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**Open-ended Working Group of the Parties to
the Montreal Protocol on Substances that
Deplete the Ozone Layer**
Twenty-fourth meeting
Geneva, 13–16 July 2004

**Decision XIV/11: The relationship between the Montreal
Protocol and the World Trade Organization**

Note by the Secretariat

The Secretariat is circulating in the annex to the present note reports of the eighth and ninth meetings of the Special Session of the Committee on Trade and Environment to the Trade Negotiations Committee (SSCTE) for the general information of the Parties.

The reports in question (document TN/TE/8 dated 20 April 2004 and document TN/TE/9 dated 28 June 2004) have been submitted by the Chairperson of the SSCTE to the Trade Negotiations Committee of the World Trade Organization after sessions of SSCTE held on 19 April 2004 and on 25 June 2004.

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Annex

**WORLD TRADE
ORGANIZATION**

TN/TE/8
20 April 2004

(04-1785)

**Committee on Trade and Environment
Special Session**

**REPORT BY THE CHAIRPERSON OF THE SPECIAL SESSION OF
THE COMMITTEE ON TRADE AND ENVIRONMENT
TO THE TRADE NEGOTIATIONS COMMITTEE**

1. The eighth meeting of the Committee on Trade and Environment Special Session (CTESS) was held on 19 April 2004.

I. STATUS OF WORK

2. The meeting was marked by constructive discussions on all three components of the trade and environment negotiating mandate. Under paragraphs 31 (i) and (ii), one new submission had been tabled – document TN/TE/W/39 by the European Communities (EC). The EC submission argued that it could be useful for the CTESS to explore the Multilateral Environmental Agreement (MEA)/WTO relationship in the context of global governance principles. These principles included emphasizing the importance and necessity of MEAs; the need to design environmental policy within multilateral environmental fora; the need for close cooperation and increased information flow at the national level, and at the international level between various international bodies for the mutual supportiveness of trade and environmental policies; the fact that MEAs and the WTO were equal bodies of international law; and the need to not interpret WTO rules in "clinical isolation" from other bodies of international law. The EC indicated that its submission did not preclude analytical discussions in the CTESS on the specific trade obligations (STOs) in MEAs.

3. Some support was expressed for the governance principles suggested by the EC, particularly on the need to develop common approaches to address global environmental problems, avoiding unilateral action. One participant argued that what would ultimately be needed would be an interpretative decision on mutual supportiveness and deference in the WTO/MEA relationship. Certain specific questions were put to the EC on the governance principles; for instance, about how they could work in practice to avoid MEA/WTO conflicts, and the type of instrument in which they could be embodied.

4. However, the position was also taken that governance principles fell outside the paragraph 31 (i) mandate, and that it was premature to discuss potential outcomes. Numerous participants insisted on the need for the CTESS to continue to build a firm, factual and analytical foundation to support whatever results were reached on this part of the mandate.

5. Some participants drew attention to the links and potential synergies between paragraphs 31 (i) and (ii) of the mandate, indicating that an outcome on 31 (ii) could also have a positive effect on 31 (i). Under paragraph 31 (ii), numerous participants welcomed the list of potential avenues for increased cooperation and information exchange, on which Ambassador Yolande Biké had reported to the TNC in document TN/TE/7. It was suggested that the Committee could benefit from further discussion of the items on the list, and that an eventual consolidation could be contemplated. The criteria for the granting of observer status were also discussed, with some participants calling for a delinking of this part of the mandate from the broader observer status question in the WTO.

6. A very useful exchange on Paragraph 31 (iii) took place at the meeting, and revolved around a submission by the United States (US) - document TN/TE/W/38. The exchange was particularly welcomed in light of the fact that relatively little time could be allocated to this part of the mandate in previous CTESS meetings. The US paper called for the establishment of a "core" and a "complementary" list of environmental goods. The core list would embody products on which there was a consensus that they constituted environmental goods, and the complementary list would include products on which a definitive consensus could not be reached, but for which there was a "high degree of acknowledgment" that they were significant for environmental protection, pollution prevention or remediation, and sustainability. Modalities for trade liberalization were suggested for the two lists.

