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**Committee on Trade and Environment**

**REPORT TO THE 5<sup>TH</sup> SESSION OF THE  
WTO MINISTERIAL CONFERENCE IN CANCÚN**

Paragraphs 32 and 33 of the Doha Ministerial Declaration

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**I. INTRODUCTION**

1. The following report covers the work undertaken by the regular session of the Committee on Trade and Environment ("the CTE ") between the Fourth (Doha) and the Fifth (Cancún) Ministerial Conferences of the WTO.<sup>1</sup> Each issue is sub-divided into "(a) Papers" and "(b) Discussion". The first lists the papers submitted under each item. The second, "Discussion", is a factual summary of those issues that have been discussed and that are covered by the reporting requirement in paragraphs 32 and 33 of the Doha Ministerial Declaration ("DMD").<sup>2</sup>

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<sup>1</sup> The full detail of the discussions is reflected in the reports of the five meetings held during this period (WT/CTE/M/29-34).

<sup>2</sup> The relevant provisions of the DMD are reproduced in Annex 1, on page 16. Unless otherwise stated, paragraph numbers refer to those of the DMD.

## II. PARAGRAPH 32

2. As a *recommendation for the Cancún Ministerial Conference*, one Member proposed that Members review the CTE's Work Programme (Annex 2) with a view to determine whether it continued to meet the requirements of Members. The CTE could then report to the next Session of the Ministerial Conference with a proposal for amended Terms of Reference.<sup>3</sup>

### A. PARAGRAPH 32(i) (MARKET ACCESS)

*The effect of environmental measures on market access, especially in relation to developing countries, in particular the least developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development.*

3. The CTE discussed the two aspects of paragraph 32(i) separately:

- (a) The effect of environmental measures on market access, especially in relation to developing countries, in particular the least developed among them (referred to as the "market access aspect"); and,
- (b) those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development (referred to as the "sector analysis").

### 1. The Market Access Aspect

#### (a) Papers

Members	Title	Date and Symbol
India	The Effects of Environmental Measures on Market Access, Especially in Relation to Developing Countries, in particular the Least-Developed among them, Submission from India on paragraph 32(i) of the Doha Ministerial Declaration.	WT/CTE/W/207, 21 May 2002
Observers		
UNCTAD	Expert Meeting on Environmental Requirements and International Trade (Geneva, 2-4 October 2002)	WT/CTE/GEN/2, 20 November 2002
OECD	Global Forum on Trade: The Development Dimensions of Trade and Environment (New Delhi, India, 27-28 November 2002)	WT/CTE/GEN/3, 20 November 2002

#### (b) Discussion

4. It was generally recognized that *improved market access* for developing countries' products was key to the goal of achieving sustainable development. It was recalled that, in line with Rio Principle 11,<sup>4</sup> environmental standards, objectives and priorities needed to reflect the particular environmental and developmental context to which they applied and that standards applied by some countries could be inappropriate and of unwarranted economic and social cost to others, particularly developing countries. Small and medium sized enterprises (SMEs) were especially vulnerable in this regard.

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<sup>3</sup> Canada in Job(03)/105.

<sup>4</sup> Rio Principle 11 reads as follows: "States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries."

5. Several Members stressed that the protection of the environment and health were *legitimate policy objectives* and that Members had the right to set their own appropriate level of environmental protection so as to address such objectives. However, it was also acknowledged that environmental requirements could affect exports adversely. The answer to concerns about reduced market access was not to weaken such standards, but rather to enable exporters to meet them. Several Members stressed that there was sufficient scope in existing WTO Agreements to ensure that environmental measures did not unduly restrict exports; the rules of the Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement") and the Agreement on Technical Barriers to Trade ("TBT Agreement") were referred to in particular.

6. In striking the appropriate balance between safeguarding market access and protecting the environment, it was felt that there was a need to examine *how* environmental measures could be designed by importing countries in a manner that (i) was consistent with WTO rules; (ii) was inclusive; (iii) took into account capabilities of developing countries; and, (iv) met the legitimate objectives of the importing country.

7. Several Members stressed the importance of involving developing countries in the *design and development* of environmental measures as a way of mitigating negative trade effects. Similarly, the facilitation of effective participation of developing countries in the early stages of the international standard-setting process was important. Once developed, flexibility in the *application* of environmental measures was seen as key and several Members mentioned longer time-frames as an example of this; the inclusion of exceptions was also raised. Several Members emphasized the principles of equivalence and mutual recognition in this regard and one Member proposed that the CTE could look at guidelines for the application of environmental requirements as a means of efficient and operational provision of special and differential treatment. Most Members considered that technical assistance and capacity building were key to help developing countries' exporters to meet environmental requirements. Technology transfer was also mentioned.<sup>5</sup>

8. *Information* dissemination on new environmental requirements was essential. One Member pointed out that, in the context of the World Summit on Sustainable Development (WSSD), the creation of "Sustainable Trade and Innovation Centers" to address this very need had been proposed. Others stressed that enforcing current disciplines on notification requirements more rigorously could give concerned Members an early opportunity to review upcoming environmental requirements and to adjust production methods, as appropriate.

9. In discussing ways forward, several Members felt that more weight had to be given to the identification of trade *opportunities* for sustainable growth. The CTE could look at incentives and means to assist developing countries to identify products, and develop export markets for environmentally friendly products in areas where these countries enjoyed a comparative advantage. This would reinforce the message contained in the CTE's 1996 Report (Singapore)<sup>6</sup> that trade liberalization had the potential to generate resources that could be applied to implement sound environmental policies. Moreover, one of the outcomes of the WSSD had reiterated the need to support voluntary, WTO compatible market-based initiatives for the creation and expansion of domestic and international markets for environmentally friendly goods.<sup>7</sup>

10. Several Members agreed on the need for *more analysis*, and the identification of concrete cases regarding the effects of environmental measures on market access, particularly on exports of products of importance to developing countries. Such analysis, particularly if sector-specific and based on real situations, could further the understanding of the issues and could serve to target

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<sup>5</sup> For more detail on technical assistance, see Section III and paragraph 51 in particular.

