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Committee on Trade and Environment
Special Session

SUMMARY REPORT ON THE NINTH MEETING OF THE COMMITTEE ON TRADE AND ENVIRONMENT IN SPECIAL SESSION

22 JUNE 2004

Note by the Secretariat

1. The Committee on Trade and Environment Special Session (CTESS) held its ninth meeting on 22 June 2004 on the basis of the agenda set out in the convening airgram, WTO/AIR/2315.

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

2. Two new submissions were tabled under Paragraph 31(i): document TN/TE/W/40 by the United States (US); and document TN/TE/W/41 by Chinese Taipei, which was a response to the last submission by the European Communities (EC) under this item.[1]

Submission by the United States

3. The representative of the United States indicated that the US was ready to move forward on the substance of these negotiations in light of the consensus that had emerged on having the CTESS proceed on the basis of fact and experience. The US' new submission built on its previous paper under this paragraph, document TN/TE/W/20. It focussed on the US' practical experience in the negotiation and implementation of specific trade obligations (STOs) in three multilateral environmental agreements (MEAs): the Convention on International Trade in Endangered Species (CITES), the Stockholm Convention on Persistent Organic Pollutants (POPs), and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC). The submission underscored the importance of national coordination, transparency, and accountability in negotiation and implementation, and made a number of practical observations on export restrictions in particular. In doing so, it identified the wide variety of STOs that existed, and demonstrated that even a sub-set of STOs – namely, export restrictions - could vary in design in several important respects. For instance, they could differ in their purpose, in their role within the MEAs, in the procedures and criteria by which they evolved, and in their level of clarity.

4. The submission identified the practical features of export restrictions that contributed to the achievement of MEA objectives, and which furthered the mutually supportive relationship between MEAs and the WTO. Those design and implementation features included the careful design of export restrictions so as to target specific environmental problems; the existence of science-based procedures for the adjustment of these restrictions in light of advances in knowledge; the existence of procedures for changing the scope of the export restrictions over time, that were both inclusive and appropriately flexible; and the clarity and transparency of export restrictions. The US believed that

[1] The last EC submission under Paragraph 31(i) was circulated as document TN/TE/W/39.

the MEA-WTO relationship was working well. This was especially true where trade and environment experts had collaborated both nationally and internationally. It was not surprising, therefore, that no formal disputes had arisen with respect to the STOs addressed in the US submission.

5. A number of delegations shared the view of the US that the CTESS needed to proceed on the basis of a practical approach, in which national experiences would be shared. These included the representatives of India, Australia, Hong Kong, China, Korea, Argentina, Indonesia, and Brazil.

6. The representative of India welcomed the US observation that policy coordination at the national level in negotiating and implementing STOs was a contributing factor to the mutual supportiveness of the WTO and MEAs. India also welcomed the conclusion that the export restrictions examined in the US submission did not generate trade concerns.

7. The representative of Australia believed that the US submission highlighted how simple communication tools could be instrumental to the sensible negotiation and implementation of commitments. Such procedures could helpfully avoid potential conflicts between the WTO and MEAs. Australia had its own domestic coordination measures. While these measures differed from those used by the US, Australia was struck by certain similarities in the US and Australian domestic coordination processes. These included extensive interdepartmental coordination at the federal level at each stage of a negotiation, as well as efforts to keep all stakeholders fully abreast of developments. Australia believed that the transparency and accountability provided by such coordination was key to enabling WTO rules and MEAs to live in harmony. While Australia had yet to examine the export restrictions discussed in the US paper, it believed the references to the need for transparency, science-based decision-making, and the careful design of restrictions to target specific environment problems, to be sensible. The US had mentioned that its submission would help participants enter a new phase in the negotiations, and this merited serious consideration.

8. The representative of Hong Kong, China drew attention to the fact that Hong Kong, China had itself submitted its national experience in April 2003. He agreed with the US that, in general, the MEA-WTO relationship was working well, and that national coordination was important. The US observation that export restrictions did not generate trade concerns when they met certain conditions was useful.

9. The representative of Korea believed that the CTESS had made valuable progress in identifying STOs in various MEAs. While it had not arrived at an agreed list of STOs, the end-goal of the negotiations was not the list itself, in any case, but the clarification and establishment of the proper relationship between STOs and WTO rules. Thus, it was necessary for participants to examine their national experiences, and the US submission could act as a model for this exercise. The submission had found that the WTO-MEA relationship was working well. Of course, a more comprehensive examination of STOs in a broader range of MEAs would be necessary to reach a more definitive conclusion; hence the need for a further sharing of national experiences.

10. The representative of Canada believed that the US paper had brought a new element to the discussion - the sharing of national experiences. The US had focussed on export restrictions, which was a useful approach, and which could eventually be expanded to other types of STOs. It allowed participants to see the commonality and differences among three key MEAs containing export restrictions. The paper demonstrated the importance of coordinating negotiating positions and the subsequent implementation of MEAs, the inter-agency process that was required to ensure that a country had a coherent position and that conflict was avoided, as well as the importance of sound science. Canada wished to point out that in the Stockholm and Rotterdam Conventions, a consensus vote was required for the addition of substances, and that that type of voting meant that it was unlikely for a conflictual situation to arise. CITES also had a mechanism in place for the addition of products to its various annexes. As the Stockholm and Rotterdam Conventions, as well as the

Biosafety Protocol, had entered into force, Canada wondered if they could be invited to the CTESS to share their experience.

11. The representative of Switzerland welcomed the emphasis placed in the US paper on the importance of national coordination. This had improved over the years. Switzerland in particular was coordinated and had always included an environment official in its delegation to the CTESS. With respect to the comment made in the US paper that there have been no WTO-MEA conflicts to date, Switzerland hoped that this would remain the case. However, negotiators could not anticipate how measures would be implemented. Of course, it could be argued that if there were coordination at the implementation stage as well, than problems would not arise. However, Switzerland believed that problems could indeed occur, and that the CTESS needed to go beyond the sharing of national experiences. Both the Stockholm and Rotterdam Conventions had only just entered into force. Thus, it was too early to tell whether problems would arise in their regard. Of course, Switzerland hoped that none would, but it believed that it was important to prepare for such an eventuality. The Vienna Convention itself addressed possible conflicts, which showed that implementation problems could indeed arise. Therefore, the US paper, while interesting, covered only part of the discussion.

12. The representative of Japan welcomed the US paper, but indicated that his delegation required more time for its examination. Japan would reflect on how the paper could link to the Japanese position, and how it could lead to a concrete end product - perhaps non-binding guidelines or an interpretative note. Japan wondered why the US had focussed on export restrictions in particular.