7. The flexibility offered in the paper was welcomed by numerous delegations, although the argument was made that it would be important not to preclude any options at this stage, and to consider other avenues for providing flexibility in the negotiations. It was also argued that a list-based approach may not work in isolation, and that there could be a need for the development of criteria or a definition of environmental goods.

8. Questions were posed on various aspects of the US paper, including on: the relationship between the core and the complementary list, the procedures for achieving consensus on the core list, the interpretation of the term "high degree of acknowledgement" for the complementary list, the extent to which the complementary list could lead to a plurilateral process of trade liberalization, and the application of the concepts of less than full reciprocity and special and differential treatment to the lists.

9. Numerous participants were of the view that the product and production method (PPM) criterion should not be used in the negotiations. Several developing country participants indicated that they were net importers of environmental goods, and that the mandate would need to address their objectives as well, including on technology transfer and on their enhanced international competitiveness. One participant enquired about the forum in which agricultural environmental goods would be treated, and another participant indicated that it would be working on a development-oriented list of environmental goods.

II. FUTURE WORK

10. The CTESS will, of course, continue to explore all aspects of its mandate. However, the suggestion was made at the meeting that there was a need for more structured work under paragraph 31 (iii) - perhaps even a work programme under this item.

11. I will be holding informal consultations with delegations with a view to achieving further progress on the mandate of this Committee.

WORLD TRADE ORGANIZATION

TN/TE/9
28 June 2004

(04-2770)

**Committee on Trade and Environment
Special Session**

REPORT BY THE CHAIRPERSON OF THE SPECIAL SESSION OF THE COMMITTEE ON TRADE AND ENVIRONMENT TO THE TRADE NEGOTIATIONS COMMITTEE

TRADE AND ENVIRONMENT NEGOTIATIONS: STATE OF PLAY

1. This report is intended to provide the Trade Negotiations Committee (TNC), at its meeting of 30 June – 1 July 2004, with an overview of the progress achieved in the trade and environment negotiations.¹

I. PARAGRAPH 31 (I)

2. In Paragraph 31(i), participants were instructed to negotiate on: *"the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question."*

3. Since the commencement of the negotiations, delegations have pursued two approaches under this part of the mandate: the identification and discussion of specific trade obligations (STOs) in MEAs; and a broader, more conceptual, discussion of the WTO-MEA relationship.

4. There have been two major submissions under this item since the Cancun Ministerial Conference, one by the European Communities (EC) on global governance principles, and another by the United States (US) on the negotiation and implementation of MEAs.

5. The EC proposal, presented at the April 2004 meeting, suggested that certain global governance principles be considered. These included: emphasizing the importance and necessity of MEAs; designing environmental policy within multilateral environmental fora; ensuring close cooperation and increased information flow at the national and international levels for the mutual supportiveness of trade and environmental policies; recognizing the fact that MEAs and the WTO are equal bodies of international law; and not interpreting WTO rules in "clinical isolation" from other bodies of international law.

6. The US submission, presented at the June 2004 Meeting, addressed the issue of national coordination, transparency, and accountability in the negotiation and implementation of MEAs. More specifically, it explored the US experience in the negotiation and implementation of export restrictions in three MEAs. The submission emphasized the importance of national and international coordination between trade and environmental experts, and identified a number of features in the design and implementation of STOs that

¹The report builds on the previous "state of play" submitted by Ambassador Yolande Biké (in TN/TE/7 and TN/TE/7/Suppl.1) prior to the Cancun Ministerial Conference.

contribute to their effective operation. A key conclusion of the US paper appeared to be that the MEA-WTO relationship has been working well, as evidenced by the fact that MEA-WTO conflicts have not arisen. The US has called on other delegations to also share their national experiences.

