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**WTO COMMITTEE ON TRADE AND ENVIRONMENT DISCUSSES ENVIRONMENTAL
REVIEWS, BORDER TAX ADJUSTMENT, ECO-LABELLING AND PACKAGING,
A WTO ENVIRONMENTAL DATABASE AND MARKET ACCESS**

At the meeting of the Committee on Trade and Environment (CTE) on 21 and 22 May 1997, the Chairman, Ambassador Björn Ekblom of Finland, outlined some basic objectives for the Committee during this year. The CTE should:

(a) broaden and deepen the analysis of all items on its work programme; (b) widen participation in support of this analysis; and (c) produce a brief factual report to be submitted to the General Council in December 1997.

The United States described the environmental reviews it has undertaken of several recent trade agreements. Members discussed the development of a WTO environmental database; the application of GATT/WTO rules on border tax adjustment to environmental taxes and charges; and the relationship between WTO rules and eco-labelling and packaging.

New papers were introduced by New Zealand and the United States on the environmental and economic benefits of removing trade distortions in the fisheries sector. Members also addressed the effect of environmental measures on market access and the environmental benefits of removing sectoral trade restrictions.

The CTE extended observer status to the African, Caribbean and Pacific Group of States, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Framework Convention on Biological Diversity.

A detailed report on the CTE's May meeting follows.

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

The United States made a presentation on environmental reviews of trade agreements it has undertaken. The objective was to further the CTE's understanding of such reviews. Since the decision to negotiate the NAFTA in 1991, the United States said it had voluntarily undertaken environmental reviews of a number of environmental agreements, including for the NAFTA and the Uruguay Round. These reviews had been mainly procedural undertakings to identify environmental policy issues raised by new trade policies and the potential environmental benefits of removing trade distortions. Although the causal link between trade liberalization and specific environmental impacts of proposed trade policies could not always be established in advance, the US felt such reviews promoted informed decision making and public involvement in the policymaking process.

Several Members, including the European Union, Norway and Sierra Leone, felt their understanding of environmental reviews had been enhanced by the US presentation. Norway suggested developing a check list of methodologies in the WTO to assist governments in undertaking environmental reviews. Canada noted it had also conducted environmental reviews of the NAFTA and the Uruguay Round. Several Members, including New Zealand, Japan and Canada, said the issue which the discussion had highlighted, and which permeated all CTE work, was the importance of effective coordination between environment and trade policymakers at the national level. The US and Canada emphasized the benefits of including trade policymakers in environmental negotiations.

Several other Members felt the WTO did not have the competence to deal with environmental reviews and, although they had no problem with environmental reviews being undertaken at the national level, failed to see where such a discussion in the CTE would lead. As the WTO's main concern was trade, one suggestion was to review the trade effects and cost effectiveness of existing environmental agreements and those under negotiation. In this respect, several other Members, including Norway, felt that although trade reviews of environmental agreements might be useful, MEAs were the appropriate fora to undertake them. Brazil, Canada, Venezuela, the US and others recalled that other fora, such as the CSD, UNEP and the OECD, were addressing environmental reviews.

Another suggestion, supported by ASEAN, Peru and others, was to focus on the relationship and comparability of general trade and environmental principles. The European Union said any discussion of principles should be balanced and include relevant environmental principles, such as the precautionary and polluter pays principles, and the obligation to cooperate to protect the global commons. Commenting on the suggestion to discuss relevant principles, the US said it would be difficult to summarize or interpret principles drawn from the trade rules. Peru suggested the CTE consider criteria which could lead to binding recommendations to be used in evaluating trade-related environmental policies.

In order to advance the CTE's analysis under this item, the Chairman invited Members to contribute their national experiences with respect to environmental reviews.

Item 3(a): The relationship between the provisions of the multilateral trading system and charges and taxes for environmental purposes

Members noted the importance of the issues raised by the use of environmental charges and taxes, such as the potential effects on competitiveness of adjusting environmental taxes and charges at the border. Many Members noted that although WTO rules allowed for the adjustment of taxes and charges on traded products, it had yet to be clarified whether they provided for border tax adjustment of taxes on inputs incorporated or exhausted in the production process. Switzerland said an examination of the issues raised by border tax adjustment was necessary as the conclusions of the 1970 GATT Working Party on Border Tax Adjustment were no longer valid because of the importance of environmental considerations in the policies of many countries. Japan suggested further work on border tax adjustment of taxes related to non-product-related process and production methods (PPMs).

