

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA



Fifty-fourth meeting of the Standing Committee
Geneva (Switzerland), 2-6 October 2006

Strategic and administrative matters

COOPERATION WITH THE WORLD TRADE ORGANIZATION

1. This document has been prepared by the Secretariat, following the request by the Standing Committee during its 53rd meeting (SC53, Geneva, June – July 2005) to provide an overview of the status of negotiations related to economic incentives in other fora. It provides *inter alia* an overview of the status of negotiations in the Committee on Trade and Environment (CTE) of the World Trade Organization (WTO), in particular the Special Sessions of the CTE (CTESS) where WTO members have been negotiating on certain provisions of the Doha Ministerial Declaration adopted in November 2001.
2. It should be noted that the WTO General Council, at its meeting on 27 and 28 July 2006, supported a recommendation by the Director-General to suspend the Doha negotiations. This means that all work in all negotiating groups, including the CTESS, is suspended and the progress made to date is put on hold. The work of the CTE will continue irrespective of the situation in CTESS.

Background

3. The Secretariat previously reported on the relationship between CITES and WTO in document CoP12 Doc. 18. That document contained a description of activities that had been undertaken through March 2002. The current document, therefore, will cover discussions and activities that have occurred since that time.
4. Objective 5.4 of the Strategic Vision is "to ensure continuing recognition and acceptance of CITES measures by WTO and to ensure the mutual supportiveness of the decision-making processes between these bodies". Action Point 5.4.1 directs Parties to "enhance national liaison between CITES and WTO focal points" and Action Point 5.4.2 directs the Secretariat to "enhance regional and international liaison between CITES and WTO".
5. In the preamble of the 1994 Marrakesh Agreement Establishing the World Trade Organization, WTO members recognized that their relations in the field of trade and economic endeavours should allow for "optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development".

WTO CTE and CTESS meetings

6. In furtherance of Objective 5.4 of the Strategic Vision, the Secretariat has attended meetings of the WTO CTE (where the Convention has observer status) and CTESS (where the Convention has been invited to attend on an *ad hoc* basis).
7. During the period from May 2003 to July 2006, the Secretariat attended three meetings of the CTE (June 2002, October 2002 and February 2003) as well as an MEA Information Session held in June

2002. It made interventions at all of those meetings, and the Information Session, to inform WTO members of relevant decisions or actions taken by CITES Parties and to explain the operation of the Convention. Written submissions to the CTE are contained in documents WT/CTE/GEN/5, WT/CTE/GEN/6 and WT/CTE/GEN/7 (available at www.wto.org).

8. The CTESS meetings began in March 2002. MEAs (including CITES) and UNEP submitted written requests to the WTO Secretariat for observer status in the CTESS and intervened in CTE meetings to make requests for such observer status. Such requests are still pending because consensus has not yet been reached on how to handle other politically sensitive requests for observer status in WTO bodies. MEAs were first allowed to attend a CTESS meeting as observers in November 2002, when the Fourth meeting of the CTESS was organized as an MEA Information Session on Paragraph 31(ii) of the Doha Declaration. The Secretariat was unfortunately not able to participate in that meeting.
9. The CTESS agreed at its Fifth meeting, in February 2003, to invite six MEAs (including CITES) and UNEP to its Sixth meeting in May 2003. Since that time, the CTESS has regularly invited certain MEAs and UNEP to attend their meetings.
10. Such invitations are not automatic, however. The CTESS agreed at its Fifth meeting that CITES and other MEAs would be:

invited on an ad hoc basis to meetings of the CTESS when their expertise was considered necessary to the discussions. Such a decision would be taken by consensus at the end of each meeting and would only concern the following meeting. This would be without prejudice to the negotiations currently underway in the CTESS, in particular in relation to Paragraph 31(ii) and the criteria for the granting of observer status to MEAs in relevant WTO committees. Furthermore, since the issue of observer status was before the General Council and the TNC [Trade Negotiations Committee], such an approval would be without prejudice to a solution to this issue in the General Council and the TNC.