7. In general, views continue to diverge on Paragraph 31(i), and more discussion is clearly required before an outcome may be reached. Numerous participants maintain that the CTESS must first build a firm, factual and analytical foundation under this part of the mandate.

II. PARAGRAPH 31 (II)

8. The mandate of Paragraph 31 (ii) stipulates that participants negotiate: "*procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status.*" It involves two components; one, regular information exchange; and, two, criteria for the granting of observer status.

Information Exchange

9. With respect to information exchange, delegations seem to be in agreement that the existing forms of cooperation and information exchange between the WTO, MEAs and UNEP have proven to be valuable and should be enhanced. My predecessor, Ambassador Yolande Biké, had summarized some of the concrete ideas that had been advanced by delegations:

- Formalizing MEA Information Sessions in the CTE, and organizing them on a regular basis;
- holding MEA Information Sessions on specific themes by grouping the MEAs that share a common interest;
- organizing meetings with MEAs in other WTO bodies, either together with the CTE or separately;
- organizing WTO parallel events at the COPs of MEAs more systematically;
- organizing joint WTO, UNEP and MEA technical assistance and capacity building projects;
- promoting the exchange of documents, while respecting confidential information;
- creating avenues for information exchange between government representatives from the trade and environment sides; and
- establishing an electronic database on trade and environment.

10. Many of these ideas are, of course, already being implemented today. While more ideas may be brought to the negotiating table, I would encourage delegations to reflect on how the ideas above may be packaged towards a potential outcome. In so doing, it would be critical for flexibility to be maintained in the WTO's relationship with other organizations, as some delegations have pointed out, so as not to lock the WTO into too tight an arrangement.

Observer Status

11. On observer status, while several delegations have argued that the outcome of the General Council and TNC deliberations on this matter must be awaited, others have stated that the CTESS has an important role to play. I would encourage delegations to reflect on how best to carry this part of the mandate forward. It may be helpful to remember that the mandate is only designed to deal with environmental, and not all, organizations.

III. PARAGRAPH 31(III)

12. In Paragraph 31 (iii), participants were instructed to negotiate: *"the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services."* Broad support has been expressed in the CTESS for conducting the negotiations on market access in environmental goods and services in the Negotiating Group on Market Access for Non-Agricultural Products (NAMA) and the Council for Trade in Services Special Session (CTSSS) respectively. Participants in the CTESS have actively engaged in clarifying the concept of environmental goods. In the process, several references were made to the Organisation for Economic Cooperation and Development (OECD) and the Asia Pacific Economic Cooperation forum (APEC) lists of environmental goods.

13. Since the Cancun Ministerial Conference, encouraging progress on this particular part of the mandate has been made. A US proposal on the development of a "core" and a "complementary" list of environmental goods was discussed. The core list would embody products on which there was a consensus that they constitute environmental goods, and the complementary list would include products on which a definitive consensus could not be reached, but for which there was a "high degree of acknowledgment" that they were significant for environmental protection, pollution prevention or remediation, and sustainability.

14. While two delegations had tabled their own lists of environmental goods prior to the Cancun Ministerial Conference (Japan and Qatar), Chinese Taipei informally tabled its preliminary list at the June 2004 meeting. Furthermore, China proposed the creation of two environmental goods lists, a "common" and a "development" list.

15. I am pleased that discussions under this item are becoming more concrete, and would urge participants to continue submitting specific examples of products, or product categories, that they would like to include in the negotiations. This would be a useful complement to the definitional discussions that the Committee has been pursuing. I note that the OECD, the World Customs Organization (WCO) and the United Nations Conference on Trade and Development (UNCTAD) have all been invited to brief the Committee on their work on environmental goods at the next meeting.

IV. JULY PACKAGE

16. For the July package, I would propose that the CTESS be encouraged to continue pursuing its Paragraph 31 mandate, with a view to achieving a positive outcome in the negotiations.