13. The representative of the European Communities welcomed the sharing of the US' national experience, since such sharing could help delegations learn from each other. However, after having read the paper, the EC wondered "what next." How would the paper help participants decide the WTO-MEA relationship, and where should the line be drawn in that relationship? In paragraph 22 of the US paper, certain features of export restrictions had been laid out. For the EC, these were features which had to be decided in the MEAs, and which the WTO had to accept. But where would the line be drawn between export interests and species conservation under CITES, for instance? A mere sharing of a national experience would not answer that. Therefore, it would be important to consider the guiding principles behind the national experiences, which should be the next step.

14. The representative of Venezuela indicated that his country was committed to undertaking the national coordination suggested in the US paper, since a new Venezuelan constitution had established certain environmental rights for the first time in Venezuelan history. Venezuela was now attempting such coordination, and had organized a national workshop in Venezuela from 5-7 May to prepare for CTESS negotiations. The workshop was attended by CITES, the Rotterdam and the Stockholm Conventions. Venezuela was a member of CITES, and had been actively involved in the negotiation of the Rotterdam and Stockholm Conventions, which it hoped to be able to ratify as soon as possible. Therefore, Venezuela viewed national coordination as being of vital importance, but wished to draw the attention of the US to the fact that there could be no comparison between a developed and a developing country in this regard. There would be a need for special and differential (S&D) treatment, for technical assistance and capacity building so as to strengthen coordination between the institutions of the developing world.

15. The representative of Argentina believed that national coordination would be vital to ensure a mutually supportive relationship between trade and the environment, and to avoid potential conflicts between MEAs and WTO rules. The EC had raised a pertinent question, asking what the underlying principle would be for the WTO-MEA relationship. Argentina believed that that principle had to be that of coordination at the national and international levels in order to avoid conflicts. That was why the US paper had been very interesting. Furthermore, Argentina underlined that the sharing of national experiences by Members could not be replaced by the sharing of experiences by MEA Secretariats.

16. The representative of New Zealand agreed with the emphasis placed in the US paper on the importance of national coordination. This was a key precondition to ensuring policy coherence in this area, and it was such procedural and process features that New Zealand hoped the CTESS could focus on. As Venezuela had pointed out, there would be a real capacity building dimension to this work. New Zealand agreed that the WTO-MEA relationship appeared to be working well. However, the CTESS was not yet at the point where it could conclude that both regimes lived in perfect harmony. The US had itself noted that its paper was limited to particular STOs in three MEAs. Therefore, there was a need to continue discussing national experiences, both the positive and the problematic. This could answer the EC's question of "what next." If delegations could identify problems, then that would help to determine the next steps. The representative of Indonesia agreed that the national coordination was vital to avoiding MEA-WTO conflicts, and that the identification of concrete problems would be valuable to CTESS discussions.

17. The representative of Chinese Taipei commented on the US view that it was not surprising that WTO-MEA conflicts had not arisen. While Chinese Taipei hoped that this would continue to be the case, this did not indicate that no conflicts could arise in future. One of the purposes of these negotiations was to identify potential conflicts and to provide mechanisms for avoiding them. It shared Korea's view that a more comprehensive examination of STOs in MEAs would be required to draw conclusions, and agreed with Switzerland that domestic implementation would need to be looked at more closely.

18. The representative of Nigeria thanked the US for its submission, welcoming the idea of greater national coordination.

19. The representative of CITES felt that much of the description of national and international coordination in the US paper was recognizable. Many countries had similar procedures and mechanisms in place to prepare for CITES meetings. In terms of implementation, all the 166 parties to CITES had management and scientific authorities, and coordination at the national level had always been quite important. It was noteworthy, however, that in the last five to six years, CITES had not been involved in commercially important species. However, with CITES slowly moving into commercial fish and timber species, the size of the various delegations attending CITES meetings had tended to double. Delegations had been seeking reinforcement from their fisheries and trade representatives, and not just their scientists.

20. Commenting on paragraph 22 of the US paper, CITES indicated that the Convention had developed numerous measures which were not found in the Convention itself, but rather in the resolutions and decisions of the Conference of Parties (COP) and its Standing Committee. When scientific committees found that a species was unsustainably exploited, and that a country had not taken the measures which the international scientific community had found necessary, the Standing Committee could recommend that importing countries suspend trade with the exporting country until compliance was achieved. Similar mechanisms existed for countries that had insufficient legislation; for countries that failed to submit annual reports on their trade after three years; and, in general, for the non-implementation of CITES by a party. There were also measures in CITES that provided positive incentives, rather than sanctions, for compliance. In terms of the criteria for the listing of species, these had been around for some time. However, species had never been listed for commercial reasons; rather, refusals to list species had sometimes been commercially motivated.

21. On paragraph 24 of the US paper, CITES underlined that it was also possible for non-parties, as well as observers, to participate in CITES meetings. In fact, there were more non-governmental representatives in CITES than there were governmental. CITES tried to ensure balanced representation at its meetings by funding developing country participants, so that all countries were represented by at least one administrative officer and a scientist.

22. CITES decisions were not taken by consensus, but by a two-thirds majority vote with the possibility for objection, or of a reservation, at a later point. The transparency of CITES measures and existing implementation mechanisms were described in paragraph 27 of the US paper. The appendices to the Convention were readily available, and the CITES had an up to date web site with information on trade restrictions (www.cites.org). The CITES Secretariat was located in Geneva and was therefore able to organize briefing sessions for Geneva-based delegations. One such session would be organized in September, prior to the COP 13 in Bangkok. Delegations were invited to the Bangkok COP, which would take place from 2-14 October 2004.

23. The representative of United States indicated that while the US had suggested a new phase in its paper, its paper built on the work conducted in the CTESS over the past two years. It was based on the ideas that Australia had offered on a phased approach; on the approach that Hong Kong, China had pursued in its submission; and on the numerous submissions received on examples of STOs. These included submissions from India, Chinese Taipei, Malaysia, Korea, and a number of other delegations. The US felt that the EC paper, submitted at the last meeting, had distracted delegations from the practical and analytical approach. An experience-based approach would be far more fruitful in furthering the Paragraph 31 (i) mandate than a more abstract and generic discussion. New Zealand raised an important point, which was that an experience-based approach would help the CTESS gauge whether there were problems that needed to be addressed in these negotiations.

24. With respect to Japan's question, the US explained that export restrictions offered a useful point of comparison, both because there were considerable differences in their features, and because they appeared to be the most common form of STOs in MEAs. The US echoed the Argentinean view that Members' experiences could not be replaced by Secretariat experiences. Ultimately, this had to be an assessment made by a Member, so the US looked forward to submissions on the experiences of others.