Several Members, including Nigeria, recalled that the Report which the CTE presented to the Singapore Ministerial Conference, 9-13 December 1996 (the "Report") referred to the fact that there had only been a preliminary investigation of this item. (This Report is reproduced in full in Trade and Environment News Bulletin PRESS/TE 016). Paragraph 182 of the Report noted that scope existed under WTO provisions for governments to apply environmental charges and taxes. Several Members, including Japan and Nigeria, said the potential implications of these measures should be examined, such as their competitiveness effects, taking into account international policy coordination in this area.

Several other Members, including Egypt, Morocco and Korea, questioned the relevance of discussing taxes related to non-product-related PPMs and competitiveness. Another Member recalled that the Report set out that: "WTO Member governments are committed not to introduce WTO-inconsistent or protectionist trade restrictions or countervailing measures in an attempt to offset any real or perceived adverse domestic economic or competitiveness effects of applying environmental policies". Canada felt that, although the PPM issue was sensitive, it could be clarified. The European Union said this issue had horizontal implications and applied to all, not solely environmental, charges and taxes.

Norway said the use of economic instruments would stimulate innovation in pollution-control technologies. The European Union said environmental taxes were increasingly used to promote internalization of environmental costs and to change consumption and production patterns. Such taxes and charges would likely be subject to increasing attention. In this context, Japan, Australia, the EU and others referred to the Kyoto meeting of the Conference of the Parties to the Framework Convention on Climate Change in December 1997. The United States felt any discussion on border tax adjustment should be kept separate from that on climate change.

Canada, Nigeria and others referred to the potential for double taxation on imported products if taxes were adjusted at the border. Norway said several constraints existed on the use of economic instruments, i.e. the valuation and competitiveness problems, which made it politically difficult to introduce neutral eco-taxes. If eco-taxes were coordinated, the competitiveness issue would not constitute a problem. Apart from the difficulty of agreeing on a common approach for the use of environmental charges and taxes, there would be significant competitiveness issues raised by a coordinated use of an eco-tax set at a level which would induce changes in consumption or production patterns. One way to alleviate the competitiveness effects was to use border tax adjustment. In cases where environmental problems stemmed from consumption, the application of border tax adjustment to neutralize competitiveness effects should be possible according to WTO rules. Complications arose with eco-taxes designed to solve problems related to production processes which generated transborder or global environmental problems. From an environmental and cost-efficiency point of view, it had been argued that the scope of border tax adjustment should be extended. However, in Norway's view this would raise several concerns: (a) risk of protectionist abuse; (b) non-product-related PPM issues; (c) technical and administrative difficulties; and (d) in certain cases, risk of providing unintended incentives for suppliers as the extended use of border tax adjustment might discourage improving environmental performance.

Argentina, the United States and others said economic instruments, such as taxes, had an advantage over command and control measures as they were more transparent and did not affect the functioning of the market. Individual interests might obtain exemptions from the application of economic instruments and could be non-transparent and subject to protectionist capture.

Egypt said the imposition of taxes, per se, was valid, but forcing producers to incorporate environmental externalities by imposing taxes on products made with polluting PPMs was based on the assumption that the costs of the polluting firm and the damage function of the polluted firm were known. This was more complex if an importing country attempted to make adjustments at the border on "like" products. Egypt asked what an internationally-acceptable and appropriate pollution tax would be. Furthermore, even the positive effects of applying border tax adjustment, such as minimizing environmental damage, encouraging cleaner production, and raising revenue for environmental protection, were not of direct benefit to developing countries. Egypt, Morocco and Korea referred to the negative competitiveness effects and sovereignty issues concerning environmental standards related to PPMs. Differences in environmental policies should not result in the introduction of compensating duties or import/export rebates. The rebate of eco-taxes reduced their effectiveness, Korea said, particularly if pollution arose from PPMs. At this stage, there was no need to discuss the potential coverage and policy implications of border tax adjustment as only a few countries had introduced such taxes. It was preferable to conduct an analysis of the feasibility, environmental benefits and potential disguised protectionism associated with adjusting taxes at the border based on the way in which they were produced or processed.

Members welcomed Switzerland's offer to make a presentation at the September meeting on the incentive taxes it had introduced to combat air pollution. Switzerland said WTO provisions had been taken into account when these instruments had been designed.