<sup>6</sup> WT/CTE/1, 12 November 1996, paragraph 197, in particular.

<sup>7</sup> WSSD Plan of Implementation, paragraph 99(b).

positive measures. In this regard, several Members referred to relevant work undertaken by the OECD<sup>8</sup> and UNCTAD.<sup>9</sup>

## 2. Sector Analysis

### (a) Papers

Members	Title	Date and Symbol
Japan	Analysis on the Relationship between Fisheries Subsidies and Over-exploitation of Fisheries Resources	WT/CTE/W/226, 24 April 2003
Japan	Sustainable Development and the Trade of Forest and Fishery Products	WT/CTE/W/222, 6 February 2003 <sup>10</sup>
Japan	Issues on Forestry Products Trade and Environment	WT/CTE/W/211, 11 June 2002
New Zealand	Fisheries Subsidies	WT/CTE/W/204, 19 March 2002
Observers		
Saudi Arabia	Energy Taxation, Subsidies and Incentives in OECD Countries and their Economic and Trade Implications on Developing Countries, in Particular Developing Oil Producing and Exporting Countries	WT/CTE/W/215 and TN/TE/W/9, 23 September 2002
UNEP	UNEP Workshop on the Impacts of Trade-Related Policies on Fisheries and Measures Required for their Sustainable Management, 15 March 2002, Geneva, Chairman's Summary	WT/CTE/W/205, 8 May 2002

### (b) Discussion

#### (i) *Agriculture*

11. One group of Members argued that agricultural trade reform offered "win-win-win" opportunities for the environment, trade and development. Trade- and production-distorting agricultural subsidies had a negative effect not only in the countries that applied such policies (incentive for intensive farming practices), but also on the environment of other countries, particularly developing countries. Such subsidies increased the instability of the international price of agricultural commodities. This led to reduced returns from agriculture in developing countries, which discouraged production and investment. Lower agriculture returns were linked to poverty - a major cause of environmental degradation. Conversely, increased returns would lead to higher incomes for developing country producers, thereby improving their financial capacity to maintain and pursue sustainable farming practices.

12. Another group of Members was of the view that a certain level of domestic support was necessary to maintain various environmental benefits arising from agricultural production. Such environmental benefits included the maintenance of cultural landscapes, land conservation, management of water resources and the preservation of biodiversity.

#### (ii) *Energy*

13. Some Members and one Observer were of the view that the energy sector also presented a potential "win-win-win" situation for environment, trade and development. They argued that existing

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<sup>8</sup> In particular: the OECD "case studies" contained in the publication "The Development Dimension of Trade and Environment: Case Studies on Environmental Requirements and Market Access", 19 November 2002, COM/ENV/TD(2002)86/FINAL (available on the OECD website).

<sup>9</sup> With regard to relevant work by UNCTAD, there is more detail under paragraph 33.

<sup>10</sup> This document was previously submitted by Japan as a proposal in the Negotiating Group on Market Access (TN/MA/W/15/Add.1, 6 January 2003).

taxation and subsidy schemes in OECD countries were generally biased and discriminatory vis-à-vis petroleum products. There were negligible taxes on coal and gas, and, in addition, coal products in many OECD countries, were subsidized. Such policies needed to be corrected. It was suggested that subsidies be removed and that fuel taxation be restructured to reflect carbon content – this would ensure that polluting sources (with higher carbon content) be penalized, not favoured. It was stressed that the issue was not climate change mitigation *per se*, but the impact of environmental policies on market access on the one hand, and their consistency with WTO rules on the other. Herein lay the relevance to the CTE mandate in paragraph 32(i). Nevertheless, some other Members considered that the CTE was not the appropriate forum to discuss the impact of measures taken to mitigate climate change as this was being dealt with adequately in the UNFCCC<sup>11</sup> and the Kyoto Protocol.

(iii) *Fisheries*

14. There was a general recognition of the importance of achieving the objective of sustainable development in the fisheries sector. It was recalled by a number of Members that the very fact that negotiations on the subject of fish had been launched at the Doha Ministerial Conference was largely based on the preceding CTE analysis. Subsequently, the WSSD Plan of Implementation had reaffirmed the call to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries.<sup>12</sup>

15. A few Members maintained that poor fisheries *management* – taking place under open-access fisheries – coupled with increasing world demand for fishery products was at the root of declining world fisheries resources resulting from over-exploitation and illegal, unreported and unregulated fishing. In this regard, subsidies could be an effective instrument to reduce capacity, for example through vessel buy-back programmes. One Member stressed that the possible effects of subsidies on resources changed depending on resource status and fishery management regimes. The cases of skipjack tuna, and purse seine fishery in the Eastern Pacific Ocean were referred to in this regard.<sup>13</sup> It was argued that there was a need for flexibility among products when determining tariff levels, taking into account the level of fishery resources and the status of fishery management.

16. Other Members argued that over-capacity, and, consequently, a significant part of over-exploitation of fisheries, was caused by *subsidies*. Even when apparently sound management regimes were in place, subsidies could destabilize fisheries management and impede the objective of reducing over-capacity. A high value tuna species was given as an example of a particular fishery which was under a multinational management regime and where stocks had collapsed. It was emphasized that it was the trade measure (the subsidy) that generated over-capacity and needed to be disciplined. Trade liberalization, in concert with sustainable resource management, could stimulate more efficient production with more long-term environmental benefits. Trade barriers in the form of tariffs, or other non-tariff measures, were no substitute for effective resource management.