Submission by Chinese Taipei

25. The representative of Chinese Taipei commented on the global governance principles proposed by the EC in document TN/TE/W/39. On the EC's suggestion that disputes between two parties to an MEA be settled in the MEA, even when WTO Members, Chinese Taipei believed that this could lead WTO Members to deviate from their obligations under Article 23 of the Dispute Settlement Understanding (DSU). The Article called upon WTO Members to abide by the rules and procedures of the DSU. Chinese Taipei believed that Members had the right to resort to the WTO dispute settlement mechanism when trade measures were involved.

26. With respect to the EC's interpretation of the *Gasoline* case, Chinese Taipei wished to point out that the paragraph from which the EC had drawn related to whether Article 31 of the Vienna Convention could be considered to form part of public international law. Thus, the term "public international law" only referred to international law in the context of treaty interpretation. Chinese Taipei was concerned that the so-called "deference principle" could prejudice the rights of a non-party to an MEA. It would also be against the spirit of Article 3.2 of the DSU, which stated that the recommendations and rulings of the Dispute Settlement Body (DSB) could not add to, or diminish, the rights and obligations provided in the covered Agreements.

27. In paragraphs 12 to 14 of the EC submission, the EC had used the term "relationship between WTO and MEA rules," rather than the "relationship between existing WTO rules and the STOs set out in MEAs," as mandated by the Doha Declaration. While the EC submission was helpful in providing a broader perspective on the relationship between these two sets of rules, part of the EC's global governance principles either ran counter to existing WTO rules, such as the DSU, or prejudiced the rights of WTO Members that were not party to MEAs.

28. The representative of the European Communities was pleased that there were some common ideas in the paper submitted by Chinese Taipei. Paragraph 5 of the paper pointed to the value of the multilateral approach, which the EC believed in. The EC had tried to emphasize the need for coordination between the WTO and MEAs, which took the discussion beyond Paragraph 31(i) and into 31(ii). Its intention was not to overlook the role of the WTO in devising multilateral solutions. It was undoubted that multilateral solutions were not the exclusive terrain of MEAs. The WTO, within the boundary of its competence, also had a role to play, but the issue under discussion in the CTESS was how to create a balance in the event of a conflict.

29. With respect to multilateral environmental policy being made within MEAs, and the suggestion that this could deviate from Article 23 of the DSU, such deviation was certainly not what the EC had in mind. While DSU rights should not be curtailed, it would be useful for WTO Members to agree by consensus that MEAs should handle environmental disputes. Trade and environmental disputes could of course be linked, but the basic objective was to ensure that trade issues would be handled by trade experts, and environmental issues by environmental experts. In the 1996 report of the CTE, Members had already agreed to making a first attempt at addressing MEA conflicts in the MEAs themselves. This did not diminish WTO rights and obligations, but was simple, practical advice, that was agreed to at the time.

30. With respect to the EC's interpretation of the *Gasoline* case, the EC was not trying to reinterpret or renegotiate what the Panel and the Appellate Body had said. Rather, it was simply clarifying the background for some jurisprudence. The *Shrimp-Turtle* case had itself referred to MEAs. The EC was simply trying to emphasize that the WTO did not operate in clinical isolation. If any delegation were of the view that it did, then there would be a problem.

31. In terms of referring to "the relationship between existing WTO rules and the STOs in MEAs" as Chinese Taipei suggested, and the concern that the EC paper exceeded the mandate, the EC was simply trying to identify the principles which underlied the WTO-MEA relationship. The experience-based approach suggested by the US was useful, but lessons would ultimately have to be drawn from the experiences presented to the CTESS. The EC did not invent the global governance principles that it had proposed, and participants had to examine the sources from which the EC had quoted. However, the EC reassured delegations that it was not opposed to an analytical debate, and that the only reason it had not commented on the US paper was because it had not had sufficient time to consider it.

32. With respect to the comment made by some delegations at the last meeting that the EC could not draw on the Singapore Report, the EC held that various issues addressed in that report continued to be relevant today, even though the Report was negotiated against a broader mandate. For the EC, the Singapore Report constituted an international "*acquis*," from which the EC did not wish these negotiations to regress. On the issue of governance principles being premature at this stage, the EC believed that it was important to reflect on outcomes. It did not have a ready-made answer to this mandate, and believed that ideas could flow from Paragraph 31(ii) that could influence the overall debate. These could include practical steps for governance, such as better information flow. With respect to the fears raised at the last meeting about the potential renegotiation of the Rio Principles, the EC indicated that that was not its intention. Rather, the EC wanted a practical, real-world, application of those principles.

33. The representative of Venezuela agreed with Chinese Taipei that the concept of global governance could be subject to many different interpretations, and that there was no universal consensus on what it meant. It also agreed with paragraph 5 of the Chinese Taipean paper that multilateral solutions to environmental problems were important, but that it was equally important not to underestimate the role of the WTO. While some delegations believed that environmental policy should be set by the United Nations, and trade policy by the WTO, it was important for these trade

and environment negotiations to examine the concept of sustainable development in the context of the WTO. In response to the EC, Venezuela explained that it was not seeking to renegotiate the Rio Principles. Rather, Venezuela wanted to link the Rio Principles to the WTO, and to make them effective and consistent with its rules.

34. The representative of the United States agreed with Chinese Taipei that the EC paper expanded on the mandate of the Committee. In particular, the US registered its disagreement with the EC's characterization of the *Gasoline* case. The US pointed out that several delegations had expressed similar concerns at the last meeting of the CTESS and had included: India, Egypt, the Philippines, and Australia. The representatives of Brazil, India and the Philippines agreed that the EC had misinterpreted the *Gasoline* case. While the Appellate Body had indicated that the WTO could draw on the customary rules of interpretation of public international law (the Vienna Convention), it had not stated that WTO rules could be interpreted in light of MEAs.

35. The representative of Norway found that the EC submission had been timely and relevant, seeing it as a complement, rather than a substitute, for the analytical discussion. There was no way to determine whether the EC approach was premature, other than by trying it out. As the EC had pointed out, it was difficult to foresee the conclusion of these negotiations. At the last meeting, there seemed to be widespread agreement amongst Members that unilateral action should be avoided and that MEAs offered a viable, multilateral, alternative. Furthermore, there was support for a division of responsibilities between the WTO and MEA regimes, whereby each regime would be responsible for issues falling within its primary area of competence. Potential interlinkages between the WTO and MEA regimes demanded close co-operation at both the national and international levels in order to enhance mutual supportiveness, as the US pointed out.

36. At the last meeting, a number of delegations had raised concerns about the notion of deference. Chinese Taipei had argued that the principle could be applied indiscriminately, leaving great scope for interpretation. Norway believed that it was up to MEA parties to define the objectives of their agreements, and the tools to use, but that in that process consideration had to be given to WTO rules so that mutual supportiveness could be enhanced.