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

Extensive work is currently being undertaken in various international fora in the field of eco-labelling. The Secretariat had prepared an overview of the work which had been completed recently, in particular in relation to the market access impact of eco-labelling programmes.¹

Canada drew attention to the UNEP Expert Group's report, *Eco-labelling and Trade: A Cooperative Approach*, which had been issued as a non-paper (dated 6 March 1997) in the TBT Committee (CTBT). Several Members referred to the OECD's study, *Eco-labelling: Actual Effects of Selected Programmes*, which they felt was a useful reference for further work. The European Union said reference should also be made to the Global Eco-labelling Network. Egypt and Morocco said future updates of other organisations' work should include their relevant conclusions. Egypt, Mexico, Pakistan and others suggested the CTE undertake further analysis of standards, technical regulations, and packaging.

Hong Kong said the CTE could build on the recommendations arising from other fora's work to establish a set of reference principles for eco-labelling, including the need for transparency, adequate consultation, consideration of market and trade impacts, the special needs of developing countries, sufficient allowance for adaptation, harmonization of standards, scientific and technical evidence, and acceptance of equivalency and mutual recognition.

Canada, Brazil, Chile and others said the priority should be to implement the Report, which stressed the importance of WTO Members following the provisions of the TBT Agreement and its Code of Good Practice, including those on transparency for government sponsored eco-labelling programmes. Notification of eco-labelling programmes to the TBT Committee would be without prejudice to Members' views concerning the coverage and application of the TBT Agreement to those aspects concerned with non-product-related PPMs. Canada recalled that it had notified the work programme of its Environmental Choice programme in 1996 and hoped other Members would notify their programmes. Canada said complying with the procedural and substantive provisions of the TBT Code of Good Practice would address trade concerns, while maintaining environmentally-credible eco-labelling.

Brazil said it was taking the necessary steps to notify the Brazilian Green Seal eco-labelling scheme to the CTBT. At this stage, the Green Seal scheme was in a preliminary phase for leather, shoes, paper and timber. Notification of the scheme at this early stage would allow Brazil to proceed according to the TBT Agreement's provisions, whereby interested parties would have the opportunity to become acquainted with the scheme and to provide comments on their local production criteria. Through ensuring transparency in the development of its eco-labelling scheme, Brazil would be in a position to contemplate different or additional criteria on an equivalency basis.

The European Union said procedures to review its eco-labelling scheme had just been initiated; the Commission had recently tabled a proposal in the European Council on procedural principles to establish eco-labelling criteria whereby non-European Union interested parties would be given the same opportunity to be involved and contained a provision according to which small and medium size enterprises (SMEs) in developing countries would be given preferential treatment for fee payment. In this regard, one Member was concerned that the EU revision of its eco-labelling scheme would not sufficiently take on board SME concerns.

Many Members who spoke at the meeting referred to the scope for further discussion on the relationship between eco-labelling and the TBT Agreement. Differences of view remained on the treatment of eco-labelling criteria involving life-cycle analysis, i.e. on the extent to which standards based on unincorporated PPMs were, or should be, covered by the TBT Agreement. General agreement existed on the desirability of eco-labelling schemes, as standardizing bodies, to adhere to the TBT Code of Good Practice. Australia suggested the CTE examine whether the TBT Agreement's provisions adequately addressed eco-labelling, focusing on: (a) the applicability of the TBT Agreement to labels, irrespective of the kind of information provided on the label; (b) the disciplines that should apply to eco-labelling schemes, as standardizing bodies; and (c) the extent to which the criteria used to award labels were standards or technical regulations.

¹ Copies of this document (WT/CTE/W/45) are available upon request to the Trade and Environment Division, WTO Secretariat.

Canada, the United States and Japan, among others, said experience indicated that progress on the coverage of the TBT Agreement was not likely to be productive at this stage in either the CTE or the CTBT. Although it might be counterproductive to discuss what the rules were, Canada said there might be merit in discussing what the rules should be. Canada preferred the discussion to take place in the CTBT at the appropriate time, as the CTBT had an Agreement around which to orient the discussion.

The European Union said that whereas eco-labelling was mentioned explicitly in the CTE's work programme, the issues it raised went beyond the CTBT's mandate. There might be a lack of continuity if discussion on the same issue was conducted in two different WTO Bodies. Canada recalled that the Canadian and the EU submissions to the TBT triennial review had outlined that eco-labelling should be addressed in this review. Norway and others said the discussion was not mature enough to be taken to the CTBT.

