行政院環境保護署九十二年度專案研究計畫
計畫編號：EPA-92-U1U1-02-101

永續發展與環保國際合作
「貿易與環境相關議題研究分析」

行政院環境保護署

行政院環境保護署九十二年度專案研究計畫
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永續發展與環保國際合作
「貿易與環境相關議題研究分析」

計畫經費：　壹佰叁拾陸萬元
計畫主持人：　倪貴榮
共同計畫主持人：施文真
計畫執行人員：　趙雯蕙、李姿慧、王敏賢

委辦單位：行政院環境保護署
承辦單位：國立交通大學
計畫執行期間：民國 92 年 1 月至民國 92 年 12 月止
印製年月：民國 92 年 12 月

永續發展與環保國際合作「貿易與環境相關議題研究分析」計畫
期末報告基本資料表

甲、委辦單位	行政院環境保護署			
乙、執行單位	國立交通大學科技法律研究所			
丙、年　　度	九十二	計畫編號	EPA-92-U1U1-02-101	
丁、研究性質	■基礎研究	□應用研究	□技術發展	
戊、研究領域	政策研究			
己、計畫屬性	■科技類	□非科技類		
庚、全程期間	92 年 1 月～ 92 年 12 月			
辛、本期期間	92 年 1 月～ 92 年 12 月			
壬、本期經費	1,360 千元			
	資本支出		經常支出	
	土地建築＿＿＿千元		人事費＿568＿千元	
	儀器設備＿＿＿千元		人事費＿420＿千元	
	其　他＿＿＿千元		材料費＿＿＿千元	
			其　他＿372＿千元	
癸、摘要關鍵詞（中英文各三則） 世界貿易組織（WTO） 多邊環境協定（MEAs） 環境商品與服務業（Environmental Goods and Services）				
參與計畫人力資料：（如僅代表簽約而未參與實際研究計畫者則免填以下資料）				

參與計畫人員姓名	工作要項或撰稿章節	現職與簡要學經歷	參與時間(人月)	聯絡電話及 e-mail 帳號
倪貴榮	統籌、督導計畫之進行	國立交通大學科技法律研究所助理教授 英國愛丁堡大學法學博士	12	03-5712121-57551 kjni@cc.nctu.edu.tw
施文真	計畫指導與諮詢	國立東華大學環境政策研究所專任副教授 英國倫敦大學亞非學院法學博士	12	03-8662500-26113 wcshih@mail.ndhu.edu.tw
趙雯蕙	研究分析與報告撰寫	國立交通大學科技法律研究所碩士生 國立成功大學碩士	12	03-5712121-57550 giniachao.itl91g@nctu.edu.tw
李姿慧	研究分析與報告撰寫	國立東華大學環境政策研究所碩士生	12	03-8662500-26113 m9151008@em91.ndhu.edu.tw
王敏賢	研究分析與報告撰寫	國立交通大學科技法律研究所碩士生	12	03-5712121-57550 peri.itl92g@nctu.edu.tw

行政院環境保護署計畫成果中英文摘要

一、中文計畫名稱：
永續發展與國際環保合作--貿易與環境相關議題研究分析
二、英文計畫名稱：
Research on Trade and Environment Issues
三、計畫編號：
EPA-92-U1U1-02-101
四、執行單位：
國立交通大學
五、計畫主持人（包括共同主持人）：
倪貴榮、施文真
六、執行開始時間：
92/01/23
七、執行結束時間：
92/12/31
八、報告完成日期：
92/12/22
九、報告總頁數：
414
十、使用語文：
中文
十一、報告電子檔名稱：
EPA92U1U102101.DOC
十二、報告電子檔格式：
WORD 2000
十三、中文摘要關鍵詞：
世界貿易組織，多邊環境協定，環境商品與服務業
十四、英文摘要關鍵詞：
WTO, MEAs(Multilateral Environmental Agreements), Environmental Goods and Services
十五、中文摘要

在第二次世界大戰結束後，採取進口限制的經貿措施，經常成為經濟強權國家用以改變他國政策的有利工具；而鑒於國際環境保護愈為重要，將貿易與環境掛勾，亦即以貿易手段達到維護環境目的，乃成為最新國家政策與實踐。另在現今的國際社會中，存在約 200 個多邊環境保護協定，其中有 20 個多邊環境協定規定了貿易措施。為調和貿易與環境之衝突，2001 年 WTO 杜哈部長會議授權貿易與環境委員會(CTE)協商包括釐清環境協定之貿易措施與 WTO 規範之間的關係等議題。

本計畫重點在於探討 WTO 貿易規則與主要 MEAs 之關係、環境商品與環境服務業相關議題、TBT/Eco-Labeling

相關議題，以及比較主要國家或區域組織之立場文件，並希望能協助研析我國未來在多邊與雙邊貿易協定談判或糾紛中，環境相關議題之立場及紛爭解決機制，以及完成分析我國環境政策與法規與 WTO 貿易與環境規範相容性等。

主要成果包括完成基礎研究；出席兩次 CTE 會議，除發表立場文件外，並與他國代表進行多場次的正式與非正式雙邊會談。十月間，並舉辦專家會議，就我國目前參與 WTO「貿易與環境工作分組運作」進行檢討，做為日後推動相關計畫之參考。

十六、英文摘要：

Since the end of the Second World War, economically powerful countries have been constantly applying import restrictions as a means to force the change of other countries' national policies. In light of the increasingly importance of preserving the global environment, it also becomes a usual practice and policy of a country, mostly developed countries, to use trade measures to enforce environmental standards. Meanwhile, there are about twenty international accords among totally more than two hundred multilateral environmental agreements (MEAs) requiring trade restrictions as an enforcement mechanism. In order to accommodate the potential conflicts between trade and environment, the WTO Doha Declaration mandating the Committee on Trade and Environment (CTE) to convene members in negotiating several critical issues.

The project aims to explore the agenda governed by the CTE, in which our country proves to have strong interests, mainly including the relations between WTO rules and trade obligations set out in MEAs, labeling for environmental purposes, environmental products and services. The task then will cover the analysis of positions of respective members with a view to helping consolidate our position that may best serve the interests of our country. The consistency between WTO rules and our national environmental policy and regulations will be also examined.

The primary performance and results of this project include: conclusion of fundamental study on CTE agenda, especially focusing on legal perspective; presence at two CTE meetings held on July and October 2003 respectively in which a position paper had been submitted, titled "The Relationship between WTO Rules and Specific Trade Obligations set out in MEAs"; additionally, in such a forum, we assisted officials to conduct formal or informal negotiations on a bilateral basis. On October, we held an

expert meeting aiming to examine the present function and performance of governmental unit responsible for trade and environment tasks and then made some useful suggestions over the improvement of future work, including capacity building, reasonable allocation of funding and resources, and personnel training.

主計畫名稱：永續發展與環保國際合作「貿易與環境相關議題研究分析」委辦計畫期末報告

計畫召集人：倪貴榮

服務單位：國立交通大學科技法律研究所

計畫期程：92 年 1 月 23 日起 92 年 12 月 31 日止

總 經 費：新台幣壹佰參拾陸萬圓整

序 言

工業革命以後，人類活動的經濟規模有了躍進式的成長，雖然人們的生活與過去相比是更加的平穩與舒適，但各種開發活動所衍生的環境問題，也讓各國付出慘痛的代價。由於環境問題是全球性的，因此各國間簽署各項條約與協定，以期解決環境問題。而許多協定中所欲達成的環境目的，通常需藉由貿易的手段方能實現，所以，環境與貿易之議題在國際間受到高度的重視。

為避免各國假環保之名，行貿易保護措施之實，從過去的關稅暨貿易總協定（General Agreement on Tariffs and Trade，簡稱 GATT），對此議題皆有所著墨，世界貿易組織(The World Trade Organization，簡稱 WTO)下更設立了貿易與環境委員會（Committee on Trade and Environment，簡稱 CTE）專門處理會員間的環境與貿易問題上之爭議，2001 年的杜哈部長會議並授權 CTE 就特定議題進行探討與談判。

由於我國亦為 WTO 之成員，可以會員之身分參與相關議題之討論，本計畫期望能藉由資料之蒐集與分析，彙整專家學者之意見，做為我國在環境與貿易立場上之建議，以維護我國之利益。

總 結

目前，WTO 與 MEAs 之間的「關係」可能有以下兩種發展：其一為兩方（WTO 與 MEAs）各自運作、各自表述；另一為依照紐西蘭的提案，當發

生貿易與環境爭端案件時，在進行正式的爭端解決程序前，先在一公共機構進行諮商，這對於是 WTO 成員但非 MEAs 會員者，毫無疑問的將產生衝擊。而我國立場而言，必須估計和預測未來談判之談判走向和結果，對於 WTO 成員但非 MEAs 會員者將造成何種影響。

關於 WTO 與 MEAs 間之資訊交換，多數國家認為對於資訊的交換應有具體的結果，畢竟許多 MEAs 對於 WTO 所討論的議題都相當關心並希望能夠參與，認為可以促進 WTO 與 MEAs 間良好的互動，並能改善 WTO 給予部份團體一種「秘密機構」的形象。而在授與 MEAs 觀察員地位方面，在 CTESS 中，目前是採用一種特別的操作方式，即讓許多 MEAs 的秘書處人員能以受邀者的身分出席 CTESS，雖然歐盟希望能將這種特別的方式予以正式化，但最後並未成功。對於歐盟的提案，由於我國被排除於 MEAs 之實際參與，在資訊取得上處於不利的位置，因此，我國應在 CTE 中支持歐盟的本項提案，並爭取通過大會決議，以解決我參與 MEAs 之部分困境。至於「環境商品」議題，特別是其定義問題，目前在 CTE 中仍然無法達成結論。由於有國家提出使用 PPM 作為分類的標準之建議，我國應評估這樣的分類對我國可能造成之衝擊，並持續觀察各國對此一議題之態度與反應。另外，為了瞭解我國於此項商品的貿易量與模式，建議主管機關可以就環境商品另編制相關的貿易統計數據，以協助我國形成對國內產業以及環保最有力的談判立場，並提供我國於 NAMA 進行談判時的基礎背景資料。而有關環境服務業的分類，建議主管機關可參考澳洲的作法，委託產業團體與政府機構合作進行產業研究調查，分別以出口者與進口者的角度，分析我國於此一議題上所應採取的立場。

歐盟在 CTE 中一直積極地扮演著此議題主導者之角色，尤特別關心自願性環保標章的部分，但歐盟的提案因與 ISO14024 有關，牽涉到產品週期分析（LCA），更增加了本議題之爭議性。雖然我國已推動並實施環保標章，然對於歐盟的主張，仍不宜過快表達支持，蓋我國出口產品亦有可能因歐盟之措施而遭受歧視性之待遇，建議各主管機關應共同會商此議題，以確立我國在此議題應有之方向與立場。

在我國立場文件提出方面，在 STOs 的認知上，我國以蒙特婁議定書為例，認為根據議定書的遵約機制所為貿易措施或制裁的決定，對締約國而言係具法律拘束力。但，我們不立刻主張該貿易措施之決定絕對係所謂之

STOs，而是認為至少應將之列為協商之內容，以便周延地探討其內涵及效力。雖然入會後連續兩年我國在 CTE 都提出了立場文件，但在意見整合上，建議國內相關部會應在 CTE 會前先行詳細討論、並彙集各界之意見，做深入的研究，立場文件的提出才能發揮更大的效用。另外，不論有無發表立場文件，建議國內儘可能派員參與各項 CTE 的活動，以培養和加強我國參與 WTO 事務的能力。

計畫名稱：永續發展與環保國際合作「貿易與環境相關議題研究分析」委辦計畫期末報告
計畫編號：EPA-92-U1U1-02-101
計畫執行單位：國立交通大學科技法律研究所、國立東華大學環境政策研究所
計畫主持人(包括協同主持人)：倪貴榮、施文真
計畫期程：92 年 1 月 23 日起 92 年 12 月 31 日止
計畫經費：新台幣壹佰參拾陸萬圓整

摘要

在第二次世界大戰結束後，採取進口限制的經貿措施，經常成為經濟強權國家用以改變他國政策的有利工具；而鑒於國際環境保護愈為重要，將貿易與環境掛勾，亦即以貿易手段達到維護環境目的，乃成為最新國家政策與實踐。另在現今的國際社會中，存在約 200 個多邊環境保護協定，其中有 20 個多邊環境協定規定了貿易措施。為調和貿易與環境之衝突，2001 年 WTO 杜哈部長會議授權貿易與環境委員會(CTE)協商包括釐清環境協定之貿易措施與 WTO 規範之間的關係等議題。

本計畫重點在於探討 WTO 貿易規則與主要 MEAs 之關係、環境商品與環境服務業相關議題、TBT/Eco-Labeling 相關議題，以及比較主要國家或區域組織之立場文件，並希望能協助研析我國未來在多邊與雙邊貿易協定談判或糾紛中，環境相關議題之立場及紛爭解決機制，以及完成分析我國環境政策與法規與 WTO 貿易與環境規範相容性等。

主要成果包括完成基礎研究；出席兩次 CTE 會議，除發表立場文件外，並與他國代表進行多場次的正式與非正式雙邊會談。十月間，並舉辦專家會議，就我國目前參與 WTO「貿易與環境工作分組運作」進行檢討，做為日後推動相關計畫之參考。

Abstract

Since the end of the Second World War, economically powerful countries have been constantly applying import restrictions as a means to force the change of other countries' national policies. In light of the increasingly importance of preserving the global environment, it also becomes a usual practice and policy of a country, mostly developed countries, to use trade measures to enforce environmental standards. Meanwhile, there are about twenty international accords among totally more than two hundred multilateral environmental agreements (MEAs) requiring trade restrictions as an enforcement mechanism. In order to accommodate the potential conflicts between trade and environment, the WTO Doha Declaration mandating the Committee on Trade and Environment (CTE) to convene members in negotiating several critical issues.

The project aims to explore the agenda governed by the CTE, in which our country proves to have strong interests, mainly including the relations between WTO rules and trade obligations set out in MEAs, labeling for environmental purposes, environmental products and services. The task then will cover the analysis of positions of respective members with a view to helping consolidate our position that may best serve the interests of our country. The consistency between WTO rules and our national environmental policy and regulations will be also examined.

The primary performance and results of this project include: conclusion of fundamental study on CTE agenda, especially focusing on legal perspective; presence at two CTE meetings held on July and October 2003 respectively in which a position paper had been submitted, titled "The Relationship between WTO Rules and Specific Trade Obligations set out in MEAs"; additionally, in such a forum, we assisted officials to conduct formal or informal negotiations on a bilateral basis. On October, we held an expert meeting aiming to examine the present function and performance of governmental unit responsible for trade and environment tasks and then made some useful suggestions over the improvement of future work, including capacity building, reasonable allocation of funding and

resources, and personnel training.

前　言

為了解決環境問題，各國政府常針對特定議題發表共同的環保宣言，或簽訂特定的區域、雙邊或多邊環保協定，處理全球氣候變遷、臭氧層稀薄、有害廢棄物越境處理管制，以及生物多樣性等環境議題。在這些國際公約與規範中，運用了許多經濟的、貿易的手段，做為達成環境保護的目標，所採用的方法是否隱藏限制或是不合理的保護本國企業措施，在已開發國家與開發中國家間存有極大的歧見。而 WTO 成立後，雖其各項政策的基本意涵，在於降低各種關稅及非關稅障礙，以追求貿易自由化之目標，但其最終目的在於增進全人類的福祉，因此若干環保考量與相關用語亦被納入 WTO 協定中，除設立了 CTE 專責與環境相關的貿易議題處理，WTO 各項協定中如：技術性貿易障礙協定、衛生與動植物檢疫措施協定、農產品協定、服務貿易總協定、與貿易有關的知識產權協定，以及烏拉圭回合談判中作出的關於貿易與環境的決議，都對貿易與環境問題作了規定。而 2001 年的杜哈部長會議並授權 CTE 就特定議題進行探討與談判。

目前 CTE 對貿易與環境議題之討論，認爲 WTO 關於非歧視和透明度的基本原則與爲保護環境所需採取的貿易措施是不衝突的，而貿易措施包括根據環境協定採取的措施；另一方面，CTE 也指出貿易限制不是為了達到環境保護目的而惟一可採取的措施，這些措施也不一定是最有效的，尚有其他的選擇，包括：幫助各國獲得保護環境的技術、給予他們財政援助以及提供培訓等。

研究方法

一、蒐集分析 WTO/CTE 各國立場文件資料

1、　定期蒐集各國於 TBT、CTE 委員會例會發表之立場文件，配合該次會議紀錄，了解文件提出國對特定議題之立場及比較其他國家之意見，分析此議題之作用及可能引起之效應，摘錄其中重要資訊至於網站中。

2、 除定期之例會資料，並留意於兩委員會中不定期召開之特別會議，是否有會員國提出重要的文件對特定議題有主導的作用，或引起各國之重視，或對國際間環境與貿易議題將造成影響。蒐集建檔之，並加以追蹤探討。

3、 了解主要意見國負責 WTO 環境與貿易事務主管單位，對於其所提之立場文件是否以相關補充資料，盡可能蒐集以便進一步了解其所持立場理由，做為我國處理國際間環境與貿易議題之參考。

二、MEAs 關於環境與貿易議題之追蹤報導

1、 除參考 WTO 各成員國所提出之立場文件，並定期追蹤幾個主要 MEAs 之最新動態，如條文是否更新，或是例行的締約國大會（Conference of Parties,簡稱 COPs）是否做成新的決議，或有其他重要政策、計畫提出。

2、 蒐集國際期刊中對於 MEAs 探討之文章，做為本計畫之參考。

三、舉辦專家會議

環境與貿易之議題博大精深，惟有多方參考專家學者意見，才能整理成統一的立場，方能做成政府對內施政或對外發言之依據。本計畫將於十月時舉辦專家會議，計畫執行單位除準備餐資料予與會之專家學者，並研擬相關議題，包括「我國目前參與 WTO 貿易與環境工作分組運作之檢討」、「環保署參與 CTE 之利基探討」、「環保署內部資訊整合」，以及「杜哈宣言第 31 至 33 段之後續討論：以 WTO 與 MEAs 關係為重點」，期能在會議中獲得初步的共識。屆時將邀請各界專家學者與政府機關代表共同參與討論，並假環保署會議室召開本次會議。

四、法律議題分析

運用歸納法、比較法、演繹法、與案例研究等方式進行分析。討論議題如下：

1、 檢視我國與貿易相關之環保法令，是否符合 WTO 透明化、非歧視性之原則。

2、 分析所蒐集各國立場文件所蘊含之法理，做為我國日後發表內容之參考依據。

3、 分析各主要 MEAs 是否有與 WTO 規範相衝突處，若有衝突，應如何

加以調和。

五、網路資源分享

維護貴署全球資訊網站中「貿易與環境資訊網」之網頁，重點摘譯 WTO 最新訊息及相關資料，並不定期更新資料、進行專題報導，以供各界參考。

結　果

在討論貿易規則與 MEAs 之關連性上，在 2002 年時，CTE 的討論集中在名詞定義，如何謂 MEAs，何謂 STOs；到了 2003 年，CTE 的討論重點則移轉到標明具體 MEAs 之貿易義務及各國執行該義務之經驗分享。目前，對於杜哈宣言第 31(i)，以美國為首的部分會員朝限縮的方向解釋該段內容，包括 STOs 的範圍、MEAs 之定義以及談判範圍限於 WTO 現行規範如何適用於系爭多邊環境協定之締約國等；而歐盟、瑞士和我國等則傾向比較寬廣的定義。至於 MEAs 之締約國大會決定(decision)是否應列入談判範圍，在 WTO 會員國間仍存有歧見。此外，CTE 目前在此議題的大方向可能關心的主要議題在於 MEAs 會員之間，同時該會員等亦同屬 WTO 會員，適用貿易措施是否合於 WTO 規範之問題。對於執行貿易義務影響 MEAs 非締約國但為 WTO 會員之情形，則非目前談判重點。

關於環境商品與服務業未來的談判重點，以環境商品的分類而言，主要以 APEC 清單與 OECD 清單者進行討論。目前提倡 APEC 清單者表現較為積極，不過歐盟的態度以及主要開發中國家的態度必須要再加以觀察；此外，美國於今年（2003 年）7 月份提出一份頗為具體的談判清單，有必要持續追蹤於 NAMA 或是 CTESS 中各會員對於美國之談判提案的態度與意見，並研究我國相關產業的現況是否允許我國做出支持美國提案的「表態」。至於環境服務業，由於在現行之 GATS 承諾表中已有較為具體之項目，因此，目前對於環境服務業之定義與範圍之爭議性較小，但隨著各國環境管制之趨勢由管末控制朝向生命週期管制、經濟工具的使用、國際環境管制手段之多樣化（例如京都機制中的排放權交易、清潔發展機制等）等，環境服務業之市場有極大的發揮空間，環境服務業之定義以及範圍也將隨者改變，值得持續於 CTE 中觀察；此外，歐盟所提出的新環境服務業的分類表，目前已經有會員採取並運用在其初始回應表中，此一發展趨勢對於我國內產業之影響，也必

須進行進一步的研究。而台巴自由貿易協定的簽署，雖然雙邊在環境服務業的開放程度在 WTO 與 FTA 下是相同的，但協定簽署後，對於我國環保服務業者至巴國設立據點或直接提供服務而言，將更有制度性的保障。

在環保標章議題之最新發展方面，歐盟積極在 CTE 中建議委員會除了對強制性的環保標章制度做檢查，也建議對自願性的環保標章制度做檢視；另 TBT 委員會也應該審視其制度的有效性與透明性的問題，是否符合良好操作規範的規則，以及是否也間接造成不必要的貿易障礙。並建議在 2004 年以前應召開三次的專門會議（dedicated sessions）來討論建構在生命週期分析（Life-Cycle Analysis，簡稱 LCA）的自願性環保標章計畫（含政府主導或非政府主導）。大部分發言會員持較為負面之意見，認為歐盟的提案加重 CTE 的負擔，並與 TBT 的工作重複，且隱含讓產品週期分析取得合法性的目的；惟加拿大、瑞士、波蘭及塞浦路斯等則支持歐盟之提議。

在立場文件的提出上，今年擬提之立場文件，除延續去年的首次立場文件的精神，參酌前數次各國的立場及談判進度，繼續深化我國立場的論述。另外，有鑑於目前對於 MEAs 所標明的 STOs 在定義上仍有爭議，以及 WTO 規則與 MEAs 之 STOs 之相容性仍有討論的空間，本年度的立場文件內容，包括二點一般觀察及二項較深入的主張；除此，對於其他會員國對我提案所提出之問題，也已做出回應的初稿。

結　論

本計畫結論可分為以下六點：

一、　本年度貿易與環境委員會相關會議議題重點分析 1、對杜哈宣言第 31(i)段之討論 MEAs 與 WTO 之間的「關係」可能有以下兩種發展：其一為兩方（WTO 與 MEAs）各自運作、各自表述；另一為依照紐西蘭的提案，當發生貿易與環境爭端案件時，在進行正式的爭端解決程序前，先在一公共機構進行諮商，這對於是 WTO 成員但非 MEAs 會員者，毫無疑問的將產生衝擊以我國立場而言，必須估計和預測未來談判之談判走向和結果，對於 WTO 成員但非 MEAs 會員者將造成何種影響

2、對杜哈宣言第 31(ii)段之討論 在資訊交換方面，自 2002 年開始，WTO 秘書處也常受邀於各 MEAs 進行主要會議（例如締約國大會）時，就貿易與環境以及 WTO 相關規範舉辦技術援助性質的研討會，而許多國家也認為對於資訊的交換應有具體的結果，畢竟許多 MEAs 對於 WTO 所討論的議題都相

當關心並希望能夠參與，認為可以促進 WTO 與 MEAs 間良好的互動，並能改善 WTO 給予部份團體一種「秘密機構」的形象。

在授與 MEAs 秘書處觀察員地位方面，目前具有 CTE 觀察員身份之 MEAs 有：UNEP、CBD、CITES、ICCAT、以及 UNFCCC；而在 CTESS 中，目前是採用一種特別的操作方式，即讓許多 MEAs 的秘書處人員能以受邀者的身分出席 CTESS，雖然歐盟希望能將這種特別的方式予以正式化，但最後並未成功。

二、 環境商品與服務業「環境商品」議題，特別是其定義問題，仍然無法達成結論，另一方面，由於開發中國家對於此議題欠缺足夠的資訊與了解，也使得共識難以達成。目前 WTO 對於環境商品議題有一新的發展為：有十個非洲國家將農業產品與環境商品做連結，並提出一份報告；而日本也在協調、彙整國內各部門間（如 MITI、農林漁業部）的意見，看是否要將部分農業產品也視為環境商品的一部分，這將使得環境商品分類的協商工作更難以進行。

三、 環保標章

雖然杜哈宣言第 32(iii)段授與 CTE 可就「為達成環保目的而應規定之標示等」進行討論，惟部分國家仍認為此與 TBT 委員會之工作重複，CTE 不應對環保標章之議題過於著墨。關於本議題，歐盟一直積極地扮演著主導者之角色，尤特別關心自願性環保標章的部分，但歐盟的提案因與 ISO14024 有關，牽涉到 LCA，更增加了本議題之爭議性。

四、 我國立場（以 WTO 與 MEAs 之關係為重心）我國主張追求 WTO 與 MEAs 相互支持的目標不應剝奪 WTO 會員質疑 MEAs 特定貿易義務在 WTO 的法律制度下適法性的權利。至於關於 WTO 規範與 MEAs 中特定貿易義務的確定關係：二者是否真的相容？儘管並無關於實施 MEAs 特定貿易義務在 WTO 適法性的案例發生，惟依據一些 MEAs 所施行的貿易管制。例如，蒙特婁議定書對於氟氯碳化物的進口管制，已違反 GATT 數量限制的規定，亦未必符合 GATT 之例外條款。因此，我國似不應支持有些會員認為兩者係屬「相容」的看法。

我國雖已成為 WTO 會員，但由於政治因素的干擾，對於在 CTE 所討論之議題，除了掌握議題的進度與未來之發展趨勢，並應仔細思考該採取何種立場，對我國最為有利。

五、 加入 WTO 後我國對貿易與環境議題之實踐

1、我國參與國際雙邊或多邊協定之情形

今年八月我國與巴拿馬簽署了台巴自由貿易協定後，對於我國環境商品或服務業，可藉由設立據點的方式，逐漸拓展中南美洲的環保業務；而只要是符合本協定第 20 章規定之情形，我國為了環保的考量所採取的措施，即不違反本協定內容之義務。

2、我國環保法令與措施檢視

除了涉及到公共工程競標的環保服務業部分可能對國外廠商構成障礙，大

體而言上述環保法令的各項標準與實施方法對於國內外之業者採相同待遇，並無歧視之情事發生，故與 WTO 之規範尚無牴觸之虞。

六、專家會議

與會者多同意參與 CTE 可解決我國在國際環境議題上的部分困境，但 WTO 仍以處理以貿易有關之議題為主，不可能寄望參與 CTE 能完全解決我國目前被排除正式參與 MEAs 之問題。與會的專家學者並建議我國應積極參與 CTE 之運作，有關主管機關應積極培訓 CTE 之專業人才及加強能力建構。最後，在立場文件的提出上，與會者也建議必須先考慮哪些議題是我國所要著墨的、我國對於各議題的優先次序為何、立場為何；而除了理論基礎，若有民間業者參與，並加入實務上的經驗，立場文件之內容將更具說服力，而更能維護我國之利益。

建議事項

分為三部分，一為下年度應修先研究的課題，二為行政資源整合，三為人才培訓。

一、下年度應優先研究的課題

（一）、關於杜哈宣言第 31(i)段

持續追蹤和分析各會員國對 MEAs、特定貿易義務（STOs）與 WTO 規則關係之最終立場。惟必須注意各會員國對於 STOs 的定義、範圍仍未達成共識。我國應研商在適當時機，如何就各國對我國立場之疑義，做出具說服力之回應。

身為非 MEAs 締約國之 WTO 會員，我國可以試著先預估本段的談判結論可能會有幾種可能性，再針對各種可能的談判結果分析其將對於我國之影響，以此分析回推此類 WTO 會員（亦即，非 MEAs 締約國）應採取何種談判策略，並先行研擬我國的因應對策。另外一個準備的方向是，觀察是否有其他 WTO 會員國遭遇到和我國相同之情形，可聯合之以集團的方式在 CTE 中行動，較有可能發揮實益。

（二）、關於杜哈宣言第31(ii)段

關於歐盟資訊交換的提案，由於我國被排除於MEAs之實際參與，在資訊取得上處於不利的位置，因此，我國應在CTE中支持歐盟的本項提案，爭取通過大會決議，以解決我參與MEAs之部分困境。另一方面，UNEP與部分MEAs向WTO提出成為觀察員之申請，我國也應予以支持，這對於拉近我國與該組織之距離，將有極大的助益。

（三）、環境商品之分類與定義

對於環境商品之分類與定義，值得持續觀察的敏感議題包括：是否要使用PPM作為分類的標準、是否應該捨棄OCED以及APEC的清單，發展出WTO自己的清單、開發中國家對此一議題的態度、以及各會員對於美國於今年七月份所提之談判模式的反應。就我國而言，似乎可以參考澳洲的作法：委託產業團體與政府機構合作進行產業研究調查，分別以出口者與進口者的角度，分析我國於此一議題上所應採取的立場，並提出我國對於環境商品的定義依據，特別值得進行詳細評估者為：我國是否贊成PPM亦可以當成分類或定義環境商品的一個標準；此外，由於現行的進出口貨品統計當中，並沒有單獨將環境商品列入；於所有政府相關的統計單位中，似乎僅有環保署針對「免關稅進口環保設備或車輛用途證明核發統計」當中，提及可被歸類於環境商品的「環保設備」，因此，為了瞭解我國於此項商品的貿易量與模式，建議主管機關可以就環境商品另編制相關的貿易統計數據，以協助我國形成對國內產業以及環保最有力的談判立場，並提供我國於NAMA進行談判時的基礎背景資料。

（四）、環境服務業

就環境服務業，建議主管機關參考澳洲的作法：委託產業團體與政府機構合作進行產業研究調查，分別以出口者與進口者的角度，分析我國於此一議題上所應採取的立場。另外，在未來研究時，可參考「美新」協定與「台美」協定中的相關資料進行分析。

（五）、關於環保標章議題

由於大部分國家對於歐盟所提出的以 LCA 為評鑑方式的自願性環保標章多存有疑慮，因此後續發展應持續追蹤注意。目前我國雖已推動並實施環保標章，然對於歐盟的主張，不宜過快表達支持，蓋我國出口產品亦有可能因歐盟之措施而遭受歧視性之待遇，建議各主管機關應共同會商此議題，以確立我國在此議題應有之方向與立場。

另外，各國政府綠色採購政策可能造成國內廠商與國外廠商間不公平競爭的狀態，這項潛在的問題應值得加以研究；另外，未來也應檢視我國環保標章制度是否在未來的政府採購，被他國抨擊隱含不必要的貿易限制。

二、行政資源整合

（一）、各部會意見彙整

對於議題的討論，似乎各部會的互動仍顯不足，以致無法廣泛匯集及整合各方意見，以做出最有利於我國之決定。因此國內相關部會應在 CTE 會前先行詳細討論、並做深入研究。

（二）、CTE 例會/特別會出席人員派遣

不論有無發表立場文件，應儘可能參與各項 CTE 的活動，除了可達到與他國交流的目的，並可在會議中觀察和學習他國參與談判的技巧和策略，以培養和加強我國參與 WTO 事務的能力。

而在活動的出席上，應有兩位以上的人士參與相關活動，若其中有人因故不克出席，其他人員仍然能掌握 CTE 各種議題的討論進度與後續發展。人員的指派，應分為固定成員與臨時成員兩類，前者的作用在於經驗累積與傳承，後者作用在於因應不同議題的需求以及人員的訓練。團隊的組成成員建議可包括：政府單位、法律背景的專家、資訊分析與策略研擬團隊，以及談判小組等。

另外，我國也應積極參加由 WTO 與各 MEAs 舉辦能力建構或技術援助之研討會或是訓練課程，除促進我國對於各個 MEAs 之瞭解，並可增加我國與 UNEP 或是 MEAs 有非正式接觸的機會。

在出席會議的準備上，建議於每年年底先選定下年度所要參加的場次，並研擬出席代表名單。敲定所欲參加的會議場次後，在經費方面，由相關主管機關會商出國費用的分攤比例；在時程規劃安排上，建議由國貿局主導，以出國日期往前推算各項準備工作的截止日期。

（三）、研究計畫之管理與互通

目前各單位多自行編列預算，決定研究主題。建議可在計畫草案提報前，建立一審核機制，以避免工作項目的重複，而將計畫經費的支出做最有效的運用。

年度結束時，相關部會人員可就本年度的計畫成果進行分享與檢討，並做為未來對策研擬時的參考。另一方面，可將各單位的研究成果製作成淺顯易懂之文案，印製宣傳折頁，擴大向產業宣傳。

建議主管機關如果於人力資源調度可行的範圍之下，盡可能指派同一或同幾位對此議題已具備一定熟悉度的承辦人員，對於計畫的延續性以及與其他相關部門之間的溝通，應可以減少許多訓練新進人員或不熟悉此議題之承辦同仁的時間與資源成本。

三、人才培訓

除了在國內的訓練，若能至 WTO 現場見習，能力將進一步提升。另外，經貿官員與其他各部會官員的經驗分享與交流也應視為訓練的必備課程。

目錄

表目錄

圖目錄

第一章　緒論

第一節　背景說明

工業革命以後，人類活動的經濟規模有了躍進式的成長，雖然人們的生活與過去相比是更加的平穩與舒適，但各種開發活動所衍生的環境問題，也讓各國付出慘痛的代價。由於環境問題是全球性的，過去三十年來，環境問題多由聯合國環境規劃署(United Nations Environment Programme, 簡稱 UNEP) 主導，制訂諸如條約、協定或者不具拘束力(Non-binding)的國際文件，處理了國際社會所關切的環境問題，例如海洋、大氣、臭氧層、氣候變遷、生物多樣與自然資源保育(包括水、森林、土壤)等等。我國身為地球村的一份子，對上述各項環境議題皆投入一定程度之努力，卻因特殊的國際地位而通常被排除在這些多邊環境協定（Multilateral Environmental Agreements,簡稱 MEAs）之外，並受到一些不公平的對待。

由於許多協定中所欲達成的環境目的，通常需藉由貿易的手段方能實現，環境與貿易之議題在國際間受到高度的重視。為避免各國假環保之名，行貿易保護措施之實，從過去的關稅暨貿易總協定（General Agreement on Tariffs and Trade，簡稱 GATT)，對此議題皆有所著墨，世界貿易組織(The World Trade Organization，簡稱 WTO)下更設立了貿易與環境委員會(Committee on Trade and Environment，簡稱 CTE）專門處理會員間的環境與貿易問題上之爭議，2001 年的杜哈部長會議並授權 CTE 就特定議題進行探討與談判。

由於我國亦為 WTO 之成員，可以會員之身分參與相關議題之討論，本計畫期望能藉由資料之蒐集與分析，彙整專家學者之意見，做為我國在環境與貿易立場上之建議，以維護我國之利益。

第二節　計畫目標與工作內容

一、目標說明

（一）、WTO 環境與貿易相關議題研析

隨著國際社會對環境保護的廣泛注意和人們環保意識的日益增強，各國開始制訂各種環保政策，試圖減輕污染對環境造成之負面效應，但由於環境問題並非單一國家之問題，而是國際性之問題，因此必須仰賴國際間的共同合作，才能有效解決各項環境問題。因此，各國政府常針對特定議題發表共同的環保宣言，或簽訂特定的區域、雙邊或多邊環保協定，處理全球氣候變遷、臭氧層稀薄、有害廢棄物越境處理管制，以及生物多樣性等環境議題。在這些國際公約與規範中，運用了許多經濟的、貿易的手段，做為達成環境保護的目標，所採用的方法是否隱藏限制或是不合理的保護本國企業措施，在已開發國家與開發中國家間存有極大的歧見。

而在各國的環保政策上，立法也由過去所謂的管末處理控制，逐漸轉為製程改善等事先預防措施，規範對象從在生產或消費過程中造成環境污染與損害之「產品」擴充即於「製程」，即所謂「製程及產製方法」（process and production methods，簡稱 PPMs）之規範。其中，污染者付費原則（polluter pays principle）與預防原則（precautionary principle）是製程既生產方法之管制基本精神，除要求污染者（生產者、製造者）負擔因其污染行為所造成之環境損害成本，並加入包括產品生命週期評估（Life-Cycle Assessment，簡稱 LCA）等方法，在產品生命週期的各個階段，分別探討其對環境可能產生的影響，同時要求生產者內化及改善其 PPMs 所造成之環境污染與損害。由於各國之環保技術有高有低，加入對製程的要求，對開發中國家造成一定程度的負擔，當其不符和先進國家之環保標準時，往往遭受到貿易進口限制的處罰措施，往往引起以開發國家與開發中國家兩集團間之爭議。

1994 年烏拉圭回合談判結束後，於 1995 年成立了 WTO，WTO 各項政策的基本意涵，在於降低各種關稅及非關稅障礙，以追求貿易自由化之目標，但其最終目的在於增進全人類的福祉，因此

若干環保考量與相關用語亦被納入 WTO 協定中，除設立了 CTE 專責與環境相關的貿易議題處理，WTO 各項協定中如：技術性貿易障礙協定、食品安全檢驗與動植物防疫檢疫措施協定、農業協定、服務貿易總協定、與貿易有關的智慧財產權協定、補貼暨平衡措施協定，以及烏拉圭回合談判中作出的關於貿易與環境的決議，都對貿易與環境問題作了規定。但有論者以為這其中還是潛藏「綠色貿易障礙」的貿易保護主義，難保各國不會假 GATT 第 20 條為理由，做為合法保護國內產業或達到其他目的之藉口，過去引起的爭議有奧地利禁止特定地區（如印尼）之木材進口、美國與馬來西亞的 Shrimp/Turtle 爭端等，[1]以後者為例，雖然爭端解決小組與上訴機構已做出回應，但還是有爭議存在。[2]

環境與貿易之相關議題既多且廣，本計畫無法逐一研究討論，由於我國已為 WTO 之一員，故計畫執行重點在於與 WTO 相關者，除了討論 WTO 貿易規則與主要多邊環境協定（MEAs）之關係、環境商品與環境服務業相關議題、TBT/Eco-Labeling 相關議題，以及比較主要國家或區域組織之立場文件，並希望能協助研析我國未來在多邊與雙邊貿易協定談判或糾紛中，環境相關議

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[1] 該案系爭法條為美國國內法（Public Law 101-162 第 609 節），其規定為：

(a)　授權由美國國務卿開始同有關國家共同磋商關於海龜保護的國際條約，並定期就談判情況向國會進行彙報；

(b)　授權由美國國務院負責制定具體實施措施，禁止所有未符合海龜脫逃器（Turtle Excluder Devices，簡稱 TED）裝備使用要求、達到相應美國海龜保護標準的國家或地區捕獲的野生蝦及蝦類製品進入美國市場。

[2] 本案中，上訴機構將 GATT 第 20 條 g 款中所謂可耗盡的自然資源（natural resource）的解釋，由傳統的礦物等非生命資源，擴展到對生命物種的保護，認為第 609 節雖然屬於 GATT 第 20 條 g 款的例外規定，惟美國在實施的過程構成「不合理的差別待遇（unjustifiable discrimination）」，違背了 GATT 的有關精神、無法滿足第二十條序言的規定，因此還是無法適用第二十條。

雖然，美國在事後發出修訂其有關蝦與海龜之法律的指針綱要，其中包括：（一）在考量外國（有關保護海龜）之計畫與美國（有關保護海龜）之計畫兩者間是否相一致時將給予較大的解釋空間；（二）詳細說明作出舉證違反美國相關法律該決定的時間表與程序。美國並表示已提供，也將繼續提供技術訓練去協助任何政府所提出有關海龜脫逃器(TEDs)之設計、製造、安置與使用。但是，由於美國並未撤銷禁止進口該項命令，也未採取必要措施允許在不受限制情形下外國特定蝦與蝦製品可進口至美國，因此馬來西亞在 2000 年 10 月 12 日依據 DSU 第 21 條第 5 款規定要求將所控訴事宜移交最原始所設立之爭端解決小組處理。爭端解決小組於 2001 年 6 月 15 日做出美國勝訴之報告，認為美國的措施並無違反 WTO 相關規定；惟之後的上訴機構認為美國在執行相關法律時，對於進口國家還是有歧視的情形存在。

題之立場及紛爭解決機制，以及完成分析我國環境政策與法規與WTO貿易與環境規範相容性等。本計畫特別重視以下幾點：

1、各國對於MEAs貿易措施議題於WTO中所提交的文件，其所提到的幾個主要公約條文內容（與貿易相關的限制或禁止措施）是否合理？由於我國並非多邊環境協定之締約國，因此若與他國發生糾紛，無法透過利用多邊環境協定之爭端解決機制加以解決。針對一方當事國為WTO會員國亦為多邊環境協定締約國，而另一方當事國為WTO會員國但非多邊環境協定締約國，發生衝突時之爭端解決模式，我國應可預先研究，以維護我國之權益。

2、國際間環境商品與環境服務業的市場及未來發展趨勢為何？我國應採取哪些措施以符合國際規定，或是強化我環境服務業的市場競爭力？

3、歐盟對Eco-Labelling之議題似乎十分重視，常提出相關文件欲引起會員之討論，由於Eco-Labelling可能會與技術性貿易障礙（Technical Barrier of Trade，簡稱TBT）有關，對於國際間Eco-Labelling議題之後續發展，將多加注意。

（二）、研擬環保署參與WTO/CTE相關議題談判之立場文件（position paper）

91年10月的WTO/CTE特別會議（Special Sessions，簡稱CTESS）期間，我國針對杜哈部長宣言第31(i)段提出了基本立場，當時所強調的重點在於我國認為可藉由逐步（step by step）討論的方式，達成在WTO會員國之間建立有關WTO規範以及實現環境目的而採行的貿易措施之整體關聯性的共識；並同意一些會員國所提，MEAs所規定的特定貿易義務不應自動地被認定為符合WTO規範。我國並認為WTO會員國可談判出一個解釋性的決定或一份明白指示在MEAs中規定的何種貿易義務符合WTO條件與原則之瞭解書。必要性原則、比例原則以及透明性原則，包括其是否基於足夠的科學證據以及其是否遵照GATT第20條等觀點，應包含在該解釋性的決定或是該瞭解書，以驗證依該MEAs所制定的貿易措施之合法性。而當該貿易爭端係界於一方當事國為WTO會員國亦為MEAs締約國，以及一方當事國為WTO會員國但非MEAs締約國之情形，該爭端應僅依WTO爭端解決瞭解書之

程序進行並依 WTO 之規範解決，並且依爭端解決機制所成立的專家小組及上訴機制，應將重點置於該 WTO 會員國但並非 MEAs 締約國之當事國，被排除參與該多邊環境協定談判的事實。

今年擬提之立場文件，除延續去年的首次立場文件的精神，參酌前數次各國的立場及談判進度，繼續深化我國立場的論述。另外，有鑑於目前對於 MEAs 所標明的 STOs 在定義上仍有爭議，以及 WTO 規則與 MEAs 之 STOs 之相容性仍有討論的空間，本年度的立場文件內容，包括二點一般觀察及二項較深入的主張：除此，也將針對其他會員國對我提案所提出之問題，做出適當之回應。

第三節　執行方法

一、蒐集分析 WTO/CTE 各國立場文件資料

（一）、定期蒐集各國於 TBT、CTE 委員會例會發表之立場文件，配合該次會議紀錄，了解文件提出國對特定議題之立場及比較其他國家之意見，分析此議題之作用及可能引起之效應，摘錄其中重要資訊至於網站中。

（二）、除定期之例會資料，並留意於兩委員會中不定期召開之特別會議，是否有會員國提出重要的文件對特定議題有主導的作用，或引起各國之重視，或對國際間環境與貿易議題將造成影響。蒐集建檔之，並加以追蹤探討。

（三）、了解主要意見國負責 WTO 環境與貿易事務主管單位，對於其所提之立場文件是否以相關補充資料，盡可能蒐集以便進一步了解其所持立場理由，做為我國處理國際間環境與貿易議題之參考。

二、MEAs 關於環境與貿易議題之追蹤報導

（一）、除參考 WTO 各成員國所提出之立場文件，並定期追蹤幾個主要 MEAs 之最新動態，如條文是否更新，或是例行

的締約國大會（Conference of Parties,簡稱 COPs）是否做成新的決議，或有其他重要政策、計畫提出。

（二）、蒐集國際期刊中對於 MEAs 探討之文章，做為本計畫之參考。

三、舉辦專家會議

環境與貿易之議題博大精深，惟有多方參考專家學者意見，才能整理成統一的立場，方能做成政府對內施政或對外發言之依據。本計畫將於十月時舉辦專家會議，計畫執行單位除準備餐資料予與會之專家學者，並研擬相關議題，包括「我國目前參與 WTO 貿易與環境工作分組運作之檢討」、「環保署參與 CTE 之利基探討」、「環保署內部資訊整合」，以及「杜哈宣言第 31 至 33 段之後續討論：以 WTO 與 MEAs 關係為重點」，期能在會議中獲得初步的共識。屆時將邀請各界專家學者與政府機關代表共同參與討論，並假環保署會議室召開本次會議。

四、法律議題分析

運用歸納法、比較法、演繹法、與案例研究等方式進行分析。討論議題如下：

（一）、檢視我國與貿易相關之環保法令，是否符合 WTO 透明化、非歧視性之原則。

（二）、分析所蒐集各國立場文件所蘊含之法理，做為我國日後發表內容之參考依據。

（三）、分析各主要 MEAs 是否有與 WTO 規範相衝提處，若有衝突，應如何加以調和。

五、網路資源分享

維護貴署全球資訊網站中「貿易與環境資訊網」之網頁，重點摘譯 WTO 最新訊息及相關資料，並不定期更新資料、進行專題報導，以供各界參考。

第四節　預期成果

一、完成 WTO 貿易規則與主要 MEAs 之關係等相關議題之資料蒐集與彙整。

二、完成環境商品與環境服務業相關議題之資料蒐集與彙整。

三、完成 TBT/Eco-Labeling 相關議題之資料蒐集與彙整。

四、了解主要國家或區域組織之立場，研析未來議題諮商走向並協助研擬我國在環境與貿易議題上之談判立場文件。

五、協助環保署研析我國未來在多邊與雙邊貿易協定談判或糾紛中，環境相關議題之立場及紛爭解決機制。

六、比較我國環境政策及法規與 WTO 貿易與環境規範相容性。

七、摘錄 WTO 貿易與環境議題之最新資訊，在網站中供各界參考。

第二章　WTO/GATT 貿易與環境議題之發展

第一節　貿易與環境之發展趨勢

在第二次世界大戰結束後，經貿措施，特別是進口限制（Import Restrictions）便經常成為經濟強權國家用以改變他國政策的有利工具，較常見的議題包括人權、國家安全及反國際恐怖活動等。而鑒於國際環境保護愈為重要，將貿易與環境掛勾，亦即以貿易手段達到維護環境目的，乃成為最新國家實踐。而隨著全球經濟一體化的趨勢，各國用以保護一國產業的手段，已由傳統的關稅貿易障礙演變成非關稅貿易障礙的方式，其中以環境保護為訴求的綠色貿易障礙更成爲國際貿易發展中常引發爭議的重點項目，其來源主要有：國際貿易協定中有關環境的條款、國際環境公約、國際環境管理體系系列標準 ISO14000 和環境標示制度等。

以美國為例，在過去二十多年中，美國為保護漁業及生物資源已制定出多種法案，期以禁止特定產品的進口，來表達對出口國保育政策的不滿。此種環境貿易措施（Environment Trade Measures，簡稱 ETM）或稱與貿易有關之環境措施（Trade-related Environmental Measures，簡稱 TREM）適法性，在九〇年代初期，美國以墨西哥鮪魚之捕獲措施，未符合美國保育海豚的標準，而援引「海洋哺乳動物保護法」（The Marine Mammal Protective Act，簡稱 MMPA）對墨西哥所製的鮪魚產品實施禁止進口後，即引起相當大的爭議；特別在關稅暨貿易總協定（General Agreements on Tariffs and Trade，簡稱 GATT）決定美國的此種貿易限制違反了 GATT 規範後，更招致環保團體的不滿與抗議，甚至將 GATT 體系認定為環境保護的障礙。

在一九九八年，從世界貿易組織（The World Trade Organization，簡稱 WTO）處理類似議題所表達的法律見解中，可以看出 WTO 自一九九五年正式成立後，為順應環保潮流，對於 ETM 採取較為寬容的態度，但此傾向並不當然表示所有的 ETM 此後皆能通過 WTO 規範的檢驗。其關鍵在於如何在具體案例中，對 GATT 第 20 條的一般例外條款中的序言及(b)、(g)二環保例外條款予以適當的解釋與適用，以達到調和自由貿易與環境保護衝突之

目的。我國曾於一九九四年至一九九五年遭受美國培利環境貿易制裁，而正式成為 WTO 會員後，當遭遇被他國實施 ETM 時，雖然可透過其爭端解決機制處理相關問題，他國是否可以 GATT 第二十條排除我控訴之主張，進而影響我國權益，值得深入研究。

除了 WTO 協定，目前世界有約 200 個仍然有效的國際協定處理各種環境問題，這些協定被稱為多邊環境協定（Multilateral Environment Agreements，簡稱 MEAs），其中常可發現利用貿易手段達到保育目的之例證。相關實踐基本上可區分為兩種類型；第一種為該環境協定主要係藉由可能危害環境的產品的貿易管制（trade control），當然包括進出口的限制，以完成協定所訂之目標，通常締約國即有履行的義務，例如野生動植物保育公約（CITES），即要求締約國管制野生動植物產品以達到保育瀕臨絕種物種的目的；蒙特婁議定書係藉由氟氯碳化物（CFC）的貿易禁止以使該物質予以禁止；另外，巴塞爾公約和最近通過的生物安全議定書皆有類似的設計。

第二種型態，係各環境組織為強制締約國或非締約國遵行一定的環境標準及要求，乃通過決議（resolution）或建議（recommendation）禁止相關產品進口至各會員國；此即所謂的貿易制裁（trade sanctions），即以使被制裁國家蒙受經濟損失，以迫使其改變或修正其政策，例如 CITES 為保育瀕臨絕種的犀牛和老虎曾決議建議各國對亞洲等消費國實施野生動植物產品之禁運；未來京都議定書(Kyoto Protocol)為有效抑制排放，是否將貿易制裁機制納入亦值觀察。

第二節　WTO 對貿易與環境議題之回應

一、世界貿易組織之成立

建立一個國際性的貿易架構之概念可回溯至 1947 年 GATT 設立之初。在當時戰後的氛圍當中，GATT 係所謂的 Bretton-Woods System 之一部分，用以推行並管理全球經濟發展。[3]GATT 對於國

[3] 國際貨幣基金會（International Monetary Fund，IMF）以及世界銀行（World Bank）亦屬於該系統之下。

際貿易架構提供了兩個基本的方向：第一，發展條件以降低並消除關稅；第二，施加避免或排除其他型式對貿易的妨礙或非關稅障礙之義務。

從 1948 年到 1994 年，GATT 一共舉行了八回合的談判，以建立遵循以上兩項原則的貿易體系。在 1994 年，最後一回合的烏拉圭回合（Uruguay Round）談判中，締約成員訂定了馬拉喀什設立世界貿易組織協定（Marrakech Agreement Establishing the World Trade Organization），並依此成立了 WTO。1995 年 1 月 1 日 WTO 正式運作。

二、世界貿易組織協定前言以及對於貿易與環境之決議

在馬拉喀什協定之前言中，各國同意：「鑒於彼此在貿易及經濟領域間之關係，應致力於提昇生活水準、確保充分就業、實質所得與有效需求之大量及穩定成長、擴大貨品與服務貿易之產出，並在永續發展之目標下，將世界資源作最適運用，尋求環境之保護與保存，並兼顧各會員經濟發展程度相異下之需求與關切。」

而在關於貿易與環境之決議中，各國決定「為臻永續之發展，確認貿易與環境措施間的關聯性」並且「對是否需要修改多邊貿易體系相關條文提出適當之建議，惟所提之建議必須與多邊貿易體系所揭櫫之公開、公正及不歧視原則相符合」，世貿組織中之貿易與環境委員會（Committee on Trade and Environment, 簡稱 CTE）便是依據這兩項原則的精神而成立。

三、杜哈宣言（Doha Declaration）

在現今的國際社會中，存在約 200 個多邊環境保護協定，其中僅有 20 個多邊環境協定規定了貿易措施。而這些多邊環境協定將會在 WTO/CTE 當中接受討論。舉例而言，為保護臭氧層所締定的蒙特婁議定書（Montreal Protocol）限制含有氟氯碳化合物（chlorofluorocarbons，CFCs）氣體之製造、消費以及出口，巴塞爾公約（Basel Convention）係管制有毒廢棄物於跨越國境之貿易與運送活動，而國際瀕臨危險物種交易公約（Convention on International Trade in Endangered Species）亦為另一個包含貿易措

施的多邊環境協定。

（一）、關於第 31 段之摘錄[4]

為了強化貿易與環境之相互支持，部長們同意在不預設結果之情況下，就下列項目進行談判：

1、WTO 現行規範與各類多邊環境協定中之特定貿易義務之間的關係，談判範圍應限於 WTO 現行規範如何適用於案內多邊環境協定之締約國，且此一談判不應損及非屬該案內多邊環境協定締約國之 WTO 會員在 WTO 規範下之權利；

2、在各多邊環境協定秘書處與 WTO 相關委員會之間交換資訊之正常程序及觀察員地位授予之審查標準；

3、在適當時，就環境商品及服務之關稅及非關稅之障礙進行削減或免除。

部長們注意到漁業補貼構成第 28 段規定之談判的一部分。

（二）、關於第 32 段之摘錄[5]

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[4] With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudging their outcome, on:

(i) 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;

(ii) procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status;

(iii) the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.

