provide additional flexibility for participating developing countries, by suggesting that they be required to eliminate tariffs on a smaller percentage of products on the complementary list.

4. The representatives of Canada, Japan, New Zealand, the European Communities, Norway, Thailand and Cuba agreed that the CTESS could add value to the work in NAMA, but stressed that the rates of trade liberalization had to be determined by NAMA and not the CTESS.

5. The representatives of Canada, Australia, Norway, Hong Kong, China, Mexico, Singapore, Indonesia, and Argentina agreed with the US position that it would be best not to use non-product related PPMs in the identification of environmental goods. The representative of Norway believed that, at least for the time being, the PPM criterion would be difficult to work with, since it would involve the setting of new standards and customs classifications, which would be time consuming and would create definitional uncertainties. The representative of Canada argued that it would eventually become evident to the CTESS that going beyond the concept of "predominant end use" would be problematic. The representative of Switzerland agreed that there could be practical difficulties in using PPMs (see statement below).

6. The representative of Switzerland indicated that there were six questions that had emerged from previous discussions: (1) was how to classify products with multiple end-uses and to deal with products whose end-use was not environmentally friendly; (2) was how to deal with the PPM and end-use criteria and their implications for the concept of "like products"; (3) was how to deal with the fact that the "use" of an environmental good could be of special interest, when for customs policy purposes and trade nomenclatures, goods tended to be classified based on their physical characteristics, size, etc.; (4) was how to deal with goods produced through cleaner production processes and technologies; (5) was how to update the classification of environmental goods over time, and (6) was how to deal with the notion of "environmental friendliness", since goods considered environmentally friendly in some parts of the world could be seen as unfriendly in others.

7. The Swiss Government had integrated "principles of sustainability" in its Federal Constitution, and they were to be applied in all policy fields. A product could only be considered truly "environmental" if its entire life cycle was environmentally friendly. The life cycle approach (LCA) went beyond the PPM issue since a product's performance throughout its life cycle (including disposal) had to reflect an Integrated Product Policy. The promotion of environmental technology in Switzerland was based on the principles of sustainability and decided on a case-by-case basis.

8. However, Switzerland was aware that a large number of WTO Members were of the view that the PPM criterion should not be used. This was a legitimate view and Switzerland did not wish to re-open discussions on this issue. Furthermore, it recognized that for the purpose of market access negotiations, a definition of "environmental products" based on LCA or on PPMs would create practical difficulties. The application of the PPM criterion at the border would not be easy, and another difficulty would be that there was lack of internationally recognized standards for the LCA of products. Therefore, it supported a more limited definition based on product end use. In that sense, the APEC and OECD lists provided a good starting-point for the negotiations.

9. Switzerland urged participants not to lose sight of the aim of the Paragraph 31 (iii) mandate, which was to promote sustainable development through the building of an international market for environmental goods and services. This could contribute to combating global environmental problems such as climate change, the loss of biodiversity, the depletion of the ozone layer, the pollution of fresh water resources, land degradation, etc. Therefore, all WTO Members had to have access to environmental goods and services, for the lowest possible price at their border.

10. In reaction to the US paper, Switzerland argued that both the OECD and APEC lists would need adaptation since they did not offer sufficient market access opportunities for all Members, in particular for developing countries. It was important to develop a balanced list that reflected the interests of developing and developed countries alike. The proposal to develop a core and a complementary list was promising and merited further exploration. It could allow for rigour on the core list, and flexibility on the complementary list.

11. The representative of the European Communities (EC) explained that the EC was seeking a balanced outcome, which reflected the interests of all Members, and which was also ambitious. It was not looking for a simple "window dressing" exercise. It expressed its support for the two categories of "environmental remediation and pollution prevention" and "clean technologies" proposed in the US paper. However, it wondered if these categories had to stop there, since these tended to include products which were only produced in certain parts of the world. Other factors could be taken into account, such as the low environmental impact of a product and its renewability. Thus, it was important not to prejudge the outcome of negotiations on this matter.

12. With respect to the PPM criterion, the EC reminded participants that sensitivity with respect to that criterion had arisen in a completely different context – one in which markets were being closed *vis-à-vis* products of a certain PPM. Under Paragraph 31 (iii), however, Members were looking at how to open markets for environmentally friendly PPMs; in other words, the opposite. Thus, it wanted delegations to reflect further on this criterion, which could cover organically produced agricultural products, and FSC-certified forest products. The EC had been reflecting informally on classification issues, and whether it was possible to look for ways other than Harmonized System (HS) classification. In certain instances, labels were already being used to identify products, and it would be important not to foreclose these or any other ways of identifying products.

13. The EC was heartened by the conclusion in the US paper that the development of a single list would be the ideal solution for the NAMA negotiations. It was not clear to the EC how a balanced result, which took account of the interests of all WTO Members, could be achieved on the basis of self-selection. Furthermore, what incentive would Members have to go beyond a "minimalist approach" on the core list, if two lists were to be developed? The two-list approach could provide Members with an incentive to reduce the core list to a minimum, and push all other products into the complementary list where they would not have to commit themselves to reduction. This would, of course, not lead to the environmental benefits that participants were seeking. However, the EC indicated that it understood that the US had made this proposal in order to provide greater flexibility. It nevertheless believed that flexibility could be achieved in other ways, through for instance different levels of commitment and timeframes.

14. The representative of Hong Kong, China believed that a broad definition of environmental goods, which would provide for goods that were easily identifiable at customs, needed to be developed for the benefit of all Members. The US idea of a dual list offered a practical basis for further discussion. However, together with the representative of Indonesia, Hong Kong, China enquired about how the principles of Special and Differential treatment (S&D) and "less than full reciprocity" would be applied to the complementary list, and whether they would also be used in relation to the core list. Furthermore, it wondered if these concepts would apply to both end dates and end rates of negotiations, and requested clarification on the required level of support for the inclusion of a product on the complementary list.

15. The representatives of Brazil, Thailand, Ecuador, Cuba, and Kenya also asked for clarification on whether/how the concept of "less than full reciprocity" would be applied to the core list. The representative of Kenya added that the concept of less than full reciprocity in the US paper would have to abide by Article XXXVI, paragraph 8, of GATT 1947, which states that "the developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties." With respect to S&D, the concerns of Hong Kong, China were echoed by the representatives of Mexico and Thailand. The representative of Thailand called for the concepts of S&D and of less than full reciprocity to be applied to all environmental products, and not just to those on the complementary list.