17. Most Members stressed that since relevant negotiations were taking place in the Negotiating Group on Rules and the Negotiating Group on Market Access the issue of fish was best left to these bodies. While agreeing that duplication of work needed to be avoided, one Member argued that the CTE needed to monitor the issue of subsidies from an over-exploitation point of view, i.e. an environmental point of view; this had always been the *role of the CTE*. Another Member pointed out that the CTE could contribute to the ongoing negotiations, while avoiding an isolated CTE discussion, through paragraph 51 of the DMD.

18. All agreed that more could be done to provide *technical assistance* in natural resource conservation and management through the various international environmental organizations in the

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<sup>11</sup> United Nations Framework Convention on Climate Change (UNFCCC).

<sup>12</sup> WSSD Plan of Implementation, paragraph 31(f).

<sup>13</sup> For more detail, see WT/CTE/W/226.

fisheries sector. Some Members reiterated the importance of further studies on the effects of fisheries subsidies and referred, in particular, to the work of the Food and Agriculture Organization of the United Nations (FAO), UNEP and the OECD in this regard. One delegation in particular called for case studies with respect to the impact of subsidies on fishery resources.

(iv) *Forests*

19. Several Members recalled that the WSSD Plan of Implementation attributed considerable importance to the concept of sustainable forest management.<sup>14</sup> It was pointed out that as forests provided multiple benefits, such as the mitigation of global warming and the conservation of biological diversity, the issue needed to be dealt with in a cross-sectoral manner which included a discussion of trade-relevant elements. While Members agreed on the importance of achieving the objective of sustainable development, some stressed that there were different ways of achieving sustainable forest management. There was, therefore, a need to look at measures which ensured conservation without reducing countries' ability to benefit economically from their forestry resources.

20. Several Members shared the concern that international trade of illegally harvested forest products could undermine conservation efforts in source countries, as well as other environmental, economic, and social goals. The importance of appropriate *domestic regulation*, and the capacity to implement and monitor such regulation, was emphasized. In addition, it was pointed out that more attention needed to be given to the fact that poverty and high indebtedness fuelled the illegal exploitation of forestry resources and were at the root of the problem.

21. One Member considered that while domestic measures taken to combat illegal logging were needed, it was also important to examine possible *international approaches* from a trade perspective, taking into account discussions in other international fora. In this regard, a positive contribution to the forestry issue presented a key challenge for the WTO. A number of other Members, however, were of the view that the issue was being appropriately dealt with in other fora and questioned the usefulness of debating it in the WTO. One Member emphasized the importance of regional initiatives and private-public partnerships in the forestry sector.

22. The same Member argued that there was a relationship between *tariff levels* and over-exploitation and stressed that each Member needed to retain flexibility among products when determining the appropriate level of tariffs. A number of other Members, however, argued that tariffs and non-tariff measures were no substitute for efficient resource management and that tariff elimination would not inevitably lead to an exhaustion of natural resources. On the contrary, it was argued that tariff escalation on processed products greatly hampered developing countries' efforts to achieve sustainable forest management. Moreover, the focus on tariff levels would open up the possibility of discrimination on the basis of non-product related process and production methods (PPMs), which remained unacceptable to several delegations. It was stressed that the modalities of the tariff reductions on forestry products was best left to the Negotiating Group on Market Access.

23. One Member questioned the rationale and WTO-compatibility behind the use of *export restrictions* for the preservation of forest resources when such restrictions were imposed on the raw material but not on processed products thereof. Some other Members maintained that such measures constituted part of the country's sovereign right to protect its forest resources and were consistent with Article XX(g) of the GATT.

24. Several Members pointed out the importance of *positive measures* in the forestry sector. In this regard, *national* solutions would always be the most effective ones as they involved countries themselves in the conservation effort. Several Members noted that they were providing technical assistance and expertise through organizations with specific expertise in the area, such as the FAO,

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<sup>14</sup> WSSD Plan of Implementation, paragraph 45.

the United Nations Forum on Forests (UNFF), the International Tropical Timber Organization (ITTO), as well as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

B. PARAGRAPH 32(ii) (TRIPS)

*The relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).*

(a) Papers

Members	Title	Date and Symbol
European Communities	Review of Article 27.3(B) of the TRIPS Agreement, and the Relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD) and the Protection of Traditional Knowledge and Folklore, "A Concept Paper"	WT/CTE/W/223 <sup>15</sup> , 14 February 2003
Observers		
UNCTAD	Seminar on Systems for the Protection and Commercialization of Traditional Knowledge, Communiqué - New Delhi, 3 – 5 April 2002	WT/CTE/W/214, IP/C/W/350, 26 June 2002
Convention on Biological Diversity (CBD)	Review of the Provisions of Article 27.3(b), relationship between the TRIPS Agreement and the Convention on Biological Diversity and Protection of Traditional Knowledge and Folklore	IP/C/W/347/Add.1 and WT/CTE/W/210, 10 June 2002

(b) Discussion

25. Some Members were of the view that an *amendment* of the TRIPS Agreement to accommodate some essential elements of the Convention on Biological Diversity (CBD) was necessary. Such an amendment could require that an applicant for a patent relating to biological materials or to traditional knowledge (i) disclose the source and country of origin of the biological resource and/or of the traditional knowledge used in the invention; (ii) give evidence of prior informed consent through approval of authorities; and, (iii) give evidence of fair and equitable benefit sharing. It was felt that a failure to provide a solution to this relationship could be detrimental to the objectives of the agreements themselves, and to sustainable development in general.