We note that fisheries subsidies form part of the negotiations provided for in paragraph 28.

[5] 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

部長們指示貿易與環境委員會在討論其所有的授權辦理事項時，應特別注意下列事項：

1、環境措施對市場進入的影響－尤其是對開發中國家，特別是對低度開發國家之影響－以及取消或降低某項貿易限制及扭曲措施，可能造成貿易、環境及發展三方面均獲益之情形；

2、與 TRIPS 協定之相關條文，以及

3、為達成環境目的而規定之標示等。

關於這些議題的工作應包括明確澄清 WTO 相關規定的任何需要。委員會應於第五屆 WTO 部長會議提出報告，並在適當時就未來行動提出建議，包括談判的可行性。本工作以及依據第 31 段第（i）與（ii）節所進行之談判結果，應與多邊貿易體制中的開放與不歧視之特性相符，也不應增加或減縮 WTO 會員於現行 WTO 規範下享有之權利與義務，特別是「食品安全檢驗與動植物防疫檢疫措施協定」下的權利和義務，亦不應改變 WTO 會員權利及義務間之平衡性，同時應考量開發中國家及低度開發國家之需求。

到目前為止，沒有任何的多邊環境保護協定曾挑戰 GATT-WTO 系統，即正式地將兩者之間的重疊以及衝突之處提出討論，而杜哈部長宣言期待新舉行的談判將能夠釐清在這些環境協定下之貿易措施與 WTO 規範之間的關係。

四、非歧視性原則

WTO 規範中之非歧視性原則包括兩個部分，最惠國待遇原則（Most-favoured-nation treatment）以及國民待遇原則（National treatment）：

（一）、最惠國待遇

最惠國待遇係指就特定事項，一國承諾將其所給予第三國國民（或第三國產品）之待遇，賦予相對國之國民（或產品），其目的係用以確保不會有其他國家之國民（或產品）享有優於有最惠

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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.

國地位國家之國民（或產品）之待遇，故此原則最初之功能係在透過國與國之間相互交換 MFN 之承諾，而解決歧視待遇之問題。當相互交換最惠國承諾逐漸擴散之後，最惠國待遇與不歧視（non-discrimination）則幾乎變成同義詞。

最惠國待遇分別規定在 GATT 第 1 條，服務貿易總協定（General Agreement on Trade in Services，GATS）第 2 條以及與貿易有關之智慧財產權協定（Trade-Related Aspects of Intellectual Property Rights，TRIPS）第 4 條。

GATT 第 1 條第 1 項規定，「在對有關輸出或輸入及對因輸出或輸入所生之國際支付轉帳所課徵之任何種類之關稅或規費，在對該等關稅及規費之徵收方法，在有關輸出及輸入之一切法令及程序方面以及本協定第三條第二項及第四項所涉事項方面，任一締約方對來自或輸往任一其他國家之任一產品所給予之任何利益、優惠、特權或豁免，應即無條件給予來自或輸往其他所有締約國之同類產品。」同樣類似的規定也出現在 GATS 第 2 條第 1 項，「關於本協定所涵蓋之措施，各會員應立即且無條件地對來自其他會員之服務或服務提供者提供不低於該會員給予其他國家相同服務或服務提供者之待遇。」以及 TRIPS 第 4 條，「關於智慧財產保護而言，一會員給予任一其他國家國民之任何利益、優惠、特權或豁免權，應立即且無條件給予所有其他會員國民。」

最惠國待遇意指所有會員國均立於相同的基礎，並共享任何因降低貿易障礙所帶來的利益。最惠國待遇原則確保開發中國家與其他稍具經濟基礎之國家能自由地在談判出的最佳貿易條件下獲得利益。

（二）、國民待遇

國民待遇係要求會員國對於進口到其國內之其他會員國產品，給予不低於其本國產品之待遇。其適用情形與最惠國待遇並不相同。國民待遇原則分別規定在 GATT 第 3 條、GATS 第 17 條以及 TRIPS 第 3 條。

GATT 第 3 條第 1 項規定，「各締約方咸認本國稅、其他國內規費，及影響進口貨品於國內銷售、推銷、購買、運輸、分配或使用之各種法律、規章和規定，以及規定產品之混合、加工或使用須符合特定數量或比例之國內數量管制法規，在適用於輸入或

國內之產品時，不得為保護本國生產而實施。」此係 GATT 國民待遇原則之總括性規定。GATT 第 3 條主要係處理兩個事項，其一為第 3 條第 2 項之國內稅事項，[6]其二為第 4 項之足以影響國內銷售之法律規章。[7]GATS 第 17 條第 1 項規定，「對承諾表上所列之行業，及依照表上所陳述之條件及資格，就有關影響服務供給之所有措施，會員給予其他會員之服務或服務提供者之待遇，不得低於其給予本國類似服務或服務提供者之待遇。」其在一定之條件下，除了要求會員國對來自於其他會員國之「服務」給予國民待遇之外，更要求會員國對來自於其他會員國之「服務供應者」給予國民待遇（包括給予設立商業據點之國民待遇）。TRIPS 第 3 條規定，「除（一九六七年）巴黎公約、（一九七一年）伯恩公約、羅馬公約及積體電路智慧財產權條約所定之例外規定外，就智慧財產權保護而言，每一會員給予其他會員國民之待遇不得低於其給予本國國民之待遇。」其使會員國之國民在其他會員國可以享受相同於當地人民之待遇。

非歧視性原則是多邊貿易體制中相當重要的一項原則。非歧視性原則避免了環境政策的濫用以及其作為保護主義之偽裝。該原則並確保了國家環境保護政策不能對外國與本國所製造之產品，或由不同國家所進口之產品採取具歧視性的措施。

五、關稅暨貿易總協定第 20 條

WTO 下之關稅暨貿易總協定（General Agreement on Tariffs and Trade，GATT）對 WTO 會員國課以許多義務，如 GATT 第 1 條之最惠國待遇之義務、第 2 條關稅拘束之義務、第 3 條國民待遇之義務、第 11 條第 1 項消除數量限制之義務等。此種義務在 GATT 之中並非全無例外，GATT 第 20 條之一般例外條款即為一

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[6] GATT 第 3 條第 2 項規定：「任一締約方於輸入其他締約方之產品時，不應對其直接或間接課徵超過對本國生產之同類產品所直接或間接課徵之國內稅及任何種類之規費，各締約方亦不得以有違本條第一項規定之方式，另行對輸入產品或本國之產品課徵國內稅或其他規費。」

[7] GATT 第 3 條第 4 項規定：「任一締約方輸入其他締約方之產品時，就影響其國內銷售、推銷、購買、運輸、分配及使用之各種法律、規章和規定所享受之待遇，不得低於本國生產之同類產品所享有之待遇；但如國內運輸適用費率之差別，僅係基於交通工具之經濟營運考量，而非因產品之產地而異者，不在此限。」

例。GATT 第 20 條之前言規定，「本協定中任何規定不得解釋為各締約方不得(Prevent)採用或實施下列措施，但該等措施，在施用方式上，不得對情況相同之國家構成武斷或不合理之差別待遇，間在相同狀況下，就各項措施之實施，均不得構成專斷及無理歧視之手段，亦不得構成為對國際貿易之變相限制。」同時並規定了十項例外條款。[8]

就 GATT 第 20 條(b)款「維護人類、動物或植物生命或健康之必要措施」之規定而言，倘若一國為了保護人類之生命或健康（例如禁止有害健康之食品進口，或禁止對兒童容易造成危險之玩具進口），或為保護動物或植物之生命或健康（例如禁止帶有傳染病或蟲害之動物或植物或其製品進口），其禁止進口或限制進口，即有其正當之理由。在國際貿易上許多進出口限制均係基於此一規定而制訂，例如一國所設之技術規範或檢疫規範，使得國外產品無法進口，其在 GATT 下之合法基礎，即為 GATT 第 20 條(b)款之

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[8] GATT 第 20 條條文爲：「本協定中任合規定不得解釋爲各締約方不得(Prevent)採用或實施下列措施，但該等措施，在施用方式上，不得對情況相同之國家構成武斷或不合理之差別待遇，間在相同狀況下，就各項措施之實施，均不得構成專斷及無理歧視之手段，亦不得構成爲對國際貿易之變相限制。惟下列措施不在本協定限制範圍內：

（一）維護公共道德之必要措施。

（二）維護人類、動物或植物生命或健康之必要措施。

（三）關於金、銀輸出或輸入之措施。

（四）爲保障與本協定各項規定並無牴觸之法律或命令之貫徹執行之必要措施，包括海關事務之執行、關務及依本協定第二條第四項款及第十七條所規定所實施之獨佔之執行，、專利權、商標權、著作權版權之保護與詐欺之防止等法令。等事項，而與本協定各項規定並無牴觸之法令之必要措施。

（五）關於監犯勞工產品之措施。

（六）爲各項具有藝術、歷史或考古價值之國家寶務保護所採措施。

（七）關於可能枯竭之自然資源之保存措施，惟該等措施須一併對本國生產及消費限始生實效者制。

（八）爲履行經「大會」所認忍可之任何政府間國際商品協定所定義務而採之措施，惟須該協定所遵守之基準已向「大會」提出而未經異議，或該協定本身已向「大會」提出而未經異議。

（九）爲確保國內加工業獲得足夠之原料時，當政府平準計畫部份在某些期間內維持爲穩定物價而將國內某種原料價格限制在國際價格之下期間，所爲限制該項原料輸出之必要措施。但該項限制(措施)不得用以增加該國內工業之輸出或加強對該國內工業之保護，且不得違反本協定各項有關禁止歧視之規定。

（十）對於普遍性或區域性短缺之產品所採收購或分配之必要措施。，但該措施須符合所有締約方均應對該項產品之國際供應公平享有之交易機會原則，如該措施違反本協定其他規定者，則應於上述短缺情況消失後，應立即停止該措施，。「大會」應於一九六〇年六月三十日以前檢討本項款規定是否必要。」

規定。[9]而採取違反 GATT 進出口限制之國家，若欲引用 GATT 第 20 條(b)款作為正當化之基礎，除了須有保護人類或動物或植物之生命或健康之理由外，該措施亦須具備「必要性」，亦即原則上必須別無其他較適當之方法。此外，(b)款所稱「維護人類、動物或植物生命或健康之必要措施」必須係保護實施進出口限制之國家之人類、動物或植物之生命或健康，而不包括保護其他國家之人類、動物或植物之生命或健康。

就 GATT 第 20 條(g)款「關於可能枯竭之自然資源之保存措施」之規定而言，GATT 承認對可能枯竭之自然資源之保存有其優先性，故 GATT 第 20 條(g)款規定，一國就有關保存可能枯竭之自然資源之措施，縱使其具有貿易限制之效果，在 GATT 之下亦為合法。此一規定對於環境之保護與貿易政策之調和，有正面之意義。在 GATT 第 20 條(g)款之下，會員國若欲引用作為該國實施貿易限制措施之基礎，必須符合三項要件：1.必須自然資源係可能枯竭者；2.該措施必須係關於保存可能枯竭之自然資源；3.會員國所採取之措施之生效，須與其國內之生產或消費之限制有關。

任何違反 GATT 基本義務的貿易措施，在一般例外條款下，必須同時滿足兩類標準；亦即序言與個別例外條款。兩者為並行的要件。必須注意的是，無論檢驗此二種標準的次序如何，假使其一無法成就，則另一要件即無驗證的必要。

六、服務貿易總協定第 14 條

會員國在 GATS 中的相關義務，於符合一定之條件下，得免於履行，此即 GATS 之例外規定。GATS 第 14 條規定了一般例外之情形，會員國在有一般例外之情形時，得違背一國對服務貿易之特定承諾，而限制服務之進口（有時甚至得因而違背一國之最惠國待遇義務）。

GATS 第 14 條所規定之一般例外，在結構上與 GATT 第 20 條之一般例外類似，均設有一般例外之共同要件以及各國一般例外之個別要件。就一般例外之共同要件而言，GATS 第 14 條前言規定：「本協定不得禁止會員為下列目的之所需，而採取或執行之措

[9] 在該 TBT 或 SPS 措施違反 TBT 及 SPS 協定之規定時，再以本款檢視該措施是否符合例外規定。

施；惟此等措施之適用方式，不得對一般條件類似的國家間形成專斷或不合理的歧視，或對服務貿易構成隱藏性之限制：……」此一共同要件之規定與 GATT 第 20 條前言之規定非常類似。就個別要件而言，與環境議題有關之規定為 GATS 第 14 條(b)款，條文內容為「為保護人類、動物或植物之生命或健康所需者」，亦與 GATT 第 20 條(b)款相同。

七、技術性貿易障礙協定

一國政府為保護其國民之安全及健康，或其他合法之目的，常必須就產品規定其規格或標準，以確保政策目的之達成。此種規格或標準，在日益複雜之產品項目及產品構造，對進口國與其人民合法利益之保障甚為重要，但此種規格或標準往往亦對進口產生不當的限制作用，而構成貿易障礙。此即所謂技術性貿易障礙；其意係指一國所設之技術規章或有關標準之規定，對貿易產生不合理之限制或干擾。

技術性貿易障礙協定（Agreement on Technical Barriers to Trade，簡稱 TBT）前言就該協定之目的有一概括的說明。該前言最主要者乃在希望藉協定之制訂，而能更進一步達成 GATT 之目標，亦即盡量擴展貿易，並使貿易盡量在無「人為之干預」下進行。前言認為，國際的標準及符合性評估體制（international standards and conformity assessment system），藉由使生產效率之提高以及國際貿易之促進，而可以對 GATT 目的之達成有所貢獻；故期望鼓勵此種國際的標準及符合性評估體制的發展。但其亦希望能確保技術規章與標準（包括包裝、標示與標章要求，以及就一項產品是否符合技術規章與標準之符合性評估程序等）不至於構成國際貿易之不必要障礙。協定前言一方面承認各國有權為確保其出口之品質、保護人類、動物或植物之生命或健康、保護環境、防止詐欺行為，而採取其認為適當之程度之措施，但亦規定此種措施之採行不得對相同情況下之不同國家造成武斷且無正當理由之歧視，或造成隱藏性之貿易障礙。

TBT 協定中有幾項重要的特徵，分述如下：

（一）、不歧視性原則：TBT 協定第 2.1 條規定，「各會員應確保在技術性法規方面，對於從任何會員境內所輸入之產

品，給與不低於對待本國同類產品及來自任何其他國家同類產品之待遇。」此一規定包括了國民待遇以及最惠國待遇之要求。

（二）、技術規章不應造成不必要的貿易障礙：TBT 協定第 2.2 條規定，「各會員應確保其技術性法規之擬訂、採行或適用，不得以對國際貿易造成不必要之障礙為目的或產生該等效果。為此，技術性法規對貿易之限制，不應較諸達成合法目的所必須者嚴格，同時並顧及未達成該合法目的所可能產生之風險。該合法目的其中包括國家安全需要；欺騙行為之預防；人類健康或安全、動物或植物生命或健康、或環境之保護等。評估該等風險時所考量之相關事項，其中包括現有之科學性及技術性資料，相關之加工技術或對產品所預定之最終用途。」此項規定除了標明技術規章（包括技術規章本身及其適用）之嚴格程度外，並明訂可以作為制訂與實施技術規章之合法目標。其中較為重要者為「環境之保護作為制訂及適用技術規章之合法性」，獲得 TBT 協定之確認，此就環保與貿易之調和而言，應屬相當重要之進展。

（三）、採用國際標準及參與國際標準之制訂之原則：TBT 協定第 2.4 條規定，「若須制定技術性法規，且已有相關之國際標準或該等國際標準即將完成時，各會員應以該等國際標準或其相關部分作為其技術性法規之依據。但該等國際標準或相關部分非屬達成合法目的有效或為適當方法時，不在此限。例如由於基本氣候、地理因素或基本技術問題。」一國倘若欲制訂技術規章，應以國際標準（或即將完成之國際標準）作為其技術規章之基本內容；換言之，一國之技術規章原則上不應與國際標準相違背。不過，一國若認為其合法目標無法在國際標準下達成時，亦得另行制訂不同之標準，應不以條文例示之「基本氣候、地理因素或基本技術問題」為限。

（四）、透明化原則：透明化之要求為 TBT 協定相當重視的一項重點。TBT 協定第 2.11 條要求「各會員應確保經採行之技術性法規，均予以立即公布或以其他方法提供之，俾使其他會員之利害關係人知悉該等技術性法規。」TBT

協定第 2.12 條則規定，「除第 2.10 項所述之緊急情況外，各會員應容許其技術性法規之公布與迄施行之間，有一合理期間，俾輸出會員（尤指開發中國家會員）之生產者，有時間依輸入會員之要求，調整其產品或生產方法。」

八、食品安全檢驗與動植物防疫檢疫措施協定

基於維護國民生命、健康乃各國政府應盡的責任及政策，GATT 第二十條，即所謂的一般例外（General Exceptions）條款之第(b)款當中，特別允許各國政府基於保護人類、動植物的生命及健康之必要條件下，得採取違反 GATT 基本義務之貿易限制措施。

不過，原先之 GATT 對於如何同時兼顧動植物衛生檢疫及國際貿易並無完善的規定，因此為了避免部分國家假借、或濫用保護其國民生命、健康之名，而影響正常的貿易活動，各國代表於烏拉圭回合談判中進一步通過了「食品安全檢驗與動植物防疫檢疫措施協定」(Agreement on the Application of Sanitary and Phytosanitary Measures,簡稱 SPS)，以為各國採取衛生、檢疫措施之指導規則，希望能將對貿易的負面影響減至最低。此協定乃世貿組織貨品貿易多邊協定（Multilateral Agreements on Trade in Goods）下之一項次協定。

在 SPS 協定之前言當中，即宣示其目的在於建立一個多邊架構的規則與紀律，以指導檢驗與檢疫措施之發展、採用與執行，使所有會員國達到保護其國內的人民健康、動物健康及植物衛生等之目的，又盡量減少對貿易產生負面影響。

在 SPS 協定第 2 條第 1 項首先承認各會員有權採取動植物衛生檢疫措施，而為達到上述目的，SPS 協定鼓勵會員採用國際標準，「為力求儘可能廣泛調和檢驗與檢疫措施，會員應根據現存的國際標準、準則與建議，以訂定其檢驗或檢疫措施」，凡採用國際標準者即推定其為符合本協定及 GATT 1994 相關規定（SPS 協定第 3 條）。而 SPS 第 3 條第 3 項則規定：「若科學上屬合理，或一會員確定其根據 SPS 協定第 5 條第 1 項至第 8 項而實施較高之檢驗和檢疫保護水準係屬允當，則該會員可在檢驗或檢疫上之保護，比依相關國際標準、準則或建議所定之措施，引用或維持較高的水準。惟不論以上之規定如何，凡檢驗或檢疫之保護水準與

依據國際標準、準則或建議所制定者有所不同時，不應與本協定中其他任一條款規定不一致。」。

簡言之，SPS 協定要求會員所採取之檢驗或檢疫措施確實為確保食品安全及動植物健康所需，並無其他限制貿易的意圖，儘可能採用現存的國際標準，會員採取較高水準之措施所依據之風險評估，必須是基於客觀、正確之科學數據。

同時，SPS 協定鼓勵各會員在一定的條件下接受其他會員之措施與自己的措施具有同等性（SPS 協定第 4 條第 1 項）、遵守透明性原則（SPS 協定第 7 條），以及要求各會員就不同區域之條件採用不同之動植物衛生檢疫措施（SPS 協定第 6 條）。

對於所謂的國際標準，SPS 協定於附件 A 的第 3 項(a)款中加以規定—就食品安全而言，係指由國際食品安全委員會（Codex Alimentarious Commission）針對食品添加物、動物用藥與農藥殘留物、污染物、分析與採樣方法、及衛生實務法規與準則所建立的標準、準則與建議；就動物健康或動物疾病而言，係指國際家畜流行病機構（International Office of Epizootics）贊助下所訂定出之標準、準則與建議；就植物健康而言，則為國際植物保護公約秘書處（the Secretariat of the International Plant Protection Convention）與該公約架構下之地區性組織所合作、訂定出之標準、準則與建議；就非前述國際組織所涵蓋之事項，則由動植物衛生檢疫措施委員會指定。SPS 協定第 3 條第 4 項並要求會員盡全力參與國際標準制定之發展與檢討。

會員在評估為防範某一風險的檢驗或檢疫措施，應顧及相關經濟因素，如害蟲或疾病侵入、滋生或散播而致生產或銷售的損失、控制或撲殺的費用、或抑制風險的替代方法的相對成本效益（SPS 協定第 5 條第 3 項）。當有數種檢驗或檢疫措施可達成相同程度之保護，會員應考慮技術與經濟可行性，採用對貿易有較低限制者（SPS 協定第 5 條第 6 項）。

SPS 協定適用於可能直接或間接影響國際貿易的所有檢驗與檢疫措施，包括以下事項：(a) 為保護該會員國領域內之動物或植物之生命或健康，以免蟲害、疾病、帶原生物或致病生物的進入、滋生或散佈的風險的相關措施；(b) 為保護該會員國領域內之人類或動物的生命或健康，以防範因食品、飲料或飼料中的添加物、污染物、毒素、或病原而導致的風險；(c) 為保護該會員國領域內

人類的生命或健康，以防範因動植物或其產品所攜帶的疾病或蟲害的進入、滋生或散佈的風險；或(d) 防範或限制會員國領域內因蟲害的進入、滋生或散佈所造成的其他損害（SPS 協定附件 A)。而所謂檢驗與檢疫措施包括所有相關法律、政令、規定、要件與辦法，涵括範圍則有最終產品標準（end product criteria)、製程與製造方法（processes and production methods)、測試、檢驗、證明與批准等程序（testing, inspection, and approval procedures)、檢疫處理（包括動植物之運輸、或使動植物在運輸過程中存活之必要材料的相關要求）（quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the material necessary for their survival during transport)、相關統計方法、採樣程序及風險評估方法之規定（provisions on relevant statistical methods, sampling procedures and methods of risk assessment)、以及直接與食品安全有關之包裝或標示要求（packaging and labeling requirements directly related to food safety)。

九、與貿易有關之智慧財產權協定

與貿易有關之智慧財產權協定（Trade-Related Aspects of Intellectual Property Rights，簡稱 TRIPS）中，明確地提及環境議題之規定係 TRIPS 第 27 條第(2)款以及第(3)款關於可專利性之例外情形。

TRIPS 第 27 條第(2)款規定，「會員得基於保護公共秩序或道德之必要， 而禁止某類發明之商業性利用而不給予專利，其公共秩序或道德包括保護人類、動物、植物生命或健康或避免對環境的嚴重破壞。 但僅因該發明之使用為境內法所禁止者，不適用之。」TRIPS 第 27 條第(3)款則規定，「會員得不予專利保護之客體包括：(a)對人類或動物疾病之診斷、治療及手術方法；(b)微生物以外之植物與動物，及除「非生物」及微生物方法外之動物、植物產品的主要生物育成方法。會員應規定以專利法、或單獨立法或前二者組合之方式給予植物品種保護。本款於世界貿易組織協定生效四年後予以檢討。」這兩項條款處理了在智慧財產權保護中對環境保護之考量。

十、貿易與環境委員會（CTE）

CTE 於 1995 年 WTO 成立後第一次理事會中成立，當時其主要的任務為：(1)鑑別貿易措施與環境措施之間的關聯性，以促進永續發展；以及(2)在與多邊貿易體制的公開、平等、非歧視性等本質相容的情況下，對於是否需要進行任何多邊貿易體制條文的修改，做出適當的建議。於同年 2 月 16 日召開第一次例會時，CTE 建立了主要工作以及討論內容，可大致分為十個議題：

1、用來達成環境目的之貿易規範以及貿易措施之間的關聯性，包括與存在於 MEAs 中之貿易措施之關聯性。

2、貿易規範與環境政策之間的關聯性以及其帶來的貿易衝擊。

3、a)貿易規範與環境義務以及負擔之間的關聯性。

b)貿易規範與對產品的環境要求，包括包裝、標示以及回收之標準與規則之間的關聯性。

4、貿易規範在用來達成環境目的之貿易措施，以及帶來貿易衝擊之環境政策的透明度（係指完全並即時的揭露）。

5、WTO 之爭端解決機制以及 MEAs 爭端解決機制之間的關聯性。

6、環境措施對開發中國家之出口阻礙其進入市場的潛力，以及解除貿易限制與扭曲所帶來的潛在環境利益。

7、一國國內達禁產品之進口爭議。

8、環境以及與貿易有關之智慧財產權協定(TRIPS)之間的關聯性。

9、與服務業之貿易協定有關之相關條款與工作方案

10、在世界貿易組織條文第五條中所提及之與跨政府組織和非政府組織間之適當安排與意見投入。

在貿易與環境議題的討論上，CTE 認爲 WTO 關於非歧視和透明度的基本原則與爲保護環境所需採取的貿易措施是不衝突的，貿易措施包括根據環境協定採取的措施；CTE 同時注意到，貨物貿易、服務貿易和知識產權協定的條款允許各國政府優先考慮各自國內的環境政策。另外 CTE 也注意到，爲保護環境而採取的對貿易有影響的措施，可在一些環境協定中發揮重要作用，特別是當貿易是產生環境問題的直接原因時。但委員會也指出，貿易限制不是惟一可採取的措施，而且它們也不一定是最有效的，其他的選擇包括幫助各國獲得保護環境的技術、給予他們財政援助以及提供培訓等。

第三章　WTO 貿易規則與多邊環境協定（MEAs）之關連性

第一節　背景說明

隨著各種環境問題的日益嚴重，加上環境衝擊是全面性的影響，世界各國不得不在地區或國際層面上，透過彼此間的合作以尋求比較有效的解決途徑，多邊環境協定（Multilateral Environmental Agreements,簡稱 MEAs）可視爲當前較爲有效的國際環境機制，而除了國家，MEAs 的成員尚包括許多的非政府環境組織(environmental NGOs)。各個多邊環境協定原則上每年會召開一次締約國大會（Conferences of Parties, 簡稱 COPs），由所有締約國組成一個全權機構，是公約的最高決策機構，有權通過一切必要的內部和外部決議(internal and external decisions)，尤其是調整附件的決定。由於 MEAs 的修正或附件的調整能夠實質性地變更締約國的義務，特別是這些協定，常以貿易的手段來達到環境保護的目的，這時是否能以 GATT 第 20 條的各款規定將貿易限制措施正當化，便存在許多爭議。以 GATT1994 第 20 條（b）、（g）兩項為例，條文用語模棱兩可，過於抽象化，加上很多環境問題帶來的風險是往往是不確定的、長期的，很難加以評估。因此，基於環境保護爲目標的 MEAs 與基於貿易自由化爲宗旨的 WTO 發生衝突在所難免。

從表面上來看，MEAs 貿易措施和 WTO 規則衝突的原因是環境保護與貿易發展的衝突。但是貿易本身不產生或極少產生污染，因此兩者衝突實質是不合理的經濟活動和環境保護之間的衝突，特別是因為經濟活動過程中所造成的環境上的損失，如污染由全體國民承擔。一些國家主張 WTO 應闡明貿易與環境條款間的關係以確保法律的確定性、可預見性與國際一致性，但部分國家則認為 WTO 上訴機構的決議已經闡明了現存的 MEAs 之中與貿易有關的措施是與 WTO 相容的，既然沒有衝突存在，也就沒有必要去釐清或解釋。目前 MEAs 中確實有少數會引起和 WTO 規則、原

則可能發生衝突的問題，如幾個比較重要的 MEAs：瀕危野生動植物物種國際貿易公約（CITES）、巴塞爾公約（Basel Convention）、蒙特婁議定書（Montreal Protocol）等。

站在 WTO 之立場，由於 WTO 推崇貿易自由化，降低會員間市場進入條件，反對進出口數量限制和歧視，反對貿易障礙等，因此在環境保護問題上處於尷尬的境地；但另一方面，越來越多的 MEAs 採取貿易措施做為達到環境保護的手段，這是因爲貿易措施直接與經濟利益相關，能直接地影響對環境產生影響的法人或自然人，加上 MEAs 的決議多是「軟法」（soft law），甚至本身欠缺較完善之爭端解決機制，一旦問題產生，特別是措施影響到為 WTO 會員但非 MEAs 成員時。為解決此問題，在 2001 年的 WTO 部長會議上，部長們同意成立貿易談判委員會（Trade Negotiations Committee，簡稱 TNC），對貿易與環境的相關議題進行一系列的談判。這些談判的主要目的在於釐清多邊貿易與環境架構（multilateral trade and environment）之間的關係，並在 WTO 各委員會、MEAs 各秘書處之間進行資訊交換。

而於 2002 年 2 月所進行的貿易談判委員會之第一次會議當中，各國同意將在 CTE 之特別會議（Special Sessions）中進行該議題之談判。談判內容列於杜哈宣言 31(i)，即：「同意就 MEAs 中具體貿易義務和 WTO 現行規則的關係展開談判。WTO 成員確定 MEAs 的談判內容範圍限於 WTO 現行規定對多邊環境協定地約國之適用性，並指示這一談判不應損害任何不屬於 MEAs 成員在 WTO 中享有的權利」；另外，部長們亦同意在維護多邊貿易體制的公開性及非歧視性的同時考慮到發展中國家的需要。

依循部長會議的指示，在本年度所召開的例會中，會員國對於本議題進行多次的討論。在 2 月 14 日召開的第一次特別會議裡，各國嘗試將 MEAs 放進杜哈宣言第 31(i)做檢視，探討多邊環境協定下所採取的貿易措施，是否與 WTO 的立場與精神發生衝突。在討論的過程中，多數國認為未來的執行重心應放在確實的實踐上，而非落入爭辯文字定義的窠臼中，因此特別關心 MEAs 中有哪些特定貿易義務（STOs）會與 WTO 的規範發生不相容的問題。

第二次例會於 4 月 29 日舉行，除了 WTO 各成員國，食品與農業組織（FAO）、國際標準組織（ISO）、經貿合作發展組織

（OECD）、聯合國貿易與發展小組（UNCTAD）、聯合國環境署（UNEP）以及生物多樣性公約（CBD）亦有代表出席參與。討論議題主要圍繞著杜哈宣言第 32 條，其中，歐盟的環保標章提案，因為涉及生命週期分析（LCA），多數國家對歐盟的論點抱持質疑的態度，擔心歐盟的作法根本就是將自願性環保標章定位成強制性的標章體系，造成貿易上的模糊空間，並認為此議題應在 TBT 處理較為恰當。

第三次例會於 7 月 7 日舉行，加拿大在本次會議中提案要求 CTE 向部長會議建議，對 CTE 的工作方案進行檢討，理由是少數工作項目在過去十年內從無會員提案，或討論相當有限，應可考慮予以刪除。瑞士、菲律賓、印度、馬來西亞、巴西、中國、埃及等表示反對，主要理由包括應由 CTE 本身先進行檢討、改變工作項目之授權須有共識、不宜給予部長太多之工作、時機不宜等。歐盟、挪威、智利及韓國等則原則認同加拿大之提案，但亦認為需要更多時間作更深入之考量。智利另提出折衷建議，認為可同意於部長會議後進行檢討，日本及韓國對此表示支持，但埃及、肯亞、馬來西亞、菲律賓、巴基斯坦等仍表示無法接受。另外，歐盟再度提出與環保標章相關的提案，並建議請部長會議授權 CTE 就環保標章（eco-labeling）議題舉行三次之專案會議，但並未獲得大多數會員國之認同。

第四次例會則於今年 10 月 28 日召開，會中除通過本年度之 CTE 年度報告，並決定 2004 年 CTE 例會的時間為：3 月 16 到 17 日、7 月 6 到 7 日、以及 10 月 12 到 13 日。

第二節　CTE 秘書處對 MEAs 中與貿易有關措施分類之背景文件介紹[5]

根據 UNEP 在 1999 年的統計資料顯示，與環境相關的協定共有 238 個；其中，WTO 秘書處認為 MEAs 中含有潛在性貿易措施的共有 28 個，比較重要的則有 12 個，分別是：國際森林保護公約（International Plant Protection Convention）、大西洋鮪類資源保育委員會（ICCAT）、瀕臨絕種野生動植物國際貿易公約（CITES）、南極海洋生物資源保育委員會（CCAMLR）、蒙特婁公約（Montreal Protocol）、巴塞爾公約（Basel Convention）、生物多樣性公約（Convention on Biological Diversity）[11]、聯合國氣候變化綱要公約（UNFCCC）[12]、國際熱帶林木協定（ITTA）、聯合國漁業協定（UN Fish STOscks Agreement），鹿特丹公約（PIC）以及斯德哥爾摩公約（POPs）。在秘書處發表的文件中，除了整理上述公約的基本資料，並將各條約中與貿易有關的措施條列出供成員國參考，並針對下列公約的貿易措施做介紹與分類。

一、國際森林保護公約

與貿易相關的措施有 IPPC1979 年版本中的第五章、第六章，以及 1997 年修正版本中的第五條、第七條。締約國有違約情形時，依照植物國際衛生檢疫措施第 13 號標準（International Standard for Phytosanitary Measures No. 13）處理。

二、大西洋鮪類資源保育委員會

ICCAT 雖然並非為受規章限制的團體，但是被委員採納的與大西洋或鄰近地區鮪類相關的保育建議（Recommendations）或是判決（Resolutions），締約國、有合作關係的非締約國、實體單位

[10] 文件編號：WT/CTE/W/160/Rev.2，提交日期：2003.04.25
[11] 含生物安全議定書。
[12] 含京都議定書。

（Entities）以及漁業實體（Fishing Entities）都應遵守、履行。其中，只有建議是唯一有拘束力的工具，當一向建議被採納後，若六個月內沒有任何締約國表示異議，該項建議便於提出後六個月開始執行；而判決只是比較次要的工具，沒有異議期間。

ICCAT 所採納的建議或是判決正逐年增加中。截至 2002 年底，共有 8 項建議與 10 項判決被認為是含有貿易措施者。當一國有違反本委員會所採納之建議或判決之情形時，將縮減其原本可以捕捉的數量，減少的數額為超出的量，或是超出量的百分之一百二十五；在某些情況，甚至他國可對其進行司法審判。

三、瀕臨絕種野生動植物國際貿易公約

CITES 所採行的貿易措施是對公約附件一、附件二所列物種的進出口「數量（Qoutas）」做規範，會員國違反 CITES 的處理流程如圖 1 所示。

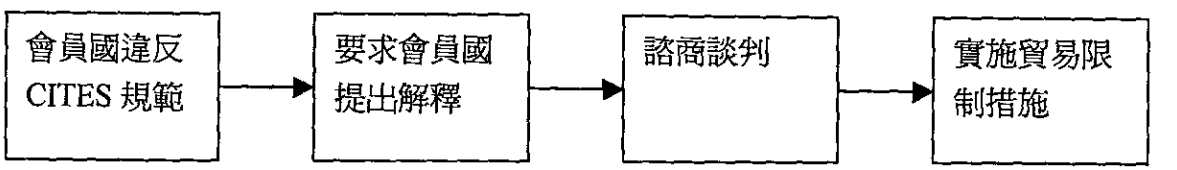

圖 1　CITES 違約處理機制

WTO 秘書處發現，CITES 的貿易措施來源有六：

1、公約中的條文；
2、由締約國大會所決議的貿易措施；
3、由締約國大會底下的代表團所決議的貿易措施；
4、公約中動物委員會與職務委員會所建議的貿易措施；
5、由秘書處對締約國大會或是代表團所提之貿易措施建議；以及
6、由締約國所採納的更嚴格的區域貿易措施。

四、南極海洋生物資源保育委員會

公約本身並未含有貿易措施，但與貿易相關的措施被採納且對締約成員有拘束力，如：締約國對本國國籍船隻的授證與檢查

義務（Licensing and Inspection Obligations of Contracting Parties with regard to their Flag Vessels Operating in the Convention Area ）。委員會僅強調促進締約國對公約的實踐，對於違約者，未見具體的懲罰措施。

五、蒙特婁議定書

議定書中與貿易相關的條文為第 2 條、第 2A~2I 條、第 4 條、第 4A 條以及第 4B 條，締約國會議（Meeting of the Parties）決議中與貿易相關的則有第 5、第 10 以及第 15 次會議。其中 2002 年於羅馬召開的第 15 次會議中所採取的貿易措施有：

（一）、第 7 號決議

為了監控破壞臭氧層物質（ozone-depleting substances,簡稱 ODS）的貿易情形與避免 ODS 的非法貿易，鼓勵締約成員彼此間的資訊交換、改進對 ODS 的鑑定方法，以及避免 ODS 的非法交易，當發現有非法交易的情形時，應提報秘書處。

（二）、第 36 號決議

鼓勵尚未對 ODS 做進出口授證管制的成員，儘快建置此系統。

對於違約者，本公約無具體懲罰措施，僅在公約第 8 條提到，對於無法達成目標的成員，應提供技術支援。

六、巴塞爾公約

巴塞爾公約的基本義務為確保有害與其他廢棄物跨國境移動僅應在產生國缺乏環境健全與有效方式處置之設備或能力，或進口國需要此些廢棄物做為回收、再利用之原料等條件下，或物件的越境轉移符合由締約國決定的其他標準，但這些標準不得背離本公約的目標方能進行。WTO 秘書處整理本公約與貿易相關的條文有第 3～6 條，以及第 8、第 9 條，第二次與第三次締約國大會都做出與公約附件七國家出口禁止相關的決議，第六次締約國大會除了表達希望成為 WTO 觀察員的意願，並討論將公約中與貿易措施有關的條文送交 WTO 進行檢視。

（一）、1994 年第二次締約國會議決議

要求 OECD 國家立即禁止出口有害廢棄物至非 OECD 國家做最終處置，亦決定自 1997 年 12 月 31 日起，禁止全部有害廢棄物有 OECD 國家跨國境運送到非 OECD 國家做回收或在利用等活動。

（二）、1995 年第三次締約國會議決議

新增公約第四 A 條規定，禁止「附件七國家」出口任何有害廢棄物至「非附件七國家」。第四 A 條第一項規定：「附件七所列各方應禁止向未列於附件七的國家作 供進行附件四 A 節所列作業的危險廢物的一切越境轉移。」同條第二項規定：「附件七所列各方應於 1997 年 12 月 31 日之前逐步終止，並自這一日期起禁止向未列入附件七的國家作公約第一條(a)款之下供進行附件四 B 節所列作業的危險廢物的一切越境轉移。」

截至目前為止，並沒有違反本公約的情形發生，不過一些雙邊的討論認為對於對於「通知」的部分也應加以規範。

七、生物多樣性公約

本公約並無明顯的貿易措施，主要是設定一些目標以及基本原則，但為了達到這些目的，公約條文所採用的特定措施還是會對締約國產生貿易上的影響，而且某些條文甚至與一些國際貿易協定相關。WTO 秘書處認為公約中與貿易措施有關的條文有第 7(c)條、第 8 條、第 10~11 條、第 14~16 條、第 19 條以及第 22 條；另外，締約國大會決議也提到希望與 WTO 合作，並爭取成為 CTE 的觀察員，並討論將公約中與貿易措施有關的條文送交 WTO 進行檢視。比較值得注意的是，在第六次締約國大會的第 23 號決議中提到了以「預防原則」做為指導方針。

而在生物安全議定書中，WTO 秘書處認為與貿易措施有關的條文則有前言、第 2:4 條、第 7~16 條、第 18~19 條、第 26 以及附件的部分。另外，本公約並無遵約機制。

八、聯合國氣候變化綱要公約

本公約並沒有對貿易直接進行限制，但違反者可能會受到貿易的制裁。WTO 秘書處認為本公約與貿易相關的條文有第 3.5 條

與第 4.2(a)條，其中第 3.5 條並提到，締約國為對抗氣候變遷所採取的措施，不應有專斷、不公平的歧視或是在貿易上造成扭曲限制的情形。

針對京都議定書，WTO 秘書處認為本公約與貿易相關的條文則有第 2、6、12 以及 17 條。而議定書建立量而有利的履約機制以確保目的之達成。

九、國際熱帶林木協定

ITTA1994 協定中並無貿易措施的條文，但在執行時 ITTA1994 的貿易目的被提升，反映在公約的第 1 條與第 36 條中。會員如有違反協定的情形，經過投票表決後將排除其會員資格。

十、聯合國漁業協定

本協定並無特殊與貿易相關之規定，僅於第 17.4 條提到成員間資訊交換的問題。在第 19 條則提到當有違約情形發生時，應對該船隻儘速進行調查與司法審判，對船長和船員有應剝奪其自非法活動所能得到之利益。

十一、鹿特丹公約

WTO 秘書處認為公約中與貿易措施有關的條文有前言、第 5~8 條、第 10~13 條以及第 15 條。

十二、斯德哥爾摩公約

WTO 秘書處認為公約中與貿易措施有關的條文有前言、第 3、4 條及第 8 條。

綜上所述，大多數公約的履約機制建立在資訊交換與技術支援（以設立基金會的方式），而所謂與貿易相關的措施，指的是「數量管制」，包括：捕捉量、越境移送量、排放量等。

第三節　2003 年各國及我國對於 WTO 與 MEAs 特定貿易義務之立場分析

去年 CTE 的談判，著重於基本概念之定義，今年大方向則在於標明具體 MEAs 之貿易義務及各國執行該義務之經驗分享。

一、各國立場

（一）、挪威

挪威主張討論的焦點應放在 WTO 會員就「特定貿易義務」（STOs）的觀念所做的解釋：

1、有關 STOs 的定義

(1)、有關 STOs 的定義，挪威提出 STOs 應符合三項要件：

A、「特定性」（specific）－該項措施在 MEAs 中有特別的規定以及明確的定義，包括清楚定義的替代措施；

B、「貿易相關性」（trade related）－在 WTO 之範圍內，與進出口有關之措施；

C、「義務」（obligations）－所有強制性的條款或是某些條文加總的效果等同於形成一貿易義務。

(2)、有關「在 MEAs 之締約國間」，如果 MEAs 准許締約國做保留（reservations），則聲明保留的締約國應該在其聲明保留的事項範圍內被視為非締約國

2、其他評論：

(1)、有些在「灰色地帶」的 STOs（WTO 會員有不同意見者），顯示發展定義的重要性；

(2)、本段宣言（杜哈宣言第 31(i)）並不包括協商 MEAs 與 WTO 規則之間的關係；

(3)、本段宣言的協商不應限制 WTO 會員就其認為 WTO 的規則被違反的時候要求 WTO 爭端解決小組處理的權利；

(4)、協商也不應影響 MEAs 所授權，但非 STOs 的相關措施。

（二）、加拿大

加拿大贊同一些 WTO 會員的想法，認同將一開始的討論焦點放在六個 MEAs 中所規定的 STOs：CITES、蒙特婁議定書、巴賽爾公約、特定有害化學物質以及殺蟲劑於國際貿易中之事前告知同意同意公約（簡稱鹿特丹公約或 PIC）、生物安全議定書、以及持久性有機污染物公約（簡稱斯德歌爾摩公約或 POPs）等六個公約。雖然加拿大贊成將討論的焦點集中到此六個公約，但並不代表加拿大的立場是此六個公約包括所有的 STOs。這六個公約中所採取的措施非常不同，包括有產品、物質或物種之國際貿易的禁止、限制、或條件。

1、與 STOs 觀念相關之考量因素的分析

加拿大認為 STOs 有可能規定在一個特定的條文中，也有可能是一些條款加總所構成的，有些條款甚至會規定貿易相關措施應如何執行。而締約國所做的決定，不論是締約國大會或是透過其他特定程序所做成，是否算是 STOs 所包括的措施，應該先經過詳細的分析特定的 MEAs，不用事先的排除這些決定。至於 MEAs 的修正案是否應算是 STOs？加拿大以為如果 WTO 會員接受該修正案而該修正案有規定 STOs 相關措施的話，沒有理由認為 STOs 不包括修正案。

最後，針對氣候變化綱要公約以及京都議定書，加拿大認為這兩個公約並沒有 STOs。

2、結論

分辨貿易相關措施的的一核心觀念在於締約國在選擇措施以及執行或設計措施時所享用的裁量權。

（三）、瑞士[13]

瑞士認為將特定 MEAs 中的條款用條列的方式進行討論有關第 31(i)的範圍是不合適的，瑞士希望發展出一套標準，以較為概念式的方法確認特定貿易義務(STOs)。因為以下原因，瑞士認為條列條款的方式不適合用來討論杜哈宣示：

STOs 不必然由一個 MEAs 中的單一條文規定，有可能是一組的條文加以規範，於此，不適合用條列各條款的方式處理。至於

[13] 文件編號：TN/TE/W32，提交日期：2003.05.13

由 MEAs 的相關決策機構所做之決定是否為 STOs，也無法以一般性的規則加以認定，必須看各 MEAs 授與締約國大會以及其他組織做決定的權限等。

此外，因為 MEAs 係持續發展中，如果 STOs 以條列條款的方式呈現，勢必要跟隨著 MEAs 的新發展隨時修改名單，頗為不便。

瑞士於今年二月的 CTE 例會中已提出 STOs 的兩種類型：

(1)、於 MEAs 下強制性的明文規定之貿易措施；

(2)、其他為達成 MEAs 目的，適當且必要之其他措施。

就第二類的 STOs 而言，若干會員代表希望瑞士提出更多的例子加以說明。

瑞士提出第二類之 STOs 的原因如下：MEAs 中貿易義務的設計賦予締約國頗大的裁量空間（"marge de manoeuvre"）來決定要採取哪些措施。既然 MEAs 的締約國於協商 MEAs 時決定將此裁量空間交由締約國，WTO 的會員即必須設計出一機制以確保 WTO 規則不會干涉到該締約國行使此一裁量空間的主權。但是，如果有 WTO 會員濫用此一裁量空間，以具有保護主義目的或以造成不正當歧視的方實施 STOs，則其他 WTO 會員可以於 WTO 的架構之下加以干涉。

瑞士接者舉出「持久性有機污染物公約」（POPs）第 3.1 以及 3.2 條，以及 Basel Convention 第 4.1 以及 4.7 為例說明前分類之兩種 STOs。

由上述可知，瑞士認為以表列方式列出各種 STOs 並不是一種有效率的方式，此外，此份名單可能永遠也無法製作出來。因此瑞士比較偏好使用較為概念性的方式來訂定一些標準，以方便基於較為一般性的基礎卻任何為 STOs，而且也便於將 MEAs 未來的發展一併列入考慮。

前述所提及的機制，指的是下列狀況：包含 STOs 的 MEAs 顯示出該 MEAs 之締約國認為，為達成該公約的目的，採取相關的貿易措施係有必要。因此，瑞士認為此一必要性已經不適合再由 WTO 作一次檢視。也就是，STOs 中所包括的措施，將被假設為係為達成 MEAs 目的所必要者。此一假設不代表該措施即不用受到 GATT 第 20 條的規範。我們還是可以審查該特定措施的適用是否以專斷恣意的方式或造成不正當的歧視或隱藏性的貿易限制。

最後，瑞士表示確信以上的概念與杜哈宣言第 32 段相符，因為這不會造成會員於現行 WTO 協定中之利益減損或義務增加。建議設置一程序性的規則，規定如果一貿易措施是所謂的 STOs，則即符合第二十條的必要性原則。

（四）、馬來西亞[14]

1、前言

馬來西亞將針對第 31(i)有關特定貿易義務（STOs）等相關議題提出一些觀察。

2、杜哈宣示（the Doha mandate）

第 31(i)很清楚將談判焦點放於現行之 WTO 規則與 MEAs 中的 STOs 之間的關係。截至目前為止，討論的幾個焦點在於：何謂 MEAs？談判是否只包括已生效的 MEAs？何謂 MEAs 中訂定之 STOs？

3、多邊環境公約

馬來西亞認為第 31(i)中所指的 MEAs 應具有下列特色：

(1)、多邊的特徵，包括：

A、其係於聯合國協助之下協商；

B、協商所產生的協定是開放給來自所有區域的國家，而已開發與開發中國家均積極的參與其中；

C、會員籍可反映出聯合國／世界貿易組織會員的多樣性。

(2)、其環境特徵係表現於該條約的環境保護目標

其條約的特徵係指已被批准且生效的條款。

4、特定貿易義務

STOs 包含承諾採行某特定措施，或是承諾避免採取某特定措施，而且包含強制性以及特定性等要件。馬來西亞認為，於杜哈宣示中的 STOs，因其使用「特定」、「義務」、以及「貿易」等詞彙，顯示其所指的是具有拘束性義務的 MEAs 條款，並於貿易行為中規範有特定之行為義務或特定限制。也就是其具有強制性與特定性。

會員曾討論，由 MEAs 的締約國大會所做的決定所可能包括的 STOs 是否為談判的對象，何謂由 MEAs「所定」（"as set

[14] 文件編號：TN/TE/W29，提交日期：2003.04.30

out”），馬來西亞認為其有特殊意義：只有在由締約國所制定的附錄、議定書、或是公約的修正，並已經過多數締約國的批准，才有可能被納入談判的範圍。

馬來西亞嘗試著於附錄中，列出三個 MEAs（CITES、巴塞爾公約以及蒙特婁議定書）中所包含的 STOs。不同於美國與日本的作法，馬來西亞不認為條文內容與貿易相關的就是所謂的特定貿易義務，有些只是針對特定行為加以敘述之方式，並不是所有的條款都真正與貿易有關。

馬來西亞認為 CITES 中屬於特定貿易義務的條文有第 3(2)~(5)、4(2)、(4)、(6)、5(2)~(4)、6(2)~(6)、8(6)條；巴塞爾公約中屬於特定貿易義務的條文有第 4.1(b)~(c)、4.6、4.7(c)、6(1)~(3)條；蒙特婁議定書中屬於特定貿易義務的條文有第 4A、4B 條。

（五）、歐盟[15]

1、一般論述

於有關杜哈發展回合中第 31(i)，歐盟持續的傾向以透過例子的方式作概念性的討論，例子可用來澄清與列舉討論中的概念以及原則，但這些例子並不是窮盡式或唯一的例子。

於本篇中，歐盟將針對「MEAs 所規定」一詞進行一些澄清。

歐盟贊成其他 WTO 會員的意見，認為「MEAs 所規定」並不應解釋為僅由條約本身所訂定，應該包括所有由締約國大會（COPs）所做的決定，只要該些決定符合 STOs 之定義。於本份文件中，歐盟將進一步探討 COPs 決定的法律拘束性以及效果。