16. The representative of Japan found work on this part of the mandate to have been slow, and felt that there was a need for greater efficiency. Given the divergent views on environmental goods,

Japan urged delegations to concentrate on developing a list. It had submitted its own list, in which it had taken the OECD classification into account, as well as certain environmental problems. Together with the representative of Thailand, it enquired about the procedures that would be used to reach consensus on the core list, and about the concepts of "definitive consensus" and of the "high degree of acknowledgement." The representative of Ecuador also enquired about the way in which consensus would be achieved on the core list, and the representative of Switzerland about the number of Members that would have to agree to the complementary list for a "high degree of acknowledgement" to have been achieved.

17. The representative of Mexico asked the US to clarify: (1) whether the year 2010 would be the deadline for the elimination or for the reduction of tariffs; and (2) whether the complementary list suggested a plurilateral approach, which would be of concern to Mexico. The representative of Ecuador echoed Mexico's concerns with respect to the setting of a potential end-date for the negotiations, which would need to be set in light of progress in other negotiating groups, as well as with regard to the creation of a potential plurilateral track with regard to the complementary list.

18. The representative of Korea argued that there were two approaches currently on the table for the identification of environmental goods: a definition-based approach, and a list-based approach. Defining environmental goods would be difficult since the concept was still evolving. Similarly, the list-based approach could not work in isolation. Korea supported the use of the APEC list as a starting-point for negotiations, since it had been developed for the purpose of trade liberalization. Korea supported the US proposal. The core and complementary list approach could lead to the production of a workable list through the nomination of products by participants. In the negotiating process, views would eventually converge on the definition and coverage of environmental goods, as had taken place in the OECD. Korea stressed that the negotiations should include all WTO Members.

19. The representative of Canada believed that a single, comprehensive, agreed list of environmental goods for tariff reduction or elimination would be the ideal result, both to advance collective trading interests and to further environmental goals. However, the proposal to develop two lists of environmental goods, a core list and a complementary list, could offer a useful alternative to tackling this important sector. Canada supported a practical, "bottom up" approach to identifying environmental goods. The US proposal was consistent with Canada's general approach in NAMA negotiations, of providing additional flexibility in sectors where agreement was proving difficult. One of the challenges related to the structure of the Harmonized System of tariff classification, where classifications did not, in some instances, differentiate between environmental goods and other dual or multiple-use goods. Thus, the US approach struck a practical means of furthering the CTESS' overall objectives, while recognizing the challenge of product identification.

20. The US had tried to encompass a broad range of goods, and had suggested using the category of "environmental remediation and pollution prevention." Here, Canada believed it could be helpful to use more specific categories or sub-categories, such as those proposed by APEC, and joined Korea in underlining the value of the APEC list as a starting-point for work in this area. Specific categories or sub-categories proposed in APEC included air pollution control, water pollution control, solid/hazardous waste management, remediation/clean-up of soil and water, noise/vibration abatement, environmental monitoring, analysis and assessment equipment, potable water treatment, recycling systems, renewable energy plants, heat/energy management, and soil conservation. These categories reflected more fully the range of products in the environmental sector. In addition, consideration could be given to other products that Members proposed.

21. The US paper's inclusion of "clean technologies" as another category of environmental goods had reflected a willingness to engage in complex issues. However, the tasks of clearly identifying technologies that were sufficiently "clean," and of identifying the goods embodying those technologies, were daunting ones, and Canada was interested in hearing from the US how it would address these issues. In addition to the two general categories proposed by the US for the core list,

Canada believed that further flexibility could be explored when selecting goods for the complementary list. It encouraged interested parties to put forward proposals on the specific goods they considered environmental, and which were identifiable through the HS. The CTESS needed to establish a process through which this work could be undertaken, and to eventually turn to NTBs.

22. The representative of New Zealand saw the US approach as a useful starting-point for the discussion of definitional issues. However, he indicated that New Zealand wished to give further thought to the categories proposed by the US for the core list, and did not want to foreclose any options at this stage.

23. The representative of Australia welcomed the increased focus on Paragraph 31(iii), arguing that Paragraphs 31(iii) and (ii) offered the most realistic prospects for the CTESS' contribution to the overall negotiations. Paragraph 31(iii) negotiations could deliver increased trade with sound environment benefits if handled in a sensible manner. Australia saw the US paper as useful in moving the CTESS' work forward, and was conscious of the difficulties involved in this area since it had participated actively in APEC and OECD discussions. Together with the representatives of Switzerland, Thailand and Argentina, Australia enquired about the relationship between the core list and complementary list and their respective contents. The representative of Australia saw the categories of "environmental remediation or pollution prevention" and of "clean technologies" as a useful basis on which to operate, while taking APEC's work into account. Since there had been positive engagement in both the recent NAMA and Services Council Special Session (SCSS) meetings, Australia argued that the CTESS could contribute to this positive mood by putting a work programme in place.

24. The representative of Norway welcomed the US proposal, and agreed with Switzerland that there were many challenges involved in the identification of environmental goods. With respect to the categories mentioned in the US paper, there was a need for sub-categories. Norway viewed the APEC and OECD lists as complementary, but welcomed the receipt of contributions from developing countries. It believed that focus should initially be placed on the development of a core list, and that time would tell whether there was a need for a complementary list. It hoped that all environmental goods could receive the same treatment.

25. The representative of Singapore echoed the view that the Paragraph 31 (iii) mandate could be important for the environment and sustainable development. The US contribution was a good starting-point for the negotiations, since it was ambitious but flexible. It included three elements of flexibility: (1) the development of two separate lists; (2) flexibility on the complementary list; and (3) the application of the concept of less than full reciprocity. The work of the CTESS and of NAMA should be viewed as complementary processes. One group could not hold up progress in another.

26. The representative of India argued that there was a need for harmony between the WTO's overall approach to industrial goods, and its approach to sectoral initiatives, such as in environmental goods. It nevertheless welcomed the discussion triggered by the US paper, which it was still considering. Several delegations, such as Canada and Switzerland, had flagged systemic issues which needed to be grappled with in these negotiations, which the CTESS could benefit from discussing further.

27. The representative of Brazil felt that discussions so far had not addressed products of export interest to Brazil, since they had focussed on high value-added products that unfortunately developing countries did not have a technological or competitive advantage in. Brazil agreed with other speakers that the lack of clarity in NAMA negotiations made the work of the CTESS difficult on this subject. It was concerned that the US had only included high value-added products on its core list.