26. Some Members wished to further consider proposals such as the creation of an international instrument which would provide for a *positive protection* of traditional knowledge at the national and regional levels. This would not only prevent misappropriation but would also guarantee that national benefit sharing mechanisms and laws were respected world-wide. The creation of a database on traditional knowledge was also mentioned. Such a database could be useful for authorities when granting patents to determine the novelty of an invention associated with traditional knowledge. Regarding the disclosure of origin, one Member proposed the possible introduction of a system such as a "self-standing disclosure requirement" on biological resources and traditional knowledge. It was argued that this would allow WTO Members to keep track, at a global level, of all patent applications for which they themselves had granted access.

27. Another group of Members argued that, from a legal perspective, the CBD and the TRIPS Agreement were mutually supportive. Nevertheless, their *implementation* could create conflicts. Hence, both bodies of law needed to be implemented in a mutually supportive way in order not to undermine their respective objectives; sound national legislation and regulation was key to this. One Member argued that contractual systems, developed to protect sovereign rights over access to genetic resources or traditional knowledge, could be a means of effectively implementing

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<sup>15</sup> This paper was previously circulated as a communication from the European Communities in the TRIPS Council (IP/C/W/383, 17 October 2002).

CBD provisions in a manner that rendered changes to the TRIPS Agreement unnecessary. Another Member suggested that a compilation of national experiences on CBD implementation could be useful for the work of both the CTE and the TRIPS Council.

28. Most Members were of the view that key aspects of the debate on the relationship between the TRIPS Agreement and the CBD were being dealt with appropriately by the *TRIPS Council* and that the CTE needed to avoid duplicating such work. In the same vein, it was felt by some that the fundamental intellectual property rights issues should be left to the World Intellectual Property Organization (WIPO), an organization that had considerable expertise in this area.

29. The CTE also took note of the work undertaken in other fora, in particular with respect to the adoption, by the CBD, of the *Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization* and the finalization, by the FAO, of the *International Treaty on Plant Genetic Resources for Food and Agriculture*.

C. PARAGRAPH 32(iii) (LABELLING)

*Labelling requirements for environmental purposes.*

(a) Papers

Members	Title	Date and Symbol
Canada	Labelling and Requirements of the Agreement on Technical Barriers to Trade (TBT): Framework for Informal, Structured, Discussions.	WT/CTE/W/229 <sup>16</sup> , 23 June 2003
European Communities	Labelling for Environmental Purposes	WT/CTE/W/225 6 March 2003
Switzerland	Labelling for Environment Purposes	WT/CTE/W/219, 14 October 2002
European Communities	Labelling	G/TBT/W/175, WT/CTE/W/212, 12 June 2002
Observers		
ISO	Progress in Environmental Management Systems (EMS) Standardization	WT/CTE/GEN/1, 19 November 2002

(b) Discussion

30. Most Members agreed that voluntary, participatory, market-based and transparent environmental labelling schemes were potentially *efficient economic instruments* in order to inform consumers about environmentally friendly products. As such they could help move consumption on to a more sustainable footing. Moreover, they tended, generally, to be less trade restrictive than other instruments. It was also noted, however, that environmental labelling schemes could be misused for the protection of domestic markets. Hence, these schemes needed to be non-discriminatory and not result in unnecessary barriers or disguised restrictions on international trade. One Member questioned the assumption that comprehensive labelling schemes had a positive effect on achieving good environmental outcomes.

31. Some Members noted that for developing countries, and their SMEs in particular, difficulties arose along with the growing complexity and diversity of environmental labelling schemes in export markets. While international standards for labelling had a significant potential to facilitate trade by promoting the convergence of labelling requirements, as was previously pointed out with respect to environmental requirements in general (paragraph 6 above), there was a need to better involve

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<sup>16</sup> This paper was previously circulated by Canada in the TBT Committee as G/TBT/W/174/Rev.1, 31 May 2002.

developing countries in the setting of environmental standards and regulations, whether at the national or international level. It was reiterated that developing countries were at a disadvantage due to limited or ineffective participation in these processes.

32. For developing countries, the recognition of the *equivalency* of their own certification systems was an area of particular concern; it was important to concentrate on assisting developing countries to design schemes that supported environmental objectives within their own domestic context.

33. All agreed that *transparency* was of utmost importance with respect to environmental labelling schemes. Information on regulations had to be properly disseminated in order for foreign producers not to be at a disadvantage and not to suffer unnecessary losses.

34. Regarding the *basis* for environmental labelling schemes, some Members stressed that such schemes needed to be based on measurable scientific considerations. One Member was of the view that "consumer information" *per se* was a legitimate objective. Others questioned what additional information needed to be provided in response to market and consumer demands beyond health, safety and direct environmental consequences of products (such as toxicity). Familiar differences of views remain on what was characterized by one Member as the root cause of controversy surrounding the labelling debate: the WTO compatibility of measures based on non product-related processes and production methods (npr PPMs).

35. Some Members considered that there was a need to reach some form of *common understanding, interpretation or guidance* with respect to labelling requirements for environmental purposes; it was desirable to clarify through agreement rather than through dispute settlement – without undermining existing WTO provisions. One Member proposed that the CTE could (i) come to a common understanding on the types of labelling schemes discussed and the meaning of the various terms used (environmental labelling, eco-labelling, labelling for environmental purposes); (ii) identify specific trade concerns relevant to environmental labelling; and (iii) make recommendations for necessary action.