COPs 除了一些例如預算等行政事項之外，大多被賦予訂定決策的「實體權力」（substantive powers）。此類權力係由條約所賦予。實務上，COPs 所做的決定有很多種，但其法律地位是相同的。以下將 COPs 的決定分為三類：

(1)、修正 MEAs 的 COPs 決定，包括：修改 MEAs 條約本身的決定，以及制定或修正技術性附錄的決定。因為其法律拘

[15] 文件編號：TN/TE/W31，提交日期：2003.05.14

束性，上述的 COPs 決定都應算是 STOs。

(2)、COPs 決定做出解釋或是進一步詳列締約國針對 MEAs 之條款或其他 COPs 決定應做之具體履行措施。此類決定是否具有法律拘束力必須視個案而定。此類 COPs 決定即是不具有法律拘束力，但就 MEAs 條款的解釋，包括 MEAs 中所含 STOs 之解釋，均扮演著重要的角色。

(3)、一般性或具有政治性的 COPs 決定。此類的 COPs 決定並不具有法律拘束力，因此，不算是「義務」。但此類 COPs 決定也可扮演解釋 MEAs 的角色。

2、結論

歐盟認為所有具法律拘束力的 COPs 決定，如果其包含 STOs 定義中的義務，都應被納入談判的範圍。於大多數的情形，COPs 決定都是具有法律拘束力的，不過，如果有疑義，則應是該決定的具體語句以及其處理的議題，必要時由 MEAs 來認定。

（六）、日本[16]

1、前言

於 2002 以及 2003 的 CTE 特別例會中，許多會員針對澄清特定貿易義務（以下簡稱 STOS）以及國際環境公約（以下簡稱 MEAs）中的特定條款進行討論，日本認為此類觀念的澄清應該與分析 MEAs 中之特定條款齊頭並進。於本文件中，日本將依據其特定性以及義務性，挑出六個 MEAs（包括 CITES、Montreal Protocol、Basel Convention、Biosafety Protocol、PIC、以及 POPs）中的 STOs，於附錄中以表列呈現。此一表列並不包括所有的包含 STOs 的 MEAs，而日本針對此次立場文件的提出、解釋、以及內涵之觀念，隨著談判之進行，不排除進行修改與補充。

2、分析 MEAs 中之特定貿易義務

日本將依據 MEAs 所為之貿易措施分為下列四種類型：

(1)、該貿易措施是 MEAs 下明文的強制規定

(2)、MEAs 中明文規定之伴隨義務（obligation de resultat），而

[16] 文件編號：TN/TE/W26，提交日期：2003.04.25

該貿易措施係 MEAs 所指，用來實踐該義務之潛在手段

(3)、MEAs 中所規定之伴隨義務（obligation de resultat），但 MEAs 中並沒有提及貿易措施，為實踐該義務是否要使用貿易措施的決定完全交由締約國自行決定

(4)、該貿易措施沒有規定於 MEAs 中，但締約國依據 MEAs 下之各類決策單位有義務執行該措施

日本認為第一類中的貿易措施為 MEAs 締約國之間與 WTO 規則相符的 STOs，第二類中的貿易措施如果符合下列兩要件，則初步認定也算是與 WTO 規則相符之 STOs：

(1)、依據 MEAs 為達成其環境目的，該貿易措施是根據科學原則所定；

(2)、該貿易措施的範圍要與 MEAs 所追求的目標在範圍與程度上合乎比例（比例原則）。

第三類與第四類中的貿易措施則應被認定為不屬於杜哈部長宣言中的談判範圍。

此外，本文也排除適用於締約國與非締約國之間的貿易行為的規範（舉例說明，例如 Article 4.5 and 4.6 of the Basel Convention 等）。

MEAs 條款中賦予締約國權利者，因為並不是特定貿易「義務」，因此也被排除。

日本以巴塞爾公約、CITES、蒙特婁議定書、斯德哥爾摩公約、生物安全性公約以及鹿特丹公約為例，將六個公約中與貿易相關的條文條列出並以其所提出的分類方式加以區別，詳如表 1 所示。在討論六個 MEAs 中的 STOs 時，日本有以下的考量點：

(1)、裁量權之空間（degree of discretion）

最重要的考量點之一為：MEAs 賦予其締約國採取貿易措施之裁量權空間／程度。日本並舉出數個例子作為討論：

A、MEAs 的條文中如果清楚的強制要求締約國必須要進行貿易禁止或限制，則該類義務即構成 STOs。例如 Basel Convention 的第 4.2 條第（e）款與（g）款

B、Biosafety Protocol 中的第 18.1 條

(2)、援引其他國際文件（reference to other international

instruments）

如果貿易義務中有援引到其他國際文件（例如 Basel Convention 第 4.7 條第（b）款），則如果該項國際文件本身即具有特定性而且遵守此文件係強制要求，則此類貿易義務也構成 STOs。

(3)、特定貿易義務之種類（form of specific trade obligations）

STOs 的種類當然包括商品跨境運輸的禁止與限制，但是也包括例如通知、技術規格、包裝與標示等條款。STOs 可能單獨於一條文中呈現，也有可能是數個條文結合所形成者。日本認為有關貿易行為的通知（notification），即便係程序性的規定，如果此類通知為實踐該貿易行為的強制要求的話，則通知也算是 STOs 的一種（例如 Basel Convention 中的第 6.1、6.2、與 6.3 條）

有關例如 Basel Convention 第 8 條與第.條（a）款中所提到「在進口」之義務是否為 STOs，日本認為此類義務應該算是 STOs，因為此項義務可用 GATT1994 第一條與第十一條檢視。

(4)、決策單位的決定（decisions of the deliberating organ）

有關於 MEAs 條款與其決策單位（例如締約國大會、各委員會等）所做出之決定的關係，可預見以下兩類個案：

A、該貿易措施係明文規定於 MEAs 中，而詳細的履行細節則明文的交由決策單位來決定。

B、該貿易措施並沒有於 MEAs 中規定，而做成採取貿易措施的決定係交由其決策單位

日本的意見是，於個案 1 中，相關的 MEAs 條款算是前述第一類，而該貿易措施則算是 STOs。

3、後續討論

日本邀請其他 WTO 會員針對其所提出有關 STOs 之例子進行討論、意見交換以及分析。此外，邀請 MEAS 秘書處參加 CTE 特別例會並非想其相關經驗與專業係很有幫助的。

（七）、中國香港[17]

1、前言

香港於 2003 年 2 月份的 CTE 例會中提出各會員應開始針對一些 MEAs 進行執行經驗的討論與分享，因此，香港於本文件中將以自身的執行經驗針對 CITES 中的相關條款進行檢視。以不損及香港的協商立場為前提，香港提出其觀察與會員分享。

[17] 文件編號：TN/TE/W28，提交日期：2003.04.30

表 1　多邊環境協定中屬於特定貿易義務之條文—日本的分類

公約名稱	貿易措施分類	條文
巴塞爾公約	1	1. 第 4(1)(b)~(c)、4(2)(e)~(g)、4(7)、4(9)以及 4A 條。 2. 第 4(2)(f)條與第 6 條關於通知的義務。 3. 第 8 條關於在進口的義務。 4. 第 9(2)、(5)條對於關心非法跨境的義務。
	2	1. 第 4(2)(d)關於為了達到減少有害廢棄物跨境運送，以及為了人類健康或環境目的所無法避免的貿易措施與義務行為。
CITES	1	1. 第 2(4)、第 3 第 4(1)~(6)以及第 5 條。 2. 第 6(1~(6)條關於許可與核發證書之義務。
	2	1. 第 8(1)條為了執行本公約與避免違反情形發生所採的貿易措施與義務行為。
蒙特婁議定書	1	1. 第 4A、4B 條。 2. 第 4(1)、(1bis)、(1ter)、(1qua)、(1quin)、(1sex)、(2)、(2bis), (2ter)、(2qua)、(2quin)、(2sex)、(3)、(3bis)、(3ter)、(4)、(4bis)、(4ter)以及 4(9)關於締約國義務之描述。
	2	無

表 1　多邊環境協定中屬於特定貿易義務之條文—日本的分類（續）

公約名稱	貿易措施分類	條文
斯德哥爾摩公約	1	1. 第 3(1)(a)(ii)、3(2)條。
	2	1. 第 6(1)(d)(i)、(iv)條規定關於為達到本公約目的所無法避免的貿易措施。
生物安全性公約	1	1. 第 7(1)、10(1)~(4)、11(5)、15、21 條。 2. 第 8、9(1)~(2)、12(1)、(3)、13(2)條關於通知的義務。 3. 第 18(2)關於文件製作的義務。 4. 第 25 條對於非法跨境活動的管制義務。
	2	1. 第 16(1)~(2)條規定關於為達到本公約目的所無法避免的貿易措施。 2. 第 18(1)條規定關於為達到本公約目的所無法避免的貿易措施。
鹿特丹公約	1	1. 第 10(9)、11 (1)(a)~(b)、(c)(i)、11(2)條。 2. 第 12(1)~(4)條關於通知義務的規範。 3. 第 13(1)、(2)、(4)條關於文件製作的義務。
	2	無

2、CITES 中下之貿易義務

香港於 1976 年成為 CITES 的會員，為了履行公約的義務，香港透過「動物與植物（保護瀕危物種）法案」，針對瀕危物種之進口、出口、與持有作一全面性的管制體系。CITES 希望透過於特定條件下核發出口／進口執照與許可的方式，管制瀕危動植物物種的貿易。

執行 CITES 第 3、4、5、及 6 條與貿易相關的條款係相當明確的，但第 14 條則因為其非強制性以及開放性的特色，執行發生困難。為了確保瀕危物種適當的保護程度，香港就 CITES 第 3、4、5 條沒有要求，但為第 14 條所准許者，加以管制。例如，CITES 第 4 條僅要求附錄二的物種進行貿易時，必須出具出口許可或是再出口許可，為了加強進口管制，香港另外要求必須出具進口許可。值得關注的是非特定性的貿易義務將執行何種措施的裁量權交由締約國視其需要決定，不論其是否與 WTO 相符、是否為有效的管制等。

於檢視香港執行 CITES 的經驗後，香港認為 MEAs 中的 STOs 應包括下列因素：必須具有強制性、必須明確規定締約國為了率履行 MEAs 相關義務所必須採取的行動，以及必須是影響商品自由貿易的貿易措施。

3、後續發展

可考慮後續的工作包括持續針對不同的 MEAs 檢視其貿易義務，已決定其是否為 STOs，如果是的話，則何種為該些 STOs 量身定做的解決方案係有必要的。

（八）、中國[18]

1、前言

中國希望就 CTE 例會中有關辨認 MEAs 以及 STOs 之相關準則的分析工作提出其貢獻。在本文第四部份中，中國由不同的層面出發給予 STOs 一些分類。在附錄中列之 MEAs 僅為舉例說明 MEAs 條文中的 STOs。

2、辨認 MEAS 之準則

國際環境公約係以保護以及促進環境品質，並適當的使用

[18] 文件編號：TN/TE/W/35，提交日期 2003.06.27

自然資源為目的所設計之國際條約。中國認為杜哈宣言第三十一段第一項中所指之 MEAs 應包括下列之要素：

權威性（authoritativeness）：MEAs 應該於聯合國之贊助之下進行協商，該條約並應提交至聯合國秘書長或相關附屬機關之秘書長處。

普遍性（universality）：MEAs 實質多數的締約國應包括大多數的 WTO 會員。

開放性（openness）：該條約應開放給其資格同於各該條約適用於原始締約國之國家加入

對貿易之影響（impact on trade）：MEAs 應包括明確的貿易措施，而該些措施之執行應形成對貿易之實質影響。

有效性（effectiveness）：討論中的 MEAs 應已生效並該開放給新會員加入。

3、辨認 STOs 之準則

中國認為 STOs 僅限於特定以及具強制性之貿易措施，以下為辨認 STOs 的一些要素：

目標（objective）：該措施係為了達成 MEAs 的目的而設計。

與貿易相關（trade-related）：該措施必須為於 WTO 架構下辨識出與進出口有關者，而其執行必須實際上造成對於貿易的影響

相關性（relevance）：MEAs 下之貿易措施必須與 WTO 之規範有關。

強制性（mandatory）：貿易措施必須是 MEAS 中明確規定並具有強制性者

特定性（specificity）：措施之執行必須是條約中明確並清楚規定者

4、STOs 之分類

在 MEAS 中的 STOs 包括的範圍很廣，就 STOs 之來源，中國做了以下的分類：

A、於 MEAS 前言中之 STOs

B、於 MEAS 條文中之 STOs

C、於 MEAS 附錄中之 STOs

D、於 MEAS 修正案中之 STOs

E、於 MEAS 締約國大會決定之 STOs

第二及第三類之 STOs 最不具有爭議性，不過就第四以及第五類之 STOs，中國認為必須以個案來認定。

此外，就其對於貿易之影響可分類如下：

類別 A：貿易限制或禁止

A、強制性進口貿易限制

B、強制性出口貿易限制

C、強制性進口貿易禁令

D、強制性出口貿易禁令

類別 B：出口與進口程序與措施

A、出口締約國必須要遵守之出口程序

B、進口締約國必須要遵守之進口程序

C、處理、運輸、包裝、以及標示相關之措施

D、有助於貿易進行之措施

（九）、美國

美國認為杜哈宣言第 31(i)段所謂的特定貿易義務僅限於公約條文中所陳述者，並以 CITES、蒙特婁議定書、巴塞爾公約、生物安全議定書、鹿特丹公約以及斯德哥爾摩公約為例，條列出美國認為屬於特定貿易義務的條文，整理如表 2 所示。

表 2　多邊環境協定中屬於特定貿易義務之條文－美國的分類

公約名稱	特定貿易義務
CITES	1. 第 2(4)條規範禁止附件一、二、三中所列的特定物種之貿易，除非在符合公約所規定的情形下。 2. 第 3 條規範附件一所列物種之所有貿易。 3. 第 4(1)~(6)條規範附件二所列物種之所有貿易。 4. 第 5 條規範附件三所列物種之所有貿易。 5. 第 6(1)~(6)條關於許可與核發證書之規定。 6. 第 8(1a)、(1b)、(3)~(4)、(6)~(7)關於締約國為執行公約所採取之措施。 7. 第 9 條關於管理與科學機構的指派。
蒙特婁議定書	1. 第 4A(1)條對締約國貿易之指導與控制的規定。
巴塞爾公約	1. 第 3(1)~(2)條要求呈報對有害廢棄物之定義與有害廢棄物跨境運送之情形。 2. 第 4(1)、4(2)(e)~(g)、4(6)~(10)條關於對有害廢棄物跨境運送的一般要求。 3. 第 5(1)條對於指定適當機構與特定點之規定。 4. 第 6(1)~(5)、(9)~(10)條關於有害廢棄物跨境運送之管理。 5. 第 8 條關於再進口責任之管理。 6. 第 9(2)條關於非法運送廢棄物之遣送回國之管理。 7. 第 13(2)、(3a)、(4)關於資訊交換的管理。

表 2　多邊環境協定中屬於特定貿易義務之條文—美國的分類（續）

公約名稱	特定貿易義務
生物安全議定書	1. 第 7(1)、(3)條對通知協定程序應用之管理規範。 2. 第 8 條關於通知的規範。 3. 第 9(1)~(2)關於通知之接受與承認之規範。 4. 第 10(1)~(4)關於決定程序之規範。 5. 第 18(2)關於文件的管理。 6. 第 19 條條對於指定適當機構與特定點之規定。
鹿特丹公約	1. 第 5(1)~(2)條關於化學物質的禁用程序之規定。 2. 第 10(2)、(4)~(5)、(7)~(9)條對附錄三所列化學物質進口義務之規定。 3. 第 11 條對於附錄三所列化學物質出口義務之規定。 4. 第 12(1)~(4)關於出口通知之規定。 5. 第 13(2)、(4)對出口伴隨之資訊之管理。
斯德哥爾摩公約	1. 第 3(1)(a)(ii)、3(2)(a)、3(2)(b)(i)、3(2)(b)(ii)、3(2)(c)對締約國間對公約所列化學物質之進出口管理規範。 2. 以及附錄 A，第二部分第 c 段之規定。

（十）、我國立場與回應

1、去年我國立場文件之概述與回應

針對杜哈宣言第 31 段內容，我國去年 10 月於 WTO 中提出我國之立場，認為想要在 WTO 會員國之間建立有關 WTO 規範以及實現環境目的而採行的貿易措施之整體關聯性的共識，可更容易地藉由逐步（step by step）討論的方式達成；另外，我國同意一些會員國所提，在一多邊環境協定中所規定的特定貿易義務不應自動地被認定為符合 WTO 規範。對於在一多邊環境協定中所規定的特定貿易義務不應自動地被認定為符合 WTO 規範之看法，智利代表感興趣的是在何時這個情況會發生？我國認為以 CITES 為例，其便存在特定貿易義務並且片面地被執行。然而，如同紐西蘭之提案中所引述的 OECD 之研究顯示，台灣在某些情況下不能享受該多邊環境協定締約國提供之最惠國待遇（MFN treatment）。因此，由我國觀點觀之，一多邊環境協定所規定之特定貿易義務並非總是符合 WTO 規則。

對於我國所提出之文件，各國也提出相關疑問，針對埃及代表所提，在「當 WTO 會員國與多邊環境協定締約國間存在特定貿易爭端時，依照爭端解決瞭解書第 23 條，僅有該申訴國具有將該爭端帶進 WTO 架構或是多邊環境協定下之爭端解決機制的權利。」之情況發生時，埃及代表認為該爭端應首先在該多邊環境協定架構下處理，再來才是依 WTO 爭端解決機制處理。針對這項爭議，我國認為我們所提文件之立場係僅希望能將選擇的權利交給爭端的當事國。我國並非表達希望能在這兩種爭端解決機制中擇一作為嚴格的或是強制性的結果，我國希望能讓當事國自由地作選擇。

2、出席 2003 年 CTE 第三次會議並提出新立場文件

CTE 於 2003 年 7 月 7 日至 8 日計先後舉行一般會議及特別會議，我國以台澎金馬獨立關稅領域之名義，由國貿局會同環保署官員及學者專家出席該次會議。首日一般會議主要審定呈報於本年 9 月於墨西哥坎昆舉行之 WTO 第五屆部長會議之最後版本。其中較大爭議在於「為環保目的所為之標示」，即環境標示的協商；部分代表認為 CTE 不必做實質討論，蓋應屬對貿易之技術障礙委員會（TBT）之職權範圍；相反地，特別如歐盟則積極地從 CTE 架構的觀點，表達看法。我方在相關議題

之討論，由於尚未形成國內共識，故無特定立場。

次日舉行特別會議。主要協商議題包括繼續討論 WTO 貿易規則與多邊環境協定（MEAs）之特定貿易義務之關係；與 MEAs 資訊交換的程序與授與 MEAs 秘書處觀察員身份的標準；以及如何降低環境商品與服務業的關稅與非關稅障礙。在第一項議題，我國則延續去年的首次立場文件的精神，參酌前數次各國的立場及談判進度，繼續深化我國立場的論述。本次立場文件包括二點一般觀察及二項較深入的主張：[19]

(1)、一般觀察

各國代表對此議題已提出為數可觀的立場文件。有些致力於將 MEAs 中所列的貿易義務予以列舉；其他國家則傾向採取較概念式的詮釋方式，描繪所謂 MEAs 的特定貿易義務。我國認為此二種方式本質上並不互斥，而是處於互補關係。此外，我們也提醒與會代表，所謂的特定貿易義務一詞係 WTO 所自創，在 MEAs 中並無類似的表述。因此若能由國際環境社群，特別是與有貿易義務的 MEAs 中，提供資訊將有利於特別會議在此議題的諮商。

(2)、基本主張

A、繼續深化「MEAs 所標明的特定貿易義務」應採較廣的見解

前次文件中，我方僅提出顯現於 MEAs 中與拘束力和強制力的條文、附件、修正案，決定的決議等應列入此定義中。

本次文件則首先提出通常 MEAs 的概念並不僅指所謂的公約條文而言，而係泛指一個體制（regime），它能持續進行造法（law-making）活動已在締約國間創造出具義務性的規範。

因此，由 MEAs 的締約國大會（the Conference of Parties, COP）或締約國會議（the Meeting of Parties, MOP）等機關所為決定（decision）亦有可能具拘束力。嗣後，我方則舉出根據蒙特婁議定書的遵約機制（Compliance Procedure）所為貿易措施或制裁的決定

[19] 文件編號：TN/TE/W/36，提交日期：2003.07.03

應屬對該議定書的締約國而言係具拘束力的。該機制係由該議定書的附件四所確立，並設立執行委員會以監督各國的執行並呈報 MOP 其認應持之建議，MOP 可決定為確保遵行所應持之措施，而在附件五中更名列「終止貿易」係其中的選項。我們認為該議定書對締約國實施貿易制裁具法律基礎，而應具拘束力。雖然我們不立刻主張該貿易措施之決定係所謂之特定貿易義務，但應將之列為協商之內容。

此外，我們亦強調除謀特婁議定書外，其他之 MEAs 諸如 CITES 或 ICCAT，已有或正發展類似之遵約機制，儘管其欠缺如同蒙特婁議定書之法律基礎，我們初步觀察認為其決定並無義務性，故應排除於協商之外。

B、WTO 規則與多邊環境協定特定貿易義務之相容性

當一些基本概念與列舉 MEAs 之特定貿易義務的工作，已陸續呈現時，我國文件對於認為二者關係應屬相容的主張，抱持審慎的態度。

儘管目前 WTO 並未發生會員控訴遭受實施 MEAs 貿易措施的案件，WTO 與 MEAs 關係表面上似乎也未有衝突局面，惟此現象並不表示二者在法律上已完全相容。我們認為在同時具備 WTO 與 MEAs 締約身份的會員，既然已在 MEAs 中同意實施貿易義務，應該不允許其在 WTO 為相反的主張，惟必須注意在執行該義務的過程仍有可能抵觸 WTO 所認定的一些重要原則，諸如不歧視原則、比例原則、必要原則，正當之法律程序等。

因此，我國主張追求 WTO 與 MEAs 相互支持的目標不應剝奪 WTO 會員在 WTO 的法律制度下，去質疑 MEAs 特定貿易義務的權利。我們同意諸如瑞士的看法，一同時具備 WTO 與 MEAS 締約國身份的會員不應再去於 WTO 下挑戰特定貿易義務的價值與必要，然而 WTO 特別應被允許在爭端發生時去檢視執行特定貿易義務的合法性。

3、對各國提問之回應[20]

因各國評論各有類似之處，回應方式乃以議題為回應導向，而非針對個別國家的意見作回應，對於各國提問意見之回覆初稿整理如表 3 所示。

[20] 由於該次會議議程倉促，並無時間針對各國之評論做現場立即的回應。本回應內容僅屬計畫主持人之個人意見，並非代表我國之正式立場，而仍須經主管機關工作小組討論後方能定案。

表 3　各國對我國於本年七月 WTO 貿易與環境委員會特別會（CTESS）所提關於「WTO 規範與多邊環境協定特定貿易義務之關係」意見及評論之回應

議題	各國評論	我國回應
MEAs 與締約國大會或會議之決定	有些會員傾向限縮看待 MEAs 並表達不願將 MEAs 之決定納入杜哈議程 31 之 1 的談判範圍。	我國認為目前最緊要的工作即在確定 MEAs 之含意為何。MEAs 儘管非如 WTO 般為一完整之國際組織，惟其組織架構亦相當完備。既然 WTO 賦予其部長會議和總理事會可以做成具備法律義務的決定，同理，MEAs 大會及有關會議所為之決定，若有體制上之基礎，亦將產生相同效果。 如果我們不欲忽視 MEAs 本身即與 WTO 具相類似之屬性，太快排除 MEAs 之決定在談判範圍，是有疑問的。我們明瞭杜哈議程有其限制，因此我們並不認為所有 MEAs 大會等所為之決定皆具備拘束力，因而皆可以成為特定貿易義務。 因此，我們同意應以個案為基礎，以認定具拘束力的 MEAs 決定是否構成特定貿易義務。

表 3　各國對我國於本年七月 WTO 貿易與環境委員會特別會（CTESS）所提關於「WTO 規範與多邊環境協定特定貿易義務之關係」意見及評論之回應（續）

議題	各國評論	我國回應
蒙特婁議定書附件所列且通常經由會議決定而實施的貿易制裁	在七月會議中，各國較少實質評論我國提出之蒙特婁議定書案例。	在蒙特婁議定書訂於附件中的履約程序，係非常特別的案例，如同聯合國安理會通過之貿易制裁般，其所定「終止貿易」的決定一旦啟動，即可發生拘束力，且如果明確標明制裁內容，即可能成為「特定貿易義務」。雖然尚未發生具體案例，在未就本案例為周延討論前即予排除似為不當。 由於前次會議為時間所限，對於我國所提出之案例，各國較少作評論，我們歡迎各國代表利用這次機會作更深入的討論。
所謂「set out in MEAs」的涵意	各國希望瞭解我們如何界定「set out」。	對於何謂 set out，我國在前二次文件中並無特別著墨，因為我們認為目前最重要的工作，主要在於先決定何謂 MEAs，其次再進一步確定特定貿易義務的範圍；我們認為 set out 與一些表達方式，如「標明」、「顯示」等等應屬相通，因此不需要特別花精神在這方面上。

表 3　各國對我國於本年七月 WTO 貿易與環境委員會特別會（CTESS）所提關於「WTO 規範與多邊環境協定特定貿易義務之關係」意見及評論之回應（續）

議題	各國評論	我國回應
所謂「STOs（特定貿易義務）」與拘束力	在解釋特定貿易義務時，各國懷疑法律拘束力是否為唯一要素。	目前我國亦不認為具法律拘束力為界定特定貿易義務的唯一要件，但卻是最重要的一項。
WTO 規範與 MEAs 中特定貿易義務的確定關係：二者是否真的相容？	各國希望我國進一步論述前次立場文件中關於 WTO 規範與 MEAs 特定貿易義務的相容性。	我們同意澳洲等國之意見，即目前似乎過早討論 WTO 規範與特定貿易義務的確實關係。而我們對於各國文件中以提到二者為「相容」的用語，感覺用詞上應更為謹慎。儘管並無關於實施 MEAs 特定貿易義務在 WTO 適法性的案例發生，惟依據一些 MEAs 所實施的貿易管制，例如，蒙特婁議定書對於氟氯碳化物的進口管制，已違反 GATT 數量限制的規定，因此在此 CTE 場域，我們應避免對於特定貿易義務合法與否的判斷。 如果我們將蒙特婁議定書之貿易制裁列為談判範圍，對於貿易制裁與 WTO 規範之關係，應更為謹慎以對。由於 MEAs 多數欠缺足夠的爭端解決機制，在決定實施制裁時，可能違反一些基本原則，例如正當法律程序和比例原則等等。

二、綜論

在闡述何謂 STOs 時，除了名詞上的解釋，已有部分國家開始嘗試將 MEAs 條文中與 STOs 相關的部分列出，如日本針對 Basel Convention、Montreal Protocol、CITES、POPs、Biosafety Protocol 以及 PIC 六項公約中，屬於第一類貿易措施與第二類貿易措施的條文分別列舉出來；馬來西亞則是就 CITES、Basel Convention 以及 Montreal Protocol 各條文中與貿易措施相關者，是否屬於 STOs 做出區別；瑞士列出與貿易相關的 MEAs 名單；香港則是分享其在執行 CITES 時的經驗

目前，對於杜哈宣言第 31(i)，以美國為首的部分會員朝限縮的方向解釋該段內容，包括何謂特定的貿易義務（Specific Trade Obligations, 簡稱 STOs）的範圍、MEAs 之定義以及談判範圍限於 WTO 現行規範如何適用於系爭多邊環境協定之締約國等。而歐盟、瑞士和我國等則傾向比較寬廣的定義。

此外，CTE 目前在此議題的大方向可能關心的主要議題在於 MEAs 會員之間，同時該會員等亦同屬 WTO 會員，適用貿易措施是否合於 WTO 規範之問題。對於執行貿易義務影響 MEAs 非締約國但為 WTO 會員之情形，則非目前談判重點。

本年 7 月 CTE 特別會議致 TNC 之貿易與環境談判現況報告，目的為提供資訊予該委員會，以便於 2003 年 7 月 14 日會議中提出「為 Cancun 部長級會議準備之貿易與環境協商達成成果之總體報告」。其報告認為關於第三十一段第一項主要的討論中心為 MEAs、STOs，不過對於是否應先行界定概念，存有贊成與反對兩方意見。關於 STOs，部分代表團成員認為應於 MEAs 中明確列出該措施並且指出是為了 MEAs 而設計，不過 MEAs 其他之貿易措施仍被討論是否可成為特別貿易義務。此外，另有成員主張，檢視 MEAs 運作架構，應藉由確定該項特別貿易義務乃起始於 MEAs 中，並建議 MEAs 之會締約國大會(Conference of Parties, 簡稱 COP)決議內容應予公布。COP 各種形式的決議執行與其合法性已成為討論項目之一。總之，目前朝向具體檢驗 WTO 規則與個別 MEAs 之關係發展。

根據澳洲在去年六月的 CTESS 中提出的「三階段理論」[21]，

[21] 澳洲認爲 WTO 處理 MEAs 問題的進程可以分爲以下三個階段：

現在 WTO 之談判進程似乎有從第一階段邁向第二階段的跡象，雖然各國間尚未達成共識，但已有將 MEAs 的具體義務呈現並加以討論的趨勢。

我國因政治因素無法成為諸如 Basel Convention；Montreal Protocol 與 Climate Change Convention(Kyoto Protocol)之締約國。在此議題，關於分享實施經驗上有其困難；但並不表示不能陳述一些意見；仍要看有關單位在此方面希望發揮的程度。國內負責之各 MEAs 之業務單位，必須表示其接觸相關 MEAs，特別是對於實施 MEAs 涉及貿易措施之看法，方能擬定出合乎國家利益之立場。

第四節　杜哈宣言第 31(ii)有關觀察員及資訊交換之提案

於 2002 年 11 月 12 日，CTE 特別會議為 UNEP 與六個 MEAs 舉辦一場 MEAS 資訊交換會議，會中達成數個雙方與觀察員的資訊交換與合作方式。

一、資訊交流

各國代表團除表示肯定目前於 WTO、MEAs 與 UNEP 三者間的資訊交流方式，並以 UNEP 跟隨 CTE 特別會會議步伐所舉辦之後續會議為參考對象。

代表團之建議如下：

(1)、於 CTE 中，正式安排 MEAs 資訊會議，並以一般基礎組織化。

(2)、同為相似利益的 MEAs 予以分類並組成團體，將其列為不同主題之資訊。

(3)、於其他 WTO 組織中，舉辦相關 MEAs 會議，而非納入或排除於 CTE 委員會。

(4)、更有系統地結合 WTO 事項與 MEAS 會員大會內容。

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(1)、對於特定貿易義務之討論，以及 MEAs 之特定貿易義務與 WTO 規則間之關係；
(2)、WTO 與 MEAs 秘書處間資訊之交換；
(3)、處理第一、二階段中之衝突，以談判方式解決，且不能損及 WTO 會員國之權益。

(5)、聯合 WTO、UNEP 與 MEAs 中的技術協助與能力建構。
(6)、促進文件之交流，但仍得以保留機密性文件。
(7)、提供政府官方代表間於貿易與環境事務之資訊交流管道。
(8)、建立貿易與環境相關資訊之電子資料庫。

部分代表並強調資訊交換穩定性的重要，以及 WTO 與 MEAs 相關財務及人力資源等限制；另有代表主張 WTO 委員會因為擴大與 UNEP 及 MEAs 的接觸而受益的想法應獲得確認。

二、觀察員地位

有些代表認為此議題須等待常會與 TNC 代表的意見，其他代表則表示 CTE 特別會的討論須有委員們之授意，不過雙方均認為此項議題之討論將促進水平式討論發展並提供方向。

部分代表認為觀察員地位之議題應儘早解決，並已注意到 UNEP 及 MEAs 於 WTO 組織中的觀察員申請要求。相關規定為部長級會議與常會之會議流程附錄三(WT/L/161)，因此部分代表提議應以此文件為參考基礎。

歐盟在今年七月的 CTESS 中提出一份有關觀察員及資訊交換之提案。歐盟建議邀請之觀察員應限於參加貿易與環境委員會特別會議（CTESS），不適用參加會例會(CTE Regular Session)及任何其他 WTO 之委員會。受邀參加之 MEAs 秘書處，應限於過去曾參與 MEAs 資訊會議(information sessions)，且在秘書處整理之 Matrix 資料（MEAs 貿易措施之彙整）內之 MEAs。而在雙邊資訊交換的工作上，歐盟認為 CTE 過去與 MEAs 秘書處合辦之非正式資訊會議，應使其正式成為 CTE 之工作計畫，且每年舉辦一次。

對於歐盟有關觀察員之提案，菲律賓、阿根廷、智利、馬來西亞、巴基斯坦、巴西、埃及、古巴、泰國、印尼、中國、印度、厄瓜多、香港等表示異議，希望維持目前個案決定之方式、希望留待總理事會或 TNC 作出通則性之決定、無法接受成為談判之一項 early harvest。挪威、韓國、加拿大（不應與新回合談判掛勾、建議接納 UNCTAD）、我國、瑞士、美國（不應影響會員對 MEAs 定義之立場、須有引進更多 MEAs 之彈性）、紐西蘭、日本、澳洲、捷克等則表示支持，認為可傳達給 MEAs 一項強烈之政治訊息。

第五節　未來發展觀察

姑不論 MEAs 貿易措施和 WTO 規則可能產生衝突外，其實，二者應具有著相同的使命—致力自由貿易與環境保護之平衡，以追求宇永續發展，但兩者在問題的處理上，似乎各存有盲點：WTO 若過度強調貿易自由化，將易忽視過度開發的經濟活動所衍生的環境問題，而在爭端解決的處理上，不見得能夠以公正的角度處理與環保有關之爭端；而許多 MEAs 可能則是過分依賴貿易限制措施，甚至在可以採取其他可替代的環境政策時，仍選擇採用貿易限制措施，是否妥當即引人非議。

WTO 與 MEAs 二國際體系應處於平等之地位；而追求相互支持以達到永續發展的目標，則是雙方具高度共識之所在。惟如何落實雙贏的理念，則考驗各會員、締約國及各該國際組織、公約的智慧。我國雖非多數 MEAs 的締約國，惟已成為 WTO 會員，未來 WTO 與 MEAs 任何協商結果，也必然對我國產生不同程度影響。我國應積極、主動參與包括 WTO 與 MEAs 協商在內之 CTE 各議題，瞭解議題談判走向，俾及早因應。

第四章　環境商品與服務業

第一節　概述、定義問題

杜哈部長級宣言第 31（iii）段，授權進行環境商品和服務業之關稅與其他障礙之降低與消除的談判。貿易談判委員會採用的談判架構包括三個談判實體：(I) 非農產品市場進入談判小組（Negotiating Group on Market Access，以下簡稱 NGMA）；(II) 服務貿易委員會特別會議（Council for Trade in Services in Special Session）；和 (III)貿易和環境委員會特別會議（CTE in Special Session）。有關環境商品的談判主要由非農產品市場進入談判小組負責、環境服務業則由服務貿易委員會例會負責，CTE 特別會議負責環境商品此一觀念之澄清，特別是有關定義與分類，並扮演監督的角色。

一直以來，環保商品的定義不甚容易，乃因其具備以下幾種特性：

1、產品的多重用途：許多環保產品具有多方面用途，例如分離有害廢棄物所使用的離心機，同時具有工業用途，約僅 10%的離心機專用於環保用途。

2、關務政策目的及貿易命名：為海關官員辨識貨物之方便及通關業務之便捷，通常係以貨物之物理特性作為稅則及貿易命名之原則，而不是以貨物用途。

3、清淨技術之應用：某些設備具有潛在的清淨技術用途時，難予分類。所謂清淨技術係指改善生產過程或上游原料，以減少污染物的排放，不屬於傳統的管末處理方式。

4、環保產業的多樣化：環保產品及服務之分類通常係依污染媒介而定，如空氣、水、固體廢棄物、噪音等或能源及其他自然資源的使用。但在某一媒介中的分類項目不見得適合另一項媒介物，例如「污染物的回收」適合放在化學品處置之分類，而不適合用於空氣污染之分類。

5、技術的成熟度：部份污染防治技術已相當成熟，且已廣泛運用到其他工業用途，如中和、抽水等層次不高的技術，因此很難

就此等技術加以詳細分類。

除了環境商品有定義上之困難外，環境服務業亦遭遇類似的困境。WTO 秘書處提供的環境服務業背景資料中提到，烏拉圭回合談判期間雖建立了服務部門分類表（Services Sectoral Classification List，SSCL），其乃根據聯合國暫行中央產品分類（United National Provisional Central Product Classification，CPC），將環境服務部門定義為污水處理服務、廢棄物處置服務、公共衛生集類似服務、其他環境服務等四類。而其他環境服務則泛指廢氣處理、噪音降低、自然景觀維護及其他等項目。但由於 SSCL 分類指引不具拘束性，會員國可以自由採行分類系統；是故，每個國家就環境服務業的定義與分類也就都不盡相同。此外，其他國際組織，例如 OECD，亦針對環境服務業提出自己之定義。

本章將針對環境商品與服務業進行以下之討論：首先將就國內相關文獻作一整理回顧，以瞭解我國之現況、接著將就 CTE 於 1995-2003 之間，針對環境商品與服務業所提之文件進行整理，包括秘書處、美國、紐西蘭、卡達、OECD 以及 UNCTAD 等國家／國際組織所提交至 CTE 之立場文件做一彙整、依據上述文件之彙整，本章接著將針對環境商品與服務業未來之談判重點作一臆測性之分析，並就我國可能因應之方向提出一些思考之面向以供相關之主管機關參考。

第二節　國內相關文獻彙整

一、環境商品

一直以來，環保商品的定義不甚容易，乃因其具備以下幾種特性：

（一）、產品的多重用途：

許多環保產品具有多方面用途，例如分離有害廢棄物所使用的離心機，同時具有工業用途，約僅 10%的離心機專用於環保用途。

（二）、關務政策目的及貿易命名：

為海關官員辨識貨物之方便及通關業務之便捷，通常係以貨物之物理特性作為稅則及貿易命名之原則，而不是以貨物用途。

（三）、清淨技術之應用：

某些設備具有潛在的清淨技術用途時，難予分類。所謂清淨技術係指改善生產過程或上游原料，以減少污染物的排放，不屬於傳統的管末處理方式。

（四）、環保產業的多樣化：

環保產品及服務之分類通常係依污染媒介而定，如空氣、水、固體廢棄物、噪音等或能源及其他自然資源的使用。但在某一媒介中的分類項目不見得適合另一項媒介物，例如「污染物的回收」適合放在化學品處置之分類，而不適合用於空氣污染之分類。

（五）、技術的成熟度：

部份污染防治技術已相當成熟，且已廣泛運用到其他工業用途，如中和、抽水等層次不高的技術，因此很難就此等技術加以詳細分類。

二、環境服務業

（一）、國內對於環境服務業之定義

我國環保產品定義方面，環保署於89年度委託台綜院施行的「我國環保產業及其市場之分析研究」計劃中提到，環保產業難以明確定義，乃因其涵蓋的範圍相關廣泛；且由於污染特性不同而使污染防制方法不同，對環保設備、技術與服務的需求亦有所差異，故與環保相關的產業與服務業不易分類。以國內來說，環保產業概括管末(end-of-pipe)及製程中之污染防治處理技術、機具製造及設備，以及提供公、私部門進行減廢、資源回收與污染預防等勞務之服務業。其中，環保設備業包括污染防治設備業、環境技術工程業與廢棄物資源化工廠；廢棄物資源化工廠包括焚化爐、掩埋場的興建與橋樑隔音工程等項目；而環保服務業則包括環境工程顧問業、環境檢驗、廢棄物清除處理業，及資源再生利用與清潔公司等的勞務提供。

（二）、環境服務業呈現形式

依據環保署網頁的專題報導「加入WTO對我國環境服務業影響之相關參考資料」指出，GATS規範之服務類型有四類：

A、跨境供應：非本國及跨境對其他會員國提供服務。

B、國外消費：會員國之國民在其他會員國境內購買服務。

C、設立商業據點：國外服務供應商在WTO會員國境內建立商業據點，並進行運轉及擴張業務，如設立分支機構、代理機構或所有的子公司。

D、自然人呈現：會員國對外國及個人提供短暫居留機會，俾利提供服務。

而環保服務之供應者主要多透過設立商業據點及自然人呈現之服務模式提供服務；但是，當然也不排除以其他服務模式提供環境服務。全球多數國家皆以貿易為經濟命脈，其類別眾多，而環保服務業更是不可或缺的一項。但因為其服務提供形式特殊，因此容易產生貿易上的障礙，如：若限制企業設立商業據點及雇用母國國民者，勢必影響該項服務之貿易競爭力；而勞力密集度高的環境服務業，如垃圾處置，則會受限於自然人的移動。這些

面向，在加入 WTO 後也是必須繼續留意的地方。

（三）、環保產業現況與瓶頸

根據李堅明於 90 年度的「因應貿易自由化促進我國環保產業發展策略研究」中提到，在全球環保產業的成長趨勢下，雖然各項環保產業的成長率差異不大；然而，環保服務業卻是其中最具發展潛力的項目。而在這之前，環保署為了進一步瞭解我國環保產業的最新動態與未來展望，早已於 89 年度委託台綜院進行「台閩地區環保產業市場問卷調查」。調查的主要目的是，蒐集臺閩地區環保產業市場現況(包括環保產值、受雇員工人數、經營現況等)資料，探析環保市場規模，以及對未來五年環保產業發展之預測與看法，俾供相關主管機關釐定環保產業發展政策與輔導措施之參考依據。調查樣本則依環保產業定義，區分環保設備及器材製造業、環境保護服務業、環保工程建造及裝置業之所有廠商為主；而調查區域包括臺閩地區，即臺灣省、臺北市、高雄市、福建省金門縣及連江縣(馬祖)。

調查結果顯示，環保從事業者對各類別產業未來發展所遭遇困難瓶頸的看法大同小異。以最困難的發展瓶頸而言，環保設備及器材製造業、環保服務業及環保工程建造及裝置業均認為市場及業務開拓是最主要的發展瓶頸。環保設備及器材製造業的未來發展瓶頸依序為市場及業務開拓、技術研發及人才培訓、產業市場及技術資訊建立；環保服務業發展的未來瓶頸依序為市場及業務開拓、環保法規及人才培訓；環保工程建造及裝置業則依次為市場及業務開拓、環保法規、產業市場及技術資訊建立。整體而言，業者認為環保產業未來的發展瓶頸主要在於市場及業務開拓、環保法規、技術研發、人才培訓以及產業市場及技術資訊建立等層面。

（四）、台灣加入 WTO 後之衝擊

台灣加入 WTO 後，國內各產業紛紛面臨不同的衝擊；就環境服務業方面，環保署曾於正式入會前舉辦多場的說明會。其中，89 年 2 月的「加入 WTO 後對我國環境服務業之影響座談會」就提到，要探討加入 WTO 後之影響應更廣泛考慮其他因素：第一為環境工程；第二是營造工程；第三為政府採購協定。會如此考慮，

是因為以上三者都與環境服務業有密不可分的關係。

而以正面的衝擊來說，與環境服務業最直接相關的考量，亦可分為三個層面：

(1)、工程顧問業：環保署約 10 年前就開放許多純粹顧問業參與國內施政計畫的規劃，環保署當時並未有任何限制，評審過程也未有歧視待遇；但國外的東西有些在國內並不合適，因此現在存活的家數已很少。雖然環保署在公共工程上有些限制，但是每個國家在公共工程方面均有限制，故外國廠商並未有佔有優勢；所以就工程顧問服務業面而言影響不大。

(2)、環保服務業：環保服務業與環保工程業糾合在一起，無法分割。但環境服務業的主管機關繁多，環保署與工業局在後續作業上，應該就環保產業與環保服務業在 WTO 與 APEC 諮商時，在這些項目之管理、作業與輔導上，有個一統籌代表單位，避免出現多頭馬車的情形。

(3)、所有國家在環境服務業涉及人民健康時，經常規定管理機制及資格條件，如 APEC、美國與加拿大等，均認為某些技術條件應有特殊的資格，具備可公信的條件。未來國際認證系統在國際上將可交互認證，包括產品、系統及檢測方法等；不過目前尚未發展成熟，國內檢測業應不可隨意開放給不清楚其作業及管理等檢測方法的國家。

此外，亦有業界表示，對大陸開放後只對少數原料、化學藥品及部分設備有影響，以服務業來說，短期並不會有影響。而日、韓、香港、新加坡等 26 個政府採購協定國家對我國環保產業拓展國外市場幫助不大，因環保產業為高技術流向低技術。業界需要政府低利貸款融資、協助廠商展覽及貿易拓展、國外政府與私人部門工程等方面協助提供資訊。政府也應儘早將服務業承諾表開放項目及各國環保服務業開放項目之資訊，提供給業者以評估衝擊效應，並同時多邀集業者參與相關會議。

而加入 WTO 後，對於國內環保產業的衝擊來自幾方面：

(1)、貿易自由化之後，透過國際比較利益所產生的貿易行為，隨著進出口的產品對環境造成的污染效果不同，產生區域性污染重分配的問題；

(2)、依據 WTO 規範，要求產品必須符合『綠色生產』標準，

增加環保需求；

(3)、各國環保法規加嚴，有利環保產業的發展；

(4)、加入 WTO 後，意謂各國對於其國內環保市場的開放，一方面衝擊其國內環保產業的發展，另一方面，藉由引進高品質環保技術，以較成本有效的方式面對更嚴格的環保標準。就開放環保市場而言，我國承諾開放的環保產品主要以環保服務業為主，顯見未來我國環保服務業將面對更險峻的國際競爭條件。

（五）、因應之道

其實國內許多學者都曾針對此問題探討，如：李堅明、李涵茵的「因應貿易自由化促進我國環保產業發展策略研究」；環保署網頁的專題報導「加入 WTO 對我國環境服務業影響報告」；李堅明的「WTO 環保產業最新定義與我國環保產業發展定位之研析」；李堅明、王俊凱的「台灣因應 WTO 環保產業新趨勢之發展策略研析」；以及台綜院於 89 年度所做的「我國環保產業及其市場之分析研究」計劃。以上的文獻都曾對相關問題提出一些建議與因應之道，多屬於政府部門之作為，整理如下：

(1)、落實環保法規的執行：環保產業具有明顯法規導向的特性，環保法規是推動環保產業發展的最主要動力來源。無論是新環保法規的設立，或是既存的環保法規加嚴，均可以創造環保需求，進而帶動環保市場的發展。然而，環保支出對一般經濟生產活動沒有直接貢獻，卻要支付龐大的費用；因此對一般企業而言，會儘量遞延其環保支出。倘若政府的監督無法貫徹，不但無法真正達到改善環境品質的目標，更會阻礙環保產業良性發展的契機。因此，必須加強政府主管機關環保法規的真正落實。

(2)、環保產業的整合：國內環保廠商仍以中小企業為主，規模過小。一方面，無法發揮規模經濟特色，維持其競爭力；另一方面，具有過度競爭的現象，尤其是以價格做為競爭的工具，長期不利產業發展。因此，國內環保廠商應思考透過策略聯盟的方式，擴大生產規模，提升產業競爭力。

(3)、環保技術研發：研發是技術創新的不二法門，環保企業為維護其產品優勢，均對從事研發給予誘因。為了避免缺乏

適當的獎勵誘因機制而導致研發速度不夠快、品質不夠好的情況，政府應思考提升環保企業努力從事研發的誘因機制。例如：投資抵減或加速折舊等租稅誘因機制，以維護其長期競爭優勢。

(4)、加強環保技術引進及移轉：環保產業是屬於技術密集產業，其競爭力顯著表現於技術層次上。因此，政府在每年提供龐大費用予工研院或中研院等學術研究單位，從事於技術的研發上，應設置一定比例用於環保技術的研發；且研發成果應加速技術移轉至環保產業，以提升環保產業的技術層次。

(5)、協助國際市場的開拓及資訊提供：由於貿易自由化的關係，資訊的透明度愈發重要。國內環保市場有限，為協助國內環保產業永續發展，開拓海外市場是未來的發展趨勢；未來亞洲的環保產業將是全球主要市場，尤其是中國大陸正快速經濟起飛，帶動的環保需求將相當可觀。因此，政府應透過各種管道蒐集相關資訊，提供給國內環保企業市場變化的最新資訊，以瞭解大陸及其他亞洲國家環保法規的趨勢，及早因應，並掌握環保產品的特性與商機。

(6)、加強環保科技及與貿易相關人才之培育：政府應定期舉辦環保科技人才培訓課程，落實環保證照認證制度；此外，國際環保條約多而繁複，為協助政府及業者瞭解國際環保法令及國外市場之內國環保政策與規定，必須培養熟悉國內外環保條款與規定，以及其對我國及世界經濟所可能帶來影響的人才，提升整體環保產業的人力資本素質，以厚實永續發展的基石。

(7)、穩定政府環保經驗成長：由資料顯示，政府部門仍是我國環保市場的需求主力，扮演著火車頭角色，更是促進環保產業成長的推手。未來，國內環保市場的成長，政府仍需扮演關鍵性角色，即每年維持一定環保經費的成長，透過『乘數效果』(multiplier effect)，擴大環保市場的成長。

除了政府的努力外，民間也不能毫無作為。因為政府的作為中，也有需要產業界要配合的部分，例如：人才的培育，技術的創新研發，資訊的搜羅，以及策略聯盟等都是需要各界多方配合、努力的。

第三節　CTE 會議中（1995-2003）所提文件彙整

一、秘書處

CTE 秘書處就環境商品與服務業共提出有四份文件：1995-6-8 針對環境與服務業之關係提出一較為全面性之背景文件（WT/CTE/W/9）、與 1998-3-13 就消除貿易障礙與扭曲所帶來之環境利益之文件中，針對環境服務業以及相關之貿易障礙與扭曲有一專節進行討論（WT/CTE/W/67/ADD.1）、於 2002-10-3 則針對服務業貿易自由化所帶來之環境利益（亦即是 CTE 之工作項目 6 與 9）提出一討論文件（WT/CTE/W/218）、以及於 2002-11-22 針對 OECD 以及 APEC 所提之環境商品清單作一整理（TN/TE/W/18）。

（一）、WT/CTE/W/9

於 1995 年之文件中，CTE 針對 GATS 第十四條第 b 款有關「為了保護人類、動物及植物之生命與健康之必要」的一般例外規定，彙整其協商史以及與 GATT1994 第二十條之比較、服務業與其他產品之互補性、服務業貿易與環境之關係、以及其他 GATS 相關條文作一簡要之分析。GATS 第十四條係參考 GATT 第二十條訂定本協定之一般例外，第 b 款規定：「此等措施之適用不得於同類狀況之國家間構成專斷或字一之歧視，或構成對服務業貿易之隱藏性限制，本協定不得限制任何會員制訂或執行...有必要保護人類、動物或植物生命或健康之措施。」預見到 GATS 第十四條可能遭遇到之解釋性問題，本協定包括一於 1995 年月 1 日之服務業貿易委員會第一次會議中所通過的「服務貿易與環境部長決定」。GATS 第十四條第 b 款為唯一提及環境之條款，不過第十四條並沒有包括「環境」、「永續發展」、「基礎建設或交通系統之完整性」、或「可枯竭自然資源之保育」等字眼。於協商之後期，大部分之參與者均有一廣泛的共識，認為保護人類、動物及植物生命與健康的必要措施包括保護環境之必要措施，前提為此等措施必須與相關之國內措施同時執行。有小部分的協商代表認為應該將可枯竭之自然資源的保護亦列入一般例外。最後的決定認為此一例外與服務業貿易之關連不大，而且可枯竭自然資源的保護於

GATS 中似乎不必要。有關基礎建設與交通系統之完整性之協商，協商代表的結論認為此一要件已經被含蓋在第十四條第 c 款第三目中所指的「安全」此一例外中。就服務與其他商品之互補性而言，有四種可能性：