37. Chinese Taipei had previously referred to the commitments undertaken under the Montreal Protocol that affected non-parties. Norway believed that the expanding membership of various MEAs was itself solving this problem, and that membership was expanding as a result of supportive measures, as well as an increased awareness of the environmental objectives of various accords. Chinese Taipei had also wondered whether the effective dispute settlement mechanism of the WTO would entice parties to settle their disputes in the WTO. Norway noted that there had been no MEA disputes in the WTO to date, not even between a party and a non-party to an MEA. Countries that joined an MEA were unlikely to turn around and challenge these agreements in the WTO, and Norway expected that disputes between MEA parties would continue to be settled in future within the MEAs. However, nothing could, of course, prevent a Member from bringing an MEA dispute to the WTO.

38. At the last meeting, Canada had suggested that it be would useful to identify the link between the analytical approach and the governance principles. An issue that had been raised in these discussions was the lack of knowledge among WTO and MEA negotiators of the essential features of each other's agreements. Moreover, much had been said about the need for greater information flow. Therefore, a practical link could be to develop a manual by the WTO and MEA Secretariats that could assist trade and environment negotiators, as well as developing countries. In terms of the WTO and MEA regimes being equal bodies of international law, a practical outcome could be the granting of observer status on a reciprocal basis in both fora. Therefore, the points raised by the EC could usefully overlap with the analytical discussion that was taking place.

39. The representative of Egypt commented on the EC's description of the Singapore Report as an international "*acquis*." Egypt did not wish to either exaggerate or diminish the importance of this Report. While it did recognize that the Report had been agreed, some delegations had registered certain reservations on some of parts of it. Beyond being a report of the CTE, the Report had no other legal status in the WTO.

40. The representative of India shared Chinese Taipei's view that, in the event of a trade dispute between WTO Members that were MEA parties, the right of WTO Members to resort to the WTO dispute settlement mechanism had to remain intact, so as to preserve the rights and obligations of Members under the covered Agreements.

41. The representative of Switzerland commented on the issue of "clinical isolation," arguing that the *Shrimp-Turtle* case had shed even greater light on the Appellate Body's interpretation of this term. For instance, in interpreting GATT Article XX(g), the Appellate Body stated that these words had to be read by treaty interpreters in light of the contemporary concerns of the community of nations on the protection and conservation of the environment. It added that, while Article XX had not been modified in the Uruguay Round, the Preamble of the WTO Agreement showed that the signatories to that Agreement were, in 1994, fully aware of the importance and legitimacy of environmental protection. Furthermore, in interpreting the terms "exhaustible" and "natural resources," it found it pertinent that modern international conventions and declarations had assumed that natural resources embraced both living and non-living resources, and had mentioned the United Nations Convention on the Law of the Sea. In interpreting the term "exhaustible," the Appellate Body also referred to CITES, stating that the exhaustibility of sea turtles was very difficult to controvert since all of the seven recognized species of sea turtles involved in the dispute had been listed in Appendix 1 of that Agreement. Therefore, WTO rules were certainly not read in "clinical isolation."

42. Switzerland supported paragraph 14 of the Chinese Taipean paper, which stated that the fact there had been no conflict did not preclude conflicts from arising in future. The CTESS needed to develop a mechanism for avoiding such conflicts. In terms of possible outcomes, Switzerland was convinced that there was a need to pursue both an analytical and a conceptual approach. Thus, the US, EC and Chinese Taipean papers had all made useful contributions to the discussion. A sharing of national experiences would not, on its own, deliver results.

43. The representative of Australia believed that the Chinese Taipei's response to the EC demonstrated the need to return to a more practical, analytical approach, and had also shown the dangers of a conceptual discussion taking the CTESS outside its mandate. Australia continued to be concerned about the EC's selective use of the *Gasoline* jurisprudence. It welcomed paragraph 5 of Chinese Taipei's paper, on the need for multilateral solutions to environmental problems, and paragraph 8, which stated that trade measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or restriction on international trade.

44. The representative of Brazil agreed with Chinese Taipei that global governance principles fell outside the mandate. Brazil supported the statement that environmental problems were best addressed in a multilateral framework, and that coordination between trade and environment officials would be vital. Technical assistance would also be important for developing countries in that regard.

45. The representative of Ecuador welcomed paragraph 12 of Chinese Taipei's paper, which stated that trade measures for environmental purposes should not act as arbitrary or unjustified restriction on international trade, which was in conformity with the Rio Principles. Ecuador believed that to bring the abstract concept of "global governance" to the WTO, would complicate the negotiations.

46. The representative of Chile echoed Switzerland's view that both the analytical and conceptual approaches were mutually supportive. On the issue of clinical isolation, while the US and the EC held opposing views, the correct interpretation of the Appellate Body's remarks was somewhere in between. Switzerland's views on the *Shrimp-Turtle* case, with which Chile agreed, shed light on the correct interpretation. Nevertheless, Chile asked both Switzerland and Norway to clarify how a discussion of concepts that fell outside the mandate, such as those suggested by the EC, could aid the CTESS in complying with its mandate. With respect to Venezuela's comments on the Rio Principles, Chile enquired about how these principles, and the principles of international environmental law, could be made binding in the WTO.

47. The representative of Venezuela responded by quoting the summary report of the last CTESS meeting, in which it was stated that: "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 [TN/TE/W/39], 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?" In addition the summary report stated that "the representatives of Australia and Cuba put the same question to the EC." Therefore, there was no contradiction in the Venezuelan position. In document TN/TE/W/39, the EC had referred to numerous principles, and Venezuela simply wondered what the EC intended to do with them in the WTO. Would it give them binding force, was the question. Venezuela never suggested that the EC should "renegotiate them." Venezuela would not agree to that, but just wanted to have these principles reconfirmed. The representative of Cuba also put the same question to the EC.

48. The representative of New Zealand commented on the issue of "clinical isolation," wondering whether the supposedly conflicting views that had been expressed at this meeting could be reconciled. Applying the customary principles of treaty interpretation, and in particular Article 31 of the Vienna Convention, required that context be taken into account when interpreting treaty provisions, and this was what the Appellate Body had done in the *Shrimp-Turtle* case, when it was interpreting words such as "exhaustible natural resources". Equally, it was worth recalling what the Appellate Body had said in the *Hormones* case, which was that while the precautionary principle was certainly relevant, it could not be used to override the clear terms of a treaty. So, perhaps, this was one way to reconcile the two cases that had been mentioned – other bodies of law could provide context, but could not override the terms of a treaty. Another rule of customary international law was the presumption against conflict between international treaties, and a preference for the harmonious interpretation of international treaties. This rule could be relevant to these negotiations.

49. The representative of Korea recognized that requiring the WTO Panels and Appellate Body to use the substantive provisions of MEAs in interpreting WTO rules raised a range of legal problems, especially for WTO Members that were not parties to an MEA. At the same time, however, Korea had certain reservations with regard to the notion that Panels and the Appellate Body could not consider MEAs in interpreting WTO rules. Korea believed that, in certain instances, MEA could be regarded as part of public international law, and could be taken into account. A relevant factor would be the extent of the MEA's acceptance globally.