36. Another Member proposed that the CTE focus its discussions in a pragmatic way on one particular type of eco-label where common views might be easier to achieve: *voluntary labels based on the life-cycle approach*. It was pointed out that such labels were increasingly based on international standards and the standards of the International Organization for Standardization (ISO) were referred to in this regard. It was emphasized that such a discussion would take place within existing rules and would not extend to non-product related PPMs, nor would it prejudice discussions on other types of eco-labelling schemes. It was pointed out that the life-cycle approach was inherently an environmental concept and therefore appropriately dealt with in the CTE. It was suggested that the CTE could agree on the principle that the use of voluntary eco-labelling schemes based on a life-cycle approach was legitimate within the rights and obligations of the WTO Agreements. The idea of a notification procedure – or other appropriate means of consultation – for existing and new such schemes was flagged, as well as the need to assist developing countries in entering niche markets. Several other Members welcomed the focus on *voluntary* schemes and agreed that the issue was, at its root, a market access one. Some welcomed further discussions on this point. However, concern was expressed with regard to the concept of life-cycle approach and the notion of agreeing on the "principle" of the legitimacy of such schemes under WTO rules; it was pointed out that any interpretation of voluntary eco-labelling programmes needed to come from the TBT Committee. Moreover, given the non-governmental nature of many of the schemes at issue, some questioned (i) how the WTO could facilitate the use of such eco-labels, (ii) the feasibility of the suggested notification procedures and, (iii) what contribution, or added value, the WTO could provide considering work done in other fora, such as the ISO.

37. Most Members were of the view that existing WTO disciplines were adequate to deal with the issue of environmental labelling, including specific trade concerns that could arise. The issue was one

of satisfactory *implementation* of the SPS and TBT Agreements. In their view, no compelling argument had been made for the need for a common understanding or guidance to be negotiated. Nor was it clear that further work on this issue needed to include the clarification of existing rules. The TBT and SPS Agreements had created the appropriate balance of rights and obligations for both mandatory and voluntary labelling programmes.

38. With respect to voluntary environmental labelling schemes, the importance of the TBT Agreement's Code of Good Practice for the Preparation, Adoption and Application of Standards<sup>17</sup> was stressed, and acceptance of this Code by the bodies developing labelling requirements was encouraged. Moreover, it was recalled that the TBT Committee's Decision on the "Principles for the Development of International Standards" provided useful guidance.<sup>18</sup> This decision contained the principles for the development of standards, including environmental labelling standards. These were: transparency, inclusiveness or openness (that all stakeholders be involved in the development of the standard), impartiality and consensus, effectiveness and relevance, coherence, and, wherever possible, responsiveness to the needs and interests of developing countries.

39. While all agreed on the necessity of having a structured approach to the discussions, and the need to avoid duplication, views diverged on the appropriate *forum* to discuss the issue of environmental labelling. Some Members were of the view that, considering the mandate contained in paragraph 32(iii) which instructed the CTE to give *particular* attention to labelling requirements for environmental purposes, the CTE needed to intensify its work on environmental labelling. The discussion in the CTE could then be used as an input to the debate in the TBT Committee. They felt that it would not be appropriate to make work in the CTE conditional on progress in the TBT Committee which did not have a mandate specific to labelling for *environmental* purposes.

40. Many other Members, however, held a different view. They argued that the TBT Committee was better suited for the task of deliberating WTO rules *vis-à-vis* labelling since it was already discussing labelling in general, *including* environmental labelling. It would be unwise for the CTE either to preempt or to duplicate such work and more preferable to consider the results of the work carried out in the TBT Committee before taking a decision on the course of action for the CTE.

41. It was pointed out that work could be pursued on both tracks in parallel, as had been done before, and that one way of doing this would be to maintain frequent communication between the Chairpersons of the two bodies. Looking ahead, one Member suggested that the CTE could give priority to certain issues, such as the trade impacts on developing countries of environmental labelling schemes and, for example, the extent to which such schemes could help achieve the goal of sustainable development.

42. As a *recommendation for the Cancún Ministerial Conference*, one Member proposed that the CTE hold, before the end of 2004 and in addition to its usual schedule of meetings to be agreed, three "dedicated sessions" to engage in a positive dialogue on governmental and non-governmental voluntary eco-labelling schemes, notably those based on life-cycle analysis (LCA).<sup>19</sup>

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<sup>17</sup> Annex 3 of the TBT Agreement.

<sup>18</sup> G/TBT/9, 13 November 2000, "Second Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade", Annex 4.

<sup>19</sup> European Communities in Job(03)/130.

## D. OTHER PARAGRAPH 32 ITEMS

43. It is recalled that CTE Members were instructed, under paragraph 32, to pursue work on *all items*<sup>20</sup> on the CTE work programme within its current terms of reference. The issues below reflect substantive discussions under paragraph 32 that have not been covered above.

## (b) Papers

Observers	Title	Date and Symbol
CITES <i>Items 1 and 5</i>	Economic Incentives and Trade Policy	WT/CTE/GEN/7, 11 February 2003; WT/CTE/GEN/6, 20 November 2002; WT/CTE/GEN/5, 20 November 2002
UNEP <i>Items 1 and 5</i>	Enhancing Synergies and Mutual Supportiveness of MEAs and the WTO, A Synthesis Report	WT/CTE/W/213, 12 June 2002 and WT/CTE/GEN/4, 20 November 2002
WTO Secretariat <i>Items 1 and 5</i>	GATT Article XX paragraphs (b), (d) and (g)	WT/CTE/W/203, 8 March 2002
<i>(General)</i>	Selective Bibliography on Trade and Environment 1995-2002	WT/CTE/W/49/Add.1, 7 October 2002
<i>Item 9</i>	Discussion Paper on the Environmental Effects of Services Trade Liberalization	WT/CTE/W/218, 3 October 2002
<i>Item 4</i>	Environmental Database For 2001	WT/CTE/EDB/1 (and Corr.1), 31 May 2002

## (c) Discussion

44. Under **Items 1 and 5**, the CTE took note of the document prepared by the Secretariat on GATT Article XX paragraphs (b), (d) and (g). Some Members were of the view that the evolution of WTO jurisprudence (in respect of Article XX) favoured the protection of the environment, and was an additional reason for environmentalists to be more at ease with the ability of the WTO to address environmental concerns.