A、服務業貿易可能不涉及其他任何產品之互補使用，例如對於環境標準、環境法或環境資訊之意見提供

B、服務業貿易有助於其他產品之使用，例如對於製造環境友善產品之機器的維修與裝設

C、服務業貿易涉及使用其他產品，例如使用交通工具之運輸

D、服務業內鑑於產品中，例如於電腦磁片或光碟中所含之環境相關活動

就服務業貿易與環境之關係，如果服務業貿易對於環境有正面的影響，則促進此類服務業之貿易對環境當然可帶來有利之影響。GATS 並不限制任何會員提供有助於此類市場進入自由化之條件。至於其他使用有助於環境之服務業的其他有因，GATS 對於例如服務業之補貼或政府採購等議題亦沒有任何特別之規範。如果服務業牽涉到產品之互補使用，則增加該類服務業之使用已牽涉到該相關產品之近口與使用。如果牽涉到的是該相關產品的補貼與政府採購，則必須適用其他與產品相關的協定。如果服務業之活動對於環境造成負面的影響，則一會員可能有必要控制該服務之貿易與生產，以便限制其負面之影響。此一管制並不必然需要使用第十四條作為正當化此類限制的條款。如果該措施並沒有違反 GATS 之規範，則當然無須適用第十四條來予以合法化。是否需適用第十四條必須要視：於服務業中何類之措施對於環境目的是有必要的、該類措施是否與 GATS 之任何條款不相符，如果式的華，則可以適用第十四條之一般例外；如果該類措施與 GATS 之其他條款不相符，則第十四條是否可以替此類措施提供適當的正當化基礎？於服務業造成對環境之負面影響時，該服務與其他商品使用之互補性也必須考慮，因為該負面之環境影響有可能與該商品有關。於此，GATS 第十四條或其他 GATS 的條款則無法適當的處理此一環境問題。

就 GATS 第十四條與 GATT 第二十條之關係，GATS 第十四條類似於 GATT1994 第二十條。前曾提及，GATS 第十四條並沒有將

可枯竭之自然資源的保護列入一般例外之事項，因為協商代表認為其於 GATS 之下並無必要。GATS 第十四條款與 GATT 第二十條 b 款之用語相同，在前言之部分，用詞也頗為類似，僅有一處不同：第十四條提及「同類狀況」(like conditions)，而第二十條則為「相同狀況」(same conditions)。前提及服務業與產品之互補性此一特性，可能引含者第十四條 b 款之服務業貿易限制並無法被視為「有必要保護人類、動物及植物之生命與健康」。必要之限制有可能適用在對環境造成負面影響之相對應產品的使用上。服務提供的模式對於服務進口所適用的政策亦有影響。對於進口國境內訂定環境相關標準一重要的考量點在於：是否有必要針對外來服務生產者或出口者之間進行歧視、或對於服務之當地提供者與外人提供者之間進行歧視。另一與服務提供模式相關之議題在於第十四條之前言。對於服務之生產與提供均位於進口國之境內的服務提供形態，在「同類狀況」之國家間造成專斷或恣意之歧視此一要件則無法適用。於此，此一前言之要件則僅限於「不得造成對服務業貿易之隱藏性限制」。本節的討論顯示：相對第二十條來說，服務業貿易之某些特徵造成第十四條 b 款之適用的重要性相對降低。不過，下列兩議題於第十四條適用時還是必須加以留意：第十四條 b 款是否可包含所有與「環境」相關之議題，第十四條 b 款可否正當化適用與保護非本國境內之人民、動物及植物的生命與健康之措施。

就 GATS 之其他相關條款，附於 GATS 中各國之開放承諾表中列有「環境服務業」一項，此類服務業原則上對環境帶來正面的影響。於烏拉圭回合談判中，雖僅有二十個國家做有承諾，遠少於觀光業與商業，但其幾乎包括主要之 OECD 市場以及提供環境服務業之主要市場。若干其他類型之服務業的開放承諾於特定的狀況之下對於環境有可能帶來正面或負面的影響。GATS 第三條為透明化之規範。第四條為國家聯絡處之建立。其他包括技術標準與證照需求所可能造成之貿易障礙、政府採購、補貼與一般性例外。GATS 對於政府採購以及服務業並未訂有規範。至於技術標準或證照需求等，GATS 要求各會員必須將相關國際組織的標準納入考量。GATS 第七條則規範承認其他會員之標準、執照、證明文件或經驗等。

（二）、WT/CTE/W/67/ADD.1

CTE 秘書處於 1998-3-13 所提出之文件，則有一節係針對環境服務業提出一些背景說明，其中包括定義上之問題、環境產業之現況與發展趨勢等加以簡述，並參照 OECD 以及歐洲統計局之研究就環境產業作如下之分類：1.污染管理組、.潔淨技術與產品組、以及.資源管理組等三大類，並針對三類之內涵加以說明並舉例。另，針對環境服務業所可能遭遇之貿易限制與扭曲，秘書處於本份文件中亦加以說明：又服務提供模式第三種商業據點呈現，一國之投資法規以及外人移動等規範所可能附加之限制、由於環境服務業多牽涉到公共財之提供，因此，政府採購政策亦可能帶來之限制、內國環境管制架構所可能帶來之限制、環境服務業多涉及科技與技術之移轉，因此，一國之智慧財產權架構亦有可能構成限制。

（三）、WT/CTE/W/218

於 2002-10-3 之文件中，為因應 2001 年 10 月時 CTE 的會議要求 WTO 秘書處準備關於服務業貿易自由化對環境影響的背景文件。該份文件以三個部門為案例：觀光旅遊業，陸地貨物運輸(城市內) 和環境服務。其後，簡要地考慮如何評價服務貿易自由化的環境影響。不過，這個文件不試圖評價服務貿易自由化的環境影響。此類評估應由國家層次為之。極少國家在進行貿易談判評估時有特別針對服務貿易自由化和伴隨著潛在的環境影響。此外，服務貿易的多樣性極有可能於不同部門別中有不同的正面或負面的環境影響。不像商品一樣，服務的供應沒細分成像類似關稅細則中精確的多位數碼關稅分類系統。在 GATS 下，服務貿易通常區分為 12 個部門，且貿易本身則以下列四類服務的供應模式表現。貿易障礙通常為市場進入以及國民待遇原則限制。自由化需要這些障礙的進一步撤除。服務貿易自由化應考量尊重國家策略目標，發展的水準和個體成員的經濟實情應被考慮在內。當自由化對服務供應涉及的障礙進一步撤除，它不一定縮小政府的角色。相反的，自由化可能甚至加重對於適當管制的需要以達到某些策略目標。如果存在有適當的管制，且價格反映生產 (包括環境費用) 的完全費用時，自由化應該有益於環境，因為它導引更有效的資源使用。服務自由化和環境之間的強烈聯結範圍可能不

清楚（本文的焦點），但是也取決於一系列的因果關係，從自由化到發展和從發展到環境。最終，正面的環境影響將取決於社會願意投資用於環境保護的資源。而此資源的獲得則取決於發展的水準。一旦建立環境與服務貿易的聯結，該考慮是否自由化使事情由此更好或者差。當服務的供給是無形的時，能由它所聯繫之商品的消費影響測量它帶來環境影響。就運輸而論，例如，燃料的消費產生一個負面環境影響（CO2 排放物）；另一方面，服務的輸出可能帶來更有效以及對環境更友善的煉油技術。

就部門別之個案，首先討論觀光業：秘書處於 1998 年時指出環境問題是旅遊業面對的一個重要挑戰。"永續的旅遊業"被定義為："滿足現代旅行者與觀光地區的需求，同時保護與強化將來此等需求的機會。它對所有資源的管理，其方法是經濟的、社會和美學，目的在保持文化完整性，十分重視生態過程，生物多樣性和生命支持系統"。永續旅遊業的概念包括三個方面：旅遊業的環境，社會文化和經濟影響。膨脹的旅遊業活動是環境影響的基本威脅之一，因為其伴隨而來的消費帶來對於自然資源的壓力。生物多樣性公約（CBD）和聯合國環境署（UNEP）於此共同訂定出與永續觀光業相關的準則草案。這些準則提到，例如，"永續，應該在承載能力之內管理旅遊業和生態系統可接受的變化管理極限，應該限制並且防止在生態敏感地區中"。不過，觀光業對特別是開發中國家的永續發展所帶來的潛在貢獻也已形成共識。。由於觀光業自發的管制生態資源的成效不彰，因此，有必要提倡一套有效且協調過的方式以便促進永續觀光業。關於協調的方法，WTO / OMT 發展了「觀光業之全球道德準則」，在環境方面使旅遊業的負面影響減到最少。2002 年 9 月約翰內斯堡 WSSD 中決議，透過市場機制，在增進永續旅遊業的計畫上包含大眾意識的提升和經濟的多樣化的目的與行動。相關收益的「外流」（指的是觀光業所產生的外匯通常無法留在當地國）也是另一值得關切的議題，不過此一外流的問題亦發生於產品貿易上。重要的應該是外資以及當地的業者應該就所造成的環境成本負責。地主國的管制架構以及執行能力則為關鍵。就陸地交通運輸業，運輸部門包括所有涉及商品與人員的陸地、空中、或海上移動的所有活動。如果運輸勢必增加，則由環境的觀點出發，其如何成長即相當重要。於二十一世紀議程中，有一專章即是針對運輸活動。交通行為對環境

所造成的負面衝擊已有許多研究，不過於國家層級進行服務業貿易自由化之環境評估者不多。本份文件列出並簡略介紹分別由OECD、NAFTA、歐體、以及挪威外交部所做四份研究報告。以上研究均顯示隨者貿易自由化進行管制的調整之重要性。管制措施，包括標準的訂定、稅務的使用都可以增加使用考量環境因素之運輸模式的正向誘因。就環境服務業，在考慮什麼是環境服務業前，要先看環境商品和產業的定義。OECD / Eurostat 的定義如下：「環境商品與產業由下列活動組成：為測量、預防、限制、減低或矯正對水、空氣、土地的環境破壞，以及與廢棄物、噪音以及生態係相關問題所製造的商品與服務。其包括潔淨技術、降低環境風險與污染與資源使用最小化之商品與服務。」。換句話說，環境服務業是環境產業的一個部分。要定義環境服務業又是另一個議題。現行 GATS 的談判是以 1991 年之分類基準：污染控制與廢棄物管理。1991 年之後，對於環境服務的需求慢慢轉變預防、管制與監測。就其本質而言，環境服務業對環境帶來的影響多為正面，不過自確保一適當的管制架構上，政府的角色還是很重要。在 WSSD，聯合國強調了需要改進水和衛生服務的取得。在約翰內斯堡，國家同意為把無法取得環境衛生的人數於 2015 年降低至特定人數。飲水問題顯示出健康、環境和貧困之間具有緊密聯結。儘管水是一個環境資源，它也是一個終身必需品。政府的政策必須要兩方面之間取得平衡：一方面為短期內之貧戶的消費需求，另一方面為長期地確保使用水資源的成本必須要充分反映到水價上。

最後，就評估服務業貿易化之環境影響評估並不多見，目前並沒有一全球公認的環境評估。CTE 先前之一份文件中曾經提到，取決於下列因素，評估者所採取的方式將有所不同：

A、為何要進行評估

B、將要檢視何種影響

C、如何建立貿易自由化的影響與環境衝擊的關係。

目前共有三個 WTO 會員曾經針對貿易自由化或談判的環境影響進行評估：加拿大的「貿易談判環境評估」、歐體的「永續性影響評估」、以及美國的「貿易協定的環境審查」。而就評估的方法論，2002 年 1 月 OECD 貿易與環境聯合工作小組曾經提出，評估服務業貿易自由化的環境影響之方法論有下列六個步驟：

A、以環境影響為目標界定服務業部門
B、針對服務業貿易自由化設計各種情境
C、評估經濟轉變帶來的環境影響
D、評估規則訂定帶來的管制影響（效果）
E、就重大的環境影響進行審視
F、決定合適的政策回應

（四）、CTE 於 200211-22 所提之文件，則僅將 OECD 以及 APEC 之環境商品清單作一彙整，以增加各談判小組間的資料透明化。

二、美國

於環境商品與服務業之討論中，美國分別於 1997-11-21、2002-7-9、2003-6-19、2003-7-7 於 CTE 以及其他談判小組中針對環境服務業以及環境商品之談判提出四份立場文件（WT/CTE/W/70, TN/TE/W/8, TN/TE/W/34; TN/MA/W/18/ADD.4, TN/MA/W/18/ADD.5; TN/TE/W/38），於 CTE 中算是針對此一議題提出最多立場文件之會員。美國於 2003 年 7 月之第四份立場文件中，針對環境商品的談判模式提出一具體之建議談判草案，是針對環境商品之議題唯一提出較為具體之談判模式的會員。不過考慮到 CTE 之授權較為偏向有關環境商品與服務業之觀念與定義澄清，環境商品之關稅等實體談判係由 NGMA 負責，美國此份立場文件係同時提交至於 CTE 以及非農業非農產品市場進入談判小組。

（一）、WT/CTE/W/70

於 1997 年第一份立場文件中，美國針對「環境服務業自由化與環境」此一議題，提出較為觀念澄清式的立場文件。該份文件提出，「環境服務業」可被形容為：因使用有益於環境之計畫的服務所收取費用之所得。環境產業提供污染控制與減低、清潔與廢棄物處理服務、以及其他範疇日益增加之環境服務業。OECD 的報告提及環境產業可被描述為涉及與環境保護之各類範疇（例如水、空氣、土壤、噪音、自然資源等）所使用之產品與服務。環

境商品產業為製造一系列與環保相關的產品，例如水污染與排放標準、空氣污染控制、廢棄物管理與回收、環境評估與監測、自然資源保育等。一般預期環境服務業與商品於中到長期將於全球持續的快速擴張。OECD 初期的報告指出，除了有少數的大型企業佔有部分的市場，環境產業大部分都是由中小企業主導。此外，趨勢朝向為提供包括商品與服務業的「包裹式」的環境問題解決工具：由器具之設計與製造、到提供器具之裝設以及使用的服務。該份文件亦針對環境商品與服務業發展之主要障礙：於大多數的國家，環境服務業的區求傳統上多由來自於公共支出與公共採購，因此，國家與國際的環境管制大多扮演著環境產業的驅動角色。因此，一國環境服務產業之成長最大的障礙於某些領域即為環境管制之缺乏，以及環境管制與標準適用的不確定性與不一致性。近年來環境管制的趨勢為例如稅賦等經濟工具的使用。因此，業界逐漸朝向可降低成本之生產過程的調整，例如降低還料與能源的消費以及降低廢棄物以及污染。有些服務業之障礙來自於環境服務業大多與建築業與工程業之關係密切此一因素。此外，投資限制、智慧財產權保護之不足、管制缺資、以及政府採購限制等等也都造成環境產業的其他障礙。就環境商品而言，產品標準以及政府採購議題都成為或有可能成為對於市場進入之障礙。其結論為：環境產業之貿易自由化將帶來環境與經濟之利益。而其亦將跟隨這環境商品之貿易自由化而擴張。上述環境貿易與環境利益將隨者市場進入機會之改善、更有效率之資源分配、以及創新服務業之提升而實踐。

（二）、TN/TE/W/8

於 2002 年第二份之立場文件中，就 CTE 例會於 2002 年 3 月 22 日第一次會議中同意，環境商品的談判應由非農產品市場進入談判小組負責，並持續在有關產品的觀念上與 CTE 進行協調，美國完全贊成此一決定。於此，與環境商品的相關文件，美國提出，會員應該提交至兩個談判實體；非農產品市場進入談判小組的主席應該使 CTE 持續獲悉關於談判的進展。此外，於本份立場文件中，美國主要針對環境商品之分類做一立場之闡述：美國同意 APEC 的清單有助於會員發展有關的 WTO 談判。但是，有鑑於環境商品部門持續進步的特質與速度，以及 WTO 較為廣泛的會員

數，美國認為談判小組有必要針對環境商品自行達成一有關談判範圍的定義。此將要求會員與國內相關產業、民間團體、以及其他利害關係人進行諮商以確認可能被包括在 WTO 清單中的新產品，以及發展出 WTO 自己的清單。APEC 的產品分類方法集中於末端使用 (如：用來清潔環境，或防止或預防污染的商品)以及相關的組成零件，以及考慮選擇某些替代技術，例如太陽能設備。美國鼓勵商品應該以對環境友善的方式來製造，但以此為標準來發展一清單將有定義上的困難。以生產過程為標準有可能引發出另外一套新的標準或是關稅的分類細則，會員遵守與執行的能力將會有很大的不同。要發展環境商品的清單，OECD 貿易與環境工作小組（JWPTE）於 2001 年發表的「環境商品與服務產業：資料收集與分析之工作手冊」亦值得參考。因此，美國建議 OECD 應被邀請至非農產品市場進入談判小組以及 CTE 簡報其研究成果。美國於本份文件亦提及，透過消除關稅的方式降低環境商品的成本對於環境商品的平價很重要，但是非關稅貿易障礙對於此類商品的貿易可能造成更大的障礙。於此，美國注意到 OECD 的 JWPTE 的研究成果值得進行進一步的分析，也可以當成一辨別各類非關稅貿易障礙的基礎。綜上，美國認為 CTE 與非農產品市場進入談判小組應隨著談判的進度維持密切的聯繫。市場進入的談判者首先應致力於同意一有關將進行談判之環境商品的共同清單。談判並應處理非關稅貿易障礙之一般性議題，以及專門與環境商品有關的非關稅貿易障礙。

（三）、TN/TE/W/34

美國於 2003 年 6 月所提之第三份立場文件中，主要係針對 APEC 發展其環境商品清單的背景作一說明。其首先針對環境商品貿易自由化之理由，由四個層面來加以強調：部長之授權、經濟利益、環境利益、以及永續發展利益。接者簡要針對 OECD 以及 APEC 在定義環境商品時所採用之不同途徑加以說明：OECD 係針對此一部門之概念性範圍作一分析性之架構，APEC 則是以做為會員經濟體之間進行關稅自由化與消除為基礎為出發點。同時身為 OECD 以及 APEC 之一員，美國選擇與此份文件中針對 APEC 對於環境商品之定義以及所採取之方式來說明有關定義性之議題。於分類上，APEC 之清單係由下列兩類產品所構成：環境回復與污染

預防類、潔淨技術類。APEC之會員經濟體由前者開始著手，並嘗試者將後者亦納入討論中。於APEC之EVSL（提早自願性部門別自由化）之協商中，有關定義環境商品之困難性，可以以下列之標準進行評估：

A、產品之區別是否可實際上由海關人員加以執行？

B、許多關稅調和系統中（Harmonized System Tariff）之項目不僅只包括環境商品

C、國家HS關係稅則於六位數以下之水平並不一致

D、如何處理「雙重用途」之議題

美國並於結論中鼓勵各協商代表考慮使用APEC之環境商品清單作為討論之起點。

（四）、TN/MA/W/18/ADD.4

美國於2003年月7日所提出之第四份立場文件中，如前所述，係非常具體地針對環境商品談判之模式，提出具體的建議：美國建議談判可以發展出兩類之環境商品－「核心清單」以及「補充清單」。核心清單中包括就何謂環境商品已獲得共識之產品，補充清單則可包括其他額外之產品：共識雖無法或得，但絕大多數均同意該些產品對於環境保護、污染預防或防治養及永續性相當重要。針對核心清單，會員將被要求必須於一定之期間內進行關稅或非關稅貿易障礙之降低或甚至消除。針對補充清單，會員將只被要求確認出於清單中代表其總關稅水準某一比例的特定產品，並將該些產品適用同於核心清單中同意降低或消除之關稅水準。(..identify specific products representing a certain percentage of the total tariff lines on the list and subject these products to the same reduction /elimination agreed for the core list products)。該份文件並針對核心清單以及補充清單提出進一步的說明：就核心清單中的環境商品將分為兩類：環境清除與污染預防（environmental remediation or pollution prevention）、潔淨科技（clean technologies)。於TN/TE/W/34和TN/MA/W/18/Add.4兩份文件中，美國已討論過就發展此一清單所面臨之困難:

A、環境清除與污染預防：本類包括用來清潔環境或預防、防治污染之產品。例如下水道設備、固體廢棄物回收系統等。

B、潔淨科技：本類包括使用於特定工業用或消費用之產品設計，其產品之使用與廢棄相較其他相同功能之產品，對環境產生較小之衝擊

就補充清單而言，如果會員無法針對某些特定產品是否為環境商品達成共識，其可將該些產品放入補充清單中，以供所有會員參考。為了自由化的目的，會員可由補充清單中挑選其願意開放的產品，但這些產品必須構成補充清單上所有產品一最低之 X 比例。如果採用此一模式，則關於提列產品之程序以及產品被列入清單所應符合的標準等各相關程序則相當必要。例如會員應避免提列以非產品相關之生產與製造過程為標準之產品，因為此分類標準不易使用於以產品本身之物理特性作為分類標準的關稅調和系統中。就兩類清單中所列之商品開放的速度，美國亦提出相當具體的時程：就核心清單而言，考慮到杜哈宣言以及美國於 TNMA//18 中之談判草案，於核心清單中所有產品之關稅最遲應於 2010 年之前消除；就補充清單而言，會員於部門別之談判中將不會被要求必須開放補充清單上的所有產品，不過考慮到談判必須形成貿易與環境之相互支持，會員應開放某一比例之產品。美國建議會員應被要求於 2010 年之前將關稅水平一定之 X 比例的關稅消除，但各國可自行選擇將開放哪些特定產品。唯一的例外為，如果一國之某一產品特別具有出口競爭力，該國則應被要求其關稅最遲應於 2010 年之前消除。開發中國家只需被要求比已開發國家之 X 比例較少比例之產品必須消除關稅，此即為少量互惠（less than full reciprocity）之觀念。如果 NAMA 談判可以就一環境商品之清單達成共識是最佳狀況，但是 CTE 例會以及 NAMA 談判小組均強調此一工作之困難性。因此美國建議會員應考慮較具有彈性之談判模式。同時歡迎其他會員就此一模式提出任何建議。

三、紐西蘭

身為 APEC 之會員，紐西蘭於 2002-6-6 針對環境商品，於 CTE 中提出一份立場文件（TN/TE/W/6）。本份文件提及，紐西蘭於 1999 年依據 APEC 會員的工作成果提交一份文件（WT/GCW138Add1），其中包括環境部門自由化草案之細節。其涵蓋商品（包括非關稅措施）以及一小部分的服務業。該份文件中提及，APEC 的草案中就關稅、服務業、非關稅措施、以及經濟

與技術合作等項目提出一詳細之建議。此外，APEC 會員經濟體亦肯認，以達成貿易自由化協商為目的進行環境商品與服務業的定義與分類係一項重大的挑戰。為此，APEC 會員經濟使用 OECD 有關環境產業的定義進行其相關工作。以此為基礎，APEC 以商品的關稅調和分類表為基準，發展出一有關環境商品的清單。針對範疇給予越精確之定義將有助於指出環境商品與服務業所面臨的貿易障礙。有鑑於能源效率以及再生能源之全球市場需求、自然資源與生物多樣性之永續經營管理、以及針對氣候變遷與臭氧層破壞等問題之因應，許多 APEC 之會員經濟體認為有必要取得最先進與最有效率之環境品、服務業與科技。於此部門中之貿易自由化將有助於協助該些國家處理其環境問題。上述文件所列之「環境商品分類」附在本文之後。雖然上述工作係於 APEC 之授權下進行，不過其顯示就環境商品與服務業之關稅與非關稅貿易障礙之現行 WTO 談判所可能帶來的影響。

就「環境商品與服務業」而言，商品與服務業兩因素之連結相當密切。於 CTE，已有許多文件進行環境服務業範圍之討論，包括美國所提之文件（WT/CTE/W/70 of Nov 1997）、秘書處所提之文件（WT/CTE/W/67/Add.1 of 13 Mar 1998）、UNCTAD 之摘要報告（WT/CTE/W/96），以及 OECD 秘書處所提之摘要報告（WT/CTE/W/172 of 20 Oct 2000）。

基本上紐西蘭並沒有與本份立場文件中提出任何具體的建議，僅於結論中論及：於 WTO 之下所流通之相當多的文獻提供了 CTE 一不錯的出發點以澄清環境商品此一概念以及監督環境商品與服務業之談判工作。

四、卡達

卡達與沙烏地阿拉伯為鄰，以生產石油聞名，是「石油輸出國組織」（Organisation of Petroleum Export Countries，OPEC）之一員，首都為杜哈，即是 WTO 第二屆部長級會議所在地。卡達針對環境商品於 CTE 之下別於 2002-10-9 以及 2003-1-28 提出兩份立場文件（TN/TE/W/14，TN/TE/W/19）。

（一）、TN/TE/W/14

於2002年所提之第一份立場文件中，卡達除了針對杜哈部長及宣言第三十一段第三項釐清涉及環境商品與服務業談派之架構外，另提出能源部門中的環境商品、服務業與科技貿易自由化的提議草案，標準如下：

A、降低氣候變遷的潛力

B、永續發展議題

C、空氣污染排放與有毒廢棄物之產生

D、人類健康與環境保護

E、能源效率潛力

此外，另針對環境商品與科技，以舉例的方式，提出使用結合天然氣為燃料的系統(natural gas fired combined cycle systems)以及渦輪（advanced gas turbines）等導致之能源效率所帶來的經濟與環境利益廣為人知。因此建議於環境商品中另增列此兩類產品為一次項目。

（二）、TN/TE/W/19

卡達於2003年提出之第二份立場文件中，首先針對環境商品之定義作一簡述，其認為在選定特定之環境商品、科技與服務業時，有必要採用特定之環保末端用途標準。用於CTE特別會議以及NGMA協商之減讓表中的商品與科技，必須可以精準的顯示中其固有之環境與永續發展利益。此外，其亦可提升MEAs和WTO之間的整合和互相支持性。針對其第一份文件中所提之兩類系統：使用結合天然氣為燃料的系統(natural gas fired combined cycle systems)以及渦輪（advanced gas turbines）再次提出應被納入環境商品清單中之建議，並針對此兩套系統以及其他相關之有效率的低碳與低排放燃料及科技加以定義，並評估其經濟與環境優點。

其提出：因燃燒石化燃料所排放的溫室氣體被認為是全球氣候變遷的主因。聯合國氣候變化綱要公約的目標之一即在於將全球的能源系統，由高碳密度之能源來源逐漸移轉至無碳之可再生能源，以降低溫室氣體的排放以及大氣中溫室氣體的累積。但可再生能源於好一段時間內尚無法符合全球之能源需求，因此天然氣與其他相關的潔淨燃料對於轉變至無碳時代前之過渡期極有必要。天然氣與可再生能源之混合使用已存在。透過其於可再生氫

經濟系統（renewable hydrogen economy）中所扮演的角色，亦強化了可再生能源與天然氣的混合使用。可預期的是，於全球能源市場中，天然氣極有可能提供任何大規模的氫能源之加入所需的來源。依據國際能源署之全球能源展望，天然氣是次於非氫（水）相關可再生能源（non-hydro-renewables）（例如地熱、太陽能、風力、潮汐等等）成長最快的能源來源。於京都議定書的協商中，天然氣被認為是可以穩定大氣中之溫室氣體的解決方案。

由多邊環境公約的角度來看，該份文件之表一中所列之環境商品與科技潛在的優點要比一般燃料與科技大的多了。除了減輕氣候變遷現象之外，其他範圍更廣的永續發展社經利益包括：較高的能源效率、減低有害空氣污染排放與廢棄物的產生、改善空氣品質並檢少對人類健康、福祉以及生物多樣性負面的環境影響。

就有效率低碳、低污染排放之燃料與科技的全球貿易降低或完全消除關稅，對降低其成本以及增強其全球貿易擴張至為重要。此外，非關稅貿易障礙對於此類商品的全球貿易亦造成障礙。與進口至開發中國家能源相關的財政措施與政策係被扭曲的。該些措施無法清楚反應大規模的經濟意義以及有效率、低碳、低污染排放燃料與科技之有效利用所帶來的永續發展利益。逐步消除市場扭曲制度，例如補貼、財政誘因、污染排放之稅賦與關稅減免等，係相當重要。

綜上，卡達再一次提出其建議：將此兩類之產品列入 OECD 環境商品與科技的清單中，列入 B 節「潔淨科技與商品」中。

五、OECD

OECD 針對環境商品以及服務業已進行相當一段時間之研究，包括定義、產業分析與展望、環境商品清單等，許多國家以及國際組織於進行環境商品與服務業之討論時，也多引用 OECD 之相關研究報告。OECD 分別於 2000-10-20 以及 2003-5-21 提出兩份報告之摘要，分別為：「環境商品與服務業：進一步全球貿易自由化對環境、經濟與發展之利益的評估」（WT/CTE/W/37）、以及「環境商品：APEC 與 OECD 名單之比較」（WT/CTE/W/228, TN/TE/W/33）。

（一）、WT/CTE/W/37

於2000年之第一份文件中，主要為OECD日前針對「環境商品與服務業：進一步全球貿易自由化對環境、經濟與發展之利益的評估」所做之研究的摘要。該份研究主要的結論為：有必要討論供給以及需求面因素之政策結構。本份研究首先指出定義環境商品的困難：套用一位分析者的話，環境產業並不是一個單獨的部門（sector），而是整合至生產過程，而且不易以個別項目區分之各類產品、服務以及科技之提供者的集合。要決定「環境商品」清單的內容是非常困難的。例如有些產品是多功用的、以關稅政策的觀點，產品通常以其物理特性作為定義的標準等等。雖然有上述種種困難，但為了評估關稅適用於環境產品的程度，在缺乏國際公認名單的狀況下，OECD 還是嘗試著發展出一套分類。此外，本研究列出下列三群國家之環境商品的平均關稅：高所得國家（美、歐盟、日、加）、其他三個 OECD 國家（墨、韓、土）、以及七個新興經濟體（阿根廷、巴西、智利、馬來西亞、印度、印尼、泰國）。就高所得國家而言，環境商品的平均關稅水準通常是較低的。其他三個 OECD 成員小組於1996年所適用最惠國待遇之關稅大約為百分之9(但是於烏拉圭回合結束時受拘束的稅率仍為百分之25)。七個新興經濟體顯示出類似的模式：實際適用的關稅平均約百分之18，受拘束的關稅則為百分之29。就環境服務業而言，定義上亦遭遇困難：傳統環境服務業逐漸私人化，以及由管末的污染管制轉變為污染預防控制及清潔，增加了環境產業中許多服務業別的重要性。描繪環境服務業部門的範圍面臨類似定義環境商品的困難。就環境服務業的分類，OECD 歐洲統計局(OECDEurostat)所提出的手冊，與 GATS 討論時所提出的非正式部門別分類清單非常不同。前者反映出環境產業部斷演化以及整合的特色，後者則以此部門較早期之「公共基層建設」為出發點，採取比較傳統以及有限的觀點。本份 OECD 研究提出「架構式分析」，目的在於呈現出環境產業所涉及的一連串服務業別，並提供貿易政策決策者就反應當今商業現況之一系列的環境服務業一必要的總覽。為了就本部門之貿易障礙有一全面性的瞭解，OECD 秘書處針對 OECD 國家以及部分非 OECD 國家的貿易與投資機制等加以檢視。以此為基礎，OECD 的研究就 GATS 四項提供服務的模式以及跨部門之水平限制的環境服務業貿易障礙作一審查。針

對超過五十個有外資參與飲水以及廢棄物管理之服務業的開發中經濟體的調查中，發現貿易與投資自由化的「雙贏」，並列舉出案例中所帶來之環境益處、經濟效益與發展益處、以及貿易益處。環境商品與服務業的貿易自由化初步假設將帶來雙贏的局面。不過有一些供給面以及需求面的因素可能影響環境科技的散佈以及環境商品與服務業的貿易。以下就環境商品與服務業之貿易自由化的輔助性措施檢驗四項議題，以就此類輔助性措施提供一發展的平台架構。

A、強化環境管制架構與政策工具的多樣化

B、環境商品與服務業的關係：軟硬體的配合

C、透過避免扭曲來協助污染預防措施的執行

D、於新興經濟體提倡適當科技的散播

（二）、WT/VTE/W/228, TN/TE/W/33

於 2003 年之第二份文件中，OECD 秘書處則針對 APEC 以及 OECD 之環境商品清單作一比較。兩類的名單中大約有百分之三十的重疊，最多商品均被列入的業別包括在空氣污染控制（air-pollution control）、回收（recycling）、焚化（incineration）、以及衡量與監測設備（measuring and monitoring equipment）等類別。OECD 的名單主要以分析性為出發點，意在針對「環境產業」範圍內的產品作一例示，所以其所選擇的產品種類範圍較為廣泛；APEC 則先提名所有相關的產品，再依據同意後的分類系統將該些產品加以分類，此外，因為 APEC 名單的目的在於就環境產品希望給予更多的關稅優惠，因此，APEC 會員體僅針對現行的關稅機構得以為了課稅目的容易做出區分出的特定產品，所以有些在 APEC 名單沒有列入的產品是會被 OECD 名單所納入。初步針對兩類名單的觀察是：在最終獲得共識的名單中即有可能將大量的環境商品列入。大多數的 WTO 會員均認為 OECD 名單以及 APEC 名單有幫助但不是絕對。OECD 以及 APEC 為了不同的目的著手進行環境商品名單的製作，但名單的發展階段相近，兩個組織的會員體也有重疊，不過 OECD 名單製作的目的主要以分析為主，相對的，APEC 名單的出發點即是以談判為主，係在貿易自由化協議中經過協商後的結果。以下即針對兩類名單的起源作一簡介。

OECD 對於環境商品與服務業的關注起源自其對於環境政策與產業競爭力的研究課題中，為了進行提供進行政策分析的基礎，必須收集更全面性以及一致性的資料，但是在進行相關統計資料的收集時，對於環境商品以及服務業這類「產業」的定義必須先釐清。於是 OECD 與歐洲統計局（Eurosta）於 1995 年成立了一個「環境產業的非正式工作小組」（Informal Working Group on the Environment Industry，以下簡稱「非正式工作小組」），針對環境商品以及服務業進行資料收集與分析的工作。「非正式工作小組」於第 1995 年第一次工作會議時，針對環境商品與服務業初步定義如下：「環境商品與服務業包含：為衡量、預防、限制、減低與矯正對於水、空氣與土壤的環境損害，以及與廢棄物、噪音以及生態系相關之問題，而與生產產品與服務業相關的活動。以上包括減低環境風險以及降低污染與能源使用之潔淨科技、商品與服務業」。「一非正式工作小組」於 1997 年持續進行定義以及分類之工作，同時，OECD 的「貿易與環境聯席工作小組」（Joint Working Party on Trade and Environment, JWPTE）也開始注意此一議題，特別是針對環境商品與服務業的貿易自由化發展出一架構。由於針對環境商品沒有一套國際性統一的標準，因此，於「調和商品規定及號碼體系」（Harmonized System，以下簡稱 HS）下的貿易分類產品號碼中，依照「非正式工作小組」就環境商品設計出的群組（groups）、類別（categories）與次類別（sub-categories）加以歸類。最後的名單於 1998 年完成。OECD 名單是列舉式（illustrative）不是窮盡式（exhaustive）的名單，有些環境商品沒有相對應的 HS 商品貨號，有些 HS 商品貨號的產品並不是環境商品，後者是 OECD 與 APEC 名單最大的不同之處。

APEC 環境商品的名單最早期源自 1995 年 11 月於日本召開的會議，會議同意挑出特定產業，其漸進式的關稅減讓將對亞太區域的貿易與經濟成長有正面的影響。逾 1997 年五月的 APEC 貿易部長會議中則要求官員挑出哪些有潛力進行提前自願性的貿易自由化（early voluntary sectoral liberalisation，以下簡稱 EVSL）的產業部門，各國共提出了 62 個個別的部門，參考 OECD 就環境部門之定義已經進行一段時間的工作，「環境商品與服務業」由加拿大、日本、中華台北以及美國當成一單獨的類別提出。於 1997 年溫哥華所舉行的 APEC 會議中，共有 15 個部門得到所有會員體的

支持，其中環境商品與服務業被歸為優先處理（fast-track treatment）的第一類中。於 1998 年所召開的 APEC 貿易部長會議中已完成初步的 EVSL 架構，包括修改與整合過的環境商品名單。因為環境商品沒有 HS 歸類為一單獨的部門別，因此，貿易自由化的工作必須以個別產品為基礎。參考 OECD 針對何謂環境產業之活動所做的定義，APEC 會員體同意以 HS 條碼為準挑出一正面表列之商品，表中的個別產品之關稅原則上於 2003 年月 1 日前必須完全消除，不過針對某些會員體賦予一些彈性。某些 APEC 的會員體就此一協商提出不同意見，而有些會員體則認為某些具有雙重用途的產品太過敏感，因此，APEC 為了處理這些不同意見，提出：.如果該類產品係全部或主要與環境有關，則給予其 HS 的六位數條碼，或，.如果 APEC 會員體希望針對特定產品零關稅的待遇，則給予一額外之標題（ex-heading），於後者的情形，將交由 APEC 各會員體於其國家的關稅減讓表中決定將如何表現出該項產品。以上原因使得 APEC 會員體不大願意給予產品 HS 條碼，也使得 APEC 名單比原始預期的要短。不過上述有關環境商品的名單中不包括化學品，因為於 APEC 之下針對化學品另有一 EVSL 在處理。於 1998 年，各專家小組會議持續針對 EVSL 架構進行細部修飾，於 1998 年 11 月的 APEC 會議中提出一包括關稅、服務業、非關稅錯失、以及經濟與技術合作四部分的提案。部長門無法針對關稅的部分達成共識，因此，作成一決議，將 EVSL 提案中有關關稅的部分提交到 WTO，希望全體 WTO 會員可以採納此一提案。

本文件的附錄表五將 OECD 以及 APEC 的環境商品名單作一比較。商品依據 OECD 名單中的類別（categories）以及次類別（sub-categories）區分，並於次類別中，依照六位數 HS 分類次標題排序。APEC 名單的類別大多均可對應至 OECD 名單中，因此，將 APEC 名單中的產品歸納到 OECD 的類別中沒有太大的問題。如果只以相對應的 HS 條碼項目藍看，OECD 名單要比 APEC 名單多出將近百分之五十，不過，如果去除掉六位數條碼的重複表列，則兩者的名單長度即差不多：OECD 名單中有 132 項單獨的 HS 條碼，APEC 名單中則有 104 項。嚴格來說，兩類名單於六位數的 HS 條碼中重疊的部分不多，大約有百分之三十的重疊，重疊最多的業別包括空氣污染控制（air-pollution control）、回收

（recycling）、焚化（incineration）、以及衡量與監測設備（measuring and monitoring equipment）等類別。造成重疊數量過少的原因是因為兩類名單所強調者不同，此外，APEC 名單中排除化學品，因為化學品係單獨由 EVSL 之化學品提案（EVSL proposal for chemicals）處理。所有 OECD 名單中的化學品都已被納入 APEC 下的 EVSL 之化學品提案中。於一些個案中，APEC 名單舊商品提供比 OECD 名單更詳細的描述，但此類產品卻沒有對應的 HS 條碼；此外，APEC 名單中包括的一些特定產品（例如農業產品）對應至 OECD 名單中的建議類別，但這些不但沒有 HS 條碼，也沒有舉例說明的產品。

OECD 秘書處於本份文件的結論中提出：在回顧 OECD 以及 APEC 名單的發展過程中發現，就廣義的角度來看，兩者的類似性很高，不過兩者的目標以及訂定名單的過程不同。因為 APEC 名單的目的在於就環境產品希望給予更多的關稅優惠，因此，APEC 會員體僅針對現行的關稅機構得以為了課稅目的容易做出區分出的特定產品，所以有些在 APEC 名單沒有列入的產品是會被 OECD 名單所納入。初步針對兩類名單的觀察是：在最終獲得共識的名單中即有可能將大量的環境商品列入。大多數的 WTO 會員均認為 OECD 名單以及 APEC 名單有幫助但不是絕對。

六、聯合國貿易與發展會議（UN Conference on Trade and Development，UNCTAD）

除了 OECD 之外，「聯合國貿易與發展會議」（UN Conference on Trade and Development，UNCTAD）亦針對環境產業之相關議題，舉辦一系列之研討會，主要在於協助開發中國家發展其國內相關產業之量能建構（capacity building）。就其中一專家小組會議：「UNCTAD 促進開發中國家發展環境服務業之能力建構專家小組會議」之結論摘要，於 1998-8-3 提交至 CTE（WT/CTE/W/96）。

該份文件首先針對環境產業之主要趨勢作一簡單的分析：環境產業於已開發國家已面臨成長的停滯，不過於開發中國家，成長的潛力極大。因此，環境服務業之出口雖然只佔有少數，但將逐漸增加。此一現象，伴隨者民營化以及國家環境標準枝條和以及全球環境目標之訂定將使得此一產業更具出口導向。環境服務

業需求之變動性對於相關企業來說增加許多困難。環境產業呈雙重結構：個別市場中有百分之五十由少數的大型企業主導，其餘則由多數之小型企業佔據。不過產業的結構也正在轉變，主要因為因應多樣性以及跨領域之需求，結盟、合併或併購不斷增加。環境產業之貿易自由化正由不同之國際場域中進行討論。不過，如果特定前提要件無法被滿足，貿易自由化所帶來的利益將無法實現。適當之國內環境立法必須被制訂以及執行。必須進行環境有益科技（environmentally sound technologies）之移轉。國際財源對於協助開發中國家處理其最急迫之環境問題即為關鍵。但是，獲得國際財源之過程往往過於官僚化以及緩慢。

對於有助於環境服務業國際貿易以及需求成長的因素主要為適當之環境立法的訂定與執行，特別是透過管制工具。但是經濟工具、財務政策以及公共教育以及意識之提升對於確保環境商品與服務業之永續需求也即為重要。立法管制於大多數的開發中國家仍然是環境服務業需求的主要驅動力。公共意識以及環境教育於增加需求之因素上，在已開發國家以及開發中國家也逐漸扮演著重要的角色。民事求償制度也迫使公司必須對於其所造成之環境破換越來越重視。對開發中國家而言，另一增加環境服務業需求之因素則為其主要出口市場引進與環境相關的要求。

環境有益科技（environmentally sound technologies, ESTs）不容易定義，因為今天視為環境有益之科技明天也可能即不是，或是於一國視為環境有益之科技可能於另一國並不是。成功的技術移轉只有在當地技術人員受有足夠的訓練，可以吸收外來科技並隨者當地的需求加以改變方有可能。環境問題的處理以及解決必須視個案而定。技術移轉以其對於開發中國家之發展與貿易所帶來的利益等議題已經於若干場域進行討論。以優惠之條件提供ESTs 給開發中國家的可行性亦被考慮過。克服開發中國家資助ESTs 問題之解決方法之一為透過環境主管機關、地方產業以及國家與國際借款機構之共同合作。專家與技術之國際移轉大部分取決於私人公司如何被吸引進入國內的市場，不論是透過合資或是參與民營化的過程。環境服務業，特別是服務相關之一個特性在於其牽涉相當大的投資，並且需要很長的時期才可回收該投資。因此，所有權及經營權於環境服務業中的重要性遠大於其他類型的服務業。開發中國家大多使用的傳統技術要比中等收入國家所

使用的科技要來的「乾淨」。此外，已開發國家與開發中國家之技術關係以面臨一重要議題：許多開發中國家的傳統科技以及製造過程已經被私人企業取得專利，因此，對於開發中國家無償或低價使用傳統技術的人民而言，將面臨極大的威脅。

於開發中國家，缺乏適當、有能力之機構以有效執行環境立法至為重要。大多數的開發中國家面臨合格人員之欠缺，特別是私部門所提供的報酬使得供部門無法留住合格之人力資源。環境成本的內化可以確保環境改善的成本得以轉嫁給消費者，但此一策略有時會削弱企業之國際競爭力。一般認為貧窮是造成開發中國家環境惡化的主因。於此，環境立法必須照顧到窮人之需求以及需要。

GATS 中之環境服務業為一相當新知議題，因為於此一部門之國際貿易範疇於早期相當有限。早期的環境服務業具有相當濃厚的公共財之性質，不過進來的趨勢為，政府已逐漸轉變為購買者以及管制者，私部門成為主要的服務提供者。於 GATS 之下定義環境服務受到相當的限制，特別是考慮到環境產業目前之整合式的服務提供趨勢。商業據點的建立加上自然人之短暫停留似乎是目前環境服務業貿易之主要服務提供模式。水平式之措施，例如投資、人員之移動、以及政府採購的限制都會影響環境服務業之貿易。對於環境服務業定義不精準的問題可以有多種方式加以處理。其可以採取較為廣泛之定義，也可以著重提供環境服務之特定服務：例如工程服務、法律服務、管理服務等等。總之，環境服務業是促進貿易自由化的最佳人選，因為其獲得貿易自由化人士以及環境友善發展人士的一致支持。從達成環境產業貿易自由化的角度來看，將環境商品與服務業視為一「包裹」應該較為合適。除了 GATS 承諾中應去除之障礙之外，於稅賦與補貼等領域亦存在有貿易障礙。此外，政府採購之歧視性亦應加以重視。

提供開發中國家環境服務業的商業機會，並同時鼓勵技術移轉以及量能提升的主要形式為夥伴關係（partnerships）。開發中與已開發國家的企業之夥伴關係不僅只有前者受惠，後者亦因為其於新興市場中日益增加的活動而受益。對於夥伴關係之主要困難在於找出一適合的當地合作對象以及確保計畫經營團隊的持續性。另外的問題在於，於大多數的個案中，外人與當地資本的參與不平均，往往前者多控制了經營與決定的權力。夥伴關係亦有

可能因種種因素而失敗，但是有一些條件如果可符合，亦可有助於夥伴關係的成功。公私部門之夥伴關係有一很重要的關鍵因素：自然資源的所有權。於開發中國家內一些區域中，自然資源往往由當地社區所共有並共同使用，如果將市場因素考量進去，此一財產權的議題可能形成問題。環境服務業的發展必須要考慮到公民社會的需求。此加深了地方機構參與的重要性。於環境緊急災害，特別是人為災害發生時，政府的環境政策以及環境服務之需求即為關鍵。於此，私人企業善意的提供相關資訊就很重要。

該份文件最後指出：一些開發中國家成功的經驗顯示，下列的因素對於發展環境服務業之內國量能至為關鍵：

(1)、環境立法執行與適用之相當時間
(2)、全球目標達成時納入國內因素
(3)、參與式的決策過程與資訊分享
(4)、發展具有高度技術的人力資源
(5)、進行研究、影響評估與顧問工作的經驗
(6)、技術的純熟度
(7)、地方環境與工衛問題處理之成功經驗
(8)、與外資企業與機構建立關係的能力
(9)、部分之自我財務支援
(10)、國內與外人資本之財務支助
(11)、私部門的參與

第四節　環境商品與環境服務業於WTO其他委員會中所提出之文件

一、環境服務業：服務業貿易理事會

於烏拉圭回合進行有關服務業之談判時，秘書處被要求就服務業部門彙整一份有關分類的清單，以協助各國進行服務業各部門的談判，此份文件之標號為：MTN.GNS/W/120(10 July 1991)，簡稱 W/120 清單，當中第六項為「環境服務業」(environmental services)，並再細分為四個次部門（sub-sector）：污水服務業（sewage services）、廢棄物處置服務（refuse disposal services）、衛生及類似服務（sanitation and similar services）、以及其他（other），於進行有關環境服務業議題之討論時，會員即是針對此W/120 清單中的分類研析有無修改的必要。於服務業貿易理事會中，就環境服務業之談判，係於兩個小組之下進行：特定承諾委員會（Committee on Specific Commitments，簡稱 CSC）以及針對杜哈回合議題談判的服務業理事會特別會議（Council for Trade in Services Special Session，簡稱 CTSSS），以下僅針對各國於 CSC 以及 CTSSS 中，於 1999-20023 年間，就環境服務業所提出的立場文件做一簡單的整理，以便分析環境服務業之談判未來可能的走向

於 CSC 之下，僅有歐體於 1999 年提出一份有關於環境部門之分類議題（Classification Issues in the Environmental Sector，S/CSC/W/25，28 September 1999），於本份文件中，歐體認為現行基於 W/120 的分類過於狹隘，而且無法反映現今的經濟現況，此外，尚有一些技術性的缺點，例如：沒有明顯的反映出不同的環境媒介（例如水、固體廢棄物、空氣與噪音）之相關環境服務、現行分類下的兩個次部門（廢棄物處置以及衛生服務）幾乎是一樣的業別、W/120 的分類無法反映出環境產業已由傳統的管末污染防制處理以及整治等，轉變為整合式的污染控制、潔淨技術等的現況、以及 W/120 的分類主要著重於提供給一般大眾的公共設施以及基礎建設，忽略了產業所需要的環境服務業。因此，歐體於本份文件中，提出一套新的環境服務業分類，依據環境媒介（例

如空氣、水、廢棄物、噪音等等）進行環境服務業的分類，該些服務業可以被定位為純粹有關環境之核心清單，因此，不包括一些於 GATS 其他分類中所涵蓋的觀念性的服務，例如設計、工程、R&D、顧問業等等，不過這些服務業別也可能與環境相關，歐體另提出除了上述的「核心」清單外，可將上述之相關服務業別列入群組協商中（cluster negotiation），於談判時，群組清單的談判結果應可以列入非「環境」此項目下的其他業別中，不過於群組協商中，必須要注意談判的結果不應該修正（特別是減損）該些部門現行之承諾水準。歐體於本份文件中所提出的「核心」清單與「群組」清單的觀念，成為後續許多會員於 CTSSS 中提出其國家立場的討論重點之一。

於 CTSSS 中，目前共有七個會員針對環境服務業提出立場文件，先以表 4 整理之：

表 4　各國針對環境服務業之立場文件

國家	文件名稱	提出日期	文件編號
美國	環境服務業	2000-12-18	S/CSS/W/25
歐體	GATS 2000：環境服務業	2000-12-22	S/CSS/W/38
加拿大	環境服務業之初始談判提案	2001-03-14	S/CSS/W/51
瑞士	GATS 2000：環境服務業	2001-05-04	S/CSS/W/76
澳洲	環境服務業之談判提案	2001-10-01	S/CSS/W/112
哥倫比亞	環境服務業	2001-11-27	S/CSS/W/121
古巴	環境服務業之談判提案	2002-03-22	S/CSS/W/142

美國的提案主要是希望移除或降低環境服務業之障礙以創造經濟成長以及環境保護的條件，就現行的分類，美國認為其無法反映出此一產業的現況，而且無法反映出現行以成本效益為考量的管制法令，因此，美國贊成發展出一主要包括現行分類的環境服務業部門之環境服務業的核心清單，此外，同時應包括傳統上雖然並非被分類為環境服務業，但是與環境服務業具有高度相關的服務業，例如建築業、工程業與顧問業。美國希望之對現行 WTO 分類下的環境服務業產進行自由化的談判，其他與此類核心服務

業相關的部門也應一併進行討論，談判的焦點應著重於服務提供模式三（商業據點的呈現）與模式四（自然人之移動）。此外，針對專業服務業、商業服務業（例如廣告等）等，討輪其相關的貿易障礙應也有助於環境服務業之貿易自由化。此外，美國有關透明化的提案與環境服務業之談判也頗重要。美國同時認為環境服務業的自由化不應該減損政府針對相關環境服務業之品質進行管制的能力，以確保服務之提供者以環境友善之方式執行其任務。

歐體的提案則希望更多的 WTO 會員能夠參與環境服務業之談判並降低相關的貿易障礙，本件提案主要是依據歐體前述於 CSC 中所提出有關環境服務業分類的文件，由於本份文件主要係針對環境服務業，因此，其他觀念性相關的服務業例如設計、工程、研發與顧問業等，還是應被列於其他的 GATS 分類中，不過某些有環境最終用途的（environmental "end-use"），應可以被列入一特殊的「群組」（cluster）或「檢查清單」（checklist），主要可以用來協助其他部門之談判。歐體針對核心清單提出七大部門，包括：飲用水以及污水處理[22]、固體／有害廢棄物處理[23]、空氣與氣候保護[24]、土壤以及水整治與清理[25]、噪音及震動防制[26]、生物多樣性與景觀之保護[27]、其他環境與相關服務[28]，而「群組」或「檢查清單中」則包括：與環境有關之商業服務[29]、與環境有關之研發[30]、與環境有關之顧問業、承包與工程業[31]、與環境有關之建築業[32]、與環境有關之配銷業[33]、與環境有關之運輸業[34]、與環境有關之其他服務業[35]。歐體提出，CTSSS 是否應於理事會或成立一附屬單位中針對環境服務業之談判目的進行討論，提案中建議：針對模式一、二、三，所有的次部門。考量到相關服務業之組成，都應該