28. The representative of Malaysia underlined that it would be crucial for the list of environmental goods to reflect a balance of interests of both developed and developing Members. A list based on end use criteria could be a possible way forward, but would depend on progress in NAMA.

29. The representative of Kenya pointed out that most developing countries were net importers of environmental goods. For these negotiations to assist developing countries in achieving their developmental goals, they would need to strengthen their industrial capacity, promote technology transfer, enhance their competitiveness, enable them to retain control over their natural resources, etc. How would the US core and complementary lists achieve these objectives, particularly since Kenya believed that paragraph 16 of the Doha Ministerial Declaration applied to these negotiations, and that emphasis had to be placed on the export interests of developing countries? It also enquired about the forum in which agricultural environmental goods would be treated.

30. The representative of Ecuador found the categories of environmental goods specified in the US paper to be too restrictive, and believed that any categorization reached would need to reflect the interests of developing countries, in particular in relation to natural resources, such as in the areas of agriculture and forestry management. Ecuador wondered how the US paper would address the problem of dual use, and of LCA.

31. The representative of Indonesia was concerned that the US had only proposed high technology products for inclusion on the core list. Indonesia did not favour the use of the APEC and OECD lists as a basis for the core list. The representative of Venezuela agreed that the US categorization of goods seemed to focus on environmental goods of interest to industrialized countries. It did not address capacity building, technology transfer, and S&D treatment for developing countries. If participants did not address these issues, then the mandate would not deliver sustainable development, but merely market access for developed countries.

32. The representative of Cuba had no preference for the time being for the APEC or OECD lists. With respect to the US' complementary list, Cuba questioned why the commitments undertaken under that list would only apply to a certain percentage of products, and not to all products as on the core list.

33. The representative of China believed that criteria would need to be developed for environmental goods, so as to address the problem of multiple end-use. Otherwise, consensus on the identification of environmental goods would be difficult to reach. It would be inappropriate to use clean technology as a basis for the identification of environmental goods. Like PPMs, this was a subjective concept, and would be unhelpful in distinguishing environmental from non-environmental goods. Furthermore, clean technology was an evolving concept that changed with technological progress, and which was defined differently in different countries based on levels of economic development and environmental tolerance. China wondered how the US proposal addressed the concerns of developing countries. It indicated that it was currently considering the possibility of developing a "common list" and a "development list" from the perspective of developing countries.

34. The representatives of Thailand, Indonesia, Venezuela and Canada looked forward to China's common and development lists. The representative of Venezuela added that his country would be keen to participate in a developing country list which included agricultural and forestry products of interest to the developing world. The representative of Canada believed that there was a need for the CTESS to consider proposals from developing countries. The limitations of the APEC and OECD lists had been referred to by a number of participants, and while Canada favoured the APEC list, it was open to considering any other lists which participants might put forward in these negotiations.

35. The representative of the United States responded by saying that two completely different sets of positions had been taken at this meeting. One position argued that there was a need for a core list, and that participants had to try to be as inclusive as possible in the mandatory approach; while

another position had been to praise the concept of reciprocity that existed in the complementary list, and particularly the notion of self-selection. What the US had tried to do was provide a way for the membership to be both flexible and ambitious. It would be responding in greater detail to the questions raised at the next meeting of the CTESS.

36. The representative of UNCTAD indicated that UNCTAD wanted to take the opportunity to offer for circulation in the CTESS its *Report of the Expert Meeting on Definitions and Dimensions of Environmental Goods and Services in Trade and Development*, on a meeting that had been organized by UNCTAD in July last year. At the expert meeting, discussions focused on the following issues: (1) trends in the environmental industry in terms of market structure, supply and demand factors and trade flows; (2) environmental goods, more specifically on issues of definitions and criteria, statistical analyses of the OECD and APEC lists, and environmental goods of export interest to developing countries; (3) the various categories of environmental services, such as infrastructure services, professional environmental services, and services with an environmental component, which required different approaches in the negotiations as well as on the domestic front; (4) technology-related issues, particularly with regard to entire plants and technology systems; and (5) a range of systemic issues which required further analysis, such as subsidies, government procurement, emergency safeguards, regional negotiations, and linkages between NAMA and the SCSS. Ways to ensure that liberalization efforts at the WTO were commercially, financially and technically viable in providing clear developmental benefits were explored, and so was national level policy coordination.[1]

37. To conclude this item, the Chairman proposed that, to pursue its "monitoring role," the CTESS could invite the Chairmen of NAMA and the SCSS to brief the Committee on their work on environmental goods and services. It was so agreed. The Chairman also proposed that, at its next meeting, the CTESS focus on two aspects of its Paragraph 31 (iii) mandate: (1) the clarification or identification of environmental goods, where participants would be encouraged to clarify/identify products which they considered to be environmental and which fell within the mandate; and (2) information and experience sharing on the NTBs facing environmental goods, if participants would find that useful. He would be consulting informally on these proposals.

II. PARAGRAPH 31 (II) – INFORMATION EXCHANGE AND CRITERIA FOR THE GRANTING OF OBSERVER STATUS

38. The European Communities presented part of its new submission, document TN/TE/W/39, *The Relationship between WTO Rules and MEAs in the Context of the Global Governance System*, under this item. It explained that the ideas that had been listed in Ambassador Yolande Biké's last report to the TNC (TN/TE/7) on greater cooperation and information exchange had been addressed in the EC's previous submission on Paragraph 31(ii) (TN/TE/W/15). That submission continued to reflect the EC's approach to this part of the mandate. It was clear that the mandate of Paragraphs 31(i) and (ii) was closely linked, and the EC's new submission on global governance reflected this interlinkage in Part IV, which called for close cooperation and information flow at the national and international levels to ensure the mutual supportiveness of trade and environmental policies. The objective of Part IV was to develop a shared vision of how interaction at the national and international levels could take place between the trade and the environmental communities, including at Secretariat level. This had to be viewed as a part of an approach to improved global governance. Increased cooperation was necessary for effective synergies to be developed between the work of various institutions, such as, for instance, in the way in which the international community dealt with the "environmental goods issue" in UNCTAD, UNEP and the WTO. But, of course, it was also important to remember that better coordination would need to start "at home." The new EC submission attempted to provide a snapshot of what had already been undertaken in various fora on the global governance dimension of the CTESS' Paragraph 31 work.

[1] The oral statement by UNCTAD was subsequently circulated to the CTESS as document TN/TE/INF/5.