45. Under **Item 2**, the CTE took note of a report entitled "Uncertainty and Precaution: Implications for Trade and Environment", developed by the OECD Joint Working Party on Trade and Environment. The paper examined, *inter alia*, how the concept of precaution fitted into the framework of environmental protection and provided a brief overview of how it was reflected in national laws and international environmental instruments.

46. The CTE took note of the Environmental Database for 2001, submitted under **Item 4**. All notifications that were environment-related or included environmental references were listed in this document, as well as the trade policy reviews in which reference was made to environment-related measures or provisions.

47. Under **Item 9** the CTE took note of a Secretariat document, prepared at the request of Members, on the environmental effects of services trade liberalization. The paper was also relevant, at least in part, to **Item 6** as it considered the environmental benefits of removing trade restrictions. The paper focused on three sectors (tourism, transport and environmental services) as a way of illustrating some of the links between liberalization of trade in services and the environment.

<sup>20</sup> The items of the CTE work programme, derived from the 1994 Decision on Trade and Environment, are contained in Annex 2.

48. Under **Item 10**, the WTO held, on 29 April – 1 May 2002, a two and a half day public symposium entitled "The Doha Development Agenda and Beyond". One session was devoted to trade and environment. On 16-18 June 2003, the WTO held another public symposium entitled "Challenges Ahead on the Road to Cancún". A number of sessions were relevant to trade and environment. Also, under this agenda item, UNEP underlined the importance of observer status for intergovernmental environmental organizations, including the Secretariats of Multilateral Environmental Agreements (MEAs), in WTO negotiations on trade and environment.

### III. PARAGRAPH 33

*We recognize the importance of technical assistance and capacity building in the field of trade and environment to developing countries, in particular the least-developed among them. We also encourage that expertise and experience be shared with Members wishing to perform environmental reviews at the national level. A report shall be prepared on these activities for the Fifth Session.*

49. The CTE considered the two aspects of paragraph 33 separately:

- (a) Technical assistance and capacity building; and
- (b) national environmental reviews.

#### A. TECHNICAL ASSISTANCE AND CAPACITY BUILDING

##### (a) Papers

Members	Title	Date and Symbol
United States	Paragraph 33 of the Doha Declaration	WT/CTE/W/227 29 April 2003
Observers		
UNEP	UNEP Workshop on Capacity Building on Environment, Trade and Development, 19-20 March 2002, Geneva, Chairman's Summary	WT/CTE/W/206, 8 May 2002
WTO Secretariat		
	Technical Assistance and Capacity Building activities in 2002	WT/CTE/W/216, 30 September 2002
WTO, UNEP and MEA Secretariats	MEA Information Session on Technical Assistance, Capacity Building and Enhancing Information Exchange	WT/CTE/W/209, 5 June 2002

##### (b) Discussion

50. Members took note of the *WTO Secretariat's* technical assistance activities (Annex 3). The main focus of these activities was on regional seminars directed at government representatives from trade *and* environment ministries, organized in cooperation with – as well with the participation of – the secretariats of UNEP, UNCTAD and MEAs. "Side events" at certain MEA meetings, such as the meetings of the Conference of the Parties, had also been organized. These events targeted developing country participants in environmental fora with the objective of increasing their level of awareness vis-à-vis specific trade-related issues.

51. In the context of environment-related technical assistance and capacity building, the importance of *market access* was reiterated: aid did not replace trade. In this vein, several Members were of the view that capacity building efforts should focus on the needs identified in the discussion under paragraph 32(i) (see above).

52. Moreover, Members encouraged activities that brought together trade and environment officials in a manner that enhanced *coordination and policy coherence* at the national level. Emphasis was placed on the need to ensure that developing countries had the resources and the capacity to engage fully in, and make contributions to, the Doha mandate. Involving trade *and* environment officials from non-resident Members in WTO seminars and meetings could contribute to this goal. The need to target negotiators was also underscored. Members encouraged further cooperation and coordination between the WTO, UNEP, UNCTAD and MEAs in the delivery of technical assistance. Several stressed the need for follow-up thereto.

53. Some Members reported on their own technical assistance activities. In addition, one Member presented a paper on technical assistance and environmental reviews that emphasized, *inter alia*, the importance of establishing lines of communications between trade and environment officials at national levels.

54. UNCTAD's technical assistance and capacity-building activities in the area of trade, environment and development fall into three segments: (i) activities that are part of the environmental component of UNCTAD's programme on technical assistance and capacity building for developing countries, especially LDCs, and economies in transition in support of their participation in the WTO post-Doha work programme; (ii) activities in the context of the joint UNEP-UNCTAD Capacity-building Task Force (CBTF) on Trade, Environment and Development; and (iii) a UK DFID-funded project on building capacity for improved policy-making and negotiation on key trade and environment issues. Moreover, UNCTAD's intergovernmental work also focused on specific issues of the DMD. The Commission on Trade in Goods and Services, and Commodities convened an Expert Meeting on Environmental Requirements and International Trade (2-4 October 2002). The meeting highlighted that environmental and health requirements had become more frequent, stringent and complex. Experts discussed various approaches to assist developing countries in strengthening capacities to respond to and anticipate environmental/health requirements, in particular as regards information gathering and dissemination, standard setting and supportive policies.