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[22] 6A. water for human use & wastewater management
[23] 6B. solid/hazardous waste management
[24] 6C. protection of ambient air and climate
[25] 6D. remediation and cleanup of soil & water
[26] 6E. noise & vibration abatement
[27] 6F. protection of biodiversity and landscape
[28] 6G. other environmental & ancillary services
[29] business services with an environmental component
[30] R & D with an environmental component
[31] consulting, contracting & engineering with an environmental component
[32] construction with an environmental component
[33] distribution with an environmental component
[34] transport with an environmental component
[35] others with an environmental component

為無限制，就模式四，歐體的減讓表中包括企業間人員。包括契約聘僱之服務提供者的暫時性移動，歐體提議以此為基礎，可進一步討論如何改善與促進提供特定服務之自然人的暫時性移動。此外，於本份文件的附錄中，歐體並針對七大項核心清單以及群組清單，分別以舉例的方式列出相關服務業，以及相對應之 CPC 號碼。

加拿大所提的文件中，針對環境服務業的重要性，包括環境商品與服務業全球需求於近年來的增加、環境服務業自由化的雙贏情境、以及管制架構透明化對於環境服務業不們的必要性等進行闡述，針對某些會員於特定承諾委員中所提的核心與群組清單，加拿大人為這些討論主要係有關環境服務業的分類，加拿大強調針對核心清單中已經列於 W/120 之部門別應尋求更多的自由化，群組主要的目的應該用來作為談判中的一份檢查清單。有關於談判的提案，加拿大提出造成主要貿易限制者為：管制體系以及實務運作中缺乏透明化、與投資以及商業據點設立相關者、服務提供或管制者之入境與停留相關者、以及與專業人士和專家相關的證照要件。

瑞士的文件中同樣先針對環境服務業的重要性加以說明，包括於已開發以及開發中國家內，隨著環境標準日趨沿革化以及環境問題日益嚴重，均導致環境服務業不論於進口國或是出口國而言重要性漸增，有關於分類的討論，瑞士認為現行的分類（W/120）已無法反應現況，因當初進行分類時主要著眼於管末的污染管制，而不是現在越來越受重視的預防控制。因此，瑞士提中環境服務業中應以下列分類做為會員提出特定承諾的依據：污水處理[36]、廢棄物處理[37]、空氣與氣候之保護[38]、土壤以及水整治與清理[39]、噪音與震動防制[40]、生物多樣性與景觀之保護[41]、其他環境以及相關服務[42]，除此之外，為了因應環境服務業與其他服務業別日益加深的整合，下列領域中會員亦可以考慮提出特定承諾：與環境相

[36] waste water management
[37] waste management
[38] protection of ambient air and climate
[39] remediation and clean-up of soil and water
[40] noise and vibration abatement
[41] protection of biodiversity and landscape
[42] other environmental and ancillary services

關的專業服務業[43]、與環境相關之研發[44]、與環境相關之顧問業、轉承包業以及工程業[45]、與環境相關之建築業[46]。瑞士所提出的提案，於現行的承諾（existing commitments）提及，目前有將近五十個會員於環境服務業中列有特定的承諾，幾乎大部分均列在污水服務業、廢棄物處理服務、以及衛生與其他服務業；於自由化之障礙（obstacles to liberalization），瑞士認為對於環境服務業最大的障礙來自餘對於商業據點的呈現以及自然人移動之水平限制上，此外，環境標準較不嚴格的會員通常沒有於環境服務業中做出特定承諾，開放其市場有助於國家以及國民取得技術以及專業知識；於目標（objectives）上，瑞士希望針對環境服務業的提供者之商業據點呈現的要件可以較不嚴格、更多會員可以更廣泛做出於市場進入以及國民待遇之特定承諾，特別是模式三，但也包括模式一與模式二，此外，也必須針對模式四進行談判。瑞士並於附件中將現行依據聯合國暫行中央貨品分類（UN provisional Central Products Classification）發展的 W/120 做一表列。

澳洲提出本份文件最主要的目的在於希望修正現行 W/120 的分類，希望可以放入更多的環境服務業，澳洲基本上支持歐體所提出的分類方式，澳洲並注意到歐體所提的核心清單，與 OECD-Eurostat 分類中第一類之污染處理類重疊性頗高。澳洲對於環境服務業採取開放的立場，而澳洲之出口者所面臨到，並希望於 WTO 服務業談判中加以處理的一些貿易障礙包括：1. 對於法人型態要件之限制、不透明的發照程序、對申請者之處理以及通知有不必要之延遲、限制性的商業行為以及寬鬆的競爭法等、2. 環境法之不協調以及恣意之執行、規劃限制、3. 對外國公司的歧視（例如外國公司必須之付較高的註冊費、採購過程的不透明）、4. 優厚本國廠商之歧視性稅賦、5. 對外人投資的限制、以及 6. 對於特定資產（例如掩埋場址以及污水處理系統）之外人所有權限制。澳洲的提案為：會員同意擴大現行的環境服務業分類以符合現行之貿易實務，並使用新的分類進行環境服務業的談判、會員針對任何有關商業據點之限制進行檢討，以移除所有無法正當化

[43] professional services relating to the environment
[44] research and development relating to the environment
[45] consultancy, sub-contracting and engineering relating to the environment
[46] construction relating to the environment

的限制、會員確保 GATS 第一條第三項 a 款之執行，特別是各層級（中央或地方）之政府發照與所有權的管制應透明並且沒有非必要的限制。

哥倫比亞係第一個於 CTSSS 中提出有關環境服務業的開發中國家，其提出，現行分類中的服務提供者於傳統上大多由公部門或國營企業提供，因為有些服務具有公益性，而且基於經濟規模，有些服務自然的發生獨佔的情形，但是過去二十年間的經濟去管制化慢慢造成由國營企業所提供之服務的私有化。哥倫比亞認為現行分類中之環境服務業，由於需要大量的投資以及專業，其開放對於開發中國家來說有益，但是於此一部門中做出特定承諾時必須要考慮到各會員不同的發展程度。此外，如果有關服務業之國際貿易要獲得平衡，已開發國家也必須針對自然人的移動做出有關市場進入的承諾。有關於另一會員境內所取得之環境服務，主管機關應依據教育、經驗與考試要件之等同性考量其專業之資格。針對歐體所提之分類提案，哥倫比亞認為係相當有用，哥倫比亞並提出下列之服務業應被列入：環境管理系統之執行與稽核[47]、環境衝擊之評估與減輕[48]、以及潔淨科技之設計與執行的諮詢[49]。

古巴的文件中提出，市場的開放有助於環境服務業此一部門於開發中國家的發展，但是前提必須是要確保建立起健康、安全以及環境的保護，此外，自由化的過程並不自動的增加開發中國家的競爭力，談判必須要將各會員不同的發展程度納入考量並促進漸進式的自由化。古巴認為此一不們的自由化只有在適用不同待遇的狀況下才能強化國內之服務提供者，並必須移除因取得技術以及相關知識的困難所導致開發中國家於技術上的不利益。談判的進行必須要顧及會員進行管制的權利；有完整的權利建立保障環境評估之客觀性的要件，以及對國家環境帶來實質的利益，均必須被視為所有會員之正當目標。對於預期之談判結果，古巴認為國家量能建構（national capacity-building）必須是環境服務業談判成果中的一項保證，因此，市場進入之談判應確保下列事項之達成：1. 基於優惠性商業條件，進行實質的技術移轉以保證期競爭力、2. 移轉相關的專業知識（know-how）、3. 包括人力與組

[47] the implementation and auditing of environmental management system
[48] the evaluation and mitigation of environmental impact
[49] advice in the design and implementation of clean technologies

織之國家技術能力的建立，以及、4. 所採取的特定承諾應確保自開發中國家輸出的服務業係以對其最有利的模式進行。

由上述各國所提的文件中，大致上可以歸納出：1.提出文件的各會員多認為現行 W/120 中有關環境服務業的分類已無法反映出產業的現況，有必要針對進行重新的分類，2. 提出文件的國家大多不反對歐體所提出的核心清單 vs 群組清單的談判。但是，對於分類還是尚未達成共識，此外，提出立場文件進行「表態」的國家太少，無法得知其他會員，特別是開發中國家會員，對於此一議題的態度。再者，而於 CTE 中也並沒有針對環境服務業的分類進行討論。如果會員於環境服務業的分類上一直無法有共識，下列兩種情形均有可能發生：第一、有關於特定承諾的實質談判進度將受到阻礙，因為各國對於應放入環境服務業之部門無法達成共識，第二、如果新分類無法達成共識，各會員可能會「將就」使用現行 W/120 的分類進行實質特定承諾的談判。

於杜哈回合談判時，針對服務業，杜哈發展議程第十五段要求各會員必須於 2002.6.30 之前提出要求，於 2003.3.31 之前提出回應，於各國的要求表以及回應表中，如果有涉及環境服務業者，應可以得知環境服務業於現行談判狀況中的分類：並不是所有的會員都公開其要求表與回應表，就 WTO 網站上可閱覽之要求與回應表中發現，有些會員（例如加拿大、冰島）使用的是現行 W/120 的分類方式，但有些會員（例如歐體、澳洲、美國、日本）則是以歐體所提的新分類作為其初始回應（initial offer）中之環境服務業的部門。此外，各會員於過了上述之截止日期後還是陸陸續續地提出要求與回應，因此，對於環境服務業之分類以及貿易自由化的談判工作，於服務業理事會之下可說是尚未有具體的結論或共識，尚待觀察。不過，相較於環境商品因為定義與分類上的困難所導致實質談判的緩慢，環境服務業不論是否針對新的分類有無獲得共識，至少於現行的架構之下，已經有 W/120 的分類作為具體實質談判的基準，因此，貿易自由化的談判較不會受到定義或是分類爭議的影響。相較之下，環境商品貿易自由化的實質談判工作，如下所述，命運要坎坷多了。

二、環境商品：(非農產品)非農產品市場進入談判小組(Negotiating

Group on （non-agricultural）Market Access，簡稱 NAMA）

相較於環境服務業已經有一現行的 W/120 文件之分類，環境商品於 GATT／WTO 之架構下並沒有一既有的定義或分類，因此，針對環境商品貿易自由化的談判，非農產品市場進入談判小組所負責的實質談判工作，勢必迨 CTE 就定義以及分類等相關議題之工作有結果後，方可進行。因此，於 NAMA 之下就環境商品所提出的文件，共有八份，提出文件的國家僅有美國、日本與卡達，數量並不多。此外，提出的國家大都將文件同時提交至 NAMA 以及 CTESS 中，八份文件中有五份係同時提出於 NAMA 以及 CTESS。表 5 先就 NAMA 之下有關環境商品的文件做一整理，用斜體字標出之文件係同時於 CTE 中所提出者。並隨後針對沒有同時提出於 CTE 的文件做一簡單的說明。

表 5　各國針對環境商品之立場文件

國家	文件名稱	提出日期	文件標號
美國	環境商品之談判	2002-07-03	TN/MA/W/3
秘書處	環境商品清單	2002-10-07	TN/MA/S/6
日本	非農產品之市場進入	2002-11-20	TN/MA/W/15 TN/TE/W/17
秘書處	環境商品之貿易	2002-12-02	TN/MA/S/8
卡達	環境商品之協商：有效率、低碳與低污染排放之燃料與科技	2003-01-28	TN/TE/W/19 TN/MA/W/24
卡達	與天然氣相關之商品的調和系統（HS）分類貨號	2003-04-25	TN/TE/W/27 TN/MA/W/33
美國	WTO 中環境商品之自由化：定義問題（第三十一段第三項）	2003-06-19	TN/TE/W/34 TN/MA/W/18/Add.4
美國	就環境商品談判模式之美方提案	2003-07-07	TN/MA/W/18/Add.5 TN/TE/W/38

美國最早於 NAMA 之下提出有關環境服務業談判之文件，並同意就此一議題於 CTE 以及 NAMA 中的分工，美國希望提出環境商品文件的會員可以將文件同時提交於兩個組織，而 NAMA 的主席應將相關的談判進展像 CTE 報告。針對環境商品的定義，美國提出 APEC 所發展的清單應可以協助 WTO 會員進行談判，不過有鑑於環境商品部門進展的速度以及 WTO 較多的會員數目，談判小組有必要就環境商品的範圍自行定義。此要求會員必須與國內產業、民間團體以及其他利害關係人進行諮商，以確保可以納入新產品並發展一 WTO 的清單。APEC 的產品分類係著重於產品的最終用途，以及相關的組成部分，並納入一些另類技術（例如太陽能之設備）。針對 PPM，美國認為以環境友善之方式生產產品係相當重要，但是使用生產過程作為分類的標準可能有定義上的困難，而且，使用 PPM 的分類勢必增加對於實務上以及現行海關的

分類增加新的標準，會員執行的困難度即增加。美國亦提及 OECD 的分類清單，並提議要求 OECD 於 NAMA 中進行簡報。最後，美國亦提出對於環境商品的貿易自由化，除了降低關稅之外，非關稅貿易障礙（NTBs）也是必須被確認並提出討論，NAMA 正進行 NTBs 的討論，是否應考慮針對影響環境商品貿易之 NTBs 單獨進行檢視。會員應建立一套處理環境商品所遭遇之 NTBs 的機制，包括透過雙邊協商。最後，美國提出 NAMA 以及 CTE 應於此一議題之協商中維持密切的合作。

由於環境商品討論的重點之一係圍繞在 APEC 與 OECD 的清單上，因此 NAMA 於 2002.09.12-13 的會議中要求秘書處將兩份清單彙整供會員參考，因此，秘書處遂於 200210.07 提出本份文件，將 APEC 清單列於附錄一、OECD 的清單列入附錄二。

此外，日本於 2002.11.20 同時於 NAMA 以及 CTESS 提出一份有關非農產品市場進入的文件，就包括關稅談判的模式、NTBs、開發中國家待遇等，提出相關提案，並特別就環境商品提出一份談判的清單，日本強調於市場進入的談判中，應給予對於全球環境議題以及可枯竭自然資源之永續使用相關的產品特殊的考量。於清單中，日本係依據 OECD 清單中之三大項產品分類：污染處理[50]、更潔淨／資源有效性科技與產品[51]、資源管理[52]作為依據，提出一份產品清單，針對 PPM 是否應作為分類的標準、最終用途相關議題、海關使用之確認機制以及於類似產品中確認環境商品的行政成本等相關議題，日本認為應進行全面的討論，方得做成適當的解決途徑。

就日本上述的提案，NAMA 於 2002.11.45 的會議中要求秘書處製作一份有關 WTO 會員之環境商品貿易的產品統計資料。日本的提案主要係依據 1996 調和系統（1996 Harmonized System，簡稱 HS）系統命名法中之 HS 六位碼為定義的標準，但是於清單全數 166 項產品中，有 73 項無法於 HS 六位碼中反映出所對照之環境商品特性。因此，日本所提議的清單中，要求每個會員可以於現行的 HS 六位碼中，就出口與進口另特定出一「ex」項目。因此，秘書處就日本於上述文件中所列的產品清單，依據其是否有於現

[50] pollution management
[51] cleaner/resource efficient technology and products
[52] resources management

行之 HS 條碼中多增加「ex」一項，製作兩份環境商品貿易相關的統計資料，供會員參考，以瞭解環境商品之貿易於現行國際間的貿易量以及模式。

於 NAMA 下，應只有美國於 2003 年七月間所提出的談判模式算是與環境商品的實質談判有關的具體提案，不過截至 2003 年年底，尚未有國家於 NAMA 中針對美國的提案有提出新的文件。

第五節　環境商品與服務業未來之談判重點以及我國可採取之立場

基於有關環境商品與服務業談判架構之分工，有關環境商品之關稅及其他障礙之實質談判係由非農產品非農產品市場進入談判小組負責，有關環境服務業之談判則由服務業貿易委員會特別會議負責，CTE 特別會議之工作在於針對環境商品與服務業之定義及範圍。OECD 算是較早針對環境產業、環境商品、環境服務業等議題進行研究之國際機構，其他聯合國之附屬機構，例如 UNCTAD，也都透過舉辦研討會或工作會議的方式來加強開發中國家發展相關之產業。以下僅以 CTE 於 1995-2003 之間就環境商品與服務業所收到之各文件為基礎，分別就環境商品與服務業預測未來於 CTE 特別會議中之談判重點以及值得觀察之趨勢。

一、就環境商品而言

各會員的共識似乎為：環境商品之定義非常困難，僅能用一些較為大方向之特徵來加以分辨。截至目前為止，雖然有會員表示 CTE 應嘗試著發展出 WTO 之環境商品清單，不過目前國際間較為人所廣泛討論者為環境商品之清單還是為 OECD 與歐洲統計局於 1998 年所完成的列舉式之清單（illustrative list），以及 APEC 於其「提前自願性部門別自由化」（early voluntary sectoral liberalization）協商架構下，於 1998 年所提出做為談判基準之環境商品清單。OECD 並針對兩份清單之發展歷史以及比較提交一份文件至 CTE。就各會員於 CTE 所提之文件，針對環境商品所提者並不多，紐西蘭僅針對較為觀念性之定義澄清問題，但也多以 APEC 清單為範本。開發中國家只有卡達針對此一議題提出立場文

件，其較為具體的列出能源部門中之兩類產品，希望可以將其列入環境商品之次項目，並進行談判。美國於此一議題中所提出之立場文件的數量居各會員之冠，同身為 OECD 以及 APEC 之會員，美國選擇於 CTE 所提之立場文件中鼓勵會員採用 APEC 清單作為討論之出發點，頗值得注意的是日本與歐盟對於此一議題目前並沒有提出任何之立場文件。日本在非農產品市場進入之提案中加入一份環境商品的名單，並於 2002 年 11 月提交至 NGMA 以及 CTESS，該份清單中包括 OECD 以及 APEC 清單中多數之產品，另外再加上 30 項產品。歐盟目前似乎尚未特別表明其較為偏好使用 OECD 或 APEC 之清單，或準備自行提出一份清單。雖然美國於 2003 年 7 月針對環境商品之實質談判提出一非常具體的談判模式，希望透過「核心清單」與「補充清單」之分類，較為具體的推動環境商品之自由化工作，但是由於有關環境商品之關稅與其他障礙之具體談判是由 NGMA 談判小組負責，CTE 並不負責此類談判之進行，其被授權之權責在於環境商品之定義澄清以及談判之監督。因此，有關環境商品之關稅與其他貿易障礙之具體談判，預期 CTE 將較偏向協助者的角色。不過，NGMA 就環境商品之談判，勢必受到各國以及 WTO 對於環境商品之定義以及範圍之影響，因此，CTE 對於環境商品之定義如果可獲得會員之共識，對於 NGMA 推動具體之關稅或其他障礙的談判，也是即為重要。以目的論為出發點，APEC 清單所發展出背景即是以關稅降低為目的，因此，使用 APEC 清單對於協助談判之進行較為有幫助，但是考慮到環境產業之變動性以及環境商品之雙重用途的特性，OECD 較具有分析性且涵蓋較為廣泛之環境商品清單，對於環境商品未來之發展以及自由化提供比較大的空間。目前於 CTE 中，提倡 APEC 清單者似乎較為積極，不過歐盟之態度以及主要開發中國家的態度必須要再加以觀察。

二、就環境服務業而言

目前於 CTE 之文件中，各國或各國際組織所提之文件，多在於觀念之澄清以及強調環境服務業貿易自由化所能帶來之環境與貿易利益，類似於環境商品，環境服務業的定義遭遇到的困難亦頗多，例如環境服務業與產品之互補性、環境服務業與其他服務

業（例如建築業、交通業、法律諮詢等）之關係、環境服務業變動頗為快速之特性等。必須注意的是，「服務業自由化與環境」此一議題，並不等同於「環境服務業」自由化之議題。前者牽涉者較為廣泛，包括各類型之服務業，例如觀光業、交通運輸業等，對於環境所帶來之影響，後者則專門討論一特定類型之服務業：「環境服務業」之自由化議題。杜哈宣言第三十一段第三項所指應為後者。就環境服務業而言，於 CTE 中並就其定義有特別多的討論。如同環境商品，OECD 算是較早開始就環境產業與環境服務業進行研究之國際組織，主要可能因為大多數之環境服務業的提供者多位於 OECD 國家內。不過隨著開發中國家各類公共服務之民營化趨勢，以及各國與國際環境立法管制的強化，預期開發中國家對於環境服務業之需求會增加，而其國內之業者也將隨之增多。有關環境服務業之談判，於分工上主要由「服務業貿易委員會特別會議」負責，CTE 係被賦予就定義與觀念進行討論與澄清之工作，截至目前為止，於 CTE 下尚未有會員特別就環境服務業之定義與範圍此一議題提出較為具體之立場文件，僅有美國於早期（1997 年）提出一份討論環境服務業之貿易自由化與環境的背景文件。於 GATS 之承諾表中，有關環境服務業已有具體之項目被提出：主要為污染處理類與自然資源管理類，於烏拉圭回合談判中約二十多個 OECD 的國家都已針對環境服務業提出自由化之承諾。因此，相對於環境商品，環境服務業於現行之 GATS 承諾表中已有較為具體之項目，因此，似乎目前對於環境服務業之定義與範圍之爭議性較環境商品要來的小。但是，隨著各國環境管制之趨勢由管末控制朝向生命週期管制、經濟工具的使用、國際環境管制手段之多樣化（例如京都機制中的排放權交易、清潔發展機制等）等，環境服務業之市場有極大的發揮空間，而環境服務業之定義以及範圍也將隨者改變。此係值得持續於 CTE 中觀察者。

三、就我國可採行之因應之道而言

可分為身為進口國以及身為出口國兩個層面加以討論。

（一）、就進口國而言

隨著國人環境意識的提升以及我國環境管制架構的日趨完備，國內對於環境商品以及環境服務業的需求增加，如果國內無法提供足夠之產品以及服務，則環境商品與服務業之開放進口對國內環境品質的提升即相當重要。於此，由於環境商品與環境服務業之進口牽涉我國市場的開放問題，於 WTO 之談判架構下，分別由非農產品非農產品市場進入談判小組以及服務業貿易委員會特別會議負責實質的談判工作，建議環保署以及相關的主管機關（例如工業局）可與國內負責參與此兩談判小組之主管機關密切配合，隨時針對國內相關商品以及服務業之需求進行業界、相關主管機關、民眾以及民間團體之調查與瞭解，以反應國內之需求，提供我談判代表於相關之談判小組適度做出市場開放之承諾。此外，有鑑於目前政府，特別是地方政府，仍為環境商品與服務業市場主要的需求者，瞭解相關主管機關對於相關產品以及服務業的採購規範是否符合 WTO 之要求，亦是必須注意的重點之一。

（二）、就出口國而言

就國內已做過之文獻調查中可知，目前我國之環境產業似乎有潛力將相關之環境商品與服務業出口至亞洲的開發中國家，例如東南亞以及中國。因此，除了於相關的談判小組中促請我談判協商代表著力於打開其他開發中國家之市場，環保署也可考慮於 CTE 中就開發中國家之間進行環保商品與服務業之優點略加著墨，例如 UNCTAD 於其專家小組會議中即已提及，開發中國家之間的貿易是未來環境產業的趨勢之一，此外，開發中國家發展較良之中小企業，於環保產業中也逐漸與 OECD 之大型企業開始競爭。考慮到目前開發中國家於 CTE 中少有針對環境商品與服務業提出立場文件之現況，以及少有會員鼓勵開發中國家進行環境產業之貿易自由化，環保署應可考慮與其他主管機關就此一議題研究提出立場文件之可行性以及利弊研究。

第五章　環保標章議題之最新發展

第一節　背景說明

環保標章制度為產品標示制度的一部份，目的在於告知消費者關於產品的資訊，包括產品特性及其對環境的影響，或無關產品特性的 PPM（生產或製造過程）對於自然環境可能造成的負面影響。環保標章制度在國際上並無統一之標準，乃由各國或各區域組織自行決定，其評估標準又依「產品本身特性」或「產品如何製造」而異。

環保標章制度大致上可以分成三種基本類型，第一種為「強制性單一議題環保標章制度」（mandatory single issue environmental labeling programs），意指政府以規範強制要求生產者必須在產品上貼附標示，揭露政府認為有必要告知消費者的環保相關資訊。這種強制性標示制度的目的，可能是為了警告消費者關於產品中含有某些特定的有害物質，或是告知消費者產品在生產製造的過程中，對環境可能造成的正面或負面影響。第二種為「自願性單一議題環保標章制度」（voluntary single issue environmental labeling programs），這種標示制度是由生產者本身，或其他團體以第三人驗證的方式，提供消費者關於該產品有利於環境的特定資訊，如標示產品可在環境中自然分解（biodegradable）。

第三種則為「自願性多數議題環保標章制度」（voluntary multi-issue environmental labeling programs），也是本計畫所討論的重點，這個制度可能由政府、民間，或是雙方共同成立的第三方驗證機構授權生產者在一定期間內貼附環保標章，以彰顯其產品在其生命週期（從搖籃到墳墓，from cradle to grave）中，均無害或有益於環境的特性。在整個自願性環保標章的授予過程中，政府在其中僅扮演經費贊助者或是計畫管理、督導者的角色，且因其不具強制性，廠商可以自行決定否要申請，並接受第三方驗證機構之審查、授證。

第二節　主要國家對於自願性環保標章制度的實踐

一、德國

德國「藍天使」是世界上第一個發展出來的環境標章制度，源自於 1977 年由德國內政部與聯邦環境部提出討論，1978 年時設計完成，1979 年即開始實施，其主要目標為：(1)提供正確環保資訊，指引消費者購買對環境污染較低之產品；(2)鼓勵廠商發展設計及提供真正的環保產品；以及(3)在既有的環保政策上，利用「環保標章」為一市場導向工具，使與政策相輔相成。藍天使在性質上屬於自願性、政府參與之環保標章。任何對環保標章有興趣之團體，都可提出開放申請之產品項目建議案，在研擬規格標準的過程中，對產品生命週期分析（LCA）之每一階段需考量之。

本計畫的執行機構有三，分別為聯邦環境部（Federal Environment Agency，德文簡稱 FEA）、環保標章審查委員會（Environmental Label Jury，德文簡稱 ELJ），以及產品品保及標示協會（Non-profit scientific organization Institute for quality Assurance and Labeling，德文簡稱 RAL）。每年大約有 3～6 項新商品開放接受申請，每項商品之規格標準制定過程大約為 6 至 12 個月，而標章申請之四道程序為：

(1)、FEA 會初步檢視申請案屬於何種產品目錄並將之轉交 ELJ，由 ELJ 決定是否授權作進一步調查。通過後，再由 FEA 做產品生命週期之分析，會對該產品生命週期中之各個階段對於環境之影響，作出評估；

(2)、FEA 將該產品之 LCA 評估報告交給 RAL，由專家小組進一步審議以決定相關之標準及臨界值；然後再將上述之標準及臨界值連同 LCA 評估報告送返 ELJ；

(3)、此時，ELJ 會審核前述二項文件，並決定是否接受、進一步修正或拒絕給予該產品藍天使標章，以證明該產品是屬於環境友善的產品；

(4)、最後，該產品將會在 RAL 的監督管理下取得藍天使標示認證，RAL 並會與該產品之製造商簽訂認證協議。

德國的藍天使由於採取階段性鼓勵策略，並在審核過程中適

度信任廠商所提具之聲明文件，輔以政府強力宣導以及消費者的覺醒與支持，為目前少數推行成功的環保標章制度之一，少有聽見批評。目前藍天使所採用的產品標準不止是依據單一產品特性，而是依據產品的生命週期考量，並且考慮原料的取得與選擇、能源使用效率及對環境無害的廢棄物處理處置等議題。在認證的產品項目方面也不僅限定單一產品，而擴及到整套系統與服務產業。截至 2002 年底，在 90 個產品項目中已經有 780 家廠商的 3700 項產品獲准使用標章。

二、加拿大

加拿大的環保標章制度為 Environmental Choice EcoLogo，起源於 1988 年的加拿大環境保護法，本項工作由 Environment Canada 和 TerraChoice Environmental Service Inc.共同負責，亦即由政府與民間共同管理，產品標準的建置流程如圖 2 所示。

根據 1995 年的資料顯示，本計畫包含 11 種產品領域，有 86 種 Environmental Choice 的 criteria，criteria 大部分是依照產品本身的特色所設計，只有少數的產品標準才會用到 PPM（主要是 LCA）。criteria 原則上三年檢視一次標準，但當有新技術或新產品問世，criteria 就會重新檢視。

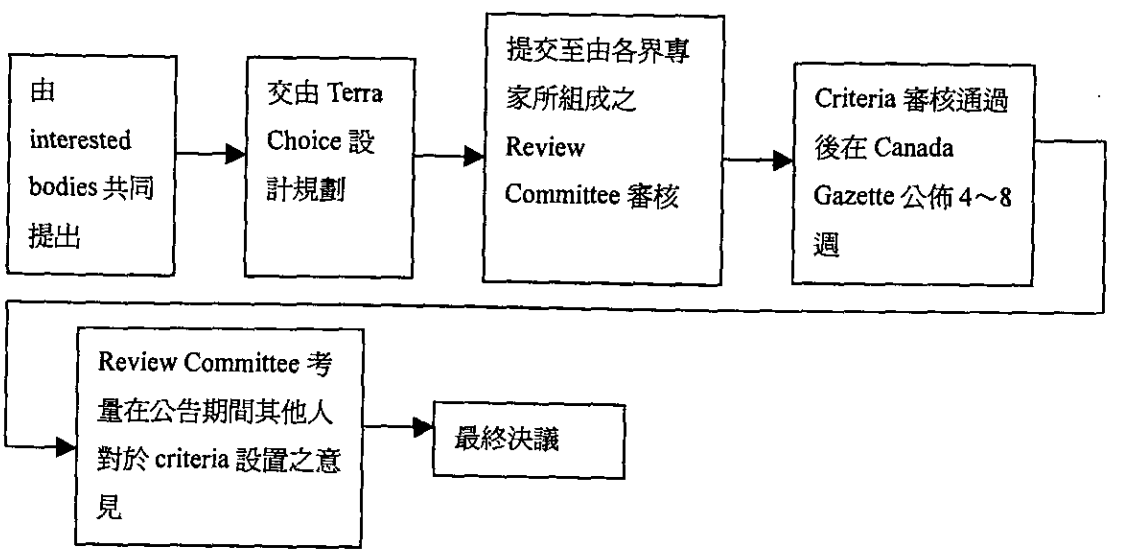

圖 2　加拿大產品環保標準的建置流程

環保標章制度在加拿大的推動情形算是相當成功，民眾對其認同度也頗高，根據 1991 年的調查顯示，80%的加拿大人願意多支付 10%的金額來購買環保產品。加拿大政府認為該國的自願性環保標章制度並不會造成國際障礙，因為其外國事務部從頭到尾都有參與這個計畫，將國際貿易的考量納入制度的設計；如果有國外的產品欲申請本標章，在審核時也是以外國當地的環保法規做為評斷的標準；加上加拿大市場的最大買主—政府，並沒有硬性規定於政府採購時需以獲得環保標章的產品為準，所以對市場並不會造成太大的衝擊；再者，加拿大政府認為，開發中國家輸入加拿大的產品種類，大多不在環保標章的產品領域內，所以該制度對於開發中國家的產品欲銷往加拿大者，並無影響。但其實還是存有潛在的爭議，包括：

(1)、每項產品領域只有前 20%的商品可獲得標章；

(2)、如果一項產品加拿大並沒有相關的環保標章規範，其還是有可能取得標章，如果 TerraChoice 認為該產品比同類產品對環境的衝擊小；

(3)、申請費因產品市場所在地而異；

(4)、提出申請到獲證的時間因產品特性而異；

(5)、年費依貨品銷售量而異；

(6)、如果國外廠商想申請加拿大的環保標章，TerraChoice 原則上會委託當地的技術機構協助檢驗以減少廠商的費用支出；如果被要求需要加拿大的專家去檢驗，TerraChoice 會儘量在行程中多安排幾家工廠一併審驗，以節省費用。

目前並沒有任何國家對於加拿大的環保標章制度提出挑戰，但上述議題仍須加以注意。

三、歐盟

歐盟在 1992 年時設置了歐盟的環保標章制度，以花卉的造型做為標章的樣式，這個標章具有歐洲的代表性（12 朵花瓣代表當初的 12 個歐盟成員國），在制度設計上，兼具選擇性、透明性，並利用多重標準建置而得，在性質上則屬於自願性標章。

每個歐盟成員被分配研擬不同領域產品的環保標準，標準的

擬定由成員國的環保部門、工業部門或是標準局等單位負責。一項產品標準的建置流程如圖 3 所示，一般而言，一項商品的規格標準擬定約需三年的時間才能完成。

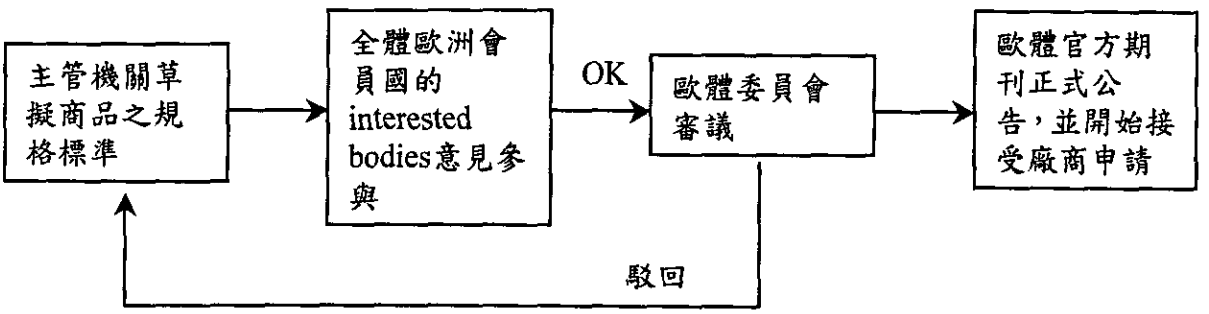

圖 3　歐盟產品環保標準的建置流程

目前歐盟已審議通過 21 類商品[53]，而尚在審核中的有 4 類商品[54]，而列於非耗盡名單上，未來「可能審核的商品」[55]中比較重要的則有電話、影印機、小型家電、冷氣、汽車、DIY 產品等。凡屬於已經公告開放的產品，皆可向該產品製造地、首先上市或輸入當地所屬國家主管機構提出申請。申請廠商將申請書及申請費用寄送所屬主管機構進行審核工作無誤後提送歐盟委員會，30 天後若無異議，主管機構即可與廠商進行使用環保標章之簽約手續；若這 30 天內有會員國提出異議，且在申請案提送歐盟委員會

[53] 包括：各式清潔用品以及使用於衛生設施的清潔用品（all purpose cleaners and cleaners for sanitary facilities）；床墊（Bed mattresses）；影印紙、繪圖紙（Copying and graphic paper）；洗碗機用之清潔劑（Detergents for dishwashers）；洗碗機（Dishwashers）；鞋類（Footwear）；手洗用之洗碗精（Hand dishwashing detergents）；硬地毯（Hard floor coverings）；室內油漆與亮光漆（Indoor paints and varnishes）；洗衣店用之清潔劑（Laundry detergents）；電燈泡（Lightbulbs）；個人電腦（Personal computers）；手提電腦（Portable computers）；電冰箱（Refrigerators，部分規定修正更新中）；土壤改良劑（Soil improvers）；電視機（Televisions）；紡織品（Textile products）；衛生紙（Tissue paper）；洗衣機（Washing machines）；吸塵器（Vacuum cleaners，2003.3 通過）；旅遊服務標準（Tourist accommodation service，2003.5.1 通過）

[54] 包括：家具類製品（Furniture）、影印紙（printed paper）、運動場地服務（camp site service）以及潤滑油（lubricant）

[55] 參考 EUEB 文件「Non-exhaustive list of priority product groups」。

45 天內無法解決，則提交管理委員會作成駁回通知。獲通過使用標章的廠商，在簽約同時需繳交該項申請產品年營業額(以出廠價格計算)之 0.15%作為使用環境標誌年費。

歐盟在 2001 年 11 時將歐盟環保標章規格標準納入採購程序之方式，在使用環保標章規格標準於政府採購邀標書時，有以下注意事項：

(1)、為避免將環保標章規格列為招標產品之技術規格後，卻沒有符合該規格之廠商來投標之現象，可以採用列出兩種以上同等/不同(variant)規格之方式進行。

(2)、將環保標章規格標準列為技術規格時，需注意不可以要求投標產品需具有歐盟環保標章。

(3)、環保標章之規格標準雖然可以列入為邀標書中之產品技術規格，但卻未必能全部作為決標準則。

四、GEN（全球環保標章網路組織）

全球環保標章網路組織於 1994 年成立，會員（目前有 26 個）涵蓋全世界至少四分之三的第一類環保標章執行組織。根據章程，會員組織所推動之計畫，必須符合「自願性、第三者驗證、多重行業、具選擇性（最優良產品），以生命週期為基礎」等條件。換言之，必須符合 ISO 14024 對第一類環保標章的定義。

在過去幾年，對於各國自願性環保標章制度的建置，GEN 已完成的工作包括：

(1)、發展出相互承認的模式，部分會員間簽署了相互承認的協議；

(2)、已開發多項共同性核心規格標準或一致性規格標準。如為前者，意指各計畫得於共同性要求事項之外，另依其當地之生態系統敏感性，氣候條件或文化理由，適度增加其他要求事項。如為後者，則在廠商申請階段及規格標準的要求事項均無二致；

(3)、採納 ISO 14024 標準為「良好操作規範（Code of Good Practice）」，並由會員自行完成對 ISO 14024 標準之符合度調查，而大多數會員都自認符合該標準中所揭示的「原則」部份；

(4)、為開發中國家或發展中的標章組織提供技術援助；

另外，GEN 正在探討如何發展並執行一個「全球調和之標章體系」(International Coordinated Ecolabelling System)。其基本概念為將現有之相互承認體系擴充至所有的 GEN 會員。此議題已於 2001/2002 年的年會中提出，並指定由董事會深入探討、撰寫報告並提送 2003 年全體會員大會中討論。

第三節　WTO 對自願性環保標章之立場

一、秘書處提案

雖然有會員國在 CTE 或 TBT 委員會中發表聲明，認為環保標章可能涉及到 TBT 協定的違反，但基本上 WTO 尚未做出決議認為各地的環保標章計畫需符合 TBT 的規定，而覺得環保標章制度在現今的國際貿易領域中，仍是可行的環境保護工具之一。但針對各方的意見，秘書處在 2000 年 6 月時提出 WT/CTE/W/150 文件，彙整一些團體所做的研究報告，分成三部分討論，分別是環保標章在北美自由貿易協定（North American Free Trade Agreement，簡稱 NAFTA）所扮演的功能、環保標章對橫跨大西洋的貿易情事以及對消費者利益的影響，以及德國環保標章計畫。

（一）、環保標章在北美自由貿易協定所扮演的功能[56]

由於對環保亦題的重視，在美國、加拿大與墨西哥，環保標章在市場上的功能愈被彰顯，同時環保的認證與綠色採購計畫的適用範圍亦逐漸擴大。加拿大的環保標章計畫比較具有影響力，在執行上也比較積極，像是東京議定書中的「節約能源」與「綠建築」等 green power 的議題，就反應在標章標準的建置，敦促廠商積極設法減少溫室氣體的排放，或從事排放額度之交易。而相較於加拿大環保標章制度的成功推廣與應用，美國因其標籤種類過多[57]，所以在市場上如法形成主宰的力量。至於墨西哥，環保標

[56] 摘錄整理自 Communications Department of the CEC, Quebec 於 1999 年所出版的文件。

[57] 至少有 25 種重要的環境標示（包括自願性與強制性），涵蓋了 310 種不同的產品。自願性

章計畫仍在推動進行中，如前有的產品項目包括回收紙與電子儀器設備。

因為 NAFTA 推動綠色採購政策（green procurement），研究指出這項政策對於取得環保標籤的產品在銷售上極為有利，因此有人質疑環保標章可能會造成 NAFTA 國家間的貿易障礙。不過也有人認為，如果 NAFTA 各成員國將環保標章評鑑的項目與方法做調和，反而有助於成員國間彼此的貿易交流，並能減少消費者困擾，發揮更大效用。

（二）、環保標章對橫跨大西洋的貿易情事以及對消費者利益的影響[58]

消費者國際（Consumers International）對於環保標章的看法是，目前大部分的環保標章計畫屬於 ISO 中的 Type I 形式[59]，發展上傾向成為單一國之標準，少有地區性或國際性，這是因為每個國家對於環保的關切重點不同，加上許多屬於 Type I 的標章計畫事由私部門操作，在計畫的推行上也比較不會提高到國家的層次。因此，其認為環保標章不應被視作貿易議題，否則對於環保標章做為環境保護的工具在成效而言反而是不利的；除此，消費者國際覺得因為 WTO 目前在決策時尚缺乏令人信服的環保觀點，所以若將環保標章的規範置於 WTO 貿易規範的架構下做討論，並不適宜。

基本上消費者國際應是比較傾向讓 ISO 成為國際環保標章的整合單位，但其也擔心因為 ISO 在標準制訂的過程對於參與成員的資格有所限制，若交由 ISO 執行，將造成環保團體與消費者團體無法參與標準制訂的窘境。因此，最後其建議以雙邊相互認證的方式推行環保標章計畫，並先從比較常消費使用的物品著手，如此，對於環保標章所欲從事環境保護的效果才會比較顯著。

的重要標示如「能源之星」，強制性的重要標示如「電池標籤（Battery Labeling）」。

[58] 摘錄整理自 Consumers International's Office for Developed and Transition Economies（簡稱 Consumers International），*London* 於 1999 年所出版的文件。Consumers International 爲一非政府組織（NGO），設立於 1960 年，成員由 112 個以開發或開發中國家的 260 個消費者團體組成。

[59] 以預先設定之產品規格標準，並經過第三者驗証，選擇對環境產生不利衝擊較的產品，頒發專用之商標。其 criteria 的建置會考量產品的生命週期。

（三）、德國環保標章計畫[60]

主要探討三個產品領域的進口與產品實際獲得環保標章的情形，分三個領域，分別是皮革與製鞋業、紡織與服飾業，以及木材與家具業。文中強調德國目前這三類製品的原料多從其他國家進口，但其中獲得藍天使標章的比例卻很少，因為外國廠商要符合德國的環保要求，尤其是回收的部分，並不容易，但是未來這些產品還是有可能必須取得環保標章，才方便進入德國的市場。

另外，本文的另一個重點在於應該幫助這些以出口為導向的開發中國家，儘早投入環境保護的潮流中，可以操作的方式包括提供環保與公平貿易的資訊，加強製造商、經銷商、工業團體與政府單位間的相互聯繫，甚至可以舉辦雙邊的研討會，促進已開發國家與開發中國家對於環境與貿易議題的看法的交流。

秘書處對於上述報告並沒有提出任何見解或是評論，但在文件末將各國的標章制度列表整理，這部分內容比較重要在於該制度是否已使用於政府採購中。該表統計資料顯示，目前只有美國的「Greening the Government」與「The Green Pages」已使用在政府採購中；已使用但項目不特定者有奧地利的「Austrian Eco-Label」以及新加坡的「Green Label Singapore」；置於納入政府採購規範，但不見得是強制規定者則有北歐的黑天鵝、德國的藍天使、美國的能源之星以及台灣的環保標章制度。各國環境標示方案彙整表如表 6 所示。

二、歐盟立場文件

去年六月歐盟在 TBT 以及 CTE 委員會中提出文件 WT/CTE/W/212 之聲明，希望用非耗盡（non-exhaustive）的原則來討論與貿易相關的標章問題，認為在 WTO 中除了會員國間資訊的交流、相關工作架構的檢驗，並考慮委員會是否應建置指導方針供會員國參考（因各國對於環保標章制度的設計不同），並應定期檢視以減少在貿易上可能產生的衝突。

該份文件除了建議委員會有必要對於那些屬於強制性的環保標章制度做檢查，歐盟也建議對於自願性的環保標章制度，TBT

[60] 摘錄整理自 United Nations Conference on Trade and Development（簡稱 UNCTAD）,Environment and Development, Geneva 於 1999 年所出版的文件。

委員會也應該審視其制度的有效性與透明性的問題，是否符合良好操作規範的規則，以及是否也間接造成不必要的貿易障礙。

對於開發中國家，則應協助其符合環保標章制度的要求（如透過技術移轉、經費提供訓練等），也可邀請其共同參與國際標準的設計，讓開發中國家能正確使用這些國際規定並從中獲取利益。

於今年 3 月，歐盟再次於 CTE 中提出 WT/CTE/W/225 文件討論「為了環境目的的標示」議題，主要目的希望釐清是否商品不論有無標示都不影響其對市場的進入。歐盟認為雖然標示（Label）是一種典型的環境措施，而多數環保標章計畫是市場自行發展出的機制，是回應對消費者的要求，但 WTO 還是有必要對「環保標章」加以檢視其正面與負面之效果，另外，歐盟並強調雖然之前主張 WTO 也應關注自願性環保標章的問題，但 WTO 還是應先檢視強制性的環保標章規定，其次才是討論自願性的部分。在該份聲明中，歐盟表示環保標章不應對消費者產生誤導的資訊（如永續生產、永續消費），也不應被視為造成貿易障礙的工具。

在眾多環保標章中，歐盟針對以生命週期分析（Life Cycle Analysis,簡稱 LCA）為原則的自願性環保標章提出討論。歐盟強調其並非重提 TBT 協定或是試圖在 CTE 中討論製程與生產方法（PPMs），而是希望在 WTO 現有的規則下討論自願性環保標章的議題。歐盟的重點在：

（一）、為「以生命週期分析為原則的自願性環保標章」取得正當性

歐盟希望取得採行相同環保標章措施成員國之承認，認為採行這樣的制度符合 WTO 協定之權利與義務。並希望聽取其他成員國的意見，看是否都同意其提案，或是有其他反對的聲浪。

表 6　各國環境標示方案彙整表

國家	方案名稱	類別	強制/自願	標示類型	方案類型	政府/非政府	生效年限	產品類別項目	授與數量	標準是否經過修正	方案是否經過顯著改變	是否有其他計畫/活動	授權駐在他國的公
已實施的方案													
奧地利	奧地利環保標章	第一類	自願	認可標誌	正面	政府	1991 年	35	150	是	否	否	10
加拿大	加拿大環境選擇	第一類	自願	認可標誌	正面	準政府	1988 年	49	126	是	是	是	10
中國大陸	-	第一類	自願	認可標誌	正面	政府	1994	12	43	未知	否	否	0
克羅埃西亞	克羅埃西亞環境標示	第一類	自願	認可標誌	正面	政府	不明	33	15	未知	未知	未知	未知
捷克	-	第一類	自願	認可標誌	正面	政府	1994	17	198			否	0.41
丹麥	北歐天鵝	第一類	自願	認可標誌	正面	準政府	1989	42	350	是	是	否	20%
歐聯	歐聯環保標章授與方案	第一類/第三類	自願	認可標誌	正面	政府	1992	11	182	是	是	否	N/A
芬蘭	北歐天鵝	第一類	自願	認可標誌	正面	準政府	1989	42	350	是	是	否	20%
法國	NF-環境	第一類	自願	認可標誌	正面	政府	1992	6	>300	否	是	否	0
德國	藍天使	第一類	自願	認可標誌	正面	政府	1977	88	4135	是	否	否	17%
德國	綠點	第一類	自願	單一特質	正面	準政府	1990	7	N/A	是	否	是	未知
冰島	北歐天鵝	第一類	自願	認可標誌	正面	準政府	1989	42	350	是	是	否	20%
印度	環保標誌	第一類	自願	認可標誌	正面	政府	1991	16	1	否	否	否	0

資料來源：WT/CTE/W/150 附錄及國貿局網頁資料

表 6　各國環境標示方案彙整表（續）

國家	方案名稱	類別	強制/自願	標示類型	方案類型	政府/非政府	生效年限	產品類別項目	授與數量	標準是否經過修正	方案是否經過顯著改變	是否有其他計畫/活動	授權駐在他國的公
已實施的方案													
日本	環保標誌	第一類	自願	認可標誌	正面	準政府	1989	69	2031	是	是	是	未知
南韓	環保標誌	第一類	自願	認可標誌	正面	政府	1992	36	219	否	否	未知	未知
盧森堡	歐聯環保標章授與方案	第一類	自願	認可標誌	正面	政府	1992	11	182	是	是	否	N/A
馬來西亞	產品驗證方案	第一類	自願	認可標誌	正面	政府	1996	1	未知	0	否	否	0
荷蘭	Stichting Milieukeur	第一類	自願	認可標誌	正面	準政府	1992	32	86	是	是	否	
紐西蘭	環境選擇	第一類	自願	認可標誌	正面	準政府	1990	17	55	1	是	否	0
挪威	北歐天鵝標示	第一類	自願	認可標誌	正面	準政府	1989	42	350	是	是	否	20%
新加坡	綠色標示新加坡	第一類	自願	認可標誌	正面	政府	1992	21	702	是	否	未知	未知
西班牙	AENOR Medio Ambiente	第一類	自願	認可標誌	正面	非政府	1993	3	14	否	否	否	
瑞典	SIS-北歐天鵝標示	第一類	自願	認可標誌	正面	準政府	1989	42	350	是	是	否	20%
瑞典	良好環境選擇	第一類	自願	認可標誌	正面	非政府	1990	17	1139	是	否	未知	未知

資料來源：WT/CTE/W/150 附錄及國貿局網頁資料

表 6　各國環境標示方案彙整表（續）

國家	方案名稱	類別	強制/自願	標示類型	方案類型	政府/非政府	生效年限	產品類別項目	授與數量	標準是否經過修正	方案是否經過顯著改變	是否有其他計畫/活動	授權駐在他國的公
已實施的方案													
台灣	綠色標章台灣	第一類	自願	認可標誌	正面	非政府	1992	35	102	是	是	否	4
泰國	泰國綠色標示方案	第一類	自願	認可標誌	正面	準政府	1993	6	0	0		是	否
英國	歐聯環保標章方案	第一類	自願	認可標誌	正面	政府	1992	11	182	是	是	否	N/A
美國	電池標示	N/A	強制	資訊揭露	中性	政府	1996	3	N/A	N/A	否	否	N/A
美國	無氯產品協會	第一類	自願	認可標誌	正面	非政府	1997	2	2	0	否	是	未知
美國	環保 O.K.	第一類	自願	認可標誌	正面	非政府	1987	5	約 10	0	否	是	?
美國	Ecotel	第一類	自願	認可標誌	正面	非政府	1994	1	34	未知	否	是	是
美國	能源指引	第三類	強制	通報卡	中性	政府	1975	19	N/A	N/A	是	否	N/A
美國	能源之星	限制部份特質標誌	自願	認可標誌	正面	政府	1992	26		是	是	是	0
美國	省能資訊計畫	第三類	強制	通報卡	中性	政府	1975	1	N/A	N/A	是	否	N/A
美國	綠色標誌	第一類	自願	認可標誌	正面	私人非營利	1989	88	300	是	是	是	5

資料來源：WT/CTE/W/150 附錄及國貿局網頁資料

表 6　各國環境標示方案彙整表（續）

國家	方案名稱	類別	強制/自願	標示類型	方案類型	政府/非政府	生效年限	產品類別項目	授與數量	標準是否經過修正	方案是否經過顯著改變	是否有其他計畫/活動	授權駐在他國的公
已實施的方案													
美國	破壞臭氧物質		強制	有害	負面	政府	1990	未定義	N/A	N/A	是	否	N/A
美國	殺蟲劑計畫(FIFRA)		強制	有害	負面	政府	1947		N/A			否	否
美國	65 提案	其他	強制	有害	負面	政府	1986	未定義	N/A	N/A	否	否	N/A
美國	SCS 宣告驗證	第二類/多樣	自願	認可標誌	中性	非政府	1991	4	2000	是	否	是	是
美國	SCS 生態剖析	第三類	自願	通報卡	中性	非政府	1989	全部	未知	是	是	是	是
美國	SCS 森林	第一類	自願	認可標誌	正面	非政府	1991	2	50	是	是	是	是
美國	SCS-NutriClean	第一類	自願	單一特質	正面	非政府	1984	1	400	否	否	是	是
美國	智慧木材計畫		自願										
美國	TSCA		強制	有害	負面	政府	1976					否	否
美國	Vermont		強制	有害	負面	政府	1991	35	N/A	否	是	是	N/A
美國	WAVE	第一類	自願	認可標誌	正面	政府	1992	1	750	0	否	是	否
美國	政府綠化	購買指南	N/A	購買指南	中性	政府	1993	N/A	N/A	N/A	N/A	N/A	N/A