39. The representative of the United States agreed that communication and collaboration at the multilateral level on trade and environment issues could offer significant benefits. The US expected that rapid progress under 31 (ii) could help inform Members' participation in discussions under paragraph 31 (i). The US had already offered some preliminary ideas in three broad areas: (1) Information Sessions, (2) documents exchange, and (3) observer status. Taken collectively, the US hoped these elements could comprise an integrated approach for increasing contact at multiple levels in the WTO-MEA relationship.

40. The representative of Canada recalled that, in the past, Canada had tabled its own ideas on the application of principles on governance matters. At present, participants had to focus on how to translate the elements contained in Part IV of the EC paper into specific ideas on information exchange, or criteria for observer status. Under the banner of "mutual supportiveness," the need for coordination and information exchange was important. The task of the CTESS was to develop efficient and accessible ways to do so, while focusing of the list of ideas in Ambassador Biké's report. There were elements of the EC paper which could also be fruitfully addressed in the regular CTE.

41. The representative of Australia agreed with the EC that its paper covered a "universe" of issues, but pointed out that the mandate under Paragraphs 31(i) and (ii) was quite specific. Australia wanted additional clarity on what the EC was seeking under Paragraph 31 (ii), since it was a key demandeur. The EC's new submission had been disappointing in that it did not present new ideas, and raised the issue of global governance which went beyond the mandate. Australia was interested in how the paper purported to span both Paragraphs 31 (ii) and 31 (i), since it believed that it was important not to blur the distinction between the two mandates. Nevertheless, Australia argued that Paragraph 31 (ii) could make an important contribution to Paragraph 31 (i). Together with the representative of Chinese Taipei, Australia called for the practical suggestions in Ambassador Biké's report to be further discussed.

42. The representative of Brazil believed that Paragraph 31 (ii) could deliver a useful outcome on the WTO-MEA relationship – a relationship which was already solid. Ambassador Biké had summarized many of the proposals that had been previously presented, but for a positive outcome to be achieved it would be necessary to enhance the capacity of developing country negotiators who worked on trade and environment issues, through for instance joint WTO/UNEP/MEA technical assistance and capacity building projects. The representative of Colombia also welcomed the ideas in Ambassador Biké's report, in particular with respect to joint technical assistance.

43. The representative of Argentina indicated that the ideas proposed in paragraph 25 of the EC paper had been the ones which the CTESS had been exploring since the beginning of the negotiations. However, the EC had added in that paragraph that information exchange in the context of dispute settlement would be needed. Argentina saw the Paragraph 31 (ii) mandate as being institutional in nature. It did not relate to dispute settlement, particular since the Dispute Settlement Understanding (DSU) already contained provisions for the consultation of experts. With respect to the CTE's Singapore Report which was referred to in the EC paper, Argentina wished to point out that ministers had agreed to that report under a broader mandate. Therefore, the report was not relevant to the specific mandate with which the CTESS was dealing, and in that sense, it agreed with Canada that the right forum for the EC's paper was the regular CTE. The representative of Mexico supported Argentina's comments on paragraph 25 of the EC paper.

44. The representative of Japan agreed with Part IV of the EC paper, and with the need for closer co-operation and information exchange. With respect to the suggestions in Ambassador Biké's report, the usefulness of Information Sessions had been confirmed, and specific discussions were now needed on their frequency and form. Dividing MEAs into groups, and organizing the Sessions around specific themes would be useful. Furthermore, MEAs which had attended these Sessions in the past

had to be given priority for observer status. The Secretariat could also prepare discussion papers in advance of Information Sessions.

45. The representative of Switzerland welcomed the pursuit of both components of the Paragraph 31 (ii) mandate, information exchange and the granting of observer status. Switzerland believed that this mandate could help prevent conflicts between the WTO and MEAs from arising. It argued that the mechanisms for information exchange that had been developed by the WTO, UNEP and MEAs in the past few years had been useful and had to be pursued on a permanent and structured basis, while maintaining flexibility. In its last submission, Switzerland had presented certain ideas on how to organize Information Sessions more efficiently, and to promote information exchange, through means such as the Internet.

46. Switzerland believed that the granting of observer status could contribute to a better mutual understanding of the WTO and MEA systems. It had previously proposed a set of flexible criteria based on Annex 3 of the *Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council*. These included: one, that decisions be made on the basis of a written request and on a case-by-case-basis; two, that an MEA Secretariat requesting observer status have a "direct interest" in the Doha negotiations on environment; and, three, that reciprocal treatment be granted.

47. On "direct interest," Switzerland believed that the applying MEA should: (1) demonstrate its capacity and willingness to contribute substantially to CTE and/or CTESS discussions; (2) demonstrate its active contribution to the general debate in areas of relevance to trade and environment; (3) demonstrate its involvement in trade-related projects, for example, in private or public partnership initiatives. For instance, the Basel Convention had formed a partnership with eleven of the most important mobile phone manufacturers, such as Nokia, Eriksson and others, on environmentally sound product management, which addressed the design, production as well as the disposal of mobile phones. The applicant would otherwise have to be involved in trade-related co-operation projects; and, (4) should provide any other information that demonstrated direct interest. An MEA applying for observer status would not have to fulfil all of these requirements, since they were only guidelines. The representative of Colombia supported the suggestions made by Switzerland. However, together with the representative of Mexico, Colombia argued that it was best to only invite MEAs on an ad hoc basis to the CTESS, until criteria were elaborated.

48. The representative of Venezuela commented on the concept of sustainable development, which had been extensively referred to in the EC paper. In paragraph 3 of the paper, a reference was made to Principles 4 and 7 of the Rio Earth Summit, but these could not be considered in isolation from the broader context in which they were agreed. Principle 7 was again referred to in paragraph 13 of the paper in relation to technical assistance and capacity building, and in paragraph 20 a reference was made to the World Summit on Sustainable Development (WSSD). Venezuela wondered whether the EC wanted to discuss these issues under the Paragraph 31 mandate? It saw Paragraph 51 of the Doha Declaration as being the more relevant Paragraph.

49. The representative of Norway agreed with other delegations that it would be useful to institutionalize and better organize MEA Information Sessions in the WTO. Norway saw merit in several of the ideas listed by Ambassador Biké, in particular with respect to focusing Information Sessions on certain themes. It agreed with the EC that national policy coordination was of paramount importance. The need for institutional co-operation had been emphasized by the CTE in its Singapore Report and at WSSD, and this had to be kept in mind in Paragraph 31(ii) discussions.

50. The representative of Cuba expressed concern about the institutionalization of various forms of co-operation, since at the moment, the CTE and CTESS enjoyed a certain amount of flexibility, which had to be maintained.