11. *Ad hoc* invitees initially could only attend discussions as observers on specific agenda items but, over time, they have been allowed to attend discussions on other agenda items as well. They have generally not been allowed to attend informal meetings of the CTESS.
12. In accordance with a suggestion made by the Chairman and noted by the CTESS, *ad hoc* invitees are usually given the floor after delegates have spoken, either to respond to questions by delegates or to clarify the way in which their environmental agreements operated.
13. During the period from May 2003 to July 2006, the Secretariat attended the following 10 meetings of the CTESS: Sixth meeting (1-2 May 2003); Seventh meeting (8 July 2003); Eighth meeting (19 April 2004); Ninth meeting (22 June 2004); Eleventh meeting (24-25 February 2005); Twelfth meeting (7-8 July 2005); Thirteenth meeting (15-16 September 2005); Fourteenth meeting (14 October 2005); Fifteenth meeting (21-22 February 2006); and Sixteenth meeting (6-7 July 2006). The Secretariat made oral interventions at most of these sessions to inform WTO members of relevant decisions or actions taken by CITES Parties and to clarify the operation of the Convention in relation to agenda items and documents under discussion. It did not make any written submissions.
14. Every CTESS meeting is summarized in a report by the Chairman to the WTO Trade Negotiations Committee. On two occasions, July 2003 and June 2004, the Chairman of the CTESS submitted reports to the TNC that described the 'State of Play' of the trade and environment negotiations. In addition, the WTO Secretariat prepares a more comprehensive summary report of each meeting which describes the content of interventions made by WTO members and *ad hoc* invitees. Such reports, as well as all meeting documents, are accessible on the WTO website (www.wto.org).
15. Progress in the Doha negotiations (including aspects of the trade and environment linkage) has been slowed by the absence thus far of 'modalities' or template agreements for trade in agriculture and industrial goods. The Director General of WTO has said that resolution of these key issues should unlock the negotiations in other areas.

16. In paragraph 30 of the Hong Kong Ministerial Declaration (December 2005), trade ministers stated that:

We affirm the mandate in paragraph 31 of the Doha Ministerial Declaration aimed at enhancing the mutual supportiveness of trade and environment and welcome the significant work undertaken in the Committee on Trade and Environment (CTE). We instruct Members to intensify negotiations, without prejudging their outcome, on all parts of paragraph 31 to fulfil the mandate.

17. During a video conference address to the opening session of the European Commission's Green Week 2006 (Brussels, May 2006), the Director General of WTO sent a message to the membership of WTO in which he said: "We all agree that unilateral action, [to protect the environment] outside a country's jurisdiction, should be avoided. Let us lend our support, therefore, to multilateral environmental accords. The Doha Round, in which this issue is currently under negotiation, is a once in a lifetime opportunity to confirm the need for 'mutual supportiveness'". In addition to making several specific references to CITES, in relation to legal instruments that protect biological heritage and the Shrimp/Turtle dispute, he stated that "the Appellate Body of the WTO has repeatedly confirmed that WTO rules are not to be interpreted in isolation of other bodies of law".
18. The Secretariat has summarized below key aspects of the Doha round negotiations which it feels are relevant to CITES.

Paragraph 31(i) of the Doha Ministerial Declaration

19. In paragraph 31(i) of the Doha Ministerial Declaration, WTO members 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 MEAs in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEAs in question.

20. There has been a substantial amount of discussion on Paragraph 31(i) centred around three main themes: the identification and discussion of Specific Trade Obligations (STOs) in MEAs; the sharing of national experiences in the negotiation and domestic implementation of STOs in MEAs, including how the domestic policy formulation process takes place in areas involving the WTO-MEA interface and how that process is reflected on the international plane; and the recognition of global governance principles related to the WTO-MEA relationship. The domestic policy formulation process is relevant, of course, to the wildlife trade policy reviews that will be undertaken in relation to Decision 13.74 of the Conference of the Parties (see document SC54 Doc. 40).
21. With regard to the identification of STOs, the 'trade measures' explicitly provided for and mandated under the Convention seem generally recognized as STOs. Some delegations believe that other trade measures, such as those contained in decisions taken by the Conference of the Parties or the Standing Committee (and related recommendations of the Animals and Plants Committees or the Secretariat), are also covered by this term. Discussion so far shows no direct conflict between STOs found in CITES and WTO rules.
22. A useful tool for these discussions has been the 'MEA Database: Matrix on Trade Measures Pursuant to Selected MEAs' (which is accessible on the WTO website) compiled by the WTO Secretariat in consultation with MEA secretariats. The Database was created in 2000 and updated in 2001, 2003 and 2005 in cooperation with MEA secretariats. The current version includes references to Resolutions and Decisions adopted or revised at CoP13.
23. While contributing to the identification of STOs in MEAs, and sharing their national experiences with the negotiation or implementation of such STOs, a number of delegations have referred to CITES. More detailed information on CITES-related experience is contained in Documents TN/TE/W/28 (Hong Kong SAR, China), TN/TE/W/40 (United States of America) and TN/TE/W/45 (Australia). CITES was also mentioned in oral or written submissions made by China, Colombia, India, Japan, Malaysia, the Republic of Korea and Zimbabwe.