Several Members, including Egypt, Brazil and Morocco said the focus of the analysis of eco-labelling programmes should be on their potential market access effects. Pakistan said, in the absence of empirical proof of the success of eco-labelling schemes in determining consumer choice, discussions might be academic. The US noted that eco-labelling was designed to change market behaviour and such effects should not be considered to be negative. Japan recalled that the OECD study had concluded that empirical evidence so far had not revealed any significant trade effects of eco-labelling.

Colombia referred to a study, Reconciliation of Trade and Environment Policies in Colombia, prepared by the Colombian Government. Colombian exporters interviewed for this study were concerned about the costs of eco-labelling, which, in some cases, had significantly affected market access for Colombian exports. Some Colombian textile companies had ceased to export products to certain developed countries due to these costs and the consideration that without the eco-label the products could not compete. Banana exporters had indicated that adaptation costs to fulfil eco-labelling requirements exceeded the benefits and had negative market access impacts. Several Colombian exporters, particularly in plastics and food, had been affected by packaging requirements in several developed countries. Technical procedures required for some packaging standards were unclear and could be used for protectionist, as opposed to environmental aims. Increased transparency and more information on eco-labelling and packaging, Colombia said, would address some of these concerns.

Some Members, including Colombia, Canada, Pakistan and Japan, referred to the importance of studying ISO 14000 and equivalency and mutual recognition of eco-labelling. Egypt and Pakistan, among others, expressed concern about ISO's international character and whether it would be useful to discuss ISO 14000 in the CTE.

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

To follow-up on the Report's recommendations under this item, Members discussed the development of a WTO Environmental Database (EDB). Many Members supported the suggestion that the Secretariat should: (a) collect all environment-related notifications and make them available to Members; (b) prepare and periodically update an index of these notifications; and (c) disseminate this index on-line for use as a guide to finding documents in the WTO Document Dissemination Facility. Hong Kong and others supported developing the EDB in phases. Generally, Members were open to suggestions as to how to disseminate the EDB taking into account technical considerations and cost effectiveness.

Norway suggested that, to ensure automatic classification of trade-related environmental measures, a notification format should be drawn up to require national authorities to indicate whether a measure had an environmental objective. Accordingly, Norway said, relevant WTO Bodies would have to change the format of their respective notifications. The European Union said the EDB should be consistent with the conclusions of the 1996 Report of the Working Group on Notification Obligations and Procedures. Referring to the Director-General's initiative to make technical assistance available to developing countries through the Internet, Nigeria said this should include access to the EDB.

The United States recalled the rationale behind the decision to create the EDB was to centralize and make information more readily available on environment-related notifications, not to create new notification requirements. Deciding which notifications to include in the EDB was a complex task given the lack of any agreed definition of what

constituted an environmental measure. For instance, the United States had doubts as to whether to include measures taken to promote or protect plant varieties or to develop genetic resources. Many Members felt the Secretariat had the competence to undertake the selection and classification of notifications in the EDB on the understanding that a notification's inclusion would not prejudice the definition of an environmental measure, nor which measures were relevant to CTE work. It was felt that Members could supplement this work by providing advice on a voluntary basis.

The suggestion had been made that the EDB be designed to facilitate analysis of the trade effects of environmental measures notified by Members. Many Members did not see a role for the EDB to undertake such a trade impact analysis. Nigeria said its understanding was that the EDB's purpose was to further such an assessment.

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*

The United States and New Zealand introduced new papers on the environmental and trade benefits of removing subsidies in the fisheries sector.⁷ The fisheries sector provided a good example of a natural resource sector where removing subsidies would generate significant benefits for trade and the environment. The United States said subsidies tended to reduce internal costs and thereby exacerbate the problems of overcapacity and over fishing, particularly for developing countries. As subsidies also distorted trade, both papers set out the reasons why their removal would provide a double dividend and be beneficial for trade and the environment. New Zealand said fishing industry subsidies affected the marine environment, the interests of developing countries and the ability of countries to ensure sustainable development. There was scope, New Zealand said, for work to clarify which WTO Articles had a bearing on fishing industry subsidies and to consider whether these Articles adequately regulated fisheries subsidies.

All Members welcomed the contribution to the sectoral analysis under this item contained in the United States and New Zealand's papers. Iceland said the fisheries sector accounted for about 80 per cent of the total value of Iceland's exports and was the foundation of Iceland's economic prosperity. This dictated the necessity of sustainably managing its fisheries resources.