51. The representative of New Zealand indicated that his delegation wished to pursue the practical and pragmatic elements of the EC paper which tended to relate to Paragraph 31 (ii), although not exclusively. It agreed with the EC that Paragraphs 31 (i) and 31 (ii) were linked. It supported many of the elements addressed in the EC paper, including that MEAs were important in the development of a common approach to global environmental problems, requiring multilateral and not unilateral solutions. It also agreed with the observation that the competence for developing measures to achieve environmental objectives rested with MEAs, just as the WTO had competence for pursuing trade objectives. Equally, it believed that fair and open trade had a crucial role to play in promoting sustainable development.

52. One of the key points that emerged from this was the observation that environment and trade objectives were not mutually exclusive. New Zealand suggested, therefore, that the problem was not necessarily in the rules themselves, but rather, the focus had to be on finding ways to ensure that mutually supportive outcomes flowed from these objectives. In this vein, it welcomed the opportunity presented by the EC paper to examine the pragmatic and practical steps that could be taken to achieve this.

53. In particular, New Zealand supported a closer examination of the following elements identified in the EC paper: (1) enhanced information exchange between MEA Secretariats and the WTO; (2) the granting of observer status for MEA Secretariats in the WTO; (3) enhanced coordination at the national level between trade and environment officials; (4) greater recognition of the need to take into consideration WTO obligations when crafting trade measures in MEAs; and (5) a recognition that when problems arose over trade measures in MEAs, the parties to the MEA in question should seek to resolve their differences in that context, rather than in the WTO. In addition, within the WTO framework, there were ways other than formal dispute settlement, which could assist in the resolution of such problems.

54. The representative of the European Communities was pleased that there was support for greater co-operation and information exchange, and believed that the Committee could benefit from further discussing the concrete ideas contained in Ambassador Biké's report. Many delegations seemed to have welcomed the idea of institutionalizing MEA Information Sessions, and of organizing joint technical assistance activities. The EC reassured Australia that it was seeking a concrete outcome on this part of the mandate, but that that outcome had to be underpinned by a common vision. Furthermore, whereas Argentina had indicated that dispute settlement was outside the scope of the mandate, the EC pointed out that New Zealand had referred to conflict resolution in its intervention. Thus, there was room for a useful debate on this issue. While the EC understood that the Singapore Report had been agreed in a different context, it did not believe that the subject matter under discussion had progressed very much since then, and felt that the Report could usefully be reaffirmed.

III. PARAGRAPH 31 (I) - WTO RULES AND SPECIFIC TRADE OBLIGATIONS IN MEAS

55. The European Communities reverted to its new submission, document TN/TE/W/39. It explained that the WTO's mandate under Paragraph 31(i) had to be viewed in a broader context - a "global governance" context, for the relationship between specific trade obligations (STOs) in MEAs and WTO rules would, in the end, be determined by the Members' vision for the interrelationship between different bodies of law. The principles proposed by the EC drew on the work of the WSSD, the work of UNEP, and the CTE's Singapore Report.

56. The representative of the United States indicated that the US was ready to continue Paragraph 31 (i) negotiations on the basis of the consensus that had been reached in the CTESS on the need to establish a firm, factual and analytical foundation for any possible results. She recalled that in February 2003, the US had suggested a way forward on Paragraph 31 (i) that would focus on delegations' practical experiences. It had suggested that, first, other delegations provide their views on examples of STOs; second, that the CTESS focus on those that appeared to be consensus examples; and third, on that basis, that individual delegations be invited to share their experiences on the negotiation and implementation of these STOs in light of WTO rules. Many delegations had supported this approach. It was pleased that the EC did not see its current paper as a substitute for the practical work that the CTESS had been doing. It would be premature for the CTESS to address broad, overarching, concepts and principles. Abstract concepts would not advance the work of the Committee.

57. The representatives of Malaysia, India, Hong Kong, China, the Philippines, Thailand, Australia, Brazil, China, Ecuador, and Indonesia argued that the "global governance" approach and principles proposed by the EC fell outside the Paragraph 31 (i) mandate, and could prejudge the outcome of the negotiations. The representative of India also reminded participants that in her report to the July 2003 TNC, Ambassador Yolande Biké had stated that "there seemed to be a general sense in the CTESS that it is premature to discuss potential results, " and hoped that that observation would be heeded. It looked forward to more analytical work on the "real issues" underlying Paragraph 31 (i) negotiations.

58. The representatives of Malaysia, China, Australia, India, Brazil, Indonesia and Hong Kong, China wanted a continuation of the analytical work which had been started in the CTESS. The representative of Hong Kong, China felt that more general discussions would run the risk of widening the mandate to regional environmental agreements (REAs), to the rights of non-parties under MEAs, and to trade obligations which were not specific. The representative of Canada noted that, to date, focus had been placed on the specific provisions of a core group of MEAs - an analytical track along which Canada hoped to continue. Canada was attracted to the informal idea that had previously been suggested of considering STOs by type or cluster. The representatives of Brazil and Ecuador suggested that the EC separate its proposals under 31 (i) and 31(ii) for greater clarity in future, and the representative of Ecuador added that the governance principles raised in the EC paper would best be addressed under Paragraph 51 of the Ministerial Declaration.

59. The representative of Singapore agreed with many of the references made in the EC paper to the CTE's 1996 Singapore report, to the WSSD and to Appellate Body rulings. No-one could dispute the importance and necessity of MEAs, that multilateral environmental policy should be made within MEAs, and that MEAs and the WTO were equal bodies of law. However, Singapore wondered if the governance principles exceeded the parameters of the mandate.

60. The representative of Cuba added that if global governance were to be discussed in the CTESS, than the democratization of international economic institutions would also need to be taken up, and so would greater transparency *vis-à-vis* developing countries in decision-making. Cuba believed that the discussion of STOs in MEAs had not been concluded, and that further work was

required, especially since there were non-trade measures that affected trade (in particular developing country trade). Having said that, Cuba appreciated the first EC principle, which called for avoiding unilateral action.

61. In terms of more specific comments on the EC paper, the representatives of India and Egypt argued that the EC governance principle that referred to the necessity of MEAs, and which argued that the negotiation of MEAs was itself a guarantee against discrimination, had not taken into account the way in which MEAs were implemented. The manner in which agreements were negotiated and adopted was not correlated with the manner in which they were implemented.