50. The representative of Switzerland responded to Chile's question by stating that not all of the concepts in the EC paper should pose a problem to Members, in particular the one on mutual supportiveness. Switzerland reminded delegations that the concept of "mutual supportiveness" was itself embodied in the Paragraph 31 mandate. With respect to the Rio Principles, Switzerland wondered if it had correctly understood Venezuela's intervention. Had Venezuela meant that these principles should be reconfirmed and made binding in the WTO? That could be an interesting proposition. The representative of Venezuela stated that he had simply enquired if the EC was willing to give the principle of common but differentiated responsibility binding force in WTO. The WTO had a similar concept in its rules, that of S&D treatment.

51. The representative of the European Communities asked Members to examine the *Shrimp-Turtle* dispute, prior to arguing that MEAs could not be taken into account in interpreting WTO rules. With respect to the coverage of governance principles by the mandate, the EC did not believe that it would be constructive to continue debating what fell within the mandate and what did not. The EC could itself argue that the mandate did not call for the sharing of national experiences, or of going down to country level, but the EC had never made this point. It was important to focus on the substantive issues at hand. The EC disagreed that global governance would be too complicated to discuss, as Ecuador suggested. On the question raised by Venezuela, the EC explained that it was not trying to make the Rio Principles applicable in the WTO, since that would make no sense, but that it had simply mentioned them since they were part of the backdrop against which these negotiations were taking place. It would be willing to discuss these Principles further.

52. The representative of Colombia presented her country's position on various aspects of the mandate. On "MEAs," Colombia believed that the term multilateral meant that a substantial number of countries had to have joined an agreement, as proof of the importance of its environmental objectives. Furthermore, the agreement would have to have been negotiated under the auspices of the United Nations or one of its specialized agencies and to have entered into force. The MEA would have to be open to all countries, including those which did not participate in its negotiation. As set out in the Vienna Convention, all annexes and amendments to an MEA would have to be treated as integral parts of an MEA. Thus, STOs within those annexes and amendments would need to be taken into account by the CTESS.

53. With respect to "STOs," Colombia agreed with the views that had been previously expressed by Argentina and India. STOs had to be compulsory and expressly mentioned in the text of an MEA. Colombia argued that Article 4.2.(d) of the Basel Convention, which required parties to take the necessary steps to ensure that the transboundary movement of hazardous waste was compatible with sound environmental management, had to be considered an STO. Discretionary measures, on the other hand, could not qualify as STOs. However, as Canada had previously stated, an STO could be contained in a combination of articles, which when read together, would lead to an STO. Furthermore, STOs should not be limited to those mentioned in the main text of an MEA, as this would unnecessarily limit the mandate, and only narrowly interpret the results of the World Summit on Sustainable Development (WSSD). With respect to STOs contained in COP decisions, these would require further discussion. The negotiations should look at the MEAs that had entered into force, such as CITES, the Montreal Protocol, the Basel Convention, and the Convention on Biological Diversity (CBD).

54. The Chairman thanked delegations for their interventions, encouraging them to continue to submit their national experiences in the negotiation and implementation of STOs in MEAs.

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

55. The representative of the European Communities indicated that the EC proposal under this item, document TN/TE/W/39, remained on the table. It showed how global governance could translate into concrete outcomes, such as greater information exchange.

56. The representative of Canada was pleased that the Chairman had reminded delegations at the last meeting of the ideas that had been captured by Ambassador Yolanda Bike in her report to the Trade Negotiations Committee (TN/TE/7). These ideas were excellent, and continued to provide a valuable basis for discussions. Canada believed that the participation of MEA Secretariats in WTO Committees was an efficient form of information flow. At this meeting, Canada wished to focus on electronic means of communication. The Internet provided a tremendous opportunity for the sharing of information, for reaching people around the world, and for networking. However, web sites did

have certain shortcomings. They required time and money, regular updating, and their proliferation made it difficult to sort through useful and relevant information. Canada encouraged delegations to make use of existing web sites for formal and informal information exchange. A recent example of a new web site was that of the International Centre for Trade and Sustainable Development (www.trade-environment.org), which issued the *Bridges* publication. Its strength lay in the range of web sites to which it was linked. Canada was pleased to have been able to provide financial support for this web site, and would welcome the WTO Secretariat informing Members of other useful sites.

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

57. Two room documents were circulated under Paragraph 31(iii): one by Chinese Taipei, entitled *Proposed Initial List of Environmental Goods;* and one by Canada, entitled *The Use of Detailed Categories in CTESS Discussions on the Liberalization of Environmental Goods*. Furthermore, China delivered an oral statement under this item, which was subsequently circulated as CTESS document TN/TE/W/42.

58. The Chairman began by reporting on the outcome of the informal consultations which he had convened on 2 June 2004 on the structure of work on environmental goods. At the meeting, delegations were consulted on two specific issues: (1) whether they would be prepared to begin submitting specific examples of products to be addressed in the environmental goods negotiations, and to have these examples proceed in tandem with the definitional discussions; and (2) whether they had any specific ideas on how non-tariff barriers (NTB) could be addressed. On the first of these issues, it was the Chairman's sense that most delegations seemed relatively comfortable in pursuing a two-track approach. One, would be to submit specific examples of products to be addressed in the negotiations; and, two, would be to continue examining criteria and definitions for the identification of environmental goods. The two approaches would complement each other. The Chairman explained that he had encouraged delegations to submit specific examples of products so that discussions could become more concrete. With respect to NTBs, it was the Chairman's sense that most delegations felt that it was premature to discuss these barriers, and that work in the Negotiating Group on Non-Agricultural Market Access (NAMA) first had to progress, in order to provide the general context within which the CTESS could operate.

59. The representative of Chinese Taipei explained that the lack of an internationally agreed definition of environmental goods was a problem for delegations aiming at a potential trade liberalization initiative in this area. However, this was not to say that negotiations could not proceed in the absence of a definition; they could. Chinese Taipei had decided to circulate its list of environmental goods in response to the Chairman's informal consultations. Its list consisted of 70 environmental goods in the category of pollution control equipment, which was an area that most Members agreed should be included in the negotiations. This was the area on which Chinese Taipei believed that the CTESS ought to concentrate its efforts in compiling the final list. The successful completion of a core list would be a realistic target at this interim stage of negotiations, and could provide momentum for future work on the complementary list.