24. Numerous delegations have yet to contribute to the experience-sharing exercise and WTO members have not yet considered what lessons, if any, can be drawn that could contribute to fulfilment of the mandate under Paragraph 31(i). It has been suggested that the exercise shows there is a need to refine international coordination and to improve information exchange.
25. Some delegations believe that the relationship between MEAs and WTO rules would benefit from a formal expression of the global principles which govern that relationship, namely, mutual supportiveness, no hierarchy, deference, transparency and international as well as national coordination. A proposed decision of the Ministerial Conference on Trade and Environment (TN/TE/W/68), containing many of these principles, was submitted by the European Communities for discussion at the CTESS meeting held in July 2006.
26. Proponents of global governance principles believe that tensions have always existed between the trade and environment regimes, so the recognition of such principles (rather than an amendment of WTO rules) would help to reinforce the relationship and minimize the potential for conflict. Other delegations find that the relationship between the trade and environmental legal regimes is working well, noting that there have not been any conflicts to date and there is no need to agree on a set of governing principles. Several delegations have indicated that they are reluctant for WTO to defer to, or to accord any automatic presumption of WTO compatibility with MEA trade measures.
27. The Chairman of CTESS has encouraged delegations to find common ground among the various approaches that have been discussed to date. Some delegations have said that experience sharing is not enough and it should be possible to make a bridge between national experience and governance principles. Some delegations have noted that there are synergies between paragraph 31(i) and paragraph 31(ii) on information exchange and observer status. Specifically, with greater cooperation and information exchange between WTO and MEAs, and criteria for the granting of observer status in the WTO to relevant organizations, the WTO-MEA relationship could be strengthened and potential conflicts possibly averted. Overall, delegations have expressed a desire to reach concrete and successful outcomes in the negotiations.
28. In June 2006, UNEP circulated among permanent missions in Geneva a draft paper on 'Trade-related Measures and Multilateral Environmental Agreements'. The Secretariat provided comments on several earlier versions of the paper. UNEP had planned to organize a workshop on paragraph 31 immediately before the next meeting of the CTESS, in September 2006, but these plans are being revised in light of the July 2006 decision to suspend all Doha negotiations.
29. During the July 2006 CTESS meeting, the Secretariat drew delegations' attention to the language found in Objective 5.4 of the Strategic Vision, particularly the reference to mutual supportiveness. It mentioned that the principles of no subordination and deference between different legal regimes had recently been furthered in another setting, through the conclusion of a Memorandum of Understanding on fishery-related issues with the Food and Agricultural Organization of the United Nations.

Paragraph 31(ii) of the Doha Ministerial Declaration

30. In paragraph 31(ii) of the Doha Ministerial Declaration, WTO members were instructed to negotiate on "procedures for regular information exchange between MEA secretariats and the relevant WTO committees, and the criteria for the granting of observer status".
31. Less attention has been given by WTO members to this part of paragraph 31. The CTESS has not yet reached a common understanding of how it should proceed to the next stage of work to fulfil the mandate.