62. The representative of India added that, in its reference to the *Gasolin*e case, the EC had stated that the Appellate Body had affirmed that WTO rules would not be interpreted in "clinical isolation" from other bodies of public international law, but the EC then added the words "including MEAs" - which the Appellate Body had not said. The representatives of India, the Philippines, and Egypt argued that the Appellate Body had only referred to public international law in the context of treaty interpretation, and were puzzled by the EC's reference to MEAs. More specifically, the representative of Egypt stated that the Appellate Body's statement in *Gasoline* had been made in the specific context of GATT Article XX(b), in reference to the *Vienna Convention on the Law of Treaties*.

63. The representative of Australia also questioned the EC's interpretation of the *Gasoline* dispute. Article 1(1), Appendix 1, and Article 3(ii) of the DSU, as negotiated, reflected a very conscious decision by WTO Members on the scope of the DSU, on the role of customary rules of interpretation, and on the role of public international law in WTO dispute settlement. The EC's interpretation of *Gasoline* disturbed the agreed balance. The representative of Brazil associated himself with the comments made by India, the Philippines and Australia on the *Gasoline* jurisprudence.

64. The representative of Australia also wondered about the reference in paragraph 31 of the EC paper to the development of "substantial linkages" to underpin mutual supportiveness. Australia believed that the relationship between the WTO and MEAs was well understood already, as had been spelled out in various ministerial declarations by MEAs and the WTO. It questioned the need for any "substantial linkages," particularly when, as was recognized in the EC paper in paragraph 34, there had been no conflicts between MEAs and WTO rules. This very encouraging statement from the EC was at the heart of why Australia believed that there was a need to tread carefully, and to not manufacture solutions to problems that discussions continued to show did not exist. The representative of Ecuador also enquired about the way in which the EC envisaged "substantial linkages" to be made between the WTO and MEAs.

65. The representative of the Philippines stated that the EC principles ran the risk of casting aside one treaty in favour of another, and establishing the primacy of MEAs. While MEAs were indeed responsible for developing measures necessary to achieve their environmental objectives, including trade measures, parties to MEAs that were WTO Members had a responsibility to act consistently with WTO rules, for instance, to comply with the WTO necessity test and with GATT Article XX. The Philippines recognized the importance and necessity of MEAs, but did not believe that trade-related measures were the only means of achieving environmental objectives.

66. The representative of Indonesia indicated that the references made in the EC paper to sustainable development were misleading, in the sense that whereas the term had three components (economic development, social development and environmental protection), the EC had failed to address its socio-economic dimension.

67. The representative of Korea indicated that the discussions on this mandate had demonstrated that a "one size fits all" solution would not work. Multiple approaches had been suggested to define the relationship between WTO rules and STOs in MEAs. It was important at this stage to make discussions more conclusive, and there was a need to summarize the positions presented by Members.

A summary could lead to a more result-oriented approach. Korea believed that the EC paper provided new momentum to the CTESS' discussions under this item. While Korea was flexible on the global governance approach proposed in the paper, it wondered whether: (1) the EC was interested in negotiating global governance principles for the WTO-MEA relationship; (2) the EC was planning to elaborate more specific operating guidelines under these principles; and whether (3) in the context of Paragraph 31 (ii), the EC intended to negotiate procedural guidelines for increased national co-ordination between trade and environment officials, and if the CTE was the appropriate forum for this. The representative of India also asked for a response to these questions.

68. The representative of Venezuela asked if the EC intended to negotiate global governance principles in the CTESS. There was no real consistency in the principles which the paper referred to, and no clear desire to negotiate. For instance, the Rio principle of "common but differentiated responsibility" had been mentioned, but was the EC willing to give that principle binding force in the WTO? The representatives of Australia and Cuba put the same question to the EC. The representative of Egypt welcomed the references made in the EC paper to the principle of "common but differentiated responsibility," and to technology transfer and financial assistance, but wondered how these issues would be addressed under Part V of the EC paper, which was on MEAs and the WTO being equal bodies of law.

69. The representative of Chinese Taipei agreed with the first two governance principles proposed by the EC. Chinese Taipei nevertheless felt that, while MEAs were more competent than the WTO on environmental matters, the mandate spoke of "STOs," on which the WTO was the more competent institution. With respect to the remaining three principles of the EC, it requested clarification on their rationale. The "deference" principle suggested by the EC could be applied indiscriminately, leaving great scope for interpretation. Therefore, it would not necessarily resolve conflicts. In paragraph 17 of its submission, the EC had suggested the adoption of the CTE's Singapore Report recommendation which stated that: "in case of disputes over trade measures applied pursuant to an MEA, parties to the MEA in question should consider settling their differences in that forum." Given that many MEAs did not have efficient and effective dispute settlement mechanisms, which compared to the WTO's, Chinese Taipei wondered whether this suggestion would deliver real benefits. In other words, would it really be followed by parties to MEAs?

70. Chinese Taipei was certain that most WTO Members, including the EC, appreciated the harmony that currently existed between MEAs and the WTO, in the sense that no MEA-related conflicts had arisen in the WTO to date. In fact, it was hard to imagine how a party bound by an MEA, that was also a WTO Member, could deny the trade obligations required by MEAs under the WTO system. Nevertheless, trade measures mandated by MEAs, such as the import prohibition on ozone-depleting substances under the Montreal Protocol, could violate some of the basic principles of the GATT, in particular Article XI on quantitative restrictions. There was no guarantee that the implementation of such a trade obligation would necessarily pass the tests of GATT Article XX. Therefore, it was important not to deprive WTO Members of their rights to challenge the undesirable implementation of trade obligations in MEAs, even though such disputes would be unlikely. Chinese Taipei also wished to remind Members that the mandate did not apply to non-parties to MEAs. It concluded by enquiring about the nature of the final instrument which would embody the EC's "governance principles."

71. The representative of Norway agreed that it was important to discuss definitions and the various concepts included in the Paragraph 31 (i) mandate, but to also address the relationship/interface between different international organizations and treaties. As that interface was growing, it was important to ensure that different sets of rules were mutually supportive. Norway had previously presented to the CTESS principles to guide the WTO-MEA relationship which were similar to the EC's. These principles had already become guidelines in the field of trade and environment, and could be reaffirmed through the negotiations. MEAs were a good tool to use in addressing environmental problems – they had obvious benefits, and it followed from the "deference"

principle that international organizations had to work in their primary area of competence. However, strong interlinkages necessitated cooperation at both the national and international levels in order to enhance mutual supportiveness between international trade and environmental policies. In this context, it was encouraging that WTO Panels and the Appellate Body were increasingly taking into consideration relevant MEAs; in other words, there was no "clinical isolation." As to how such positive developments could be built on, obvious means included increased contact between the WTO and MEA Secretariats, mutual access to each other's negotiations as observers, and the opportunity for trade and environment officials to participate in WTO and MEA negotiations of relevance to them. National coherence could also be enhanced.