60. The products for pollution prevention and control on the Chinese Taipean list fell into the following categories: air pollution control, wastewater management, solid/hazardous waste management, remediation/clean-up of soil and water, noise/vibration abatement, and monitoring/analysis and assessment. Chinese Taipei did not intend its list to serve as the sole basis for negotiations; it simply wanted the inclusion of the products that it was suggesting. The Chinese Taipean list was intended to be part of a broader list towards which other Members would contribute.

61. The representative of China believed that it was important to determine the scope of the term "environmental goods," and that efforts should be made to avoid controversial definitions based on

multiple end-use, clean technology or process and production methods (PPMs). China favoured the pursuit of “top-down” and “bottom-up” approaches in parallel. It called for the development of a "common" and a "development" list of environmental goods.

62. The "common list" would comprise the specific product lines on which there was consensus that they constituted environmental goods. These products had to reflect the interests of both developed and developing countries, although priority had to be given to products of export interest to developing countries in order to enhance their export capacity. For products on the common list, Members would commit themselves to reducing or eliminating tariffs and NTBs. The specific modality for trade liberalization, however, would have to be determined by NAMA. The "development list” would be a list for S&D treatment, which would emanate from the common list. In the development list, developing and least-developed country Members would select some of the products contained on the common list for fewer commitments. This would reflect the principle of less than full reciprocity, taking into account the vulnerability of certain environmental goods industries. China stressed the importance of combining tariff reduction with the transfer of technology to developing countries in this area.

63. The representative from Canada believed that setting out certain product categories could facilitate discussions on environmental goods. Ideally, an initial list of categories should be decided on an objective basis, so that discussions would not get bogged down in definitional issues. The categories which Canada proposed were the ones employed by the Asia Pacific Economic Cooperation forum (APEC) and were also derived from the broader definition of the environmental industry formulated by the Organization for Economic Cooperation and Development (OECD), that covered goods, services and technologies. These categories could prove useful in cataloguing the often technical items whose purpose or function was not evident from a six-digit level Harmonized System (HS) description. Canada realized that some Members may not view these categories as sufficient (i.e. as including all the products of export interest to them); as allowing for all goods that provided a sufficient environmental benefit; as providing enough room for environmentally friendly products; or as being too permissive in its inclusion of categories that may bring multiple end-use products into the picture. With respect to the latter, some Members may favour the inclusion of products based on the predominant end-use criterion, as Canada did, and as had been done in APEC.

64. Canada noted that the US, in document TN/TE/W/38, had suggested "clean technology" as a category. Canada interpreted this as a reference to goods embodying such technologies. It welcomed other Members' ideas on categories, and the identification of specific products by developing countries, as opposed to definitions. It felt that an invitation to the World Customs Organization (WCO) to speak on the HS in relation to environmental goods could also be useful.

65. The Chairman thanked Chinese Taipei, China and Canada for their contributions, and for initiating a more concrete discussion. He reiterated his request to delegations to begin submitting specific examples of products.

66. The representative of the United States agreed that negotiations on modalities, including S&D treatment, were best conducted in NAMA. However, the CTESS could add value on the definitional aspect of the negotiations. Several delegations had enquired about the products that would be included on the lists proposed by the US, and the US wished to clarify that it was flexible and was not wedded to any particular approach. It simply wanted to help discussions gain momentum.

67. The US submission, tabled both in NAMA and the CTESS, was intended to be a way forward on the complex modality question. The framework suggested in the US paper allowed for some flexibility in defining environmental goods through the use of a core and a complementary list. By suggesting two lists, the US had hoped to accommodate the variety of views that had been expressed under Paragraph 31 (iii). However, further discussions were needed in both NAMA and the CTESS,

before the modalities could be decided. Several delegations had noted that they wished to see additional sub-categories of goods, as well as new goods added. The US was open to suggestions and encouraged delegations to come forward with their ideas. However, it hoped that delegations would think practically when proposing environmental goods, or even criteria for nominating goods. There were certain criteria on which the HS did not differentiate; for example, on non-product PPM-based distinctions.

68. Some Members continued to be concerned that the environmental goods negotiations, and the US proposal in particular, would benefit developed countries only. The US proposal intentionally provided scope for a flexible definition of environmental goods. Accordingly, it was difficult to say at the outset that these sectoral negotiations represented the interests of any one group of countries, except for those countries which chose to participate. The US had referred to APEC and OECD work on environmental goods because these prior efforts could be useful in informing this undertaking. For example, as has been noted by several Members, APEC had found it impractical to identify environmental goods by anything other than an HS number, because of the difficulty in implementing the results. The reference to APEC's work was not meant to preclude new lists or approaches. In fact, the US welcomed reviewing the lists of other Members, and congratulated Chinese Taipei on its submission.

69. The US noted the contribution of the United Nations Conference on Trade and Development (UNCTAD) Expert Meeting on environmental goods and services that was held in July 2003. UNCTAD's statistics neatly summarized trade patterns on environmental goods, as defined by the OECD and APEC. UNCTAD had clearly pointed out that developing countries had export interests in this sector, as identified in the OECD and APEC lists. For example, several developing countries were net exporters of goods on both the APEC and OECD lists, such as ethanol which was exported by Argentina, Bolivia, Brazil and Guatemala. Another example was hydraulic turbines, from Nigeria and Swaziland. UNCTAD also pointed out that many environmental goods were basic intermediate goods, such as chemicals, filters, pumps, valves, and so on. Not all goods on the APEC and OECD lists were high-tech in nature, such as filters and valves. Most of the goods that were amongst developing countries' top environmental goods exports were also among their top environmental goods imports. In addition, UNCTAD reported that there may be potential for increased south-south trade in environmental goods. The US also welcomed the contribution of China, but feared that its suggestion could lower the level of ambition. It reminded Members that Ministers had singled out this sector precisely because the economic gain of liberalization was only part of the equation. Trade liberalization in environmental goods and services would have direct environmental benefits.

70. The representative of Korea commented, on a preliminary basis, on Chinese Taipei's paper. Korea and Chinese Taipei agreed on a number of issues. For instance, both believed that aiming for too broad a scope in these negotiations could result in delays and make agreement more difficult. The negotiations stood a better chance of success if Members aimed at a list that could be easily agreed and implemented. Korea preferred to focus on products whose end-use was clearly environmental, such as products for pollution control, remediation and prevention. These had been the types of products addressed by Chinese Taipei. It did not wish to include products based on PPMs, considering the absence of internationally recognized standards. It indicated that it would reflect seriously on Canada's suggestion, and on the need to look at product categories. The US suggestion could also be explored as a way forward. It welcomed inviting the WCO and the OECD to the next meeting.

71. The representative of the European Communities indicated that the EC remained committed to a successful outcome in these negotiations. A solid environmental rationale would be needed to justify the deeper cuts that were made in this area, in particular for domestic constituencies. The EC believed that MEAs, the WSSD, and the numerous international initiatives that had resulted from Johannesburg, such as the Renewable Energy Coalition and European Union Water Initiative, had

attracted attention. Increased investment in clean water and sanitation, in clean energy, technology transfer, and trade facilitation in environmental goods and services, had all gained in importance. It was on the latter issue, in particular, that the WTO could contribute.