資料來源：WT/CTE/W/150 附錄及國貿局網頁資料

表 6　各國環境標示方案彙整表（續）

國家	方案名稱	類別	強制/自願	標示類型	方案類型	政府/非政府	生效年限	產品類別項目	授與數量	標準是否經過修正	方案是否經過顯著改變	是否有其他計畫/活動	授權駐在他國的公
已實施的方案													
美國	綠冊	購買指南	N/A	購買指南	中性	政府	1993	N/A	N/A	N/A	N/A	N/A	N/A
美國	美國環保署建築塗料揮發性有機氣體排放標準	N/A	強制	資訊揭露	負面	政府	1998	50	N/A	否	否	否	N/A
發展中的方案													
巴西	ABNT-環境品質	第一類	自願	認可標誌	正面	準政府	1993	2	發展中	發展中	發展中	?	發展中
美國	消費者標示	發展中	發展中	發展中	發展中	發展中	發展中	發展中	發展中	發展中	發展中	發展中	發展中
美國	電力設施標示	發展中	發展中	發展中	發展中	發展中	發展中	發展中	發展中	發展中	發展中	發展中	發展中
美國	小型火星點火引擎	發展中	自願	認可標誌	正面	政府	發展中	發展中	發展中	發展中	發展中	發展中	發展中
芬蘭	第三類	第三類		通報卡	中性	政府							

資料來源：WT/CTE/W/150 附錄及國貿局網頁資料

表 6　各國環境標示方案彙整表（續）

國家	方案名稱	類別	強制/自願	標示類型	方案類型	政府/非政府	生效年限	產品類別項目	授與數量	標準是否經過修正	方案是否經過顯著改變	是否有其他計畫/活動	授權駐在他國的公
發展中的方案													
印尼	BAPEDAL	第一類	自願	認可標誌	正面	政府	1995-迄今？	發展中	發展中	發展中	發展中	發展中	發展中
印尼	貿易部	第一類	自願	認可標誌	正面	政府	未知	發展中	發展中	發展中	發展中	發展中	發展中
印尼	環保標章工作小組	第一類	自願	認可標誌	正面	非政府	1994	1	發展中	發展中	發展中	未知	未知
德國	第三類	第三類		通報卡	中性		尚未發展						
香港	環保標章						尚未發展						
尚未運作													
澳大利亞	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
美國	OAQPS 標示/CA 計畫	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
阿根廷	-		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
智利	-		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
未提供資訊													
希臘													

資料來源：WT/CTE/W/150 附錄及國貿局網頁資料

表 6　各國環境標示方案彙整表（續）

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發展中的方案													
義大利													
紐西蘭	98 計畫-食品標示												
美國	企鵝												
瑞典	瑞典的第三類												
德國	藍天使綠色護照-私人												

資料來源：WT/CTE/W/150 附錄及國貿局網頁資料

（二）、對改進「以生命週期分析為原則的自願性環保標章」制度的後續發展進行監督

鼓勵以採用生命週期分析為原則的自願性環保標章需符合TBT的良好作業規約（Code of Good Practice），並置於CTE下定期檢視其實踐的情形；另外，需確保開發中國家對於新制度擬定時的參與以及既有制度規則修正時的通知。

（三）、改善對開發中國家的技術支援情形

歐盟提出幾點建議，如重新考量對開發中國家的收費標準、對於規模小的產品出口商與開發中國家的贊助。

歐盟的觀點僅獲得瑞士的支持，成員國對於歐盟的提案有許多質疑，多數國家更認為環保標章的議題應由TBT委員會處理。針對歐盟將環保標章的建置焦點放在LCA，許多國家不以為然，認為也可以採用其他的方式；雖然歐盟辯稱這符合國際標準（因為ISO採之），智利則抨擊既然如此，WTO討論此議題又有何實益？整體而言，反對者多為開發中國家，包括國內亦有自願性環保標章制度者，他們擔心歐盟的作法根本就是將自願性環保標章定位成強制性的標章體系，造成貿易上的模糊空間。

加拿大的立場則較為中性，支持歐盟對開發中國家給予支援的提案，不過建議應先考慮是否已有其他的國際機構在進行類似的工作，避免資源的浪費；也同意應減少對小廠商在申請及取得環保標章時的各項費用支出。對於自願性環保標章制度的建置，加拿大也提出看法，認為不應減少對其透明度之要求，即便是自願性的環保標章，也應以開放的方式讓開發中或已開發國家的專家共同參與，並配合國際標準的引入。

不過，加拿大質疑歐盟希望將自願性環保標章制度納入CTE中檢驗的可行性，因為大部分的自願性環保標章計畫是由非政府組織所主導，WTO應以什麼樣的立場介入？另外，對於環保標章，加拿大希望能夠對「自願性環保標章」與為了「永續資源管理目的」的標章計畫加以區別，加拿大認為這兩者的目的與作法是不同的，不能混為一談；由於加拿大是天然資源出口國，因此其特別關注後者在國際間的發展趨勢，特別是在林業與漁業標籤的部分。

另外，歐盟也於本年7月7日在瑞士日內瓦所舉行的CTE第三次例會中提出Job(03)/130提案，在本提案中再度提出環保標章

之議題，歐盟認為在2004年以前應召開三次的專門會議(dedicated sessions)來討論建構在LCA的自願性環保標章計畫(含政府主導或非政府主導)；而在這三次專門會議中，應對以下議題加以注意：

(1)、了解現存的自願性環保標章計畫對於開發中國家的對環境友善之產品（取得環保標章的廠商），在貿易上是否有助益。

(2)、對開發中國家加強環保標章的資訊交流與相關活動的支援，CTE 應提供技術協助開發中國家設計其環保標章制度，並引入國際標準程序。另外，在技術支援時，應考慮產品進口地區對於環保標章之要求。

(3)、CTE 對於現存的或未來新增的環保標章計畫應檢視其透明性，並應考慮如何確保環保標章計畫並不帶有保護色彩、不具歧視性、制訂過程是透明的、可參與的，並且是以ISO14024為設計基準。

(4)、學習如何建立不同環保標章計畫間之相互承認機制。

最後，歐盟認為就強制性的環保標章計畫，在非歧視的原則下也一應一併討論。

大部分發言會員，包括菲律賓、澳洲、巴西、中國、香港、美國、日本、印尼、馬來西亞、印度、韓國、埃及、阿根廷、墨西哥等均持較為負面之意見，認為歐盟之書面提案分送過慢、不應與TBT委員會之工作重複、隱含讓產品週期分析取得合法性、三次會議太多、不應加重本委員會之工作等；加拿大、瑞士、波蘭及塞浦路斯等則支持歐盟之提議。歐盟最後對於各國之質疑提出說明，並承認書面提議分送太慢，各會員或仍需時間思考，願意再與相關會員溝通，亦盼會員能以開放之態度優予考量。

另外，參考國貿局之「我國出席WTO貿易與環境委員會例會及特別會議報告」，報告內容顯示除上述四點，歐盟之其他建議如下：

(1)、進一步研議如何改進此制度（生命週期之自願性環境標章制度，voluntary labels based on the life-cycle approach (LCA)），並考量TBT協定之良好操作規範(Code of Good Practice)及是否就既有與新的標章制度進行通知；

(2)、改進對開發中國家之技術協助，包括：降低開發中國家取得使用標章之費用、提供較小出口商與開發中國家運用此

制度之資金、支持「全球環保標章組織（GEN）」等國際組織推動開發中國家使用此制度之相關計畫等。

在7月7、8日兩日間，歐盟曾邀請我國、美國、加拿大、日本、瑞士等二十二個會員國，召開兩次非正式會議就其提案提出討論。大部分與會之會員表示環保標章應避免提及 LCA，加拿大亦反對僅列入 LCA；智利等美洲會員則對歐盟一直不理會彼等之意見深表遺憾，認為歐盟應更直截了當地明白說明其用意。

歐盟最後表示，將於未來幾個月繼續利用非正式模式與相關會員進行溝通。從各國立場的表達中我們可以發現，反對歐盟提案者大多為開發中國家，可見其對於環保標章制度被後所可能隱藏的貿易障礙，仍存有疑慮。

三、瑞士立場文件

瑞士於 2002 年 10 月 14 日提出 WT/CTE/W/219 文件，表達其對於環保標章議題之看法，並向 CTE 提出多點建議，做為未來執行時的參考。

瑞士以為依照烏拉圭回合的決議，CTE 應負責調和環境政策與國際貿易間所可能引發之衝突，處理多邊貿易體系中與環境相關的商品的貿易問題，如標準與技術法規、包裝、標章以及回收。而在杜哈部長會議也指示 CTE 對於環保目的所要求的標章(標誌)問題應特別注意，但瑞士認為 CTE 並未扮演好其應盡的角色，有關環保標章的問題，CTE 並沒有建立規範或是設計爭端解決機制，一些關於環保標章的爭論，在 WTO 反而多由技術性貿易障礙委員會（以下簡稱 TBT）所主導、討論，CTE 並沒有參與實際的運作，所以其主張 CTE 也應對環保標章之議題加以討論。

而關於環保標章的處理，瑞士主張不能增加或減少 WTO 會員國的權利和義務，特別是在動植物檢疫措施協定上。而在確定環保標章的定義時，自願性的環保標章制度也應一併納入討論；此外，環保標章對貿易趨勢是否會造成影響需加以考量，並鑑別與分析與貿易相關的環保標章議題。瑞士對於環保標章的關切重點在於：

(1)、認為關於標章的處理，尤其是動植物檢疫措施協定，應該跟多邊貿易體系一樣，採取開放的、非差別待遇的的態度，

不能增加或減少 WTO 會員國的權利和義務。

(2)、雖然 OECD 在 1997 年的調查報告指出環保標章對貿易趨勢並沒有顯著的證據證明會產生影響，但許多國家仍存有疑慮，特別是以出口為導向的開發中國家，所以必須對此議題加以考量。

(3)、各國環保標章的標準不同，應藉由標準的調和、相互承認等措施，減低貿易緊張情勢。

(4)、把環保標章做為促進永續發展的手段。

而在 WTO 貿易架構下，瑞士對環保標章執行方式之建議有：

(1)、CTE 應依照 Doha 宣言執行相關工作

瑞士認為 CET 應儘快著手與標章相關的工作，開始進行一些環境標章的討論，部分工作也可考慮和 TBT 委員會共同執行。另外，CTE 應在 WTO 的討論會中提出與標章相關的討論，並要求秘書處更新報告。

(2)、確定環保標章之定義

對環保標章的定義，瑞士認為應根據 1998 年 WT/CTE/W/79 文件紀錄，秘書長提出的由 UNEP 對環保標章所下的的定義：「所謂的環保標章，是一種提供消費者了解該項商品與其他同領域的產品相比，對環境較為友善的訊息。」而這個說法也是 ISO 系統所採納的。

其次，在 WTO 架構下所要討論的環保標章制度，究竟指的是自願性的標章制度系統，抑或強制性的環保標章系統。瑞士認為由於在杜哈宣言中提到 CTE 要處理的是與環保目的要求的標章問題（labelling requirements for environmental purposes），所以未來 CTE 在討論本問題時，應將自願性的環保標章制度一併納入討論。

(3)、鑑別與分析與貿易相關的環保標章議題

瑞士建議 TBT 委員會出版與標章相關的刊物，會員可提供經驗，或是委員會做出一些指示，提供會員國做為處理相關貿易議題時的參考；另外，瑞士希望其他會員國在提案討論時，多舉一些能促進貿易的例子做討論（如：合作栽種有機棉花）。

(4)、討論並決議應採行之措施

當環保標章制度對貿易產生影響時，應檢視其是否與

WTO 相關的貿易規範發生衝突，CTE 應儘速依照杜哈宣言的指示行動，分析的重點在於是否有歧視？制度的透明度？以及公平性等問題。

最後，瑞士提到由於各國環保標章的標準不同，應藉由標準的調和、相互承認等措施，減低貿易緊張情勢。

其實，瑞士對於環保標章制度也存有一些負面的看法，其中一點是許多現存的環保標章制度，多以 LCA 做為評估方法，由於牽涉到產品的生產製造過程，而各國的環保標準又不一致，不同的環保標章制度，可能就會產生衝突與矛盾。另一點的想法則比較特別，其認為如果依照環保標章制度所設定的條件，一項產品領域中只有少部分產品能取得環保標章，而且通常是該領域中所謂對環境最友善者，同時也是產量最大者如再生紙。這會產生什麼現象？環保標章就不再只是在眾多商品中，提供民眾做選擇的一種參考，而是實質上形了成產品標準，這樣可能會導致貿易障礙，當產品與貿易具有高度相關時，環保標章會變成阻撓國外產品因不符合標章所設定的條件，而無法進入本國市場的一種工具或手段，這對開發中國家的出口產生十分不利。這樣的想法可能建構於獲得環保標章的產品會在市場中造成排擠效應，可能對開發中國家的商品造成打擊。

第四節　我國環保標章制度推動辦理情形

在我國，環保標章制度具有公辦民營的性質，由環保署委託民間機構代為推動執行，並自八十一年起訂頒「行政院環境保護署環保標章推動使用作業要點」以及「行政院環境保護署環保標章審議委員會設置要點」，做為建立並推動我國之環保標章制度的依據。我國的環保標章制度類似加拿大的模式，環保署推動使用環保標章係於環保署之下以任務編組方式設置環保標章審議委員會，目前成員共十三人，其中民間環保團體代表二人，經濟部商檢局、中標局、工業局各一人，公平會一人，外貿協會一人，工業總會代表一人，專家學者二人，環保署代表三人，由副署長擔任召集人，負責環保標章申請案之審議工作；另由環保署以委辦方式委由公益法人為執行單位，受理廠商申請使用環保標章及初步審核等事項，並將申請案件之處理情形及初審建議，送請環保標章審議委員會審議，俟通過後，再由環保署通知執行單位與廠商簽訂使用契約，並由環保署發給環保標章使用證書。一般而言，申請至審查通過亦至少須 2~3 個月。

目前我國的環保標章計畫的執行單位為財團法人環境與發展基金會，其負責的工作項目有：

1、研擬指定產品符合使用環保標章應具備之條件或規格標準。
2、受理使用環保標章之申請及核轉。
3、審核申請廠商資格。
4、生產作業現場實地評核。
5、產品之抽查及檢驗。
6、標章授與使用及停止之建議。
7、辦理與廠商簽約、終止契約及追蹤管理等作業。
8、辦理核發環保標章使用證書。
9、受理廠商申請環保標章使用證書之補發及換發。
10、其他有關事宜。

我國的環保標章制度為自願性者，即由廠商自動自發來申請，對不申請者亦不處罰；又為兼顧環保標章規格標準須視環境品質要求，適時加以檢討，因此亦規定獲准使用環保標章之產品，每兩年須再提出申請，經審核通過始得繼續使用。截至 92 年 12

月3日，今年環保標章的使用枚數約3億8仟9百萬枚，從開辦至今，環保標章的使用枚數約33億3仟1百萬枚；我國環保標章規格標準種類與產品項目如表7所示。

廠商申請使用環保標章所需之條件為：

1、申請日前一年內，未曾受到各級環境保護機關按日連續處罰、停工、停業、勒令歇業、撤銷許可證或移送刑罰等處分。
2、於原料取得、生產、使用、銷售或廢棄物回收、清除、處理過程中減廢績效優良、對環境污染程度之降低著有成效或使用時可節省能源、資源者。
3、產品符合環保署核定之規格標準。如該項產品項目已訂有國家標準，並應符合國家標準。
4、品質及安全性符合相關法規規定。

進口產品之廠商如欲申請我國的環保標章，需檢具自行宣告並符合ISO/IEC Guide 28及CNS13249之第三者驗證之產品環保特性證明文件，並檢具該產品生產國之有關機關出具申請日前一年內無重大污染紀錄之證明文件，依本要點之規定申請使用環保標章，得不受「環保標章推動使用作業要點」要點八(一)之限制[61]。

我國環保標章制度，自民國82年起推動至今，共計已開放80項環保標章產品規格標準，環保標章產品規格項目如表2所示。惟參考「環保標章推動使用作業要點」，並未提及產品規格標準的訂定方式與流程，僅提到：(1)環保標章產品規格標準之修正，至少須於實施前六個月公告，並由執行單位通知已依修正前規格標準取得環保標章使用證書之廠商，應自公告日起至新規格標準實施日之期間內，補送符合新規格標準之產品證明文件，轉陳審議委員會審核通過後，始得於新規格標準實施後繼續使用環保標章；(2)於新規格標準公告日至其實施日止之期間內，申請使用環保標章，或依第十七點規定申請繼續使用環保標章者，應依新規格標準予以審查；(3)環保標章產品規格標準已不合第一點所定之環保理念，而有必要廢止者，須於廢止前六個月公告，並自公告日起不再接受廠商申請。我國環保標章規格標準的制訂方式未來在推動國際間相互認證是否會遭受挑戰，可能必須注意。

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[61] 該點條文內容為：廠商於申請日前一年內，未曾受到各級環境保護機關按日連續處罰、停工、停業、勒令歇業、撤銷許可證或移送刑罰等處分。

最後，關於我國推動政府綠色採購政策，係參照政府採購法第 96 條之規定，由行政院公共工程委員會會銜行政院環境保護署公布「機關優先採購環境保護產品辦法」及「機關綠色採購推動方案」，做為政府綠色採購實施的依據，並訂定民國 90 年為宣導鼓勵期，綠色採購目標比率定為百分之卅；民國 91 年起正式實施，目標值提高為分之五十，採購項目之範圍則逐年檢討，推動機關包括行政院暨所屬各部會行處局署、台北市政府、高雄市政府及各縣市政府等。最新統計資料顯示，政府機關 91 年度綠色採購總金額高達 26.5 億元，就指定採購項目而言，環保產品平均採購比例為 65.6%，超過行政院核定目標 50%，而 92 年度的採購金額，行政院希望夠成長一倍，達到新台幣 50 億元的目標。[62]對於環保標章對我國綠色採購政策是否會造成經濟上的影響，應加以注意。

[62] 「九十一年度機關綠色採購績效成果公布」，環保標章簡訊第 31 期(中華民國 92 年 3 月 31 號發行)

表 7　我國環保標章規格標準種類與產品項目

規格編號	規格標準名稱	產品相關標示	相關產品
1	塑橡膠再生品	100%塑橡膠再生	17
2	使用回收紙之辦公室自動化(OA)用紙	△△%回收紙及節省森林資源	6
3	使用回收紙之衛生用紙	△△%回收紙及節省森林資源	6
4	使用再生紙之紙製文具及書寫用紙	△△%回收紙及節省森林資源	53
5	使用回收紙之包裝用品	△△%回收紙及節省森林資源	19
6	卜特蘭高爐水泥	△△%重之高爐爐石熟料粉資源再生	2
7	建築用隔熱材料	節省能源	8
8	無汞電池	無汞及鎘污染	8
9	使用太陽能電池之產品	利用太陽能資源	0
10	布尿片	可重複使用的尿片	0
11	水性塗料	低污染塗料	16
12	回收木材再生品	△△%回收木材及節省森林資源	6
13	使用氟氯碳化合物替代品CFCs之產品(停用)	保護臭氧層	-
14	留置式拉環之飲料罐(停用)	瓶蓋設計減低污染	-
15	重填物之包裝或容器	容器之再利用	5
16	一段式省水馬桶(停用)	節省水資源	-
17	電腦主機	節省能源及減少臭氧層破壞	63
18	監視器	節省能源及減少臭氧層破壞	49
19	列印機	節省能源及減少臭氧層破壞	65
20	可重複使用之購物袋	可重複使用	1
21	電動機車	省能源、低污染	0
22	省能源精緻型螢光燈(CFL)	節省能源	0
23	洗衣機	節水及低耗能	10
24	洗衣清潔劑	高生物分解度	10
25	洗碗精	高生物分解度	5
26	無漂白毛巾(停用)	無漂白	-

註：本表整理自環保署環保標章資訊網站

表 7　我國環保標章規格標準種類與產品項目（續）

規格編號	規格標準名稱	產品相關標示	相關產品
27	二段式省水馬桶	節省水資源	106
28	家用電冰箱	省能源及減少臭氧層破壞	40
29	家用冷氣機	省能源、低噪音	171
30	使用可分解塑膠之農業用資材	使用可分解之塑膠	5
31	使用可分解塑膠之包裝材	使用可分解之塑膠	4
32	使用可分解塑膠之衛生器材	使用可分解之塑膠	0
33	使用可分解塑膠之消費性產品	使用可分解之塑膠	1
34	非石綿之摩擦材料	非石綿產品	0
35	堆肥	有機資材再利用	5
36	資源化磚類建材	資源再利用	17
37	修正帶	低污染之修正帶	0
38	螢光燈啟動器	延長燈管壽命,減少廢棄物	4
39	可置換刷頭之牙刷(停用)	刷頭可置換、減少廢棄物	-
40	省水龍頭及其器材配件	節省水資源	2
41	馬桶水箱用二段式省水器	節省水資源	0
42	螢光燈管	節省能源及減少汞污染	4
43	回收玻璃容器再生品	△△%玻璃再生品	14
44	回收再生紡織品及其製品	△△%再生紡織品	8
45	黑白影印機	低污染及省能源	54
46	電腦滑鼠	使用△△%回收塑膠及減少臭氧層破壞	0
47	電腦鍵盤	使用△△%回收塑膠及減少臭氧層破壞	0
48	除濕機	省能源	8
49	普通紙傳真機	省能源	10
50	印表機回收再利用碳粉匣	減少廢棄物	246
51	屋外即熱式燃氣熱水器	節省能源	0
52	家用微波爐	省能源	8
53	洗髮精	高生物分解度	0
54	自然循環式太陽能熱水器	節省能源	2

註：本表整理自環保署環保標章資訊網站

表 7　我國環保標章規格標準種類與產品項目（續）

規格編號	規格標準名稱	產品相關標示	相關產品
55	木製傢俱	省資源、低污染	5
56	衛浴廚房清潔劑	高生物分解度	2
57	墨水筆	低污染	0
58	鉛筆	低污染	0
59	筆記型電腦	節省能源	7
60	電視機	低污染及省能源	0
61	使用農業資源之產品	資源再利用	2
62	地板清潔劑	高生物分解度	1
63	木製玩具	省資源、低污染	0
64	充電電池	低污染及減少廢棄物	0
65	回收 PET 服飾紡織品	△△%回收 PET 服飾紡織品	0
66	桌上型個人電腦	節省能源及減少臭氧層破壞	0
67	生物可分解潤滑油	高生物分解度	0
68	肌膚清潔劑	生物分解度高於 90%	6
69	手持式頭髮吹風機	低污染	0
70	電熱式衣物烘乾機	低污染及省能源	0
71	印刷品	△△%回收紙及減少污染	0
72	電磁爐	低污染及省能源	0
73	食品包裝用塑膠薄膜	低污染	0
74	原生碳粉匣	低污染	11
75	乾式變壓器	節省能源	0
76	洗衣業	低污染	0
77	資源回收再利用建材	資源再利用	17
78	多功能事務機	低污染、省能源	0
79	行動電話	低污染	0
80	油性塗料	低污染塗料	0

註：本表整理自環保署環保標章資訊網站

第五節　環保標章議題未來之發展重點

由於歐盟對於此議題相當熱中，在其規劃的處理模式中，只要是自願性的環保標章制度，WTO 就不應加以限制，而且其導入 LCA 為評比方法，並配合 ISO 的要求，但這樣的想法短期間恐無法獲得開發中國家的認同，各方意見仍須加以討論整合。參考署內環保標章資訊網站，其中關於我國各項環保產品的的規格標準，其內容雖有環保的要求，如節能、省電、低噪音，以及產品中不得含有國際公約禁止使用之物質（如氟氯碳化物）等，但並未提及以 LCA 為環保標章核發的評鑑標準。因此，雖然我國推動環保標章的成效斐然，但對於歐盟的主張，仍不宜過快表達支持，蓋我國出口產品亦有可能因歐盟之措施而遭受歧視性之待遇，建議各主管機關應共同會商此議題，以確立我國在此議題應有之方向與立場。

另一方面，雖然「機關優先採購環境保護產品辦法」及「機關綠色採購推動方案」是依照政府採購法第 96 條所制訂公布，有其法源基礎，但該條文給予環保產品 10%優惠價差的規定，是否符合的規範，值得討論。根據我國簽署的 WTO 政府採購協定承諾開放清單草案，雖然開放的金額門檻分為三個等級，但幾乎所有的中央政府機關、地方政府機關，國營事業以及國立大專院校等單位都為適用本開放清單之對象。以韓國仁川機場案為例，只有不在開放清單內的項目與適用機關，才不會受到 WTO 的規範。我國目前雖未加入 GPA，但未來加入後，政府採購法第 96 條對環保產品的價差優惠，以及許多機關在首長積極要求下特別自行成立機關綠色採購推動小組，規定凡屬指定採購項目者非經核准必須優先採購經認可的環境保護產品的行為，恐會受到挑戰。[63]

因此我國一方面應密切注意相關議題的後續發展，另一方面應匯集整合環保與經貿兩方面專家之意見，取得共識，以利於我國環保標章制度的推動，並兼顧我國經貿上之利益。

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[63] 有些單位建議「政府機關若要符合優先採購環保產品之比率規定，則可以指令採購人員在選擇採購產品時，優先訂購環保產品」，可能不甚恰當。

第六章　加入WTO後我國關於貿易與環境議題之實踐

第一節　我國締結貿易或環境國際協定之現況

大部分現行的環境協定皆在聯合國環境規劃署（United Nations Environment Programme，簡稱UNEP）的贊助下達成協議。由於聯合國環境規劃署係在我國退出聯合國之後才開始成立運作，因此我國一直以來皆被排除參與在聯合國環境規劃署體制下所進行的任何環境協定之討論與擬定。面對全球環境保護課題之重要性日益增加，我國已認知到加入相關聯合國環境協定之必要性與重要性，特別是多邊環境協定（Multilateral Environmental Agreements，簡稱MEAs）。因此近來我國已多次地表達願意參加一些多邊環境協定之意願，然而，聯合國環境規劃署也多次地拒絕我國的請求，因其認為我國並不具備參加這些協定的會員資格。聯合國組織長久以來認為我國無法參與任何的多邊環境協定，原因在於「批准這些協定之資格只限於主權國家以及區域性組織……聯合國確認中國政府為中華人民共和國之代表，並包括台灣。」換言之，由於聯合國認為台灣係中國之一部分，因此我國目前將很難具有參與相關聯合國環境協定之資格。

一、我國以觀察員身份參與多邊環境協定（MEAs）之現狀

面臨現今與多邊環境協定並無任何正式的官方關係，我國只能藉由非正式的管道參與相關多邊環境協定之活動。由於大部分的多邊環境協定對非締約國、政府間組織以及非政府組織（non-governmental organization，NGOs）皆設有觀察員之機制，因此我國目前只能如同非政府組織一般，以觀察員的身份參與一些國際環境體制。多年以來，我國以觀察員身份已參加了數次多邊環境協定之會議，包括了蒙特婁議定書（Montreal Protocol）、巴塞爾公約（Basel Convention）、聯合國氣候變化綱要公約（United Nations Framework Convention on Climate Change）、瀕臨絕種野生動植物國際貿易公約（Convention on the International Trade in

Endangered Species）以及生物多樣性公約（Convention on Biodiversity）。

在現今國際社會中，非政府組織的確在影響多邊環境協定之談判與政策擬定上扮演了日益重要的角色，然而，由於其地位固有的限制，非政府組織並不能在具政府間體制特徵的多邊環境協定當中擁有直接且正式參與的角色。因此，儘管非正式地參與某些多邊環境協定，如葉俊榮教授所言，「台灣尷尬的國際法律地位妨礙了我國意圖參與國際環境規範之擬定與執行之機會。」

二、我國利用區域或雙邊基礎進行環境協定之協議

儘管在多邊協定擬定過程中缺乏實質（substantial）參與的機會，我國仍可藉由區域或雙邊基礎進行環境協定之談判。舉例來說，作為亞太經濟合作會議（Asia-Pacific Economic Cooperation，APEC）之一員，我國曾於 1994 年 5 月參加在加拿大溫哥華所舉辦的第一次環境部長會議（First Environment Ministerial Meeting），討論環境與永續發展等議題。在那次會議之後，我國與加拿大便共同在花蓮舉辦 APEC 環境專家會議（APEC Environmental Experts Meeting）。

在雙邊層次上，對於幾個主要集中在合作措施的協定上亦已達成了協議。在 1993 年 6 月，我國與美國便簽署了有關環境保護技術合作之協定，包括了訓練、人員的暫時分配、資訊交流以及研究專案的合作。特別是在美國於 1994 年 8 月對我實施培利法案之制裁後，我與美國政府間之「動植物保育技術合作協定（Agreement on Technical Cooperation in Conservation of Flora and Fauna）」在 1995 年 3 月生效。依照我國與美國政府間建立環境合作協定之方式，我國亦與瑞典在 1994 年 6 月達成一致的協議。值得一提的是我國亦與區域性組織，如歐盟，簽定了環境協定。該協定係管制在巴塞爾公約之綱要當中，雙邊毒害廢棄物之進口與出口，雖然我國並非該多邊環境協定之締約國。

我國迄今關於上述國際環境協定所作的努力，已產生了一些有效的成果。然而，由於這些協定的本質與多邊環境協定不同，他們大多保持在確保合作項目的範圍之內，而非創造出具拘束力的行動規範。但對我國而言，這些雙邊協定的簽署並不能被忽視，

現今國際環境協定對我國利益之影響已愈來愈直接並強烈，參與環境協定之擬定已成為我國刻不容緩之目標。

三、台巴自由貿易協定

（一）、簽署台巴自由貿易協定

近年來，區域貿易安排（Regional Trade Arrangements, 簡稱RTAs）與自由貿易協定（Free Trade Agreement, 簡稱FTA）議題的發展方興未艾，各國間彼此經貿勢力的結合雖有助於拓展經濟勢力版圖，但此類區域結盟之RTA或FTA是否將造成區域外國家的貿易與投資產生被孤立、被邊緣化的情形？此類協定是否違反WTO公平互惠與不歧視的精神？也引起各國之熱烈討論。自烏拉圭回合結束後，大部分會員似乎傾向接受FTA／RTA與WTO並行不悖的看法；2001年11月的杜哈部長會議，就貿易規則議題方面也聲明：WTO承認雙邊協定的積極作用。但，在RTA與FTA機制運作下，還是必須檢驗各國對多邊與區域性／雙邊（RTA／FTA）協定下之市場開放、貿易政策是否一致，及如何降低潛在的貿易扭曲情形。

面對國際上區域經濟整合的風潮，為了避免被邊陲化、成為其他區域整合貿易被轉向的目標，與特定貿易夥伴展開自由貿易協商、進而簽署區域自由貿易協定是目前我國重要的經貿政策之一。我國於民國91年1月1日正式成為WTO會員後，便積極展開對外洽簽FTA之工作；同年8月24日之大溪會議，陳水扁總統更明白宣示推動FTA是我國重大的經濟外交政策。巴拿馬於91年6月表達與我洽簽自由貿易協定之意願，並盼早日展開洽簽工作，本案經對外貿易主管單位及各相關業務單位就其主管業務範圍評估後，我國同意與巴國展開洽簽自由貿易協定先期工作。

經過十個月的密集諮商，雙方在92年8月8日下午由經濟部長林義夫與巴國貿工部哈哥梅部長在雙方諮商總主談人之陪同下，共同簽署了完成協定諮商之聯合聲明，宣布台巴在第五回合諮商時完成一涵蓋廣泛議題之自由貿易協定，並於8月21日由陳水扁總統與巴國總統莫絲柯索女士在台灣簽訂台巴自由貿易協定，11月4日進行換文，之後將通知世界貿易組織「區域貿易協

定(RTA)」委員會[64]，而台巴自由貿易協定也將於明年 1 月 1 日生效。本協定內容包括前言及二十一章，共 234 條條文，各章節名稱如表 8 所示。爾後巴拿馬將為我國進軍整個美洲市場之門戶，相同的，我國將成為巴拿馬進入亞洲市場之跳板。台巴自由貿易協定為我國成為 WTO 會員後所完成之最重要的一份貿易協定。

（二）、台巴自由貿易協定對我國經濟可能之影響

本協定內容涵蓋三大領域，包括：貿易投資自由化、貿易便捷化及經濟與技術合作。

在市場開放部分，協定中分立即、五年及十年三種方式，取消我國與巴拿馬之進口關稅。在農產品方面，我國立即降稅產品計有四十四%，巴國立即降稅產品計有四十一%；在工業產品方面，巴國對我出口金額相當有限，預計我國獲得之實際利益較大。協定生效後未來十年內，台灣納入 FTA 免稅清單項目將高達 97%，巴方也高達 95%。除了產品關稅優惠。

在投資及服務業部分，我國因經濟發展程度較高，入會較晚，故在 WTO 下服務業市場開放程度，原已較巴方略高，但巴方在雙邊基礎下，大幅提高原 WTO 之開放承諾，使台巴雙方自由貿易協定之服務業開放程度相當。而台灣企業赴巴國投資，將享有和巴國國民相同待遇，巴國並承諾開放金融、陸運、觀光、物流、加值電信服務業。

在經貿及技術合作方面，本協定之經貿及技術合作範疇以副約方式處理，由雙方部長於日後簽署。其主要內容包括加強企業交流、產業及技術合作、加強多邊貿易談判合作、發展觀光業、技術培訓等方面。

[64] 依據 WTO 規範，各國家或地區的自由貿易協定或區域貿易協定都須通知區域貿易委員會，並由委員會檢驗內容是否明顯違反多邊貿易規範。根據 WTO 的 RTA 委員會最新報告，截至今年 6 月為止，已接到 267 項 RTA 的通知，委員會目前正對 138 項協定進行檢驗工作。

表 8　台巴自由貿易協定章節內容

章節	章節名稱	條文數
前言	--	--
第一章	原則性條款	計 4 條條文
第二章	總定義	計 1 條條文
第三章	貨品之國民待遇及市場進入	計 16 條條文
第四章	原產地規則	計 14 條條文
第五章	海關作業程序	計 13 條條文
第六章	防衛措施	計 5 條條文
第七章	不公平貿易行為	計 2 條條文
第八章	食品安全檢驗與動植物防疫檢疫措施	計 12 條條文
第九章	標準、度量衡及授權程序	計 13 條條文
第十章	投資	計 39 條條文
第十一章	跨邊境服務貿易	計 14 條條文
第十二張	金融服務業	計 19 條條文
第十三章	電信	計 10 條條文
第十四章	商務人士暫准進入	計 7 條條文
第十五章	競爭政策	計 3 條條文
第十六章	智慧財產權	計 14 條條文
第十七章	透明性	計 8 條條文
第十八章	協定之管理	計 7 條條文
第十九章	爭端解決	計 21 條條文
第二十章	例外	計 6 條條文
第二十一章	最終條款	計 6 條條文

對於台巴自由貿易協定內容可能會引起其他國家要求比照辦理，我國駐WTO代表顏慶章則指出，FTA本身就是多邊規範的例外，內容一定更為優惠，並不存在第三國引用最惠國待遇原則的問題。顏代表並強調，台灣在加入WTO時，已對主要項目作了重大讓步，其他國家不能因為台灣與巴拿馬的自由貿易協定，對台灣提出更嚴苛的要求。以下僅就與本計畫相關的協定內容部分進

行分析。

1、對環境服務業之影響

參考表 9 可知，雖然雙邊但在環境服務業的開放程度在 WTO 與 FTA 下是相同的，但協定簽署後，對於我國環保服務業者至巴國設立據點或直接提供服務而言，將更有制度性的保障。

表 9、台巴雙方在 WTO 及 FTA 下市場開放承諾比較

部門	WTO 承諾		FTA 承諾		台巴增加市場開放承諾程度比較	
	台灣 (1)	巴拿馬 (2)	台灣 (3)	巴拿馬 (4)	[(3)-(1)] /(1)	[(4)-(2)] /(2)
1.商業服務業	0.7074	0.2602	0.8185	0.6424	16%	147%
2.通訊視聽服務業	0.6827	0.1531	0.7500	0.4125	10%	169%
3.營造及相關工程服務業	0.8333	0.5000	0.8333	0.5000	0%	0%
4.配銷服務業	0.8750	0.5938	0.8750	0.6563	0%	11%
5.教育服務業	0.8125	0.5625	0.8125	0.6563	0%	17%
6.環境服務業	0.8750	0.8750	0.8750	0.8750	0%	0%
7.金融服務業	0.4600	0.6833	0.5300	0.7667	15%	12%
8.健康及社會服務業	0.4063	0.1250	0.8438	0.8438	108%	575%
9.觀光及旅遊服務業	0.8000	0.3611	0.8750	0.8750	9%	142%
10.娛樂、文化及運動服務業(視聽服務業除外)	0.4375	0.0938	0.8750	0.7500	100%	700%
11.運輸服務業	0.4819	0.0219	0.8600	0.8438	78%	3753%
總平均	0.6701	0.3845	0.8135	0.7111	21%	85%

註 1：資料來源：經濟部國際貿易局委託中華經濟研究院「台灣與巴拿馬自由貿易協定經濟影響評估報告」

註 2：依 Hoekman 模型，次部門無限制為 1 分，有限制為 0.5 分，完全不予承諾為 0 分，次部門加總平均為部門別平均分數，部門別算數平均為總平均分數。

2、內國環保法規與自由貿易協定衝突之分析

事實上，簽署 FTA 或 RTA 後，簽約國間的貿易衝突並不會因此停止，反而可能因為貿易以外部門政策之改變，而影響到先前的承諾，造成內國法規於 FTA 之衝突；其中，最有可能造成影響的便是環保法規對於商品的要求。我國工商業較巴拿馬發達，產品技術水準也較高，許多企業皆遵行 ISO14001 之規範，因此我國商品大多能通過各地環保考量下之檢驗。因此，即便巴國新增何種環保要求，應不至於對我國產品造成出口至巴國的障礙，反而是一旦我國因永續發展的考量，採用或新修正更為嚴格時，很有可能對巴國輸往我國的產品造成進入的屏障。

雖然我國短期內上不至於因環保法規和巴拿馬發生爭執，但可以參考分析北美貿易自由協定（NAFTA）下，當一國修改其環保法令時，對於貿易衝突所可能的爭端解決模式。

(1)、背景說明

一般油品商習慣於汽油中添加甲基第三丁基醚（methylter-tiary-butylether，簡稱 MTBE）做為汽車避震之用，但前加州州長下令在 2002 年年底以前禁止於加州地區所使用的油品添加 MTBE 做為添加劑。下這道行政命令的考量是因為官員認為 MTBE 對於環境有潛在的威脅，一旦汽油從地下儲槽中洩漏出，內含的 MTBE 便有污染地下水之虞。但此舉卻造成廠商的反彈，並基於以下理由認為此行政命令並不恰當：

A、加州政府的措施與美國環保署的立法不一致；

B、規範標的錯誤，加州政府應管制的是如何減少或避免 MTBE 釋放到環境中，而非全面禁用；以及

C、將所有與 MTBE 可能有關連的業者，一併納入管理規範。

業者並爭執這項措施究竟屬於「補償性徵收」[65]，抑或「不可補償的規定」，有沒有 NAFTA 第十一章的適用。[66]

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[65] 表示政府必須要有補償性的配套措施。

[66] 本章節主要在規範投資者之地位，允許廠商認爲一國政府所採取的法律措施危害到期利益時，可對該政府提出告訴，但加拿大、美國以及墨西哥皆承認本章在實際執行上有其困難

(2)、爭端解決

對於 NAFTA 下的此類貿易衝突，學者提出以下兩點建議。考量到民間企業直接對政府提出告訴一方面可行性不高，二方面亦無法解決問題，在爭端解決上應回歸到 NAFTA 第二十章，以政府對政府的方式解決衝突。

而另一個可行的方式為選任或設立一合適之機構，以公正的第三者來處理民間企業對於政府的申訴。

回頭檢視台巴自由貿易協定中之條文，在第 20 章第 20.02 條的一般例外條款中提到，GATT1994 第 20 條及其附註，以及 GATS 第 14 條(b)款等關於環保上的例外規定，視為本章所同意的例外規定；亦即基於環保的考量，只要沒有對一般條件類似的國家間形成專斷或不合理的歧視，或對服務貿易構成隱藏性之限制，我國可採取一些必要的環保手段來保護我國之利益，而不受本協定義務之拘束。參考過去 WTO 處理貿易與環保爭端的經驗，一國基於環境保護所採取之正當措施，只要不對特定國家構成歧視或成為變相之保護措施，通常該措施被認為符合 WTO 之規範。因此，未來我國與巴國若在貿易與環境議題上發生衝突，依照本協定之例外條款，應不至於造成衝擊與傷害。

四、小結

一些學者注意到我國被排除在參與多邊環境協定之現狀，係由於我並不具聯合國會員資格。然而嚴格地說，這個說法亦顯示了一個不正確的推論。舉例來說，瑞士曾非聯合國之會員國，但這並不影響其成為任何國際協定締約國之資格。因此，任何國家皆應有資格參與多邊環境協定，不論其是否為聯合國之一員。我國加入多邊環境協定之妨礙因此僅在於大部分的多邊環境協定只允許一個「國家（State）」成為其一員，而令人遺憾地，我國並非被這些多邊環境協定視為一個國家。

雖然無法加入多邊環境協定，但由於我國已成為 WTO 之會員國，日後若與他國發生貿易與環境議題之爭議，仍可透過 WTO 爭端解決機制處理問題。另一方面，我國在經貿協定的簽署上已有

性。

所突破，透過台巴自由貿易協定之簽署，不但可以擴大我國產業的海外市場，更可以提高各國與我簽署 FTA 之意願，逐步解除我國在國際政治運作下的封鎖。如此，應可略微彌補我國無法參與多邊環境協定而可能受到之不利益。

第二節　我國環保法令與措施檢視

為避免我國加入 WTO 後，其他會員對我環保措施或規定提出質疑，環保署採取了各項因應措施。在我國環保法令方面，本計畫目前僅追蹤前述因應措施中與環保法令相關的異動或更新的部分，如開放柴油車、小客車以及 150c.c 以上重型機車進口、環保標章制度推行等措施或規定，分別敘述如下。

一、開放 150c.c 以上重型機車以及柴油車、小客車進口

關於此議題需要檢視的為我國的空氣污染法規。在我國欲加入 WTO 之際，環保署承諾的工作項目有以下兩點，分別是(1)同意入會後 6 個月內開放 150cc 以上機車進口，且屆時將對於 700cc 以上機車，另制訂符合國際規範之排放標準；以及(2)同意在入會後兩年開放柴油引擎車進口，屆時環保署將另訂定與汽油小客車排放標準相近之柴油小客車排放管制標準。兩工作項目之預期措施與實行結果如下：

（一）、同意入會後 6 個月內開放 150cc 以上機車進口，且屆時將對於 700cc 以上機車，另制訂符合國際規範之排放標準

原本之預期措施為將修訂「機器腳踏車申請符合第三期排放標準耐久測試程序作業要點」及「交通工具空氣污染物排放標準」，以便所有機車（包括高排氣量機車）均適用。環保署空保處已於 88 年 12 月提出「機車第三期排放標準增訂高排氣量標準建議方案」。

本計畫查詢相關法規的制訂進度，已知「交通工具空氣污染物排放標準」已於民國 91 年 11 月 27 日重新修正發佈，排放標準

請參考環保署網站資料；「機器腳踏車車型排氣審驗合格證明核發及廢止辦法」也在同年 10 月 2 日公布。以上兩法效力及於國內外機車之管制，因此在管制標準方面並無歧視的問題存在。而測試的方法依照環保署資料顯示，除採用美國 FTP-Transient、FTP-75 測試形態，以及歐盟 98/69/EC 指令之相關測試規定及其後續修正之規定，並符合該指令附錄Ⅰ，5.3.1.4 節表中 B（2005）列之排放標準及其後續修正之排放標準，進行特定污染物之檢測外，也採用我國 CNS11644 與 CNS11645 之測驗方式。因此在測試方法上，應不致引發爭議。

（二）、同意在入會後兩年開放柴油引擎車進口，屆時環保署將另訂定與汽油小客車排放標準相近之柴油小客車排放管制標準

原本之預期措施為將於入會後二年內，參考歐美日等先進國家之標準及我國實際環境狀況，訂定嚴格之柴油小客車排放標準。為能及早因應，環保署空保處已於 88 年 11 月召開「柴油及替代清潔燃料引擎汽車空氣污染物第四期排放標準暨柴油小客車標準草案」第一次公聽會；未來柴油小客車需加裝必要之污染防制設備（如觸媒轉化器），以符合我國法規。此外對於相關配套措施，如取消國內柴油價格補貼政策等，環保署亦將與相關部會研商。

關於柴油引擎車的排放標準，一併訂在 92 年 11 月 27 日重新修正發佈的「交通工具空氣污染物排放標準」中；至於加裝污染防治設備以及取消國內柴油價格補貼，則尚未找到相關資料。

三、其他

今年度環保署又新公布或修正與貿易相關之環保法規，經過初步的檢視，原則上不會產生貿易上的爭議，依公布時間先後簡述如下：

（一）、車用汽柴油販賣進口許可及管理辦法

本辦法於中華民國 92 年 8 月 6 日由環保署訂定發布，全文共 20 條，條文內容詳見附錄所示。本辦法依空氣污染防制法第 36 條第 3 項規定訂定之，依照本辦法規定，汽油、柴油除須符合車

用汽柴油成分及性能管制標準，並應依本辦法規定取得許可，始得販賣及進口，規範的對象為本地製造者或進口者，範圍即於其販賣、進口，以及成品儲存等項目。大體而言，所有對於國內外廠商的檢驗、審核之對待方式為一致的。

（二）、進口汽車空氣污染物驗證核章辦法

本辦法由環保署於中華民國92年7月2日訂定發布，全文共12條，條文內容詳見附錄。本辦法依空氣污染防制法第38條第2項規定訂定之，依本辦法規定，汽車進口者應取得車型合格證明或逐車合格證明，始得向中央主管機關申請驗證核章。條文中提到，在申請時需檢具環保署所要求之相關文件進行審查，審查符合規定者，應於五日內核章，但何謂符合規定，條文中並無明示。

（三）、新購電動輔助自行車補助辦法

本辦法於中華民國92年11月20日由環保署訂定發布，全文共12條，條文內容詳見附錄，並於今年4月2日修正發佈第10條條文。本辦法補助對象僅限我國國民，但不即於國內製造廠或國外原廠代理商及其經銷商；本辦法所稱之電動機車係指符合電動輔助自行車 CNS（總號：14126，類號：D1071）國家標準，並取得交通部核發電動輔助自行車型式審驗合格證明者。綜觀全文，其對於國內或是國外生產製造之電動機車，不論在資料送審、抽驗以及補助金額所採之標準一致，並無不公平待遇或歧視之情形產生。

除上述各法令規章，技師法及其相關法條之規定與相關解釋令函中，有一潛在的問題，過去也曾被拿出來討論，那就是我國各機關的工程技術服務採購，其投標廠商的資格必須要有該採購類別之執照。參考行政院公共工程委員會於中華民國92年7月21日，工程企字第09200299120號函解釋說明之第三點，茲摘錄如下：

三、機關就工程技術事項應由得標廠商自行履行或其主要部分規定技師科別時，有關廠商資格審查方式如下：

(1)、廠商以「工程技術顧問公司登記證」投標者：應核對投標

廠商（或共同投標廠商）其登記證所載營業範圍之技師科別是否已涵蓋廠商資格所定技師科別。

(2)、廠商以「技術顧問機構登記證」投標者：因技術顧問機構登記證上之業務範圍並未載明技師科別，應由投標廠商(或共同投標廠商）出具該機構執業技師之技師執業執照（所載執業機構應為該投標廠商）供審查，而執業執照所載技師科別應符合廠商資格所定技師科別。

(3)、廠商為技師事務所或聯合技師事務所者：核對投標廠商(或共同投標之技師事務所）出具之技師執業執照所載科別是否符合廠商資格所定技師科別。

由上可看出，廠商在競標政府採購案件時，有資格上之限制，而欲取得該項技師執照，則必須通過我國的技師考試。「技師法」雖非環保署所主導，各縣市的環保工程也多由各縣市自行招標決定，但環工技師的管理亦屬於環保署的職掌範圍，環保署亦為各縣市環保局之上級機關，仍須注意相關問題是否會引起國外廠商之異議。

第三節　加入 WTO 對我國產業之影響

OECD 貿易與聯合工作小組（Joint Working Party on Trade and Environment, 簡稱 JWP）自 1991 年起，便定期召開會議，討論如何促進貿易與環境政策間之相容性及相互支援性，並於 1994 年做成「貿易與環境審查方法」報告，針對環境審查方法之程序進行分析。近年來，JWP 則逐漸加強有關貿易自由化環境效應之工作，由經濟效應分析轉為對個別市場類別之分析；而多數 OECD 會員國也認為在採行有效的環境政策的條件下，因為貿易自由化可改進資源之有效分配、提升經濟成長以及達到增加國家整體利益的目的，對於環境保護有正面的促進作用。但是，針對本議題，已開發國家與開發中國家之意見並不一致。

在今年 4 月 29 日 CTE 第二次例會中，巴西針對永續影響評估（Sustainability Impact Assessments, SIAs）發表一些看法。雖然巴西肯定環境影響評估的重要性，但對於已開發國家所倡導的 SIAs

則持保留的態度，其認為SIAs並不容易執行，因為本制度中添加許多抽象的概念，也改變了環境影響評估原有的觀念、作法與目的。巴西覺得SIAs所反應的只是已開發國家的觀點，SIAs中所所規範的樣態，根本不會在已開發國家中境內發生；加上SIAs並沒有考慮到開發中國家所處的情狀，因此巴西認為SIAs有可能構成開發中國家商品進入已開發國家市場的障礙。巴西認為SIAs應加入開發中國家的考量，以達到將環境、經貿及社會利益帶給所有國家的目的。

針對巴西對SIAs的指控，歐盟認為CTE應討論實際發生的案例，看SIAs是否被任何WTO的成員國做為限制市場進入的工具，而不是隨便臆測。各國對其貿易與環境審查之工作如表10所示。

表 10　各國對「環境政策及評估方法」的立場比較

國家別	立場
OECD	1. 有必要建立評估方法 2. 應提升開發中國家環境評鑑的能力
挪威	1. 支持貿易協定的永續評估，為確保此等評估適當考量平衡性議題，相關國際組織如 UNEP、UNCTAD 及 FAO 應提供貢獻。 2. 挪威已針對漁業、農業及運輸部門進行永續評估研究，並預期在 2000 年 6 月完成。本項研究係以 OECD 環境審查方法論為基礎，環境指標則包括諸如氣候變化、臭氧層耗損、酸化及廢棄物等之因素。挪威願與各國分享及共同進行永續評估。
美國	1. 美國已於 1999 年 11 月完成加速關稅自由化方案有關森林產品的經濟與環境效應，其結論為是項自由化方案對美國林木砍伐並不會造成影響，且對全球林木砍伐造成的影響甚微。 2. 承諾美國政府將對貿易協定進行環境影響評估，包括書面審查。 3. 支持秘書處彙整各國經驗的提議，包括技術支援開發中國家。
加拿大	1. 加國已開展三階段環境審查工作，第一階段已於 1999 年 11 月完成報告：1994 年烏拉圭回合環境審查的回溯分析（retrospective analysis）。第二階段的工作為建立環境審查架構，預定於 2000 年年底完成。第三階段為應用前述完成之架構或方法論進行 WTO 諮商的環境審查。