55. The main objectives of UNEP's technical assistance is to raise awareness and understanding of the linkages between trade, environment and development, and enable countries to: (i) assess the environment and development impacts of trade and trade liberalization; (ii) engage effectively in trade and environment negotiations; (iii) formulate and implement mutually supportive policies to meet national obligations under multilateral trade and environment agreements, while also maximizing the net development gains of trade liberalization; and (iv) capture environment-related development opportunities offered by trade and globalization. To this end, UNEP undertook capacity-building workshops, training, policy dialogues, and country projects. Of particular relevance to the CTE, UNEP organized a series of back-to-back meetings with the CTE Regular Session and, a Workshop on Capacity Building on Environment, Trade and Development, which took place in Geneva, on 19-20 March 2002. The meeting provided an open forum for governments, intergovernmental organizations, regional and sub-regional organizations, policy research institutes and NGOs to assess emerging needs and current approaches to capacity building. This meeting has been followed up by activities at the regional level, including UNEP-UNCTAD CBTF workshops held back-to-back with WTO regional seminars, and a UNEP regional meeting in Mexico City on 27-28 March 2003.

B. ENVIRONMENTAL REVIEWS AT THE NATIONAL LEVEL

(a) Papers

Members	Title	Date and Symbol
European Communities	Documentation pertaining to an EC Seminar on Sustainability Impact Assessment of Trade Agreements.	WT/CTE/W/224, 21 February 2003
Canada	Initial Environmental Assessment: Trade Negotiations in the World Trade Organization, Submission by Canada.	WT/CTE/W/221, 24 January 2003
European Communities	Sustainability Impact Assessment	WT/CTE/W/208, also WT/COMTD/W/99 and TN/TE/W/3), 3 June 2002

(b) Discussion

56. It was recalled that the importance of environmental reviews in WTO trade negotiations had been confirmed in the DMD and, subsequently, in the WSSD Plan of Implementation.<sup>21</sup> Moreover, the value of environmental impact assessment (EIAs) was recognized by Principle 17 of the Rio Declaration.<sup>22</sup> While some Members emphasized the usefulness of an exchange of information on methods of environmental reviews and on implementation thereof, others noted the constraints facing developing countries in this regard. Some Members stressed the fact that environmental reviews at the national level, besides being voluntary, needed to be consistent with a country's priorities and that the task of developing countries should not be made more onerous by harmonizing review procedures. Such reviews had to be carried out in the light of national requirements, capacities, level of development, expertise, and the local situation.

57. One Member presented a paper on its initial *environmental assessment* of the WTO Trade Negotiations. This assessment suggested that, in the aggregate, any effect the new WTO negotiations might have on the national environment was likely to be minimal, on account of one or a combination of three reasons: (i) further trade liberalization was likely to affect only a small proportion of the country's trade as the bulk of it was already subject to a regional trade agreement and other free trade agreements; (ii) federal and provincial environmental legislation, policies and measures that could mitigate negative effects were already, or would soon be in place; and (iii) certain negotiations would not directly translate into increased production or trade, and therefore, were unlikely to lead to any environmental negative effects.

58. One Member informed the CTE of its activities regarding procedures and methodologies used for *sustainability impact assessments* (SIAs). It was noted that the underlying objective of SIAs was to improve quality, coherence and synergies of trade policies with other objectives by informing negotiators about the impact of negotiations on the environment, social development and the economy. A better identification of linkages between these different aspects could facilitate the development of the appropriate policy mix to mitigate negative effects and maximise positive ones for sustainable development. It was stressed that no Member had the perfect tool for this exercise and that such a tool needed to be adapted to each particular situation. It was suggested that the CTE could discuss concrete cases.

59. Another Member was of the view that SIAs posed particular difficulties for developing countries in that they added intangible elements to the concept of an EIA. In their view, SIAs did not take into account the diversity of countries and had the potential effect of constituting an additional means to prevent access of developing countries' goods and services into developed countries'

<sup>21</sup> WSSD Plan of Implementation, paragraph 97(d).

<sup>22</sup> Rio Principle 17 reads as follows: "Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority."

markets. SIAs needed to be used as an instrument to identify the difficulties faced by developing countries so as to promote sustainable development and overcome these difficulties; they needed to aim at bringing environmental, economical and social benefits to all countries.

60. Other Members informed the CTE of the *status quo* of environmental reviews of the WTO negotiations and other major trade agreements in their own countries.

61. The CTE took note of UNEP's work on environmental reviews at the national level. This included the completion of reports on six countries (Argentina, China, Ecuador, Nigeria, Senegal, and Tanzania) as well as a synthesis report and a Reference Manual for the Integrated Assessment of Trade-Related Policies. A further round of seven country projects focusing on integrated assessment of the effects of trade-related policies on the rice sector was currently underway.

## ANNEXES

### ANNEX 1: DOHA MINISTERIAL DECLARATION, PARAGRAPHS 32 AND 33

"32. We instruct the Committee on Trade and Environment, in pursuing work on all items on its agenda within its current terms of reference, to give particular attention to:

- (i) the effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development;
- (ii) the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights; and
- (iii) labelling requirements for environmental purposes.

Work on these issues should include the identification of any need to clarify relevant WTO rules. The Committee shall report to the Fifth Session of the Ministerial Conference, and make recommendations, where appropriate, with respect to future action, including the desirability of negotiations. The outcome of this work as well as the negotiations carried out under paragraph 31(i) and (ii) shall be compatible with the open and non-discriminatory nature of the multilateral trading system, shall not add to or diminish the rights and obligations of Members under existing WTO agreements, in particular the Agreement on the Application of Sanitary and Phytosanitary Measures, nor alter the balance of these rights and obligations, and will take into account the needs of developing and least-developed countries.