72. The negotiations had to result in a balanced outcome, with Members gaining on the environmental and trade fronts. It would be important in that regard to identify products of export interest to developing countries. With the contributions of Chinese Taipei, China, and Korea's oral statement, the CTESS was certainly moving in the right direction. However, it would be important to assess the proposals that had emerged from a bottom-up process against the overall environmental objectives of the negotiations.

73. The modalities for trade liberalization in this sector would need to be addressed in NAMA, but it was important for the CTESS to ensure that this sector would be given due importance. Paragraph 31(iii) provided a clear mandate for deeper trade liberalization by all WTO Members in this area. It was too early for Members to decide on the US proposal at this stage, since it would be important for the NAMA modalities to evolve first. The CTESS' focus at this stage had to be on the identification of environmental goods. NTBs could be addressed once a list of environmental goods emerged.

74. In terms of identifying environmental goods, the EC believed that certain principles needed to be considered prior to discussing categories. The definition would need to take into account international and national environmental priorities. Pollution prevention, reduction of resource use, and waste minimization were all examples that could be drawn from Agenda 21 and the WSSD Plan of Action. Some MEAs, as well as the Millennium Development Goals, could also provide guidance in identifying environmental goods. The EC agreed with the US and Korea that the negotiations had to be kept as simple as possible, and in that sense, inviting the WCO to examine realistic possibilities was a good idea.

75. In terms of categories, the EC believed that pollution control and resource management were appropriate ones. These covered the categories which the Canadians and the others had advanced. A more difficult category to explore was that of goods with a low environmental impact. UNCTAD had recently produced a definition suggesting that environmental goods were goods "which caused significantly less 'environmental harm' than alternative products that served the same purpose". That was an interesting concept, and included goods made of renewable materials, and products whose use minimized environmental impact. Some of the items which the EC wanted to see under this category would be of particular interest to developing countries. As this was a difficult category to address, the EC simply wanted to encourage additional debate on it. Certain objective parameters could eventually be looked at in the selection of goods, and included product composition; the renewable character of components; environmental performance, such as energy consumption, efficiency, recycleability and bio-degradability. Certain goods could also be defined through standards or certification.

76. The representative of Turkey indicated that his country attached great importance to this component of the negotiations, and found that a clear definition of environmental goods would be an essential step towards the development of modalities in this area. In principle, Turkey was of the view that a single, comprehensive, and agreed list of environmental goods for tariff reduction or elimination, would maximize positive outcomes for the environment and for trade. Turkey had no objection to using the OECD, APEC, Japanese or Chinese Taipean lists as a basis for the WTO list. Although Turkey clearly favoured developing a single list, it also recognized that the US proposal offered a useful alternative. The year 2010 would be an appropriate deadline for the elimination of tariffs on the core list. NTBs could be addressed after the environmental goods were identified.

77. The representative of Norway believed that the ultimate goal of the WTO should be to develop one balanced list, which would comprise products of interest to all Members. A two-list approach could, as the EC mentioned at the last meeting, lead to a minimal agreed list and a long complementary one. However, the US proposal was pragmatic, in the sense that it would allow the negotiations to proceed on the products on which there was no consensus. The OECD and APEC lists were a good starting-point.

78. However, difficulties would arise if clean technology were to be included. Clean technology was highly important in developing sustainable production patterns, but as several delegations pointed out, it was an evolving concept which would require a regular updating of any product identification. Another challenge was the issue of multiple use. At the last meeting, a number of developing countries had asked for a balanced list to be developed that would include organically produced goods and sustainable forestry products, which were based on PPMs. Norway had been reluctant to include PPMs because of the conflict that earlier discussions had raised. However, it was important to address the interests of developing countries, and Norway would be willing to work with the PPM criterion. After all, these negotiations were not about the closing of markets *vis-à-vis* certain PPMs, but their opening. Norway supported inviting the OECD to present its work.

79. The representative of Switzerland understood Chinese Taipei's list to be a request for the inclusion of certain products on the core list. Switzerland would need further clarification, therefore, on the criteria behind the list. It also enquired about the reason for which Chinese Taipei had excluded the six-digit chapter mentioned in the OECD list. Was Chinese Taipei of the opinion that only those products that had been explicitly mentioned could be included in the core list? Furthermore, why had products in the areas of water supply, water purification, renewable energy, and recycling been excluded?

80. Switzerland supported the EC on the need to first agree on global environmental objectives, such as those set out in the Johannesburg Plan of Implementation. There was a need for a logical starting-point, and Switzerland looked forward to an EC paper in this area. It also welcomed the categories mentioned by Canada, which could be used once agreement was reached on global environmental goals. It was pleased that the Canadian categories went beyond end-of-pipe treatment. On the US paper, Switzerland wondered about the number of Members that would be needed for an agreement on a complementary list, and about the relationship between the core and complementary lists.

81. The representative of Nicaragua believed that the Chinese Taipean list demonstrated how difficult it was for developing countries to identify goods in which they had an export advantage. The US had rightly pointed out that Central American countries could have an advantage in ethanol, and products which were not high-tech, and it would be important to reflect these interests in the negotiations. Nicaragua favoured the employment of the end-use criterion as opposed to PPMs. Furthermore, this was not the appropriate time to address organic products, since the discussion had not sufficiently matured. Nicaragua wondered whether the PPM criterion had been used by Chinese Taipei. It saw the Canadian categories as interesting and as requiring further reflection.

82. The representative of New Zealand believed that there was an emerging consensus that it would be useful to first focus on a core list, a consensus list, and to consider the US proposal on a complementary list as a backdrop, in the event that consensus could not be achieved. New Zealand agreed with Canada that focus on concrete products within certain categories would assist the discussions, and the Canadian categories provided a good starting-point. In fact, it was only on the basis of product-specific work that the CTESS could grapple with practical considerations, such as dual use and tariff classification. New Zealand reiterated its call for delegations to explain why they believed the products they were suggesting were environmental. New Zealand was hesitant about the idea of agreeing to global environmental goals or objectives as a starting-point for negotiations, since

this could lead to a loss of momentum. It supported the invitation of the WCO and the OECD to the next meeting.

83. The representative of Malaysia indicated that Malaysia was open to the US, Chinese Taipean and Canadian proposals, but that any list would have to reflect developed and developing country interests. The APEC list could be used as a starting-point, since it was based on end-use criteria. However, there were some products on the APEC list which Malaysia did not support, and it would be important to preserve the right to opt out on certain products, such as those with a dual use. It would also be important to be able to exclude sensitive sectors that were vital for a country's industrial development. Like other developing countries, Malaysia found it difficult to identify its environmental goods due to capacity constraints.