72. The representative of Argentina agreed with the EC on the importance of protecting the environment and of honouring the commitments made by the international community. Argentina also agreed that MEAs were the right forum for environmental policy making. However, it questioned the statement made in paragraph 16 of the EC paper that MEAs should be responsible for deciding on the measures needed to achieve their environmental objectives, including on trade measures. It pointed out that other measures, such as technical assistance and capacity building, could be important for the environment. Furthermore, the concept of "deference" referred to in the EC paper seemed to be one-sided, with the WTO needing to show deference to the MEAs, but not the opposite. For instance, the EC was suggesting in paragraph 13 of its paper that since MEAs were negotiated and agreed to by consensus in a multilateral context, then that would, in itself, act as an effective guarantee against protectionism. Furthermore, in paragraph 17, whereas the EC was suggesting that environmental differences should be settled in MEAs, it was not suggesting that trade differences be settled in a trade organization. In paragraph 30, it also stated that environmental measures should only be subjected to the test of "arbitrary or unjustifiable discrimination," and not to the least trade restrictiveness test. All this appeared to be giving primacy to MEAs.

73. The representative of Canada explained that, like the EC, it viewed the EC paper as a complement, not a substitute, for the methodology that the CTESS had pursued to date. There was certainly room to consider the role of general principles in the examination of STOs as they arose. However, it would be useful if the CTESS could identify a more direct link between its technical examination of STOs and the consideration of the principles that informed them, within the Paragraph 31 (i) mandate. Canada agreed with the EC that environmental problems demanded a cooperative, multilateral solution. The EC paper stated that because MEAs were negotiated in a multilateral context and agreed to by consensus, this acted as an effective guarantee against protectionism. What was assumed, but left unsaid in that statement, was that the responsibility actually rested with governments when they negotiated MEAs to ensure the mutual supportiveness of trade and the environment.

74. Similarly, to give meaning to the important notion of common but differentiated responsibility, or what the WTO called S&D treatment, which were related concepts, Members needed to ensure coordination between their trade and environment ministries, as well as economic development and international cooperation ministries. That was the way to ensure that mutual supportiveness had tangible benefits. Coherence had to start at home, which linked back to Paragraph 31 (ii) on information exchange, and the observership questions in the CTE and CTESS for MEAs and other relevant groups. Canada agreed that when trade and environment conflicts emerged, due consideration had to be given to countries' wishes as expressed in MEAs. However, both MEAs and WTO agreements had to be interpreted in a mutually supportive way. It was a "two-way street", as others had stated.

75. The representative of Switzerland was of the view that the principles mentioned in paragraph 7 of the EC paper were important for a coherent functioning of the trade and environment systems. The first principle of multilateral approaches and solutions to global environmental goods was widely recognized. Switzerland also agreed with the second principle in the EC paper, but wished to remind participants of the importance of UNEP, which was a central pillar of the United Nations system. It

had an important coordinating role to play in this field, which had been reaffirmed by the Global Ministerial Environment Forum which took place from 29 to 31 March 2004 in Jeju, in the Republic of Korea.

76. With respect to the third and fourth principles, paragraphs 27 and 30 of the EC paper had rightly referred to the need for mutual supportiveness and deference and to the fact that there should be no hierarchy between the two sets of law. This was a view that Switzerland had always supported, and which needed to be operationalized through fundamental legal principles on the interpretation and application of treaty rules. Policy formulation and legal interpretation in MEAs and the WTO should not be undertaken in isolation. So far, no conflict between the WTO and MEA rules had arisen. While this was encouraging, this did not mean that it could not occur in future. Therefore, practical steps to ensure coherence and facilitate interaction were required. In June 2002, Switzerland had discussed three possibilities. One, that the dispute settlement mechanism settle the issue; two, that an amendment to GATT Article XX be made, or; three, that an interpretative decision be adopted.

77. While the first option was applicable immediately, why had Ministers agreed to the Doha mandate if nothing further was required? Some questioned whether there was a need to clarify the WTO-MEA relationship given that the Appellate Body had done so in the *Shrimp-Turtle* dispute. Switzerland did not believe that the *Shrimp-Turtle* dispute had addressed the WTO-MEA relationship; it had only clarified the conditions on the basis of which national environmental protection measures could be taken. Furthermore, dispute settlement decisions were specific to the disputes under consideration, and did not provide the required security and predictability. The drawback of the second option was that a modification of GATT Article XX, to include principles for the co-existence of the WTO and MEA systems, was that it was not realistically achievable. Therefore, Switzerland favoured the development of an interpretative decision which could be used in dispute settlement. This would neither add to nor diminish Members' obligations. In terms of the way forward, Switzerland was not convinced that an experience exchange would suffice.

78. The representative of the European Communities responded to many of the questions posed. On whether the EC intended to renegotiate the Rio principles, or principles which trade ministers had accepted on other occasions, it explained that that was not the intention. Rather, the objective was to agree on what had already been agreed in other fora, or on other occasions, including WTO jurisprudence, so as to create guiding principles. With respect to Korea's question on how the EC intended to ensure domestic policy coherence, the EC explained that it was not its intention to develop guidelines for national policy making. On the question of "governance principles" being outside the mandate, the EC reminded delegations that it had been an active participant in the analytical discussions that had taken place in the CTESS. However, it had stated from the very beginning that it wished to come back to concepts underlying this debate, and the previous Chair had recognized that the discussions would follow two tracks.

79. With respect to its interpretation of the *Gasoline* dispute, the EC explained that India had misread the EC paper. The EC was not claiming that the Appellate Body had said "including MEAs." The correct quote was included in the footnote to paragraph 29 of the EC paper, which read: "The General Agreement is not to be read in clinical isolation from public international law." While there was no reference to MEAs, the EC disagreed with the contention that public international law did not include environmental law. On the issue of MEA "implementation" and the fear that the EC would give a blank cheque to any measure taken under an MEA, the EC explained that it was neither aiming for a blank cheque nor for one-way deference. The EC was also showing deference to the WTO in the MEAs in which it participated. On Chinese Taipei's question on the final instrument in which principles would be embodied, the EC argued that more discussions were required prior to the identification of that instrument. It added that an analytical discussion could not be held in the absence of some indication of what needed to be achieved.