32. In her July 2003 report to the Trade Negotiations Committee (TN/TE/7), the Chairman of the CTESS summarized the suggestions made regarding forms that enhanced cooperation and information exchange could take. These included:
- a) Formalizing MEA Information Sessions in the CTE, and organizing them on a regular basis;
 - b) Holding MEA Information Sessions on specific themes by grouping the MEAs that share a common interest;
 - c) Organizing meetings with MEAs in other WTO bodies, either together with CTE or separately;
 - d) Organizing WTO parallel events at the meetings of the Conference of the Parties of MEAs more systematically;
 - e) Organizing joint WTO, UNEP and MEA technical assistance and capacity-building projects;
 - f) Promoting the exchange of documents, while respecting confidential information;
 - g) Creating avenues for information exchange between government representatives from the trade and environment sides; and
 - h) Establishing an electronic database on trade and environment.
33. Many delegations continue to consider the above suggestions a good basis for reaching an outcome under this aspect of paragraph 31(ii). Additional suggestions have been made as well (e.g. annual information sessions, need for dialogue and use of information exchange to take stock). Some delegations have proposed that information exchange be formalized and institutionalized. Others have indicated that they prefer regular but not formalized information exchange, highlighting the importance of maintaining flexibility.
34. A note by the WTO Secretariat prepared in February 2005 described 'Existing Forms of Cooperation and Information Exchange between UNEP/MEAs and the WTO' (TN/TE/S/2/Rev.1). This showed that eight MEA Information Sessions were held from 1997 to date, and CITES was able to participate in four of them. It also recorded CITES participation in regional workshops on trade and environment that were held in Tunisia (October 2002) and Bolivia (February 2003). Such regularly-organized workshops offer useful opportunities to enhance national liaison between CITES and WTO focal points, but CITES authorities are not always invited to attend. Moreover, WTO has no budget to support participation by MEA secretariats and the CITES Trust Fund is insufficient for this purpose. The WTO Secretariat has organized a number of side events at MEA meetings, including the 12th meeting of the Conference of the Parties (CoP12).
35. The Secretariat has participated, together with representatives of UNEP and other MEAs, in several informal meetings with staff of the WTO's Trade and Environment Division and one meeting with the Chairman of the CTESS. Such meetings have been useful for exchanging information, correcting misperceptions, improving mutual understanding and identifying potential areas for cooperation. UNEP has also organized informal meetings with MEA secretariats on the margins of CTESS meetings. These meetings have enabled UNEP and the secretariats to compare their respective mandates and interests in relation to WTO, agree on joint activities or documents and exchange relevant information or experience.
36. The other key aspect of paragraph 31(ii) concerns MEA observer status in WTO bodies. A document prepared by the WTO Secretariat in January 2003 (TN/TE/S/4) contains a status report on granted and pending requests. Annex 3 of the Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council (WT/L/161) provides general criteria for observer status in those bodies. Some delegations have suggested that these criteria might be applied to organizations seeking observer status in the CTESS. Other delegations have proposed the use of different or additional criteria which are specific to MEAs. It has also been suggested that there should be a strong presumption for granting MEA requests for observer status in all WTO bodies. A few delegations have drawn attention to the difference between 'criteria for the granting of observer

status', which they point out is the mandate provided under paragraph 31(ii), and the actual granting of such status.

37. To some WTO members the *ad hoc* approach for involving MEAs and UNEP on a meeting-by-meeting basis has proved usefully flexible. Appreciation has also been expressed for the valuable contributions which MEAs have made to the CTESS. Recently, there was a suggestion that MEAs might be provided with *ad hoc* observer status in the CTESS for a renewable period of one year. No decision on this suggestion was taken, however. In the Secretariat's view, the absence of clear MEA observer status in the CTESS and the limits placed on MEA interventions have made it difficult for a meaningful dialogue to occur during most CTESS meetings.
38. During the July 2006 CTESS meeting, the Secretariat expressed its willingness to participate in any mechanism for information exchange with the WTO. It suggested that links between the CITES and WTO websites could be strengthened. The Secretariat noted that WTO has observer status in all CITES bodies and suggested that CITES should therefore be granted observer status in all WTO bodies, including the decision-making bodies.

Paragraph 31(iii) of the Doha Ministerial Declaration

39. In paragraph 31(iii) of the Doha Ministerial Declaration, WTO members were instructed to negotiate on "the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services".
40. There is some overlap in the area of environmental goods and services (EGS) between the CTESS and other negotiating bodies, such as the Negotiating Group on Non-Agricultural Market Access (NAMA) and special sessions of the Services Council. The CTESS therefore has focused on clarifying the concept of environmental goods while NAMA is in charge of the modalities for tariff reductions.
41. Delegations have put forward a variety of approaches for determining what constitutes an environmental good. These include: the list approach (under which delegations have submitted lists of specific goods they would like considered as environmental); the environmental project approach (under which delegations have suggested that all goods associated with specific environmental projects be considered environmental); the integrated approach (under which the list and environmental project approaches would be merged); and the MEA approach (under which MEAs are used as the basis for identifying environmental goods). A document discussed during the July 2006 CTESS meeting [JOB(06)/144] contains the most detailed explanation yet provided on the MEA approach. It suggests that WTO and the MEAs should work together on determining what constitutes an environmental good (or service) and begin by identifying them on the basis of environmental activities covered by MEAs. The document places emphasis on exportable goods and suggests the need for some kind of international certification process.
42. The vast majority of environmental goods discussed thus far have been connected with industrial products and processes aimed at reducing pollution or energy use. Given that there have been few references to natural resource products, the implications of these discussions for CITES are not yet evident.
43. Work on this particular aspect of paragraph 31 was intensified in 2005 in order to try and achieve some progress before the sixth WTO Ministerial Conference held in Hong Kong during December 2005. This led to the convening of several technical discussions as well as CTESS meetings.
44. UNEP recently circulated among permanent missions in Geneva a draft paper entitled "MEA Experience in Identifying and Facilitating the Transfer of Technology – What Lessons can be Drawn for the WTO EGS (Environment, Goods and Services) Negotiations?" The Secretariat provided material for the paper, as well as comments on previous drafts, which described experience under the Convention in relation to: software for computerized permit issuance/reporting, security stamps and security paper (measures which ensure that documents are difficult or impossible to alter); systems or methodologies for producing animals or plants in a way that contributes to their survival in the wild (e.g. ranching, captive breeding, aquaculture and artificial propagation); marking and tagging technology (e.g. crocodile skin tags and coded microchip implants); and forensic techniques or materials for the identification of specimens.