84. The representative of Venezuela endorsed the statement by Chinese Taipei, as well as the link that China established between environmental goods and the concept of S&D treatment. S&D treatment would be an admission of the trade and environmental reality of developing countries, as well as of their developmental needs. Venezuela welcomed the suggestion that further lists be submitted, and reminded delegations that it had supported the Qatari list. Like Nicaragua, Venezuela did not wish to see the PPM criterion used, and preferred a focus on end-use. It also suggested that UNCTAD be invited to the next meeting to brief the CTESS on its work in this area, and called for further consideration to be given to the circulation the UNCTAD *Report of the Expert Meeting on Dimensions of Environmental Goods and Services and Trade Development*, which one delegation had opposed. The representative of Brazil supported Venezuela's statement on UNCTAD.

85. The representative of Kenya enquired about the way in which the Chinese Taipean list would contribute to addressing developmental needs. Kenya had promised to submit its own list, but had found the exercise difficult. It supported the Canadian idea of discussing categories, and of inviting the WCO. In response to the various comments made about organic products, Kenya wondered how these products could be addressed in the negotiations in light of the objections that had been made. This question also related to eco-system products. The Chairman encouraged Kenya to submit its own list of goods, indicating that no category of products had been definitively ruled out by the CTESS.

86. The representative of Ecuador believed that these negotiations should contribute to sustainable development as the EC had pointed out, and should reflect the interests of developing countries. Technical assistance would be needed by developing countries. Ecuador believed that the modalities of the negotiations would need to be determined by NAMA, and that it was too early to decide on the US proposal. It endorsed the invitation of UNCTAD.

87. The representative of Chile commented on the issue of the Chinese list potentially lowering Members' ambitions. Chile believed that this would depend on the size of the common list, and how easy it would be to deviate from it. The same would be true for the core and the complementary list. This was an issue of negotiating modalities, which was a subject that needed to be left to NAMA. Chile wondered whether China and the US believed that the CTESS had a role to play in defining the rate of liberalization. Furthermore, it did not share the EC's view that the Paragraph 31(iii) mandate meant that deeper cuts would have to be made. Paragraph 16 of the Doha Declaration did not say so either. Chile found Kenya's suggestion that Members explain the environmental and developmental benefits of the products they proposed to be useful, and also requested that the tariff and NTBs that they imposed, and which they faced in export markets be stated. It endorsed the invitation of the WCO.

88. The representative of the United States responded to Switzerland's questions, explaining that the number of Members that would need to agree to the complementary list would be linked to the discussion in NAMA on "critical mass." Therefore, it would be too early to tell at this stage the exact

number that would be required. On the relationship between the core and complementary list, the US reiterated that its paper had been intended to stimulate discussion and that it was flexible. The concept of a complementary list was totally dependent on the core list, and if the negotiations proved that there was no need for a complementary list, then that would be acceptable to the US. The complementary list would only be useful if consensus on a definitive list could not be reached.

89. The US shared New Zealand's concerns with respect to the EC proposal of agreeing on principles and global environmental objectives. While it would be important for delegations to justify the products that they proposed, it would not be constructive to spend time debating principles. In response to Chile's comments on the level of ambition, the US indicated that it would withhold judgement until greater detail was provided. With respect to the UNCTAD "Report of the Expert Meeting on Dimensions of Environmental Goods and Services and Trade Development," the US agreed to its circulation.

90. The representative of the European Communities clarified that the EC did, in fact, encourage the submission of lists, but that it was simply trying to ensure that there would be an environmentally friendly outcome.

91. The representative of China explained that it would too early at this stage to worry about lowering the level of ambition, and that that level would depend on the willingness of Members to engage. China simply hoped that its proposal would provide developing and least-developed countries with greater flexibility.

92. The representative of Chinese Taipei responded to Switzerland questions by explaining that the main criterion used in the Chinese Taipean list had been that of obvious pollution control. Chinese Taipei had also checked its records on imports and exports, and had found a large trade balance on the products which it had included in its list. With respect to the OECD categories, it explained that there was no difference between those categories and its submission, but that it was simply by chance that no products on water supply or water purification had been included. Chinese Taipei did not insist on its list being given a particular weight in the negotiations; its objective was simply to help discussions advance. In response to Kenya's question, it argued that the liberalization of environmental goods would be helpful for everyone. It also supported the invitation of the WCO.

93. The representative of UNCTAD indicated that UNCTAD had kept close touch with the WCO, in particular in the run-up to its Expert Meeting on environmental goods and services. In particular, UNCTAD had contacted the Committee on the HS, since it felt that some of the criteria that had been raised for the identification of environmental goods could raise difficult customs classification issues. UNCTAD's concerns were confirmed. The criteria of predominant end-use, PPMs, environmental performance, and sustainable materials, would all be very difficult to operationalize from a customs point of view. That was the reason that APEC had decided to follow the HS.

94. The WCO had also indicated that the HS could only capture environmental goods that could be identified on the basis of objective criteria when presented at customs. This could involve definitions or references to certain characteristics of the goods in question, but could not be based on end-use criteria, on labelling, or on the use of certificates. The WCO had indicated that it would be prepared to provide technical advice on the possibility of classifying environmental goods separately in the HS, if requested by the WTO or one of its Members. This would facilitate the implementation of an international agreement on environmental goods. The WTO could also present amendments to the HS. It could do so by contacting the WCO Secretariat, the Chairperson or one or more of the contracting parties, and suggest that a good be included under the HS. However, the HS was revised in cycles, and the deadline for amendments to the current system had been in June 2003. Furthermore, there was a time lag between the adoption of amendments and their implementation, which took two

and a half years. Therefore, amendments adopted at the end of June 2003 would only become operational in a number of years. In other words, this negotiating process was stuck with the old HS.

95. The Chairman indicated that the WCO, UNCTAD and the OECD would all be invited to the next CTESS meeting to brief the Committee on their work on environmental goods, and indicated that the UNCTAD "Report of the Expert Meeting on Dimensions of Environmental Goods and Services and Trade Development" would be circulated to participants.

IV. OTHER BUSINESS

96. The representative of Japan called on the International Tropical Timber Organization (ITTO) to be reinvited to the CTESS. It regretted that while the ITTO had been previously invited to the Committee, it could no longer be invited. The representative of Malaysia responded that its government continued to harbour the same set of reservations towards the ITTO.

97. The CTESS agreed to renew the ad hoc invitations issued for this meeting, to the next meeting of the CTESS. It also agreed to invite the Secretariats of the Rotterdam and Stockholm Conventions, since they had entered into force.

98. The next meeting of the CTESS would take place on **12-13 October 2004**.

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