Several Members, including Japan and Korea, said certain fisheries subsidies could facilitate the fishing industry's transition to a more sustainable mode. They felt any analysis of the relationship between agricultural liberalization and the environment should examine the positive and negative aspects and take into account socio-economic conditions and food security concerns. Japan said environmentally beneficial subsidies should be dealt with differently from environmentally harmful ones, on a case-by-case basis. One Member said environmental subsidies also had competitiveness and market access effects, especially for developing countries.

The Secretariat introduced an informal paper, which was intended to serve as a starting point from which to develop a sectoral analysis under Item 6. Members felt this paper along with the submissions of the United States and New Zealand were steps towards addressing the issues from a sectoral perspective. Many Members, including Argentina, Egypt and others, underlined the importance of maintaining the discussion within the CTE's mandate and in the context of paragraph 198 of the Report, whereby the CTE should identify potential "win-win" situations for both environment and trade. In this respect, Argentina and others noted that, if the analysis shifted from environmental benefits to general environmental effects, the CTE would not be addressing its mandate. Egypt said a sectoral approach should define what was meant by "win-win" situations.

Hong Kong said the analysis of the positive trade-environment links should be further developed. Hong Kong appreciated the inclusion in the analysis of textiles and leather, which had been among the most severely regulated and distorted sectors affecting developing countries. The potential environmental benefits of removing these distortions should be studied further, as well as the trade effects of environmental measures in sectors more prone to disputes, such as fisheries. The European Union recalled its position set out in its non-paper (dated 23 July 1996). (See *Trade and Environment News Bulletin PRESS/TE 013*.)

⁷At the request of the United States and New Zealand, these documents are derestricted. Copies are available upon request to the Trade and Environment Division, WTO Secretariat.

Egypt referred to environmental cost internalization, a concept which had been acknowledged as WTO-incompatible if it was applied beyond policies that addressed domestic consumers and producers. Environmental cost internalization, Egypt said, was not the only response to ensure that trade liberalization had an "optimal" beneficial environmental effect.

Argentina said it had accepted environmental cost internalization in Principle 16 of Agenda 21, but this objective should not be taken out of context. Until commodity prices fully reflected the private cost of production, environmental costs could not be internalized. The first step would be to identify and eliminate policy distortions which affected international prices. In the view of many Members, fisheries and agriculture were appropriate sectors in which to begin this analysis. Argentina said the CTE should also analyze the potential environmental effects of trade policies which distorted international markets, such as market access restrictions, domestic support, and export subsidies. In the case of agriculture, the list of distorting measures would include those outside the Green Box.

ASEAN said that while a sectoral approach could provide the basis for an in depth analysis, it should not be a means by which to arrive at general conclusions. Canada said the purpose of a sector-specific analysis was to further general conclusions on synergies between trade liberalization and environmental objectives. The broader, strategic issues which Canada felt should be addressed included zero-for-zero liberalization initiatives, particularly in the non-ferrous metals sectors, and other factors that might impact on market access, such as eco-labelling and certification. In some cases, MEAs might be the appropriate policy response. In this regard, Canada said it supported the proposed Forest Convention. In general, there was a positive correlation between freer trade and sustainable forest management; good environmental management made sound economic sense.

Egypt said the CTE's mandate was to examine whether additional market access could provide developing countries with opportunities to adopt higher environmental standards, not to ensure which domestic policy responses to trade liberalization had beneficial environmental effects or were more conducive to environmental protection. Several Members pointed to the need for the analysis to pay particular attention to SMEs.

Nigeria, Egypt, Peru and others felt that, to date, insufficient attention had been devoted to market access. ASEAN and Peru said the analysis should be further developed on improving market access and providing incentives for environmentally friendly products from developing countries, and to promote environmentally sound technology and technical assistance for developing countries.

Canada recalled the link between market access and environmental goals. Higher tariffs on paper compared to pulp resulted in double drying of the pulp, with consequent increases in energy consumption. Encouragement of local production, Canada said, would likely result in energy savings, which was a strong rationale for zero-for-zero tariff initiatives in this sector. Egypt said the linear relationship between reduction of tariff escalation and generating income provided an opportunity for countries to improve environmental protection. ASEAN said the issue of tariff escalation should not be complicated; it would not be disputed that reducing trade barriers would provide increased market access opportunities, which would generate income to be used for environmental conservation.

The CTE will continue the discussion on this item at its meeting from 22-24 September.