Paragraph 32 of the Doha Ministerial Declaration

45. In paragraph 32(i) of the Doha Ministerial Declaration, the CTE was instructed to give particular attention to 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".
46. This aspect of the Doha mandate is being addressed in regular meetings of the CTE. Such meetings have continued to take place, but participation by delegations and observers has declined somewhat since the establishment of the CTESS. The substance of paragraph 32 nevertheless has clear relevance to CITES Parties, particularly in relation to Resolution Conf. 6.7 on Interpretation of Article XIV, paragraph 1, of the Convention.
47. Some delegations have noted that improved market access for developing countries' products is fundamental to the goal of sustainable development. Other delegations have pointed out that the protection of the environment and health are legitimate policy objectives. WTO members, therefore, have been trying to strike a balance between safeguarding market access and protecting the environment through: the identification of criteria that might be used in the design of environmental measures; the involvement of developing countries in the development of such measures; flexibility in the application of such measures; technical assistance and capacity building for meeting legitimate measures; and the development of export markets for environmentally-friendly products.
48. WTO members have analysed the agriculture, energy, fishery and forestry sectors to identify situations where the elimination or reduction of trade restrictions would benefit trade, the environment and development. In their discussions related to fisheries, delegations have looked particularly at fishery subsidies. In their discussions related to forests, delegations have generally considered whether and how the WTO might make a positive contribution to the forestry issue. They have noted the need to balance conservation with the economic benefits that derive from forest resources and have looked at the problem of illegal logging. CITES has been mentioned, together with FAO, UNFF and ITTO, as an organization with special expertise in the area, through which WTO members provide technical assistance and expertise at the national level.
49. In paragraph 32(iii) of the Doha Ministerial Declaration, WTO members were instructed to negotiate on "labelling requirements for environmental purposes". This issue is also being discussed in the Committee on Technical Barriers to Trade. Delegations have noted the importance of transparency and measurable scientific considerations in relation to environmental labelling schemes.

Paragraph 33 of the Doha Ministerial Declaration

50. In paragraph 33 of the Doha Ministerial Declaration, Ministers recognized "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". They also encouraged that "expertise and experience be shared with members wishing to perform environmental reviews at the national level".
51. As mentioned above, the WTO Secretariat has undertaken a variety of technical assistance and capacity-building activities. WTO members have noted the value in bringing together trade and environment officials in a manner that enhances coordination and policy coherence at national level. The UNEP-UNCTAD Capacity Building Task Force on Trade, Environment and Development (CBTF) has organized a number of workshops, often back-to-back with WTO regional workshops. The Secretariat contributed a CITES powerpoint presentation to one of those workshops, but the CITES Trust Fund has otherwise been insufficient to support the Secretariat's participation in such workshops on a regular basis. During CTE discussions, delegations and observers, particularly UNEP, have shared their experiences in performing various kinds of environmental reviews.
52. The UNEP-UNCTAD CBTF is one of the primary partners in the ongoing wildlife trade policy review project (see document SC54 Doc. 40 and Decision 13.74) and provided substantial funds to it. The project allows CITES to make a major contribution to technical assistance, capacity building, coordination, policy coherence and reviews involving environment and trade officials at the national level.

Paragraph 51 of the Doha Ministerial Declaration

53. In paragraph 51 of the Doha Ministerial Declaration, Ministers provided that:

the Committee on Trade and Development and the Committee on Trade and Environment shall, within their respective mandates, each act as a forum to identify and debate developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected.

54. There has not been a great deal of work yet on this aspect of the Doha mandate. The Secretariat nevertheless participated in a WTO Symposium on Trade and Sustainable Development within the Framework of paragraph 51 of the Doha Ministerial Declaration, which was held in Geneva during October 2005.

55. The Standing Committee is invited to note this report.