80. To brief the CTESS on recent developments in the Convention on Biological Diversity (CBD), the representative of the CBD informed the CTESS that the seventh meeting of the Conference of the Parties to the Convention (COP-7) had been held in Kuala Lumpur, Malaysia, in February 2004; and that following the entry into force of the Cartagena Protocol on Biosafety in September 2003, the first meeting of the Parties to the Protocol (COP-MOP 1) had taken place back-to-back with COP-7. A number of decisions adopted by COP-7 had made explicit reference to the WTO as a collaborating partner, or could otherwise be relevant to WTO work. With respect to the CTESS' work on paragraph 31 (i), a decision on access to genetic resources and benefit-sharing was taken. At WSSD, governments had called for action to "negotiate within the framework of the Convention on Biological Diversity, bearing in mind the Bonn Guidelines, an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources." Following up on the WSSD's request, the COP had decided to launch the negotiation of an international regime on access to genetic resources and benefit-sharing based on agreed terms of reference regarding the nature, scope, elements and modalities of such an international regime.

81. The COP mandated the existing ad hoc Open-ended Working Group on Access and Benefit Sharing (ABS) to negotiate the international regime, with the aim of adopting one or more instruments, legally binding and/or not binding, to effectively implement the provisions of Article 15 (on access to genetic resources) and Article 8(j) of the Convention (regarding the protection of traditional knowledge, innovations and practices of indigenous and local communities). The COP requested the Executive Secretary to make the necessary arrangements for the Working Group to convene twice before its next meeting and to report on its progress at the meeting that would be held in the first half of 2006.

82. The COP specifically invited the WTO - among other organizations - to cooperate with the Working Group on ABS in elaborating the international regime. One of the elements to be considered by the Working Group for inclusion in the international regime, which related directly to the work of the WTO and its TRIPs Council, was the issue of disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights. The TRIPs Agreement and other WTO agreements were also included in a list of existing instruments and processes whose relevant elements would be considered by the Working Group. For a complete overview of the decision, the CBD invited the CTESS to consult Decision VII/19, which would be made available on the web site of the Convention, <www.biodiv.org>.

83. With respect to the Cartagena Protocol on Biosafety, as of 16 April 2004, there were 91 Parties to the Protocol. The Protocol aimed to ensure an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms (LMOs). It addressed the requirements for the identification of LMOs in the documentation accompanying their transboundary shipment. In order to avoid an unnecessary burden on exporters, the first meeting of the Parties decided to integrate identification requirements for LMOs for food, feed and processing in commercial invoices or other relevant existing documentation systems. It also invited Parties and other governments to take measures to apply, as appropriate, the OECD's Unique Identifier for Transgenic Plants to cover the information requirements. At the same time, a group of technical experts was established to further elaborate the information requirements. This group would also address the threshold for adventitious presence of LMOs. As the CTESS knew, the advance informed agreement procedure (AIA) was a core component of the Protocol. It would enable Parties of import, prior to the first intentional transboundary movement of LMOs, to make informed decisions on whether or not to allow their import for intentional introduction into the environment. The meeting of the Parties adopted procedures and mechanisms to facilitate decision-making by Parties of import, in particular by those encountering difficulties in the decision-making process.

84. The meeting of the Parties also adopted a medium-term programme of work up to the fifth meeting of the Parties. According to this programme, the second meeting, to be held in June 2005, would consider the clarification of the issues involved in risk assessment and management, and would

consider the development of guidelines and a framework for a common approach to risk assessment and risk management. Furthermore, the second meeting would address cooperation and information exchange on any socio-economic impacts of LMOs, especially on indigenous and local communities. The meeting recognized the need for, and advantages of, providing general guidance to Parties to the Protocol on how to handle transboundary movements of LMOs with non-Parties, and of facilitating the participation of non-Parties in the Protocol process. Under the guidelines adopted by the meeting, each Party to the Protocol would, *inter alia*, notify or ensure prior notification of exports of LMOs to non-Parties, and would apply its domestic regulatory framework consistently with the Protocol, or the advanced informed agreement procedure of the Protocol, or a comparable procedure, as appropriate, in importing LMOs from a non-Party. Non-Parties were encouraged, *inter alia*, to adhere to the provisions of the Protocol on a voluntary basis, in particular to the provisions regarding the advance informed agreement procedure; risk assessment; risk management; and handling, transportation, packaging and identification of LMOs.

85. Finally, the meeting also set out rules and procedures for compliance. These procedures and mechanisms would be simple, facilitative, non-adversarial and cooperative in nature. Their operation would be guided by the principles of transparency, fairness, expeditiousness and predictability, and would pay particular attention to the special needs of developing countries. A compliance committee was established, composed of 15 members serving in their individual capacity. They were nominated by Parties and elected by the meeting of the Parties to the Protocol. A full term would cover a period of four years.

86. The representative of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) explained that CITES had organized a technical workshop on *Wildlife Trade Policies and Economic Incentives* that was held in Geneva between 1 and 3 December 2003, with the financial support of Switzerland, the United Kingdom, and the Economics and Trade Branch of UNEP. This was in accordance with the decision of the COP at its twelfth meeting. Governments, intergovernmental organizations, such as the WTO, NGOs and academia were all present at the meeting, and there were two working groups. The recommendations of these groups were contained in a document on the CITES website, at <www.cites.org> (document no. 11 of Standing Committee 50). This document would be transmitted to the thirteenth meeting of the Conference of the Parties to CITES, which would take place in Bangkok between 2 and 14 October 2004. The recommendations dealt with a methodology for undertaking wildlife trade policy reviews on a voluntary basis by interested countries, and a list of possible economic incentives they could consider as they conducted this type of review. The Standing Committee took note of the Report, and invited interested governments to participate in the review, and asked the Secretariat to transmit the documentation to the Conference.

IV. OTHER BUSINESS

87. The Chairman indicated that he would explore possible dates for the next meeting of the CTESS, which would take place prior to the June 2004 TNC.[2] The June TNC would be followed by a General Council meeting in July.

88. The CTESS agreed to renew the ad hoc invitations issued for this meeting to the next meeting of the Committee. The representatives of Japan and the European Communities expressed their wish to see the International Tropical Timber Organization (ITTO) reinvited to meetings of the CTESS, but the representative of Malaysia indicated that its mandate from capital on this matter had not changed, and that it was concerned about the definition of an "MEA." No consensus was reached on inviting the ITTO to the next meeting of the Committee.

[2] The next CTESS meeting was subsequently scheduled for 22 June 2004.