33. We recognize the importance of technical assistance and capacity building in the field of trade and environment to developing countries, in particular the least-developed among them. We also encourage that expertise and experience be shared with Members wishing to perform environmental reviews at the national level. A report shall be prepared on these activities for the Fifth Session." [emphasis added]

ANNEX 2: ITEMS OF THE CTE WORK PROGRAMME

- ITEM 1: The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements.
- ITEM 2: The relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system.
- ITEM 3(A): The relationship between the provisions of the multilateral trading system and charges and taxes for environmental purposes.
- ITEM 3(B): The relationship between the provisions of the multilateral trading system and requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling.
- ITEM 4: The provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects.
- ITEM 5: The relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements.
- ITEM 6: The effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions.
- ITEM 7: The issue of exports of domestically prohibited goods.
- ITEM 8: The relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights.
- ITEM 9: The work programme envisaged in the Decision on Trade in Services and the Environment.
- ITEM 10: Input to the relevant bodies in respect of appropriate arrangements for relations with intergovernmental and non-governmental organizations referred to in Article V of the WTO.

ANNEX 3: WTO SECRETARIAT TECHNICAL ASSISTANCE AND CAPACITY BUILDING ACTIVITIES<sup>23</sup>

Date	Type	Place	Coverage	With the participation of
28-30 Jan 2002	Regional Seminar	Saint Lucia	Caribbean countries	CITES, Basel Convention, Montreal Protocol, UNEP, UNCTAD
5-7 Mar 2002	Regional Seminar	Bogota	Latin American countries	UNCTAD
8 Mar 2002	Side Event	New York	Developing country participants at UNFF2	-
9 Apr 2002	Side Event	The Hague	Developing country participants to the CBD COP6	-
13-15 May 2002	Regional Seminar	Singapore	Asian countries	UNEP Regional Office, UNCTAD
30 May 2002	Trade Policy	Istanbul	Members of the Organization of the Islamic Conference (OIC)	In cooperation with the Islamic Development Bank (IDB) and the Organization of the Islamic Conference (OIC).
9-11 Jun 2002	Regional Seminar	Windhoek	English-speaking African Countries	UNEP Regional Office, UNCTAD
21 Jun 2002	Trade Policy Course (TCD)	Addis Ababa	African countries	In cooperation with the African Development Bank (ADB) and the United Nations Economic Commission for Africa (ECA).
1 Aug 2002	Trade Policy Course (Training Institute)	Casablanca	French-speaking African Countries	Partnership with <i>Institut de Commerce et d'Administration des Entreprises (ISCAE)</i>
20-23 Aug 2002	Trade Policy Course (Training Institute)	Nairobi	English-speaking African Countries	Partnership with the University of Nairobi. Including one-day visit to UNEP
10-12 Sep 2002	Regional Seminar	Riga	Central and Eastern European countries	UNEP, UNCTAD, UNFCCC
15-17 Oct 2002	Regional Seminar	Tunis	French-speaking African Countries	UNCTAD, Basel Convention, CITES
24 Oct 2002	Trade Policy Course (TCD)	Vienna	Developing countries	Organized in cooperation with the Joint Vienna Institute
6 Nov 2002	Side Event	Santiago	Developing country participants to COP12 of the CITES	-
20-21 Nov 2002	National	Beijing	China	-
26-28 Nov 2002	Regional Seminar	Suva	Pacific island economies	UNEP, UNCTAD
27 Nov 2002	Side Event	Rome	Sixth Meeting of the Conference of the Parties (COP-6) to the Vienna Convention for the Protection of the Ozone Layer and the Fourteenth Meeting of the Parties (MOP-14) to the Protocol of Montreal	-
13 Dec 2002	Side Event	Geneva	Sixth Meeting of the Conference of the Parties to the Basel Convention (COP 6)	-
25-27 Feb 2003	Regional Seminar	Santa Cruz de Bolivia	Regional Seminar on Trade and Environment for Latin American Countries	UNCTAD, CITES and Basel Convention
12-17 May 2003	Side Event	Panama City	34 <sup>th</sup> Session of the International Tropical Timber Council	-
19-21 May 2003	Regional Seminar	South Africa	English-speaking African Countries	UNEP, UNCTAD

<sup>23</sup> The table includes those activities organized by the WTO and which took place outside of Geneva (except for Side Events). It does not include activities in which the WTO was simply represented, nor does it cover Geneva-based technical assistance such as trade policy courses or introductory courses for LDCs. The "\*" indicates a planned event.

<b>Date</b>	<b>Type</b>	<b>Place</b>	<b>Coverage</b>	<b>With the participation of</b>
6 Jun 2003	Side Event	Geneva	United Nations Forum on Forests, 3 <sup>rd</sup> Session (UNFF3)	
*Aug 2003	Regional Seminar	Jordan	Arab and Middle East	UNEP
*Oct 2003	Regional Seminar	Djibouti	French-speaking African Countries	
*Nov 2003	Regional Seminar	Jamaica	Latin America and the Caribbean	UNEP / UNCTAD CTBF
*Dec 2003	National Seminar	Korea, Republic of	Republic of Korea	
*Dec 2003	National Seminar	Tanzania	Tanzania	
*Dec 2003	National Seminar	Uruguay	Uruguay	
*Dec 2003	Regional Seminar	Hungary	Eastern European Countries	UNEP / UNCTAD CTBF