表 10　各國對「環境政策及評估方法」的立場比較（續）

國家別	立場
歐盟	1. 歐盟在 1999 年中期委託英國曼徹斯特大學進行永續影響評估（Sustainability Impact Assessment, SIA），評估未來 WTO 談判對全球永續性的影響。SIA 方法論運用一組永續發展指標，涵蓋經濟、環境及社會等層面的考量，包括平均實際收入、就業、淨固定資本、公平與貧窮、健康與教育、性別不平等、環境品質、生物多樣性以及其他自然資源庫存量。 2. 歐盟將在 2000 年底委託第三階段的 SIA，WTO 新回合談判已確認的議題為農業及 GATS，因此第三階段將就此二項議題進行評估。之後將進一步就可能列入談判且可能具顯著永續發展影響的議題進行分析。
阿根廷	1. 阿國認為雖然貿易協定環境評估之經驗互享，有其利益，且可加強現行各國貿易政策以及諮商立場，但其可能不會對貿易及環境體制有利。
印度	1. 不贊同環境評估方法論多邊協議的主張。
馬來西亞	1. 支持印度及香港的看法，認為環境評估應由各國視國內決策的需要，並在財力容許的情況下自行為之。
墨西哥	1. 認為建立環境評估多邊指引的提議並不恰當，貿易自由化對環境的利弊視各地理區域之條件而定。是否要進行環境評估應由各會員國自由決定。 2. 墨國支持秘書處彙整各國執行環境評估之經驗，但不能作成任何決議。

表 10　各國對「環境政策及評估方法」的立場比較（續）

國家別	立場
巴西	1. 認環境評估應就貿易措施類別進行分析，即針對導致貿易扭曲的貿易政策進行環境影響分析。適合所有部門、國家及區域的環境方法論並不存在。 2. 會員國應分享分析經驗，對開發中國家提供技術支援是有必要的。
澳洲	1. CTE 應是各國環境評估資訊分享以及檢視貿易改革環境議題的場合。由於環境評估方法論及政治性議題仍不確定，因此支持阿國看法，認為現階段的分析應係針對各類貿易措施為之。

註：整理自國貿局(2000)，「世界貿易組織新議題」

我國則由財團法人環境與發展基金會於 2000 年之「貿易協定與環境審查方法論之研析」報告中，參考 OECD、加拿大及美國之貿易協定環境審查/評估方法架構，提出適合我國之貿易協定環境審查方法。其評估步驟包括：

1、決定欲進行環境評估之協定

(1)、評估之主要焦點集中在我國之環境有關之貿易協商中最距顯著環境影響之處。

(2)、在「各個協定分別逐一進行（agreement-by agreement）」之基礎下實施，分析之程度將會依據環境影響之顯著性而定。

2、範圍界定：概述貿易協定之預期貿易自由化衝擊

(1)、鑑別由各個貿易協定所造成之預期或是實際之自由貿易活動，以評估可能造成之顯著環境衝擊

(2)、提出以下問題以決定欲進行評估之貿易協定的範圍

A、我國參與這些協商之目標為何

B、可能達成何種貿易協定（包括關稅、補助、標準之升降，及是否可能創造或是消除生產或是貿易型態之扭曲現象）

C、達成貿易協定廣泛目標的替代方式

(3)、由於協商支立場文件會隨著時間而改變，此步驟需重複進行

3、鑑別可能之環境衝擊

(1)、區分與貿易相關之環境影響型態（產品、技術、規模、架構及法規性之影響）

(2)、列出決定環境影響為正面、負面、不清楚或是不具影響之考量問題

(3)、若在此步驟中認定特定之協商立場並無可能之環境影響，則無須採取後續行動

4、評估鑑別出環境衝擊之顯著性

決定環境衝擊顯著性時，需考量環境衝擊之頻率與持續期間、地理範圍、不可回復性及累積性本質

5、鑑別加強與/或減輕選擇方案，並將結果整合入協商立場中

(1)、工作重點應該在步驟4所鑑別出之顯著環境影響

(2)、在缺乏現有法規措施來應對可能之顯著負面環境衝擊時，需提出替代政策。可行時，應進行減輕或強化各類方案的成本效益評估

(3)、要提出新的或是經過修改的協商立場書時，需重新進行步驟2-4

(4)、協商代表可能做出之決定包括：

A、修改現行之協商立場以減輕負面之環境影響

B、放棄現有之協商立場，開始研擬新的立場

C、保留使用現有之協商立場

D、保留使用現有之協商立場，但是採取其他步驟來減輕這些環境影響

由於環發會所建議的審查方法，僅適用於我國與他國尚未簽署貿易協定前，無法涵蓋我國已加入之貿易協定（如我國業已成為WTO會員，並與巴拿馬簽訂自由貿易協定）的情形。因此，建議部分評估步驟可做彈性化之設計，以符合實際之情況，如在第5步驟的工作項目中增加爭端解決之處理（若經評估後，發現原本

協定對我國內產業部門造成不利影響，應如何與其他訂約國進行協商）。另外，由於我國缺乏環境審查方法的實證結果，而各界學者也尚在模擬操作中，除了繼續蒐集國外的貿易協定環境審查方法論與案例，建議我國可在 CTE 中提出他國技術支援的要求，如成立 workshop 進行研討，或指派專家到我國直接進行指導，對我國制度的建立應有很大之幫助。

第七章　舉辦專家會議

專家會議已於本年 10 月 16 日假環保署會議室召開，會議名稱為「我國對於 WTO 貿易與環境事務應有之策略與前瞻」，主題為檢討我國加入 WTO 後，對環境與貿易等議題等相關因應工作之檢討，以及應有策略之研擬。主席為環保署科顧室梁永芳顧問，出席成員名單詳見附錄二。會議議程與討論議題分別如表 11、12 所示。

表 11　專家會議議程表

時間	議程
09:10~09:30	報到
09:30~10:50	議題一、 我國目前參與 WTO「貿易與環境工作分組運作」之檢討 議題二、 環保署參與 CTE 之利基探討 （引言人：倪貴榮教授）
10:50~11:00	休息
11:00~12:20	議題三、 環保署內部資訊整合 議題四、 杜哈宣言第 31 至 33 段之後續討論 （引言人：羅昌發教授）
12:20~12:30	總結
12:30~	散會

表 12　專家會議之討論議題

議題名稱	討論子題
一、我國目前參與 WTO「貿易與環境工作分組運作」之檢討	1. WTO 之貿易與環境相關事務涉及一個以上之主管機關，各單位之協調、整合及分工之機制為何？是否落實？整體資源是否有效分配並經充分利用？ 2. 我國對於 WTO 事務之參與，在貿易與環境議題談判之整合性人才培訓，是否有長遠規劃之打算？ 3. 我國在出席 CTE 會議時對於議題準備、活動參與的程度定位為何？代表團成員是以任務制的選派方式產生，抑或未來將朝向有固定成員的模式發展？
二、環保署參與 CTE 之利基探討	1. 我國並非 MEAs 締約國，能否及如何藉由參與 CTE 而增加與 MEAs 之互動？ 2. 是否適宜及如何在 CTE 中表達我環境政策理念，爭取認同？
三、環保署內部資訊整合	1. 環保署各處室對於部分重要的國際公約皆有相關委外研究計畫，各研究成果應如何彙整並加以分析？ 2. 各處室承辦 MEAs 的人員應如何加強對 CTE 議題之了解？以及是否應輔以經貿與法律議題之相關訓練？
四、杜哈宣言第 31 至 33 段之後續討論：以 WTO 與 MEAs 關係為重點	1. 如何確立我國對於 WTO 與 MEAs 之關係之最終立場（杜哈宣言第 31 段第 1 項） 2. 對於杜哈宣言第 31 至 33 段規定之其他內容，我國應採取何種之立場與政策目標，方能促進與維持我國最大之利益？

一、我國目前參與 WTO「貿易與環境工作分組運作」之檢討

我國參與 CTE 之活動主要是由國貿局主導，並擔任整合各單位之意見的工作，但在運作過程中，往往發現貿易官員對環境議題不夠熟稔，不見得能對環境問題有精準的操作；但另一方面，雖然環保署對環境議題瞭若執掌，惟對 WTO 的經貿運作模式不夠熟悉，所以如何在人才及資源上做整合有其必要性。

而過去我國在參加 CTESS 時，雖分別提出文件表達我國對於杜哈議程之立場，特別是 WTO 與 MEAs 之關係參與程度極深。但除了提立場文件，如何在會場中與他國積極的互動，並對我國所提出的文件內容與他國進一步討論或是做出立即的回應，值得我們思考。

以美國、歐盟及澳洲為例，他們以團隊合作的方式參與 CTE，有固定的成員，並對成員施予訓練使其熟悉 CTE 的運作，能隨時上場、互相支援；而一些開發中國家也有固定的主要人士持續的參與 CTE 的各項活動；另外，一些國家即便不提出文件，仍固定出席 CTE 例會去觀摩學習，並對他國提出的文件發表意見。反觀我國在 CTE 的參與上雖有提出文件，也在事後做出回應稿，但我們團隊的組成不夠堅實，人員亦常常替換，當他國對我國文件內容提出質疑時，可能無法作立即且有效的回應，這是我們必須嚴肅面對的問題。

（一）、人才養成部分

關於人才的養成，中華經濟研究員溫麗琪博士表示，今年年初中華經濟研究院成立了 WTO 中心，目前 WTO 中心已著手相關的培訓計畫，成立 WTO 經貿人才學院，並將於十月三十日召開說明會。

而環保署在人員培訓上，去年也派出種子部隊到哈佛受訓，由空保處簡慧珍簡任技正報告在哈佛受訓之情形。簡任技正表示在哈佛所受的 WTO 談判模擬訓練，是以六人一組，一人分配一個議題提立場文件的方式進行，而回國後，署內也安排一連串的訓練課程，因此在人才培訓上已有進展。

（二）、我國出席 CTE 之定位

出席代表對於我國出席 CTE 之定位，有不同的看法。官方代表認為由於我國在參與各 MEAs 活動時，只能以非政府組織（NGOs）的方式進行，受到很大的限制，因此希望藉由參與 CTE 的活動，表達立場再回頭影響 MEAs，所以應盡可能提立場文件，讓其他成員國注意到我們對此國際環保議題之關心與積極表現即可。學界與業界則傾向 CTE 會外積極與他國互動，畢竟參與 CTE 活動的各 MEAs 秘書處對於政治敏感度很高，不見得會採納我國的意見與想法，但我國可考慮藉由拉近和 MEAs 中主要成員國的交情，使其了解我國的立場，凸顯我國在國際活動上的難處並尋求國際解決。

（三）、出席 CTE 相關會議之人員選派

出席代表建議，出席 CTE 相關會議團隊的組成可包括下列成員：政府官員、具法律背景的專家、資訊分析團隊（提供業者想要的資訊，如聯合國發佈的資訊中，哪些是對業者有影響的）、策略研擬團隊、談判小組，以強化我在 CTE 之表現。

二、環保署參與 CTE 之利基探討

對於 CTE 是否真為我國參加 MEAs 的最佳平台，多數代表抱持著懷疑的態度。因為 CTE 主要在處理假借環保之名行貿易障礙之實的貿易問題，並非專注解決環境問題，所以在 CTE 談 MEAs 是有侷限性的，畢竟 WTO 對於環境議題，在心態上是被動的，問題一定要和貿易相關才會處理。因此，參與 CTE 可解決我國在國際環境議題上的一些困境，但無法解決全部。

主席表示環保署很清楚參加 CTE 對於我參與 MEAs 的幫助有限，但我國還是可以在 CTE 中適時凸顯我國的困境，爭取他國的支持與同情，因此參加 CTE 還是目前我們認為最可行的方式。

簡慧珍簡任技正並以空保處為例，提出空保處所負責的 MEAs 是蒙特婁議定書與京都議定書，目前最擔心的是京都議定書若在明年如期生效，而有關排放權的交易我國又無法參與意見時，這對我國將造成兩大影響：一是大車小車在二氧化碳（CO2）的排放量有所不同，這對車輛的出口將造成影響；二是關於「碳」的買

貴與交易，我們都無法參加，可能影響到我國廠商之利益。因此以環保署的立場，希望能透過 CTE 解決相關問題，但署內也明白礙於現實環境的考量，只能試著先在 CTE 拋出議題，避免因過度投入而遭到打壓。目前，署內也在觀察是否有其他 WTO 會員國遭遇到和我國相同之情形，並進行相關準備工作。

三、環保署內部資訊整合

關於環保署內部資訊整合，台大羅昌發院長提出「計畫回饋論」，即多與受託機關互動，交換彼此的想法，不但有助於計畫品質的提升，更能藉由計畫培養署內的專家人才。對此環保署表示署裡對於一些重要的 MEAs，每年約投入一千萬的經費支援相關計畫，以 Basel 為例，其為四年的持續性計畫，去年的計畫重點則是 Basel 與 WTO 之比較，而去年韓國誤傳對我不利之訊息，環保署也立即反應做出澄清。而關於署內內部資源的整合現況，除了進行計畫研析、評比，最後並提交主管會報討論，所以相關承辦人員對於所負責的計畫皆相當熟稔。而署內對一些重要的 MEAs 議題的掌握有相當程度之把握，對於各 MEAs 我國多以遵守規約為原則，並觀察條文中是否會造成我在遵約過程中產生窒礙難行之處。各業務單位所提出的意見，由科顧室統一彙整之。

永續發展協會黃正忠秘書長則建議，在內部資訊的整合方面，應先有一架構清楚的主計畫，並對計畫的推展持續追蹤，特別是執行過程中的資訊交流、資訊紀錄以及對廠商的宣導與推廣應加以重視，才能發揮各個計畫的功效。而在整合國內各界的意見後，在將之化為我國立場文件的內容，最後再由國貿局彙整送出，或許是比較妥善的方式。

中華經濟研究員溫麗琪博士則提到未來中經院要做 WTO 之相關資料庫，內容除了各法律文件、貿易議題專論外，也希望能加入環保相關之資料，並獲得主席之支援承諾。

另外，國貿局建議環保署未來在委託各 MEAs 計畫時，是否繼續能將 MEAs 與 WTO 之互動納入研究範圍中。對此，環保署表示明年還會持續進行相關計畫，但不只是針對 CTE，而是含括 TBT 與環境商品等項目。

四、杜哈宣言第 31 至 33 段之後續討論：以 WTO 與 MEAs 關係為重點

出席代表同意在立場文件的提出方面，必須先考慮哪些議題是我國所要著墨的，我國對於各議題的優先次序為何；而除了理論基礎，若有民間業者參與加入實務上的經驗，立場文件之內容將更具說服力。另一方面，因為我國非 MEAs 的締約國，在 CTE 中針對杜哈宣言第 31(i)究應持何種立場，值得進一步研究。最後，永續發展協會黃正忠秘書長提醒環保署與國貿局，WTO 與 MEAs 有許多矛盾之處，我國在參與的過程中要小心，以免兩面不討好，應避免衝突的產生。

第八章　建置與維護環境與貿易資訊網

為使網頁之各項內容資料更有利於使用者的瀏覽，於本年 7 月推出新版的「環境與貿易資訊網」，除調整部分子目錄的內容、刪除僅有標題而沒有資料的網頁。另外，有鑑於 WTO 各成員國在 CTE 發表之立場文件，對於全球的環境與貿易議題以及我國環境與貿易措施的運作，將造成一定程度的影響，乃新增「各國立場文件」的子目錄標題，讓國內相關主管機關、專家學者對於貿易與環境的國際問題，能掌握最新的一手資訊。

首頁的圖案為一人手持平衡桿在懸索上行走，桿子的一邊為「地球」，象徵著對環境的維護；桿子的另一邊為「金錢」，象徵著經濟活動的開發。新舊網站架構對照詳見表 13，新版的「環境與貿易資訊網」首頁設計如圖 4 所示，本年度新增文件截至 12 月 2 日為止，共計 34 篇。改版後之架構內容分述如下：

表 13　新舊網站架構對照

子目錄名稱	舊網頁	新網頁
最新公告	有	有
網站導覽	有	刪除
WTO/CTE 基本資料	有	有
國內因應措施與相關資料	有	有
專題報導	有	有
國內外相關網站	有	有
與我們聯絡	有	有
CTE 例會會議紀錄	原置於 WTO/CTE 基本資料子目錄下	獨立成子目錄標題
各國立場文件	無	新增

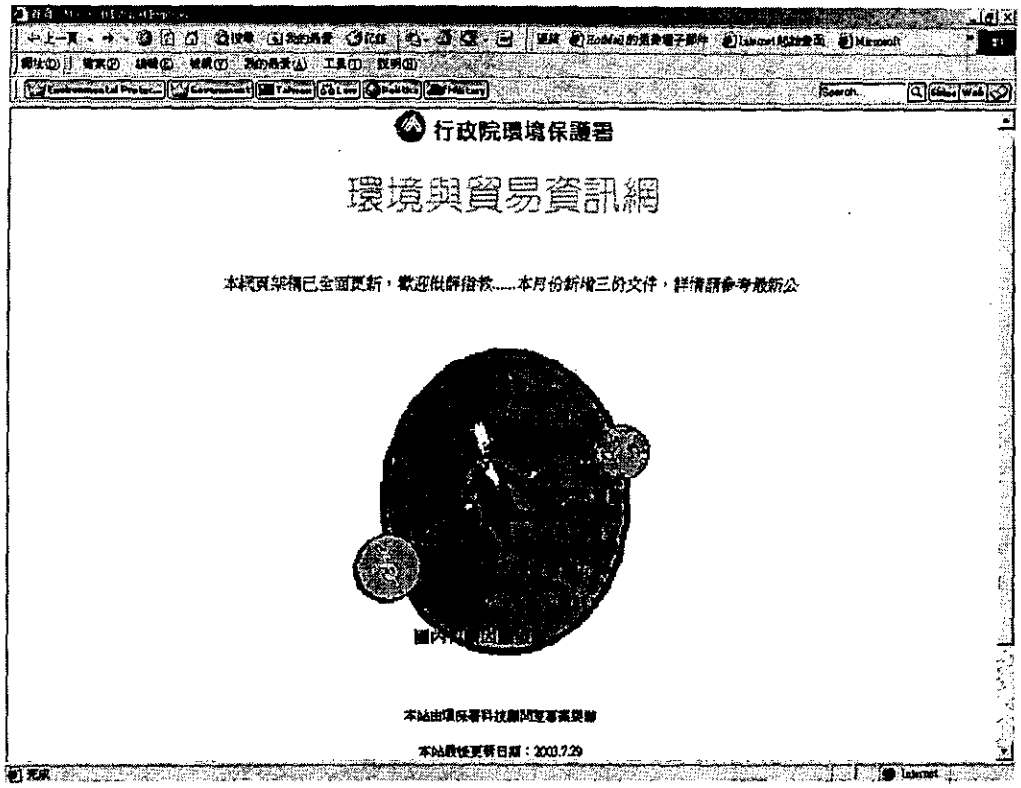

圖 4　貿易與環境資訊網首頁

一、最新公告

「最新公告」的子目錄標題雖予以保留，但呈現方式改為僅公布新增的內容，前次更新的資料則從該畫面剔除，但該份資料仍能在其他子目錄中讀取。

二、各國立場文件

WTO 各成員國在 CTE 所發表的立場文件，大概可以分成以下五類：Doha 宣言條文之解釋、WTO 與 MEAs 之關係之討論、對環境商品與服務業之看法、對於 TBT 與 Eco-labelling 所可能產生之疑義，以及其他。本網站依照這五種分類將比較重要的立場文件摘錄成中文，供各界參考，並附上該份文件之文件編號，方便有興趣者在 WTO 官方網站瀏覽全文。本年度針對各項議題新增的翻譯資料內容如表 14 所示。

表 14　各國立場文件翻譯

Doha 宣言			
提交日期	文件編號	提交單位	名稱
2003.07.10	TN/TE/7	CTESS 主席	貿易與環境協商：執行情形
2003.04.30	TN/TW/W29	馬來西亞	馬來西亞對於杜哈部長宣言第三十一段第一項聲明之摘要
WTO 與 MEAs 之關係			
提交日期	文件編號	提交單位	名稱
2003.07.07	TN/TE/W/37	澳洲	APEC 環境與貿易工作會議
2003.07.03	TN/TE/W35 TN/TE/W35/Rev.1	中國	多邊環境公約（MEAS）及特定貿易義務（STOS）之辨認(identification)
2003.05.14	TN/TE/W31	歐盟	多邊環境公約與 WTO 協定之關係—「多邊環境公約所訂定」
2003.05.13	TN/TE/W32	瑞士	瑞士於 CTE 例會中宣言之摘要
2003.04.30	TN/TE/W28	香港	杜哈宣言第三十一段第一項—多邊環境公約中的特定貿易義務—中國香港執行 CITES 之經驗摘要
2003.04.25	TN/TE/W26	日本	WTO 規則與多邊環境公約中之特定貿易義務的關係

表 14　各國立場文件翻譯（續）

環境商品與服務業			
提交日期	文件編號	提交單位	名稱
2003.07.07	TN/TE/W38 TN/MA/W/18/Add.5	美國	非農業產品之市場進入-就環境商品談判模式之美方建議補充
2003.05.21	WT/CTE/W/228	OECD 秘書處	環境商品之定義於APEC以及OECD下之比較
2003.01.28	TN/TE/W/19 TN/MA/W/24	卡達	環境商品之協商：有效率、低碳與低污染排放之燃料與科技
2002.11.22	TN/TE/W/18	CTE 秘書處	環境商品清單
2002.10.09	TN/TE/W/14	卡達	環境商品
2002.10.03	WT/CTE/W/218	CTE 秘書處	服務業貿易自由化所帶來的環境利益-工作項目6與9
2002.07.09	TN/TE/W/8	美國	環境商品之協商
2002.06.06	TN/TE/W/6	紐西蘭	環境商品
2000.10.20	WT/CTE/W/172	OECD 秘書處	環境商品與服務業：進一步全球貿易自由化對環境、經濟與發展之利益的評估
1998.09.03	WT/CTE/W/96	UNCTAD	UNCTAD促進開發中國家發展環境服務業之能力建構專家小組會議
1997.11.21	WT/CTE/W/70	美國	環境服務業自由化與環境
1995.06.08	WT/CTE/W/9	CTE 秘書處	環境與服務業

表 14　各國立場文件翻譯（續）

TBT/Eco-Labelling			
提交日期	文件編號	提交單位	名稱
2003.03.06	WT/CTE/W/225	歐盟	歐盟對自願性環保標章之提案
其他			
提交日期	文件編號	提交單位	名稱
2003.04.29	WT/CTE/GEN/13	UNEP 秘書處	UNEP 於 CTE 例會發言紀錄摘要

三、網路資源

共建置國內相關連結資料十筆，以及國外連結資料二十六筆。

四、專題報導

針對特定環境與貿易議題，從「各國立場文件」中挑選較重要的文件加以彙整，將零散的意見統整出比較明確的結果，並就可能的疑義與法律爭點提出討論及建議；另外，隨著資料的陸續增加，為方便使用者閱覽，乃以年度做初步的區分。目前本年度新增的內容有：「WTO 架構下，歐盟對於環保標章之態度」、「瑞士對於環保標章之態度」以及「參與 WTO 貿易與環境委員會 2003 年 7 月之第三次會議並提出立場文件」等三篇文章。

五、CTE 例會會議紀錄

目前計有「CTE2003 年第一次會議紀錄」、「CTE 致大會之報告草案」、「CTE 特別會致貿易協商委員會之貿易與環境談判現況報告」「服務業貿易部門於 CTE 例會之陳述」以及「2003.10.28CTE 例會會議紀錄」等五筆資料。

六、WTO/CTE 基本資料

為了讓使用者對環境與貿易之國際議題有初步的了解與認識，原資料予以保留，並重新加以編排，以方便閱讀。

七、國內相關因應措施

除了新增環保服務業的開放清單，環保署對於開放柴油小客車進口以及開放一五0CC 以上重型機車進口兩項議題，已於 91 年 10 月 2 日以及 11 月 27 日分別公布「機器腳踏車車型排氣審驗合格證明核發及廢止辦法」與「交通工具空氣污染物排放標準」，做為開放後的管制標準依據，詳細的法規內容請參閱環保署網站之法規資料庫，而該部分的環保署因應措施新舊對照表則如下表 15 所示。

表 15　我國入會後開放 150cc 以上機車與柴油引擎車進口之環保署因應措施新舊對照表

工作項目	預期措施	進度追蹤
同意入會後6個月內開放 150cc 以上機車進口，且屆時將對於700cc 以上機車，另制訂符合國際規範之排放標準。	將修訂「機器腳踏車申請符合第三期排放標準耐久測試程序作業要點」及「交通工具空氣污染物排放標準」，以便所有機車（包括高排氣量機車）均適用。本署空保處已於八十八年十二月提出「機車第三期排放標準增訂高排氣量標準建議方案」。	目前「交通工具空氣污染物排放標準」已於民國九十一年十一月二十七日重新修正發佈；「機器腳踏車車型排氣審驗合格證明核發及廢止辦法」也在同年十月二日公布。以上兩法效力及於國內外機車之管制。 除了空氣污染物的管制，在噪音問題上需通過噪音測試，而申請之車輛若已取得歐盟國家核發之合格證明，符合歐盟現行管制標準，除準備環保署所要求相關資料外，得檢附下列資料向環保署提出申請合格證明沿用。 1. 歐盟國家核發之合格證明文件影本； 2. 以歐盟現行測試方法執行之機動車輛噪音測試報告； 聲明申請進口之車輛與國外原車型為完全相同之車輛組成型態，具有相同之噪音特性。

表 15　我國入會後開放 150cc 以上機車與柴油引擎車進口之環保署因應措施新舊對照表（續）

工作項目	預期措施	進度追蹤
同意在入會後兩年開放柴油引擎車進口，屆時環保署將另訂定與汽油小客車排放標轉相近之柴油小客車排放管制標準。	將於入會後二年內，參考歐美日等先進國家之標準及我國實際環境狀況，訂定嚴格之柴油小客車排放標準。為能及早因應，本署空保處已於八十八年十一月召開「柴油及替代清潔燃料引擎汽車空氣污染物第四期排放標準暨柴油小客車標準草案」第一次公聽會，現仍和業者繼續協調中，未來柴油小客車需加裝必要之污染防制設備（如觸媒轉化器），以符合我國法規。此外對於相關配套措施，如取消國內柴油價格補貼政策等，本署亦將與相關部會研商。	關於柴油引擎車的排放標準，一併訂在九十一年十一月二十七日重新修正發佈的「交通工具空氣污染物排放標準」中。

第九章　結論與建議

第一節　結論

一、本年度貿易與環境委員會相關會議議題重點分析

（一）、對杜哈宣言第 31(i)段之討論

今年會議中，會員對於本段的內容除仍在爭辯何謂「特定貿易義務（STOs）」以及何謂「多邊貿易協定（MEAs）」外，部分會員已具體羅列哪些是他們所認定之 STOs；惟本段的宗旨，是期望能達到一些具體的結論：亦即確定 MEAS 與 WTO 之間的「關係」。關於此議題可能有以下兩種發展[67]：其一為兩方（WTO 與 MEAs）各自運作、各自表述；另一為依照紐西蘭的提案，當發生貿易與環境爭端案件時，在進行正式的爭端解決程序前，先在一公共機構進行諮商，這對於是 WTO 成員但非 MEAs 會員者，毫無疑問的將產生衝擊。因此，以我國立場而言，必須估計和預測未來談判之談判走向和結果，對於 WTO 成員但非 MEAs 會員者將造成何種影響。

（二）、對杜哈宣言第 31(ii)段之討論

至於對杜哈宣言第 31(ii)段的討論，應分成兩部分來看：

1、資訊交換：事實上 WTO 與 MEAs 秘書處間的例行資料交換已經在進行，而 CTE 自 1997 年開始也已經邀請過許多 MEAs 之秘書處就相關之 MEAs 進行報告，並回答會員的問題。此外，自 2002 年開始，WTO 秘書處也常受邀於各 MEAs 進行主要會議（例如締約國大會）時，就貿易與環境以及 WTO 相關規範舉辦技術援助性質的研討會。因此，就 WTO 與 MEAs 之間的資訊交換管道，堪稱暢通。

2、授與觀察員地位：依據秘書處所整理有關 UNEP／MEAs 以及 WTO 之間現行的合作以及資訊交換機制的文件中[68]，WTO 與

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[67] WTO 貿易與環境部門 Doaa ABDEL MOTAAL 顧問之看法。

[68] *Existing Forms of Cooperation and Information Exchange between UNEP/MEAs and the WTO,*

UNEP 於 1999 年 11 月 29 日簽訂一合作協議，當中互相授與兩機構於彼此之相關會議中的觀察員身份，因此，UNEP 係 CTE 的觀察員，除了 CTE 之外，下列之 MEAs 也具有 CTE 的觀察員身份：CBD、CITES、ICCAT、以及 UNFCCC。但是在 CTESS 中，目前是採用一種特別的操作方式，即讓許多 MEAs 的秘書處人員能以受邀者的身分出席 CTESS，雖然歐盟希望能將這種特別的方式予以正式化，但最後並未成功。因此，在 CTESS 觀察員地位的如何授與仍未明確及制度化。

許多國家認為對於資訊的交換應有具體的結果，畢竟許多 MEAs 對於 WTO 所討論的議題都相當關心並希望能夠參與，認為可以促進 WTO 與 MEAs 間良好的互動，並能改善 WTO 給予部份團體一種「秘密機構」的形象。但這並不表示這些國家贊同歐盟於今年 CTE 第二次例會的提案（有關 WTO 授與 MEAs 觀察員地位乙案）。

（三）、環境商品與服務業

對於杜哈宣言第 31(iii)段中「環境商品與環保服務業」的部分，針對「環保服務業」的實體談判，主要由服務業貿易理事會負責，定義與分類的討論雖持續進行中，不過各國均有其各自的分類，並可自由地做出市場進入的承諾；惟「環境商品」議題，特別是其定義問題，仍然無法達成結論，應如何加以分類亟需在 CTE 中儘早達成結論。另一方面，由於開發中國家對於此議題欠缺足夠的資訊與了解，也使得共識難以達成。[69]

目前 WTO 對於環境商品議題有一新的發展為：有十個非洲國家將農業產品與環境商品做連結，並提出一份報告；而日本也在協調、彙整國內各部門間（如 MITI、農林漁業部）的意見，看是否要將部分農業產品也視為環境商品的一部分，這將使得環境商品分類的協商工作更難以進行。[70]

Note by the Secretariat Paragraph 31(ii), TN/TE/S/2, 10 June 2002

[69] 如：美國建議採用 APEC 清單，但巴西希望能在 CTE 中做更多實質的討論。

[70] 此一新發展爲訪談 WTO 環境處官員所得到之資訊。

（四）、環保標章

對於環保標章是否隱含不必要貿易限制，在國際間正反意見仍在角力中，尤其是開發中國家對其存有相當大之疑慮。雖然杜哈宣言第 32(iii)段授與 CTE 可就「為達成環保目的而應規定之標示等」進行討論，惟部分國家仍認為此與 TBT 委員會之工作重複，CTE 不應對環保標章之議題過於著墨。另一方面，歐盟一直積極地扮演著此議題主導者之角色，尤特別關心自願性環保標章的部分，但歐盟的提案因與 ISO14024 有關，牽涉到產品週期分析（LCA），更增加了本議題之爭議性，如澳洲即表示對於歐盟過分積極推動環保標章的舉動感到憂慮。

事實上，隨著消費者權利意識的抬頭，即便國際間對於環保標章是否形成潛在性之貿易障礙，多持比較疑慮之態度，但未來本議題之發展，應會朝著既尊重消費者需求，並確保不會造成貿易障礙的方式進行。

（五）、我國立場：以 WTO 與 MEAs 之關係為重心

1、MEAs 中之特定貿易義務

延續去年我國立場文件主張 MEAs 與 STOs 應採廣義之立場，今年立場文件則著重 MEAs 中那些具體 STOs 之檢視。對 STOs 的認知，我國以蒙特婁議定書為例，認為根據蒙特婁議定書的遵約機制（Compliance Procedure）所為貿易措施或制裁的決定（decision），對議定書的締約國而言係具法律拘束力。但我們不立刻主張該貿易措施之決定絕對係所謂之特定貿易義務，而是認為至少應將之列為協商之內容，以便周延地探討 STOs 之內涵及效力。

另外，各國懷疑法律拘束力是否為 STOs 之唯一要素。目前我國亦不任認為具法律拘束力為界定特定貿易義務的唯一要件，但卻是最重要的一項。

2、WTO 規則與 MEAs/STOs 之相容性

我國主張追求 WTO 與 MEAs 相互支持的目標不應剝奪 WTO 會員質疑 MEAs 特定貿易義務在 WTO 的法律制度下適法性的權利。並同意瑞士的看法，認為同時具備 WTO 與 MEAs 締約國身份的會員不應再去於 WTO 架構下挑戰特定貿易義務

本身的「價值與必要」，然而 WTO 應被允許在爭端發生時去檢視關於「執行」特定貿易義務的合法性。

關於 WTO 規範與 MEAs 中特定貿易義務的確定關係：二者是否真的相容？各國希望我國進一步論述前次立場文件中關於 WTO 規範與 MEAs 特定貿易義務的相容性。儘管並無關於實施 MEAs 特定貿易義務在 WTO 適法性的案例發生，惟依據一些 MEAs 所施行的貿易管制。例如，蒙特婁議定書對於氟氯碳化物的進口管制，已違反 GATT 數量限制的規定，亦未必符合 GATT 之例外條款。因此，我國似不應支持有些會員認為兩者係屬「相容」的看法。

二、加入 WTO 後我國對貿易與環境議題之實踐

（一）、我國參與國際雙邊或多邊協定之情形

今年八月我國與巴拿馬簽署了台巴自由貿易協定後，除了對於我國環境商品或服務業，可藉由設立據點的方式，逐漸拓展中南美洲的環保業務；另一方面，只要是符合本協定第 20 章規定之情形，我國為了環保的考量所採取的措施，即不違反本協定內容之義務。

（二）、我國環保法令與措施檢視

我國環保法令與貿易相關者大致可分為以下幾類：機動車輛之污染物排放標準、機動車輛之進口審核標準、機動車輛之補助標準、油品之進口審核標準，以及環保服務業相關管理規則等。除了涉及到公共工程競標的環保服務業部分可能對國外廠商構成障礙，大體而言上述環保法令的各項標準與實施方法對於國內外之業者採相同待遇，並無歧視之情事發生，故與 WTO 之規範尚無牴觸之虞。

三、專家會議結論

與會學者、專家和政府代表多同意參與 CTE 可解決我國在國際環境議題上的部分困境，但 WTO 仍以處理以貿易有關之議題為主，不可能寄望參與 CTE 能完全解決我國目前被排除正式參與 MEAs 之問題。但大多同意我國應積極參與 CTE 之運作，有關主管機關應積極培訓 CTE 之專業人才及加強能力建構（capacity building）。[71]但由於出席 CTE 的各國代表以及列席的各 MEAs 代表的政治敏感度很高，想藉由 CTE 的參與而進一步加入 MEAs，並不如想像中的容易。

在立場文件的提出方面，則認為必須先考慮哪些議題是我國所要著墨的，我國對於各議題的優先次序為何；而除了理論基礎，若有民間業者參與，並加入實務上的經驗，立場文件之內容將更具說服力，而更能維護我國之利益。另一方面，因為我國非 MEAs 的締約國，在 CTE 中針對杜哈宣言第 31(i)應持何種立場，值得研究。

本年度計畫執行結果與計畫工作內容需求之比較如表 16 所示。

[71] 我國在貿易與環境議題的人才培訓與能力建構仍待加強，政府有關單位包括環保署、國貿局和農委會等應有計畫地培養能掌握該議題的人才，並積極派人參與 CTE 會議，以提昇我國的談判素質，俾維護我應有權益。

表 16　本年度計畫執行結果與計畫工作內容需求比較表

計畫工作內容	計畫執行結果
一、WTO 貿易與環境、環境服務業、自由貿易協定（含雙邊暨多邊貿易協定）及技術性貿易障礙等議題之資料蒐集與彙整 （一）、參與 WTO/CTE 國際性會議或國內外相關研討會，蒐集整理有關貿易與環境、環境服務業、自由貿易協定（含雙邊暨多邊貿易協定）及技術性貿易障礙等相關議題之中英文文件，並摘譯其重點。	（一） 1、於 7 月時參加 CTE 例會並提出立場文件；10 月時參加 CTE 特別會議，並與其他會員國代表分別進行諮商。 2、貿易與環境議題之資料整理與分析成果已於本報告第二與第三章呈現。 3、環境服務業議題之資料整理與分析成果已於本報告第四章呈現。 4、自由貿易協定議題之資料整理與分析成果已於本報告第四章第一節呈現。

表 16　本年度計畫執行結果與計畫工作內容需求比較表（續）

計畫工作內容	計畫執行結果
（二）、依本署需求以專題方式報導前述各項議題之諮商進展，並比較主要國家或區域組織之立場，研析未來議題諮商走向。	（二）、相關議題之資料整理與分析成果已於本報告第二～六章呈現，並摘錄於網站中。
（三）、協助研擬本署談判立場文件，並邀請相關專家學者舉行會議，討論該立場之合適性。	（三）、已於 7 月份的 CTE 例會中提出我國立場文件，並於 10 份國內舉行專家會議，專家會議結論呈現於本報告第七章。
二、我國未來在多邊或雙邊貿易協定談判或糾紛中，協助研析環境相關議題之立場及紛爭解決機制。	此部分工作內容已於本報告第九章的結論與建議部分中呈現。
三、我國環境政策與法規與 WTO 貿易與環境規範相容性分析。	此部分工作內容已於本報告第六章第二節呈現。
四、協助本署就最新的貿易與環境議題進行研析，如環保商品與服務業之關稅與非關稅貿易障礙等議題。	此部分工作內容已於本報告第四章第三節呈現。

表 16　本年度計畫執行結果與計畫工作內容需求比較表（續）

計畫工作內容	計畫執行結果
五、就我國在加入世界貿易組織（WTO）後，研析政府政策改變及產業結構調整對環境產生正面或負面的影響，並研擬因應措施。	此部分工作內容已於本報告第六章第三節呈現。
六、於本署全球資訊網站中，維護中文貿易與環境之網頁，本署每日自經濟部國貿局傳送之 WTO 最新訊息及相關資料，需重點摘譯及配合本署需要進行專題報導。	此部分工作內容已於本報告第八章呈現。

第二節　建議

建議分為三部分，一為下年度應修先研究的課題，二為行政資源整合，三為人才培訓。

一、下年度應優先研究的課題[72]

按杜哈議程所示之談判進程，CTE 需就杜哈宣言第 31 至 33 段，於 2005 年元月前完成協商，儘管因坎昆會議的談判破裂，可能影響談判進程，明年仍應是達成具體結論的關鍵年，因此，建議下年度優先研究的課題有：

（一）、關於杜哈宣言第 31(i)段

持續追蹤和分析各會員國對 MEAs、特定貿易義務（STOs）與 WTO 規則關係之最終立場。惟必須注意各會員國對於 STOs 的定義、範圍仍未達成共識。我國應研商在適當時機，如何就各國對我國立場之疑義，做出具說服力之回應。

此外，我國身為非 MEAs 締約國之 WTO 會員，可以試著先預估本段的談判結論可能會有幾種可能性，再針對各種可能的談判結果分析其將對於我國之影響，以此分析回推此類 WTO 會員（亦即，非 MEAs 締約國）應採取何種談判策略，並先行研擬我國的因應對策。另外一個準備的方向是，觀察是否有其他 WTO 會員國遭遇到和我國相同之情形，可聯合之以集團的方式在 CTE 中行動，較有可能發揮實益。

（二）、關於杜哈宣言第 31(ii)段

在今年七月的 CTESS 中，對於歐盟有關觀察員之提案，大多數的開發中國家如菲律賓、阿根廷、智利、馬來西亞等多表示異議；而已開發國家則是予以支持（如日本、澳洲）或有條件支持（如美國、加拿大），認為可傳達給 MEAs 一項強烈之政治訊息。

由於目前對於 MEAs 各秘書處與 WTO 相關委員會間交換資訊之正當程序及授與觀察員地位之審查標準係採個案決定的方式，

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[72] 建議未來的委託案研究範圍能縮小，以便就各議題做出更深入的研究與提出具體建議。

因此在資訊交換上不是那麼的頻繁、有彈性。歐盟在前述的提案中認為 CTE 過去與 MEAs 秘書處合辦之非正式資訊會議，應使其正式成為 CTE 之工作計畫，且每年舉辦一次。關於歐盟資訊交換的提案，由於我國被排除於 MEAs 之實際參與，在資訊取得上處於不利的位置，因此，我國應在 CTE 中支持歐盟的本項提案，爭取通過大會決議，以解決我參與 MEAs 之部分困境。另一方面，UNEP 與部分 MEAs 向 WTO 提出成為觀察員之申請，我國也應予以支持，這對於拉近我國與該組織之距離，將有極大的助益。

（三）、環境商品之分類與定義

對於環境商品之分類與定義，值得持續觀察的敏感議題包括：是否要使用 PPM 作為分類的標準、是否應該捨棄 OCED 以及 APEC 的清單，發展出 WTO 自己的清單、開發中國家對此一議題的態度、以及各會員對於美國於今年七月份所提之談判模式的反應。就我國而言，似乎可以參考澳洲的作法：委託產業團體與政府機構合作進行產業研究調查，分別以出口者與進口者的角度，分析我國於此一議題上所應採取的立場，並提出我國對於環境商品的定義依據，特別值得進行詳細評估者為：我國是否贊成 PPM 亦可以當成分類或定義環境商品的一個標準；此外，由於現行的進出口貨品統計當中，並沒有單獨將環境商品列入[73]，於所有政府相關的統計單位中，似乎僅有環保署針對「免關稅進口環保設備或車輛用途證明核發統計」當中，提及可被歸類於環境商品的「環保設備」，因此，為了瞭解我國於此項商品的貿易量與模式，建議主管機關可以就環境商品另編制相關的貿易統計數據，以協助我國形成對國內產業以及環保最有力的談判立場，並提供我國於 NAMA 進行談判時的基礎背景資料。

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[73] 進出口統計資料中所列的貨品項目大項爲：植物產品（當中再分爲麥類、玉蜀黍、黃豆）、調製食品、飲料及菸類（當中單獨再將調製食品列出）、礦產品（當中單獨再將原油列出）、化學品（當中單獨再將有機化學品列出）、塑膠及其製品（當中單獨再將塑膠原料列出）、木材、木製品及編結品（當中單獨再將木材列出）、紙漿、紙、印刷品、紡織品（當中單獨再將棉花列出）、珍珠、寶石、黃金屬、仿首飾、鑄幣（當中單獨再將黃金列出）、基本金屬及其製品（當中再分爲鋼鐵及其製品、金屬製品）、機械及電機設備（當中再分爲電子產品、機械、電機產品、資訊與通信產品、家用電器）、車輛、航空器、船舶及有關運輸設備、精密儀器、鐘錶、樂器（當中再分爲光學照相計量、醫療等產品，以及鐘錶）、其他等十四大項。

（四）、環境服務業

針對環境服務業，由於於烏拉圭回合談判時已經針對環境服務業有作為談判參考的分類清單（W/120），因此，實質的談判似乎不會受到有關於定義以及分類上的影響，就我國入會的特定承諾上，對於傳統分類中的「環境服務業」[74]採開放的立場，但是在水平承諾的部分，例如對於投資以及自然人入境或移動之規範等，還是會造成外國環境服務業之貿易障礙，同樣的，其他國家有關商業據點設立以及自然人之移動等規定，對於我國欲拓展環境服務業的海外市場來說，勢必亦構成程度不一的貿易障礙。就環境服務業，同樣建議主管機關參考澳洲的作法：委託產業團體與政府機構合作進行產業研究調查，分別以出口者與進口者的角度，分析我國於此一議題上所應採取的立場。另外，在未來研究時，可參考「美新」協定與「台美」協定中的相關資料進行分析。

（五）、關於環保標章議題

由於大部分國家對於歐盟所提出的以 LCA 為評鑑方式的自願性環保標章多存有疑慮，因此後續發展應持續追蹤注意；而多數國家都認為標章的議題亦應在 TBT 委員會中討論，而非僅置於 CTE 下檢視，因此，雖然目前 TBT 對標章的著墨不多，還是應定期觀察未來動向，並分析各國立場。目前我國雖已推動並實施環保標章，然對於歐盟的主張，不宜過快表達支持，蓋我國出口產品亦有可能因歐盟之措施而遭受歧視性之待遇，建議各主管機關應共同會商此議題，以確立我國在此議題應有之方向與立場。

另外，各國政府綠色採購政策雖然未呈現出強制的規定，但以台灣為例，對於綠色採購設有目標達成率，目標值為 50%，還逐年檢討採購項目之範圍，儼然形成一種不公平競爭的狀態；[75]而其他國家也是有類似的情形（如獎勵政策通常對象僅及於國內廠商）。這項潛在的問題應值得加以研究，並檢視我國環保標章制度

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[74] 污水服務業（sewage services）、廢棄物處置服務（refuse disposal services）、衛生及類似服務（sanitation and similar services）、以及其他（other）

[75] 署內「環保標章資訊網站」中之「92 年機關綠色採購指定項目」，以點選進入「二段式省水馬桶爲例」，出現各廠商的名稱與其產品的型號，是否會造成政府機關在採購該項設備時，只能與這些廠商中進行採購之誤會？

是否在未來的政府採購，被他國抨擊隱含不必要的貿易限制。

二、行政資源整合

可分成三部分討論：

（一）、各部會意見彙整

雖然行政院為因應加入 WTO 之事務設立各個工作小組，並針對不同的議題指派相關部會因應，並挑選其中一機關做為聯繫窗口，負責該項議題的主要規劃與意見整合。但對於議題的討論，似乎各部會的互動仍顯不足，以致無法廣泛匯集及整合各方意見，以做出最有利於我國之決定。因此國內相關部會應在 CTE 會前先行詳細討論、並做深入研究。

（二）、CTE 例會/特別會出席人員派遣

身為 WTO 新會員，不論有無發表立場文件，應儘可能參與各項 CTE 的活動，除了可達到與他國交流的目的，並可在會議中觀察和學習他國參與談判的技巧和策略，以培養和加強我國參與 WTO 事務的能力。

而在活動的出席上，應有兩位以上的人士參與相關活動，若其中有人因故不克出席，其他人員仍然能掌握 CTE 各種議題的討論進度與後續發展。人員的指派，應分為固定成員與臨時成員兩類，前者的作用在於經驗累積與傳承，後者作用在於因應不同議題的需求以及人員的訓練。團隊的組成成員建議可包括：政府單位、法律背景的專家、資訊分析與策略研擬團隊，以及談判小組等。

另外，我國也應積極參加由 WTO 與各 MEAs 舉辦能力建構或技術援助之研討會或是訓練課程，除促進我國對於各個 MEAs 之瞭解，並可增加我國與 UNEP 或是 MEAs 有非正式接觸的機會。特別是如果此類會議或是訓練課程係由 WTO 或 CTE 所主辦，身為 WTO 之會員，我國應然是可以出席此類會議，因此，與我常駐日內瓦代表團保持聯繫，隨時掌握此類會議的時間地點，並盡可能派人出席此等會議或訓練課程，以提升國內相關主管機關對於此一議題的熟悉度。

在出席會議的準備上，建議於每年年底先選定下年度所要參加的場次，並研擬出席代表名單。敲定所欲參加的會議場次後，在經費方面，由相關主管機關會商出國費用的分攤比例；在時程規劃安排上，建議由國貿局主導，以出國日期往前推算各項準備工作的截止日期。以明年 CTE 第二次例會為例，將於 7 月 6~7 日舉行，我國如預備提立場文件，或答覆各國對我國本年度提案之意見，應可要求環保署在明年 4 月底前將相關資料交給國貿局，而國貿局應於明年 5 月底前召開專門會議討論文件內容是否得宜，決議後於明年 6 月中旬將資料送交我住日內瓦代表處，以便在會前發送給各 WTO 成員國。環保署在明年 4 月底前的準備工作則包括：立場文件或回應資料的初步研擬、邀請各界代表就該向資料進行審議，以及文件的定稿。

（三）、研究計畫之管理與互通

1、事前審核

目前各單位多自行編列預算，決定研究主題。建議可在計畫草案提報前，建立一審核機制，以避免工作項目的重複，而將計畫經費的支出做最有效的運用。

2、研究結果相互流通

年度結束時，相關部會人員可就本年度的計畫成果進行分享與檢討，並做為未來對策研擬時的參考。另一方面，可將各單位的研究成果製作成淺顯易懂之文案，印製宣傳折頁，擴大向產業宣傳。

3. 相關承辦人員的延續性

由於本研究計畫所涉及之議題專業性頗高，此外，欲觀察以及分析的議題也是一持續進行發展的課題，相對於研究團隊有可能變動，主管機關變動的可能行不大，因此，建議主管機關如果於人力資源調度可行的範圍之下，盡可能指派同一或同幾位對此議題已具備一定熟悉度的承辦人員，對於計畫的延續性以及與其他相關部門之間的溝通，應可以減少許多訓練新進人員或不熟悉此議題之承辦同仁的時間與資源成本。

三、人才培訓

至於人才培訓的部分，除了在國內的訓練，若能至 WTO 現場見習，能力將進一步提升。另外，經貿官員與其他各部會官員的經驗分享與交流也應視為訓練的必備課程。

上述建議整理如表 17 所示。

表 17　建議表

建議	建議主辦機關	建議主辦機關之對應措施
優先研究的課題		
1. 1. 持續追蹤各會員國探討 MEAs 與 WTO 規定之關係，特別是對於各 MEAs 中之 STOs 之立場	環保署/國貿局	1. 以延續性計畫掌握與分析相關議題，並建議執行團隊中必須具備有 WTO 法律之專家協助此一議題的研究。
2. MEAs 與 WTO 相容性分析	環保署/國貿局/農委會	1. 預估各種談判結論的可能性，並先行研擬我國的因應對策。 2. 觀察是否有其他 WTO 會員國遭遇到和我國相同之情形，可考慮以集團的方式聯合在 CTE 中行動。
3. Doha 宣言第 31(ii)段關於觀察員與資訊交換之討論	環保署/國貿局/農委會	1. 持續觀察各國對於歐盟有關觀察員之提案。 2. 在資訊交換上應採積極立場獲取 MEAs 之相關資料，以補我國非 MEAs 成員之不足。 3. 積極派員參加 WTO 以及 MEAs 或 UNEP 合辦之技術訓練或量能建構的研討會，亦提升國內相關承辦同仁對於此一議題的熟悉度

表 17　建議表（續）

建議	建議主辦機關	建議主辦機關之對應措施
優先研究的課題		
4. 對自願性環保標章進行較深入之研究	環保署/國貿局/工業局	1. 定期觀察本議題在 CTE 與 TBT 委員會之發展，並分析各國立場，配合我國的實踐，確立我國在此議題應有之方向與立場。 2. 政府綠色採購政策的預先檢視。
行政資源整合		
1. 各部會意見彙整	環保署等相關部會	1. 國內相關部會應在 CTE 會前先行詳細討論、深入研究。
2. CTE 例會/特別會出席人員派遣	環保署、國貿局	1. 不論有無發表立場文件，應儘可能參與各項 CTE 的活動。 2. 在活動的出席上，應有兩位以上的人士參與相關活動。 3. 人員的指派，應分為固定成員與臨時成員兩類；團隊的組成成員建議可包括：政府單位、法律背景的專家、資訊分析與策略研擬團隊，以及談判小組等。 4. 由國貿局規劃活動進程表，交由各相關單位執行。

表 17　建議表（續）

建議	建議主辦機關	建議主辦機關之對應措施
行政資源整合		
3. 研究計畫之管理與互通	環保署等相關部會	1. 在計畫草案提報前，建立一審核機制，以避免工作項目的重複。 2. 年度結束時，相關部會人員可就本年度的計畫成果進行分享與檢討，並做為未來對策研擬時的參考。 3. 印製宣傳手冊。
人才培訓		
1. 能力建置	環保署等相關部會	1. 國內訓練的安排—中華經濟研究院 WTO 人才養成中心。 2. 至 WTO 現場見習。 3. 經貿官員對其他各部會官員的經貿知識傳授。

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會議名稱：第一次工作報告

時間：92 年 3 月 7 日
地點：環保署科顧室
主席：梁永芳顧問
出席人員：環保署謝子陽博士、倪貴榮教授、施文真教授、趙雯蕙、王敏賢、李姿慧
紀錄：趙雯蕙、王敏賢

主席：

是否可從其他國家已提出之明確、具體的立場，斟酌台灣地區的實際情況，提出適合的工作方針與建議。

倪教授：

我國立場特殊，因為我非 MEAs 之締約國，所以如何從 WTO 會員國之角度來檢視 MEA 與 WTO 規則之相容性，以及非 MEAs 會員之 WTO 會員之權利如何被保護，是我們的工作重點。

施教授：

另外，我負責的部分將以國內政策出發去看 WTO 與貿易環境相關之議題，如何使用爭端機制解決問題。不過想先了解環保署對各公約之規範中對國內造成衝擊的部分，立場及態度為何？

主席：

環保署對於立場的表態十分慎重，認為在沒有具體方案前不應急躁，隨便提交應付，但現在也是面臨了時間上的壓力。不知兩位教授認為環保署在相關議題上應有什麼樣的作為比較合適？

倪教授：

由於台灣地位特殊，難以提出影響力重大之議題與意見，但若提出一般性的意見，並無實質意義，因此我們應先視我國情況配合實施(我國目前對於

MEAs 之決議為自動履行)，未來與他國分享實行經驗，由於目前各國滿重視實施經驗的分享，因此我們或許可從此方向切入。關於提出時程之問題，由於欲提出之宣言，代表的立場為台灣，因此不應為了發表而發表，應經過國內各界討論與同意後，再視時機提出。

謝博士：

不同的國際公約由環保署下各個不同單位負責執行與了解，並由科顧室負責整合及提供大架構。不大建議本署現在就提出立場文件，希望工作重點放在 case study 或 analysis 上，再把研究成果呈現出來，並結合各處室的執行成果，提供給各部會做參考。

主席：

不過，當環保署受到壓力需要提交立場文件時，此時應提出何種內容以為回應？比如說提出 requirement 供駐 WTO 代表談判等，可能還是要請兩位教授幫忙做研究。

倪教授：

先請環保署提供過去的相關報告、研究結果，以便了解各業務單位的執行情形，方可提出較有意義之建言。

主席：

目前 CTE 的部分，國內主要為國貿局與環保署之相關度最大，環保署應如何因應國貿局對本屬之要求？

倪教授：

由於國貿局所需之資料或資訊，仍以貿易方面為主，因此環保署所提之意見，應客觀地以環境為出發，讓國貿局依其情況再行判斷，而後由國貿局提出文件。

謝博士：

如果要提出代表環保署的立場文件，希望兩位教授在之前先與其他教授（負責國貿局或工業局相關計畫者）做溝通，藉由其他教授在各個專家會議終將環保署的意見帶入討論，才能多方檢視並獲得支持。

倪教授：

我們也會藉由其他會議的參與，提供專業意見（以環保署立場為出發點者）給其他單位（主要是國貿局）做參考與整合，或許這樣的方式會比較恰當。

施教授：

建議所有相關部會與處室彙整出國報告與計畫報告。

謝博士：

先提醒兩位教授，當兩位教授出席其他單位舉辦的會議時，還是代表貴校而非環保署，這樣比較妥當。

另外，因為環保署下各業務單位多欠缺法律背景人才，所以要求其檢視我國環境法規是否有抵觸 WTO 規範者，恐怕不容易，需要兩位教授加以協助。

至於資料提供的問題，本署監資處存有報告資料的檔案，若有需要，我們可以協助兩位教授取得。

還有，TBT 目前由商檢局負責主導，但未來環保署可能也會有 involve 的部分。

施教授：

我們會先對國內現況做了解，並藉由與貴署的互動了解環保署的立場，研擬對環保署而言妥適的回應內容。

謝博士：

再回到本計畫工作項目上，先跟兩位教授提及一件事。有一個 WTO 談判貿易人才的訓練課程，希望兩位教授能提供可以做為講師的專家學者名單給本署。

回到本計畫，在網站維護更新上，最主要的工做為更新最新的 WTO、CET 資訊，希望能定期更新，如每月一次等；而網站架構內容是否需增減，由執行單位自行決定。

在法規的檢視上，跟貿易比較相關的法規應是在「環境檢驗」與「環境訓練」上；另外在環保法令的部分，一定要與四個環保公約做比較檢視。兩者都應提出建議供科顧室參考。

除此，並希望兩位教授能多跟其他做相關計畫的教授有所互動，了解其

執行情形，以做為參考。如：湯教授、羅教授等。

至於本署的立場，沒有太大的野心要做什麼表述，但至少要能 defense 其他國家的質詢。

最後，請教兩位教授，CET 二月份訊息中有無緊急事項需要環保署做回應？

倪教授：

主要議題為：環境商品與服務業、環境措施與市場進入，大體而言，應無非常急迫之事項。

主席：

關於謝博士提出的附件資料中，第 31-3 與 32-1 條業務，環保署不熟悉，請問兩位教授因如何回應？

倪教授：

先請問環保署在環境與貿易的立場是著重在進口或出口管制？是採主導或是配合的態度？

主席：

其實國內環保業者絕大部分的業務範圍還是在國內，有些部門如：檢測業、環境用藥業，多仰賴國外的支援，這些相關資訊，本署並不清楚。

倪教授：

站在開發中國家立場來看環保法規對進出口之影響，焦點在於生產過程之環境措施。所以本計畫會從國內外的環保法規中是否有隱藏性的限制，來加以探討。

期中審查委員意見

審查意見	意見回覆
于寧總經理	
1. 我國立場文件之應用 由於我國的國際處境特出，欲在 WTO/CTE 中做出實質貢獻並受到國際關注，並非容易。因此最好是 ● 擔任已開發與開發中國家間溝通之角色 ● 藉由國際組織力量發聲 ● 挑選我國已有實質之議題著手。	1. 同意委員意見。所提出之立場文件多以符合委員建議。議題挑選將建議主管機關彙整各方意見決定之。
2. 環境商品 國際間對環境商品之討論已超出傳統之「環保設備」，由環保署之立場，宜主動積極支持美國之提案，儘量將「綠色商品」納入。	2. 感謝委員意見。由於美國之提案自提出之後尚未有國家明文「表態」，建議應先觀察下次 CTE 特別會議中對於美國提案各會員之反應。此外，在決定是否要支持美國的提案時，宜先瞭解美國的提案對於我國環境產業的現況造成正面或是負面的影響，做過詳細之產業調查後，較能符合我國的利益。
3. 德國「綠點」並不是自願性環保標章。	3. 感謝委員意見，已將內文修正(p.106)。
4. 歐盟「Flower」宜譯為「花卉」，非「小白花」。	4. 感謝委員意見，報告用語已做修正(p.108)。

期中審查委員意見（續）

審查意見	意見回覆
于寧總經理 5. 環保標章 ● 我國之立場（至少為環保署之立場）宜與 GEN 立場文件一致，其原因為我國為 GEN 會員，認同該組織之理念。 ● 對歐盟提案，我國宜有回應，先以簡單之 statement 表達即可，以後視發展狀況再提立場文件。	5. 由於歐盟所實施之環保標章制度亦可能對我國出口產品構成障礙，建議應審慎為之。

期中審查委員意見（續）

審查意見	意見回覆
黃正忠秘書長	
1. 我國立場研擬的基本原則應該確立，而且應依 CTE 發展中的各項議題量身訂做，以我國的條件、利弊、遠景等為基礎、規劃： ● 不提或暫不提立場文件的策略與目的； ● 提或策縱連橫立場文件的策略或目的。 本案難得由法學及談判背景專長的學者來執行，有必要藉由本計畫建立一套我國立場研擬的架構與機制。政府部門的資源整合，是正確立場的必要條件。	1. 同意委員意見，已將意見呈獻於專家會議中，提供政府部門參考。
2. 各國立場或兩傘團體立場的分析，建議依議題從立場文件背後的動機與利害關係著手，以作為回應的參考。	2. 感謝委員意見，已在回應稿初稿中反映委員意見。
3. 報告中常出現「貿易與環境」和「環境與貿易」，不知是否有特別意涵？	3. 感謝委員意見，兩用語並無特別意涵，已在報告中統一使用「貿易與環境」一詞。
4. 環境商品雖然定義紛岐，建議未來的報告可以明確提供較受支持的環境商品類別，讓相關業者早日認知此議題對其潛在的衝擊。	4. 感謝委員意見。目前於 WTO 之下，尚無法觀察出何種環境商品的分類或定義方式較受支持，會依照委員建議，於後續之工作中加強此一觀察。
5. 網站應該可以在搜尋引擎中查詢到。	5. 感謝委員意見，本計畫網站已可經由搜尋引擎中查詢出。

期中審查委員意見（續）

審查意見	意見回覆
謝子陽教授	
1. 本計畫之重點可以大方向與小方向說明：	1. 感謝委員意見，相關建議已在期末報告中呈現。
● 大方向：分析 WTO/CTE 重要發展趨勢及與本署相關議題之回應，這個部分大抵完成。	● 請參考本報告第二章第二節
● 小方向：評析 WTO/CTE 重要議題，特別是國際環保公約 MEAs、環境服務業、環保標章（環境商品）、歐盟環境服務業之新分類等議題，提供環保署諮詢的管道（待完成）。重點為該議題（包括多邊、雙邊談判）與本署業務單位之相關性與因應之道（環保署非以團隊方式負責 WTO 業務）。另可配合 10 月份各處室 WTO 議題之訓練課程。	● 請參考本報告第三～八章之內容。
2. 環保署非常重視 MEAs 議題發展趨勢，將於 10 月底出席國際會議前召開行前會議，請倪教授及施教授提供下列資料，並請業務單位邀請國貿局派員參與：	2. 感謝委員意見，相關建議已在期末報告中呈現。
● 92 年 7 月會議我國立場文件之中英文稿；	● 請參考本報告附錄四。
● 該文件發表後，我國因應發表稿(如針對中國大陸強調 MEAs 要與聯合國相關之建議，各國意思或建議之回應）。	● 請參考本報告附錄四。

期中審查委員意見（續）

審查意見	意見回覆
3. 另外與環保署可能相關議題，如 Eco-labelling（如歐盟提出之文件）、歐盟環境新分類等議題，可協助提供評估意見。	3. 感謝委員意見，相關建議已在期末報告中呈現。例如有關歐盟針對環境服務業的新分類提案，已經將歐盟於服務業理事會中所提出的相關文件作摘要並分析(p.94)。
4. 建議環保署於本計畫期末報告完成後，分送國貿局、工業局、標檢局等相關部會以彰顯本計畫之貢獻度。	4. 同意委員意見。

期末審查委員意見

審查意見	意見回覆
牛惠之教授	
1. 就資料之蒐集、分析而言，本研究堪稱充分，值得肯定。	1. 感謝委員意見。
2. 就具體意見之提出，本研究則稍嫌不足。惟由於 WTO 之貿易環境議題。原本就有其高度複雜性，故如國內相關背景資訊不完全時，研究團隊時有提供具體建議之困難。	2. 感謝委員意見。
3. 關於環保標章之自願性，對我國之影響；環境服務業、環境商品之分類；我國之產業現況等，皆有待進一步研究，建議做為明年研究之重點。	3. 感謝委員意見，已於本報告第九章建議主管機關，將該議題列為明年研究之重點。
4. WTO 與 MEAs 之關連性，報告 p.56 與 p.174 之間似有不連貫。	4. 容說明如下： ● p.56 係 CTE 秘書處就會議之進程所做的綜合記錄。 ● p.174(現改為 p.170~171)為我國支立場文件。 ● 二者性質不同。
5. 研究成果值得肯定與鼓勵。	5. 感謝委員意見。
6. 文章中有若干錯字，請再校正。	6. 感謝委員意見，錯字已改正。

期末審查委員意見（續）

審查意見	意見回覆
黃正忠秘書長 1. 執行團隊對目前 WTO/CTE 會議的進展與資訊的掌握，相當深入與完整，值得肯定。	1. 感謝委員意見。
2. 建議把目前的資訊彙整成淺顯易懂的文案，三、四頁即可，以必未來印製程宣傳摺頁，可擴大向產業界宣導，促進業界對議題的瞭解，以裨益於收集更務實的業界意見。這些文案內容應包括： WTO/CTE 目前重要的 Agenda 那些對我國重要的 issues 兩傘團體提立場文件的背後動機 Issues 對台灣潛在影響為何應採行哪些行動方案	2. 感謝委員意見，將建議主管機關採納(p.179)。
3. 結論中有些建議太過軟，使用很多「似乎」	3. 因為許多議題尚在發展中，故結論用語保留適度彈性，以因應未來需要。
4. 台灣產品輸出，實際上會對從 PPM 角度定義之環境商品的可能發展，所產生的衝擊最高。可以建議工業局應投入研究的資源。	4. 感謝委員的建議。就本研究資料收集的結果發現，目前 PPM 尚未成為 WTO 會員在討論環境商品時的一個具體分類標準，因此，尚無法瞭解 PPM 是否將成為一談判的議題。建議後續研究由環保署與工業局合作進行，例如產業的調查等(p.174)。

期末審查委員意見（續）

審查意見	意見回覆
黃正忠秘書長 5. 台灣的環境服務業未來朝出口發展為主，因此對於WTO/CTE 談判與台灣商機有密切關連，工業局等單位應該深入分析。	5. 謝謝委員建議。

期末審查委員意見（續）

審查意見	意見回覆
溫麗琪博士 本報告內容非常豐富，惟工作內容與當初署裡所提出之工作內容有所差異，是較為可惜之處。個人就報告內容提出以下意見：	
1. p.57 報告中認為中國大陸之立場文件有明顯圍堵我國參與之意圖，應於 CTE 下次會議中提出質疑與異議。各人意見認為對中國大陸打壓之質疑應非常謹慎，才不致引起貿易與環境議題外之困擾。個人建議國人應積極參與投入於對議題的貢獻，較為實質有效，如表達我國對歐盟提出之定期資訊交換的立場（WTO 與 MEAs），或定期資訊交換的重要性。	1. 感謝委員意見，報告用語已做修正(p.57)。
2. 工作內容項目中要求就環保商品與服務之關稅與非關稅貿易障礙等議題提出研析。對於貿易障礙的部分似乎並未有任何說明之處；而 p.88 第二段之附錄表五似乎有遺漏，可否加強！	2. 感謝委員指正。對於環境商品與服務業之關稅與非關稅貿易障礙分析，本研究透過彙整 WTO 文件中針對相關議題之方式，將之呈現在 WTO 各委員會有關環境商品與服務業之文件摘要中，例如文件編號：WT/CTE/W/67/ADD.1；WT/CTE/W/218 等。另，第 86-89 頁之內容係針對文件 WT/CTE/W/228 進行摘要，因此，88 頁中所指的附錄五，係為該份文件中的附錄五。

期末審查委員意見（續）

審查意見	意見回覆
溫麗琪博士	
3. p.145 提出自由貿易協定中，「台巴」協定對環境服務業之影響。表 9 指出台巴在市場開放承諾比較，不知此一開放承諾表對環境服務業之意義何在？另外，期中既然有環境服務業部門，顯然我國工業局或在論文中對環境服務業有一定程度之定義可供參考。另外，「美新」協定及「台美」協定之研究報告中對於貿易與環境有較明確的內容可供參考。	3. 感謝委員意見，將建議未來之研究參考「美新」協定及「台美」協定之研究報告中對於貿易與環境之成果，做為未來政府相關部門施政之參考(p.177)。
4. 文字描述需再釐清，尤其是針對我國的立場部分。本報告於多處內容都描述我國立場，為很多部分並未提出立場來源，或解釋性文字，請具體表明其根據。如： ● p.49 我國認為我們所提文件將選擇的權利即於爭端當事國。 ● p.54 我國亦不認為法律拘束力為界定特定貿易義務的唯一要件。 ● p.56 我國傾向於採取廣義定義。 ● p.59 我國表示支持歐盟觀察員提案。	4. 今年 7 月所提之立場文件，主要根據去年 10 月所提立場文件之精神，再做進一步的論述。因此有些觀點不完全是計畫團隊的觀點，而是基於延續性的考量。

期末審查委員意見（續）

審查意見	意見回覆
溫麗琪博士 5. 研擬立場文件的機制和程序似乎並不具體。本研究報告並未交代立場文件是如何提出，經由何種程序，是否有召開過相關單位或業者之公聽會。立場文件的形成有其必要且有其時效性，故儘早建立相關機制和程序是刻不容緩，建議未來署裡可就立場文件邀集業者參與。	5. 本年度立場文件，由計畫團隊研擬後送交環保署，再經由環保署審核後轉國貿局，並經國貿局「貿易與環境工作分組」與會的出席委員確認通過後才正式提出。已將委員之意見於報告中建議相關主管機關（如環保署、國貿局）設計立場文件之研擬機制與提交程序(p.178~179)。

期末審查委員意見（續）

審查意見	意見回覆
黃麗惠科長	
1. 建議環保署未來之委託研究案範圍能縮小。才能真正就議題做深入研究及提出具體建議。	1. 同意委員意見，已於報告中提出相關建議(p.181)。
2. 本報告不能避免地發生打字方面的錯誤，但有些 WTO 協定的譯法不符合本局統一之譯法，且本報告就同一協定的譯法也未統一。SPS、TBT、GATT 的譯法都有誤。以上錯誤我已於報告中儘量圈出。	2. 感謝委員指正，文字的翻譯已統一，錯字並已更正。
3. p.3 第一段尾：爭端解決小組及上訴機構已審理並做出判決的爭端案件，仍留下許多討論空間，可否簡要說明有哪些討論空間？以及我國的看法？	3. 感謝委員意見，文字內容已做適當說明與修改(請參考 p3.註釋 2)。
4. p.12：請標註杜哈第 31 段的原文，以利讀者參照。	4. 感謝委員意見，已將原文標註於報告中(p.12)。
5. p.16：各會員採行 TBT 或 SPS 措施應先依據 TBT 或 SPS 協定為之，而不是立即主張適用 GATT1994 第 20 條。P.16 的含意有問題。	5. 報告內容並無此含意，但為明確起見，已於 p.16 註釋 8 做說明。
6. p.26~27：第 26 頁內容應係 CTE 特別會議對第 31.1 段之討論進展，但跳到第 27 頁完全是在講 CTE 例會對第 32 段之討論進展，看的有點混淆，應加以修改。	6. 本章節內容僅為一般性論述，介紹本年度 CTE 各次會議的討論議題與進程。

期末審查委員意見（續）

審查意見	意見回覆
黃麗惠科長	
7. p.49：杜哈第 31 段才是授權會員談判的範圍，第 32 段及第 33 段不是談判範圍。	7. 感謝委員意見，這可能是文字語意上的誤會，但已做修正。
8. p.51：最後兩句話，語意有問題，WTO 與 MEAs 有衝突，即表示二者並不完全相容。到底作者要表達的是二者相容或不相容或不十分相容。	8. 感謝委員意見，本段文字已做修改(p.51~52)。本段主要認為表面上 WTO 與 MEAs 似乎沒有衝突（因為尚未有爭端案件產生），但就法律的角度而言，兩者之規範不見得相容。
9. p.57：作者可否提出具體作法之建議，即所謂的「希望發揮的程度」，可否從學術研究的觀點提供建議？另對中共文件之主張，若其主張是 MEAs 各締約國慣有的立場，我們也不能說中共在圍堵我國，我們是否又在 CTE 提出質疑，宜審慎思考（避免給 WTO 會員認為我們在搞政治議題的負面想法）。	9. 感謝委員意見，報告用語已做修正(p.57)。惟原文的意思在於建議主管機關是否願意利用 CTE 維護我國環境之利益。
10. p.58：報告所提之代表團指的是「我國」或是「各國」，宜做說明。	10. 感謝委員指正，此處指的是「各國」代表團。
11. p.59：最後一段，內容與前面各段重複。	11. 感謝委員指正，已將文字內容做調整與修正(p.58~59)。

期末審查委員意見（續）

審查意見	意見回覆
黃麗惠科長	
12. p.60：WTO 主張的是資源有效利用的比較利益，由此來看，WTO 係支持環境保護。文中提到「過度開發經濟活動衍生的環境問題」，以及「爭端解決的處理上，不見得能夠以公正的角度處理與環保有關之爭端」係作者主觀認定，可否考慮標明「作者以為」等文字，以免讓讀者以為 WTO 和環境有衝突。	12.感謝委員建議，該段文字內容已做修正(p.59)。
13. p.56 及 p.60：第 31.1 段明言，本回合談判不處理 MEAs 非締約國 WTO 會員之問題，在此前提下，我國參與談判的出發點為何？可否在第 60 頁敘明？	13.目前 WTO 與 MEAs 關係之談判最終仍將影響對 MEAs 非締約國實施貿易措施在 WTO 的適法性之判斷；故我國出發點應在談判初始及應嚴謹把關，以避免現行談判結果若過於寬鬆，及 WTO 傾向同意 MEAs 之貿易措施，而可能影響我方權益。
14. p.61：WTO 沒有所謂的「市場進入談判小組」，只的應該是「非農產品市場進入談判小組」（NAMA）	14.感謝委員指正。用語將會進行統一。
15. p.66：倒數第四行是什麼意思？（依據 WTO 規範要求產品必須符合綠色生產標準）	15.本段係針對國內的相關文件進行彙整的工作，該段則是全文摘錄自相關之研究報告。

期末審查委員意見（續）

審查意見	意見回覆
黃麗惠科長	
16. p.107：建議環保署及工業局應提供符合我國利益之環保商品清單，或我國對其他會員主張之環保商品清單之看法。	16.感謝委員之指正，委員的意見亦已經列入研究報告第九章之建議事項中。
17. p.109：單一議題及多數議題所指為何？	17.指環境訴求為一項（僅針對節能或省水或禁用某類物質）或多項（如同時要求具備節能與低噪音）。
18. p.138：環保標章雖是自願性，但未來是否會成為強制性？另對目前已構成貿易限制效果之環保標章，WTO 會員應透過何種途徑降低此等貿易限制效果？我國對 LCA 的看法，可以認同嗎？我國的技術真的以做到 LCA 的要求嗎？我國在推動環保標章方面有遇到相關的貿易障礙嗎？	18. 目前所探討的自願性環保標章，在未來應不至於轉變為具強制性。以美國 shrimp/turtle 案為例，構成貿易限制效果之環保標章可透過 WTO 爭端解決機制處理，可改善一些限制的程度，但並非絕對解決問題。而我國對 LCA 的看法，負責國內環保標章業務的財團法人環境與發展基金會是採正面的態度。我國目前在推動環保標章制度尚未遇到相關貿易障礙或挑戰，惟政府採購法第 96 條對於給予環保產品 10%優惠價差的規定，有可能受到 WTO 會員國之挑戰。
19. p.140：我國真的與歐盟簽署環境協定？	19.本資料是參考葉俊榮教授發表於 1994 年國際環境法年報第五期第 440 頁之 "Country /Regional Reports: Taiwan"。

期末審查委員意見（續）

審查意見	意見回覆
黃麗惠科長	
20. p170：柴油引擎車進口，我方配套措施及排放標準是否已經準備妥當？	20.感謝委員意見，將轉環保署參考。
21. 本研究資料蒐集豐富，內容詳盡。	21.感謝委員意見。
22. 就實質內容，除了在今年就31.1 段提出一份立場文件，為較具體之成果，但在其他段落（如 31.2 及 31.3）僅止於資料之蒐集與彙整，缺乏具體意見。希望未來的年度計畫能加強 31.2 及 31.3 段的研究及提出立場文件。	22.感謝委員意見，將轉環保署參考。

期末審查委員意見（續）

審查意見	意見回覆
謝子陽教授	
1. 請參考環保署期末報告書格式，欠缺中英文摘要。另提醒承辦單位定報本的電子檔需上傳至環保署監資處網路系統中。另應準備國科會結案表格（請參考科顧室資料網）	1. 感謝委員提醒。
2. 本年度十月會議參與後，對各國非正式會議有極好的建議，如澳洲代表（跨部會談判小組、分工）、巴西代表團（出國經費補助）、美國代表團（代表替補性）、日本代表團（形成立場文件的機制，或對國內權益的影響）等，但對本年七約份會議中我國參考會議後的看見著墨較少，本報告較著重於國際間議題、立場、趨勢分析等，但對我國現有機制（如何做好內部分工、整合及資訊分享）應較具體建議。	2. 7月份的會議主要在對於我國立場文件意見之交換，各國意見已反映於彙整的各國的評論中(p.53~55)。
3. 本計畫對我國立場文件及原提出的英文回應資料應放入。	3. 感謝委員指正，相關資料已置於報告的附錄四中。

期末審查委員意見（續）

審查意見	意見回覆
謝子陽教授	
4. 本計畫建議如同過去研究案，對於人本與資源如何整合，似乎流於口號，未來應就協助主辦單位，如何進行有限資源整合，做實質建議（例如會議前時程表的規劃、哪些重要議題需要討論、與哪些部門相關等）。	4. 感謝委員意見，相關建議已置於期末報告之建議之中。
5. 委辦單位在計畫執行時，應考慮本計畫之委託目的。	5. 感謝委員指正。

簽　到　表

會議名稱：「我國對於 WTO 環境與貿易事務應有之策略與前瞻」座談會

開會時間：中華民國九十二年十月十六日（星期四）上午九時三十分

開會地點：環保署九樓會議室

主持人：梁永芳顧問

出席者：

單　位	姓　名	簽　到
經濟部國貿局	張俊福組長	張俊福
台大法律系	羅昌發教授	羅昌發
中央研究院社科所	湯德宗教授	請假
財團法人環境與發展基金會	于寧總經理	〃
中華經濟研究院	溫麗琪研究員	溫麗琪
中華民國企業永續發展協會	黃正忠秘書長	黃正忠
中國技術學院通識中心	謝子陽教授	請假
工業技術研究院環安中心	楊致行副主任	〃
私立東吳大學國貿系	林彩瑜教授	〃
國立清華大學科技法律研究所	牛惠之教授	〃
國立清華大學科技法律研究所	彭心儀教授	〃
國立政治大學國貿系	楊光華教授	〃
中央研究院歐美所	洪德欽教授	〃
台大法律學院 WTO 中心	葉順榮律師	葉順榮
國立東華大學環境政策研究所	施文真教授	施文真
國立交通大學科技法律研究所	倪貴榮教授	倪貴榮
環保署空保處		簡慧貞
環保廢管處		蘇瑞鏘
環保毒管處		請假
環保管考處		蔡家

單 位	姓 名	簽 到
環保科顧室		
環保科顧室		

列席者

單 位	姓 名	簽 到
國立東華大學環境政策研究所	李姿慧	
國立交通大學科技法律研究所	趙雯蕙	

「我國對於 WTO 環境與貿易事務應有之策略與前瞻」座談會
會議紀錄

時間：中華民國 92 年 10 月 16 日（星期四）

地點：環保署九樓會議室

主持人：環保署科顧室梁永芳顧問

出席人員：

經濟部國貿局多邊組張俊福組長、經濟部國貿局多邊組房文英稽核、台大法律系羅昌發院長、中華經濟研究院溫麗琪研究員、中華民國企業永續發展協會黃正忠秘書長、台大法律學院 WTO 中心葉順榮律師、國立東華大學環境政策研究所施文真教授、國立交通大學科技法律研究所倪貴榮教授、環保署空保處簡慧貞簡任技正、環保署廢管處嚴瑞錫技士、環保署管考處齊家科長、環保署科顧室魏盟巽博士。

主席致詞：

略

會議討論：

主席：

請計畫主持人倪教授先對本次座談會的目的做一簡單說明。

倪教授：

由於貿易與環境議題牽涉到跨部會間的合作，因此本次座談會安排的第一個議題「我國目前參與 WTO『貿易與環境工作分組運作』之檢討」期望能就各主管機關間的工作分配，進行全面的檢視與討論；第二個議題「環保署參與 CTE 之利基探討」與第三個議題「環保署內部資訊整合」則希望能從環保署的立場出發，檢討我國參與 CTE 事務的準備工作及團隊合作之情形，使未來我國在 CTE 的表現能更臻於完備；第四個議題「杜哈宣言第 31 至 33 段之後續討論」則希望彙集各位學者專家之意見，做為我國在 CTE 參與該議題討論時的立場依據。

關於第一個議題，請本計畫的協同計畫主持人施教授為各位說明議題提出之理由。

施教授：

議題一可從兩個層面進行討論，一為國內對貿易與環境議題，各方意見的整合以及主管機關權責之分工，而我國對於貿易與環境的議題又應投入多少的工作比重；二為如何學習他國，特別是常發言或是所提出之議題影響我國權益甚具者，在 CTE 的參與方式，俾強化我在 CTE 之表現，以爭取我國之權益。

主席：

現在就議題一開始討論，請國貿局張組長發言。

張組長：

議題一的討論對未來參與 CTE 活動的執行應是有相當大的助益。我國參與 CTE 之活動雖是由國貿局主導，並擔任整合各單位之意見的工作，但貿易官員對環境議題不夠熟稔，不見得能對環境問題有精準的操作，他國負責 CTE 的經貿官員也有類似的問題；另一方面，環保署雖對環境議題瞭若執掌，惟對 WTO 的經貿運作模式不夠熟悉，所以如何在人才及資源上做整合有其必要性。

在此也提出一個問題，若我國認為環境議題可凸顯我國地位，在 CTE 中我們應如何參與、發揮，才是比較好的模式？

倪教授：

我國參與過兩次 CTE 特別會議，分別提出文件表達我國對於杜哈宣言之立場，對議題討論的參與程度極深。但依照兩次活動的觀察，除了提立場文件，如何在會場中與他國積極的互動，並對我國所提出的文件內容與他國做討論或是立即的回應，更為重要，也更能達到參加 CTE 的意義。

以美國、歐盟及澳洲為例，他們以團隊合作的方式參與 CTE，有固定的成員，並對成員施予訓練使其熟悉 CTE 的運作，能隨時上場、互相支援；而

一些開發中國家也有固定的主要人士持續的參與 CTE 的各項活動；另外，一些國家即便不提出文件，仍固定出席 CTE 例會去觀摩學習，並對他國提出的文件發表意見。反觀我國在 CTE 的參與上雖有提出文件，也在事後做出回應稿，但我們團隊的組成不夠堅實，當他國對我國文件內容提出質疑時，可能無法作立即且有效的回應，這是我們必須嚴肅面對的問題。

在國內資源有限的情況下吾人必須釐清，我國參與 CTE 目的的重心為何？背後所支持的資源來自何處？CTE 的參與應是持續的進行並需要長遠的規劃，所以建議應積極且持續投入人才的培訓與磨練，以提升談判、協商與處理問題之能力。

主席：

政府對於 WTO 相關議題十分重視，年初也中華經濟研究院成立了 WTO 中心，現在請中華經濟研究員溫博士發表意見。

溫博士：

CTE 可能是我國可藉以拓展環保業務的國際平台，若我國與他國在環境議題上能有實質的互動，對於我環保活動有一定程度的幫助。由於環境的議題是很複雜、具高度技術性的，所以團對成員的組成應同時包括常任制與任務編組制兩類，才能發揮最大的效果。至於人才的養成，目前 WTO 中心已著手相關的培訓計畫，成立 WTO 經貿人才學院，我們將於十月三十日召開說明會。

主席：

現場有業界代表，我們請中華民國企業永續發展協會黃正忠秘書長發表意見。

黃秘書長：

政府過去委託各單位針對 WTO 的貿易與環境議題進行研究雖然有一定的成果，但業界覺得這些研究欠缺對於 CTE 文件中背後所隱藏的政治動機，

以及對商機影響的分析報導。因此，對於議題一的檢討，在此提出以下三點僅供參考：

1. 研究名詞解釋背後所隱藏的政治動機與目的，如關於特定貿易義務（STO），美國便質疑歐盟以此做為農業補貼的尚方寶劍。
2. 在 MEAs 中涉及到貿易措施的有很多，我國關注的重點在哪幾個條約？這些工作項目涉及國內哪些主管機關？而主管機關對於這些貿易措施有何想法或因應措施？
3. 目前國際間對於「環境商品」與「環保服務」的定義仍有爭議，國內目前有無統一的解釋？我應設法釐清，因其對台灣輸出的產品有很大的影響。

另外，由於國內對於貿易與環境議題的主管機關權責不明，對廠商也造成一定的困擾，遇到問題不知道該請誰協助。

而在 CTE 團隊的組成，建議可包括下列成員：

1. 政府單位；
2. 法律背景的專家；
3. 資訊分析團隊（提供業者想要的資訊，如聯合國發佈的資訊中，哪些是對業者有影響的）；
4. 策略研擬團隊；
5. 談判小組。

最後，台灣不見得要提立場文件，而是建議針對美國、歐盟等國的提案，做好檢視、跟隨的動作，了解其背後的政治動機與牽涉的貿易商業利益，分析相關措施對我可能產生之衝擊與影響，或許比較恰當。

主席：

謝謝秘書長的意見，礙於時間的關係，請各位先進就議題二發表意見，請葉律師發言。

葉律師：

議題二是「環保署參與 CTE 之利基探討」，建議可把 MEAs 與 GATT 的關係釐清，將有助於環保署各項工作的推行。可利用環保議題在 CTE 中討論其他的 MEAs，並積極與他國互動，以凸顯我國在國際活動上的難處並尋求

國際解決。

另外，認同黃秘書長對於工作團隊成員組成之提議。

主席：

謝謝葉律師。關於各位所關切的人才培訓問題，過去確實有隱憂，因此我們樂見 WTO 人才學院的成立。去年環保署也派出種子部隊到哈佛受訓，請空保處簡慧珍簡任技正發表意見。

簡簡任技正：

在哈佛所受的 WTO 談判模擬訓練，是以六人一組，一人分配一個議題提立場文件的方式進行，而回國後，署內也安排一連串的訓練課程，因此在人才培訓上已有進展。

藉由這個座談會的機會，也請各位學者專家提供一些意見協助我們業務的執行。以空保處為例，所負責的 MEAs 是蒙特婁議定書與京都議定書，目前最擔心的是京都議定書若在明年如期生效，而有關排放權的交易我國又無法參與意見，這對我國將造成兩大影響：一是大車小車在二氧化碳（CO_2）的排放量有所不同，這對車輛的出口將造成影響；二是關於「碳」的買賣與交易，我們都無法參加。以環保署的立場，希望能透過 CTE 解決相關問題，但署內也明白礙於現實環境的考量，只能試著先在 CTE 拋出議題，避免因過度投入而遭到打壓。目前，署內也在觀察是否有其他 WTO 會員國遭遇到和我國相同之情形，並進行相關準備工作。

主席：

針對簡任技正的問題，不知主辦單位有何意見？

施教授：

目前實務的操作上，我國在參與各 MEAs 活動時，只能以非政府組織（NGOs）的方式進行，受到很大的限制，因此希望藉由參與 CTE 的活動，表達立場再回頭影響 MEAs。但本計畫工作團隊在計畫執行過程中一直思考「CTE 是否真為我國參加 MEAs 的最佳平台」？因為 CTE 主要在處理假借

環保之名行貿易障礙之實的貿易問題，並非解決環境問題，所以我國應思考我參與 CTE 的態度與方式是否合宜。畢竟參與 CTE 活動的各 MEAs 秘書處對於政治敏感度很高，不見得會採納我國的意見與想法，但我國可考慮藉由拉近和 MEAs 中主要成員國的交情，使其了解我國的立場。吾人認為在短期內，參與 CTE 不見得一定能助於我國加入 MEAs。

張組長：

在此回應施教授所言，在 CTE 談 MEAs 是有侷限性的。因為 WTO 對於環境議題，在心態上是被動的，問題一定要和貿易相關才會處理。參與 CTE 可解決我國在國際環境議題上的一些困境，但無法解決全部。

另外，目前國內的運作機制有檢討的空間，除了資源的分配、人力的調度，負責相關工作的人員流動頻繁也是問題。

最後補充一點，根據過去經驗，在參加 CTE 會議時，可以感受到與他國保持互動的重要性。

主席：

環保署很清楚參加 CTE 對於我參與 MEAs 的幫助有限，但我國還是可以在 CTE 中適時凸顯我國的困境，爭取他國的支持與同情，因此參加 CTE 還是目前我們認為最可行的方式。

中場休息十分鐘

主席：

請羅院長引言。

羅院長：

關於署內內部資訊的整合，在此提供一些意見。承辦人員應積極的從所發包的計畫中學習，多與受託機關互動，交換彼此的想法，不但有助於計畫品質的提升，更能藉由計畫培養署內的專家人才。

關於議題四的討論，目前 CTE 對於貿易與環境的討論，仍處於條文的解釋階段，尚未看到較深入的實踐，我國或許可考慮如何更進一步提出具體的內容參與討論，並思考我國有無可能扮演一積極的角色，導引 CTE 進入實質的談判，促進具體概念的產生。

主席：

針對羅院長所建議的「計畫回饋論」，在此值得我們進一步討論。其實署內資訊的整合，同仁們一直在積極的進行與推動，請署內魏博士提出看法。

魏博士：

署裡對於一些重要的 MEAs，每年約投入一千萬的經費支援相關計畫，以 Basel 為例，其為持續性的計畫，去年的計畫重點則是 Basel 與 WTO 之比較。而關於署內內部資源的整合現況，除了進行計畫研析、評比，最後並提交主管會報討論，所以相關承辦人員對於所負責的計畫皆相當熟稔。

署內對一些重要的 MEAs 議題的掌握有相當程度之把握，對於各 MEAs 我國多以遵守規約為原則，並觀察條文中是否會造成我在遵約過程中產生窒礙難行之處。各業務單位所提出的意見，由科顧室統一彙整之。

環保署明白透過 CTE 參與 MEAs 有其難處，但還是要參與議題的討論，藉此表達我受不公平待遇的情形。惟議題的提出要先搞清楚國內的利基，若利基低，便不易在 CTE 中主導。另外我國對於條文應採廣義之解釋，未來如遇爭端，至少能拉到 WTO 中解決。

主席：

廢管處同仁對於 Basel 有何看法？

嚴瑞錫：

目前 Basel 有四年的報院計畫在進行，也積極爭取參加 Basel 的會議。而去年韓國誤傳對我不利之訊息，我國也立即反應做出澄清；另外，我們也請清大范教授針對「實質參與」的部分做研究。

主席：

針對議題三，跟各位報告環保署已有的措施。前署長曾要求科顧室對計畫品質提升做出改善的規劃，因此科顧室將其分成四個階段進行，第一階段是審查計畫的必要性、可行性、合理性以及是否可落實性；第二階段則是邀請專家學者參與計畫的評選；第三階段是進行期中報告審查並由科顧室召開「委辦計畫品質提升會議」；第四階段則是期末報告審查，並要求各科科長就列管計畫在主管會議中報告。現在科顧室開始挑選出去年委辦計畫中品質好與不好者，相信經過此機制，署內的委辦計畫執行將更為嚴謹。
議題繼續開放討論。

黃秘書長：

在此建議國內對於貿易與環境議題先不要急，應先做好內部分工、整合與訊息分享的工作。

既然 CTE 是 WTO 下的單位，貿易與環境議題應該還是由國貿局主導比較恰當。雖然環境議題在國際間尚未受到重視，但在益發重視永續發展的趨勢下，國內對於相關議題仍要進行長期的規劃。
在內部資訊的整合方面，應先有一架構清楚的主計畫，並對計畫的推展持續追蹤，特別是執行過程中的資訊交流、資訊紀錄以及對廠商的宣導與推廣應加以重視，才能發揮各個計畫的功效。而在整合國內各界的意見後，在將之化為我國立場文件的內容，最後再由國貿局彙整送出，或許是比較妥善的方式。

最後必須提醒，WTO 與 MEAs 有許多矛盾之處，我國在參與的過程中要小心，以免兩面不討好，應避免衝突的產生。

主席：

秘書長提到讓業者了解計畫彙整的成果，並從業者獲得意見的回饋後結合各方意見形成立場文件的內容，這點值得我們參考。

溫研究員：

建議委託機關多與受託機關間保持互動，這對於計畫的執行將有很大的

幫助。

在資訊整合方面，未來中經院要做資料庫，內容除了各法律文件、貿易議題專論外，也希望能加入環保相關之資料，希望 貴署能提供相關內容。

主席：

資料提供是沒有問題的。

倪教授：

其實，不管貿易與環境議題是由那個單位主導，人才與經費的來源更值得我們重視。

在立場文件的提出方面，哪些議題是我國所要著墨的，我國對於各議題的優先次序為何，都必須加以考慮；而除了理論基礎，若有民間業者參與加入實務上的經驗，立場文件之內容將更具說服力。

最後，因為我國非 MEAs 的會員國，在 CTE 中針對杜哈宣言第 31(1)應持何種立場，值得研究。

房稽核：

針對議題三，國貿局有下列看法：

(1) 環保署在委託各 MEAs 計畫時，是否有把 WTO 納入研究範圍？如對特定貿易義務（STOs）之討論？

(2) 在此呼應羅院長所言，在杜哈宣言中看不出 WTO 與 MEAs 到底要談到什麼程度。

(3) 杜哈宣言第 31.2 條或許是我國可以加以發揮的條文，如我國可提案要求落實 WTO 與 MEAs 堅定期的資訊交換，並將資料傳遞給會員國，如此或許可以解決我國無法立即取得 MEAs 文件之困境。

(4) 我國應對杜哈宣言第 31.3 條中關於環境商品的定義加以重視，因為此定義對國內廠商的影響很大。

(5) 環保署明年是否還有類似計畫能與 WTO 規範一併研究？

主席：

請魏博士做簡要回應。

魏博士：

本署明年還是有相關計畫，但不只是針對 CTE，而是含括 TBT 與環境商品等項目。

散會

一、WTO 與多邊環境協定

編號	標　題	文件編號	日　期	提出者/作者
(一)	SUB-PARAGRAPH 31(I) OF THE DOHA DECLARATION	TN/TE/W/20	10 February 2003	the United States
(二)	Paragraph 31(i)	TN/TE/W/21	10 February 2003	Switzerland
(三)	Discussion paper on The Concept of Specific Trade Obligations (STOs) Paragraph 31(i)	TN/TE/W/22	10 February 2003	Canada
(四)	RELATIONSHIP BETWEEN SPECIFIC TRADE OBLIGATIONS SET OUT IN MEAs and WTO RULE Paragraph 31(i)	TN/TE/W/23	20 February 2003	India
(五)	Paragraph 31(i)	TN/TE/W/24	20 February 2003	Hong Kong, China
(六)	Paragraph 31(i)	TN/TE/W/25	20 February 2003	Norway
(七)	THE RELATIONSHIP BETWEEN WTO RULES AND SPECIFIC TRADE OBLIGATIONS SET OUT IN MEAS Paragraph 31 (i)	TN/TE/W/26	25 April 2003	Japan
(八)	Paragraph 31(i) of the Doha Declaration – Specific Trade Obligations set out in Multilateral Environmental Agreements –Implementation of CITES in Hong Kong, China	TN/TE/W/28	30 April 2003	Hong Kong, China
(九)	PARAGRAPH 31(i) OF THE DOHA MINISTERIAL DECLARATION	TN/TE/W/29	30 April 2003	Malaysia
(十)	INFORMATION EXCHANGE AND OBSERVER STATUS	TN/TE/W/30	30 April 2003	Switzerland

(十一)	**The Relationship between MEAs and WTO Agreements: "set out in MEAs" Paragraph 31 (i**	**TN/TE/W/31**	**14 May 2003**	**European Communities**
(十二)	**Statement by Switzerland at the meeting of the Special Session of the Committee on Trade and Environment of 1-2 May 2003**	**TN/TE/W/32**	**13 May 2003**	**Switzerland**

編號	標　題	文件編號	日　期	提出者/作者
(十三)	**IDENTIFICATION OF MULTILATERAL ENVIRONMENTAL AGREEMENTS (MEAs) AND SPECIFIC TRADE OBLIGATIONS (STOs) Paragraph 31(i)**	**TN/TE/W/35**	**27 June 2003**	**China**
(十四)	**THE RELATIONSHIP BETWEEN WTO RULES AND "SPECIFIC TRADE OBLIGATIONS SET OUT IN MEAS"**	**TN/TE/W/36**	**3 July 2003**	**Taiwan**

(一)

TN/TE/W/20
10 FEBRUARY 2003
Committee on Trade and Environment Special Session
SUB-PARAGRAPH 31(I) OF THE DOHA DECLARATION
Submission by the United States

1.INTRODUCTION

During the course of 2002, the CTE in Special Session conducted a useful exchange of views on the scope of the mandate in sub-paragraph 31(i) of the Doha Declaration and provided an opportunity for delegations to communicate how they would like to see the negotiations proceed. It is now embarking on a phase of negotiation that will be increasingly concerned with discussion of specific examples of provisions in MEAs that are within the terms of the mandate. The United States (U.S.) welcomes this development and is prepared to engage in more in-depth analysis of the relationship between specific trade obligations set out in MEAs and WTO rules. The purpose of this U.S. submission is to contribute to the commencement of this phase of work in order to promote the development of a firm factual and analytical foundation for any eventual results under the 31(i) mandate. This phase should include efforts to understand the experience of individual Members in negotiating specific trade obligations in MEAs and implementing them.

While this submission provides U.S. views on examples of specific trade obligations in the agreements enumerated in WT/CTE/W/160/Rev.1, it is without prejudice to U.S. views on any other provisions contained in MEAs that are not specifically referenced in this submission. The United States also submits this paper without prejudice to U.S. views on the applicability of WTO rules, which presumably will be discussed at a later stage in the negotiations. Finally, the inclusion of particular MEA provisions and exclusion of others is intended to further a constructive discussion in the CTE and is not an indication of the importance or environmental significance of any particular MEA provision in relation to any other.

2.LIMITS IN THE MANDATE

In reviewing WT/CTE/W/160/Rev.1, the United States was mindful of the parameters set forth in the mandate in sub-paragraph 31(i). In particular, the United States focused on those provisions that could be categorized as "specific

trade obligations."

First, a specific trade obligation is one that requires an MEA party to take, or refrain from taking, a particular action. Such action must be mandatory and not simply permitted or allowed by a provision in an MEA. In other words, it cannot be discretionary.

Additionally, a specific trade obligation must be "set out" in an MEA.

For purposes of the immediate inquiry into examples of specific trade obligations, a further limit in the mandate is relevant. That is, the mandate only covers trade obligations among parties. Thus, it would include only those provisions in which parties to an MEA agree to bind themselves to trade obligations vis-à-vis each other. It would not include obligations requiring parties to take particular trade action in relation to non-parties.

3.REVIEW OF U.S. VIEWS IN CTE SPECIAL SESSION DISCUSSIONS

The United States has previously communicated its perspective in discussions in the CTE in Special Session under sub-paragraph 31(i). First and foremost, the United States is interested in ensuring that any result in this negotiation maintains the integrity and mutual supportiveness of both sets of international obligations – those in MEAs on the one hand and those in the WTO on the other. We must be careful not to create any reluctance on the part of individual countries to join MEAs for fear that they are simultaneously agreeing to prejudice their WTO rights. Furthermore, ministers at Doha, in paragraph 32 of the Declaration, already directed that the negotiations must not add to or diminish the rights and obligations of Members under existing WTO agreements. In the U.S. view, the MEA/WTO relationship has worked and is working quite well. WTO rules have not interfered with trade obligations among MEA parties and have not had a stifling effect on MEA negotiators' willingness to include trade obligations in MEAs where deemed important for environmental purposes. For their part, MEA negotiators have generally sought to tailor their trade provisions to meet particular environmental purposes, particularly among parties, in a way that takes account of WTO implications.

The United States has also stressed the critical importance of enhanced domestic coordination between MEA and WTO policy-makers and negotiators. Fundamentally, there is no substitute for this since it continues to be the most direct and effective means of maintaining compatibility between MEA trade

obligations and WTO disciplines. In this regard, the United States believes that progress to enhance communication and cooperation between MEAs and the WTO under sub-paragraph 31(ii) could also offer dividends in promoting increased coordination between environment and trade officials at national levels.

4.CATEGORIES OF SPECIFIC TRADE OBLIGATIONS IN MEAS

It is interesting to note that, even among specific trade obligations set out in MEAs, there appears to be a wide variety in terms of form and content. Variations include:

Obligations, whether regulating exports or imports, that seek to:

Help conserve *something in the party of export* (e.g., specimens of endangered species);

help protect an importing party from something potentially harmful (e.g., hazardous wastes or hazardous chemicals); and

avoid harm to a global resource (e.g., the ozone layer);

for the sub-set of export obligations intended to protect an importing party from something harmful, those that require:

notifying an importing party of action taken by the exporting party;

notifying an importing party of a proposed export;

restricting export if an importing party does not want it;

restricting export if the exporting party believes it cannot be handled in an environmentally sound manner in an importing party;

restricting export altogether;

obligations that vary according to their role in an agreement, including:

core obligations that directly regulate trade (e.g., certain provisions of CITES);

obligations that support core ones by establishing substantive standards to control production and/or use of particular substances (e.g., certain provisions in the Montreal Protocol);

obligations that address ancillary aspects of import or export restrictions (e.g., designation of an import or export authority);

obligations that apply independently of any particular decision on the part of a party and obligations that depend upon a party's prior decision to restrict imports or exports;

obligations that specify procedures for modifying the scope of a trade obligation (e.g., for adding new species to the appendices of CITES or new chemicals to Annex III in the Rotterdam Convention).

Additionally, procedures differ among agreements on modifying the scope of a trade obligation. Some can require consensus of all parties, whereas others permit modifications upon the agreement of a certain number of parties less than consensus.

While the preceding examples provide some picture of the variety of potential specific trade obligations in MEAs, they are by no means definitive in terms of categorizing kinds of obligations.

5.IDENTIFICATION OF EXAMPLES OF SPECIFIC TRADE OBLIGATIONS COVERED UNDER THE MANDATE

In reviewing the compilation of agreements in WT/CTE/W/160/Rev.1, the United States has not limited its consideration to MEAs that are already in force. In the U.S. view, the important factor is whether there is a specific trade obligation that warrants analysis, rather than whether the MEA in question is in force. Further, some of the MEAs that are not yet in force could enter into force during the course of these negotiations. The United States also believes that the existence of the compilation in WT/CTE/W/160/Rev.1 makes it unnecessary to debate in the abstract the meaning of such terms as "MEA", "obligation", "trade", etc. The sense of delegations regarding these terms will come to the surface through a concrete review of the examples they identify in the document.

As noted by the United States in the October 2002 meeting of the CTE in Special Session, there appear to be specific trade obligations set out in six MEAs listed in WT/CTE/160/Rev.1. These are: CITES, the Montreal Protocol, the Basel Convention, the Rotterdam (PIC) Convention, the Stockholm (POPs) Convention and the Cartagena (Biosafety) Protocol. (TN/TE/R/3, paragraph 30.)

Attached to this paper is a matrix that identifies some examples of specific trade obligations in these six Agreements. Each example is a legally binding commitment to take a particular trade action. Each is "set out" in the relevant agreement. Each involves an obligation vis-à-vis another party to the MEA in question.

These specific trade obligations identified in the attached matrix can be contrasted with other provisions that, while they might also be environmentally significant, are not specific trade obligations covered by the mandate:

Article 4 of the Montreal Protocol (in contrast to Article 4A) obligates parties to take particular trade action in relation to non-parties, rather than parties. The same is true of Article 4.5 of the Basel Convention.

Article 13.3 of the Rotterdam Convention provides discretion to individual parties on whether to subject certain of its chemical exports to labelling requirements and, as such, is not an obligation.

Article 16 of the Biosafety Protocol, Article 4.2(a) of the Framework Convention on Climate Change and Article 10(b) of the Convention on Biological Diversity contain general, rather than specific, obligations that accord discretion to the parties regarding implementation.

6.THE WAY FORWARD

The United States believes that the CTE in Special Session is now well positioned to proceed under sub-paragraph 31(i) in a more concrete, analytical manner. This phase in the work should begin to build a factual foundation that can subsequently permit the Committee to examine the relationship between these two distinct sets of international obligations. To further this effort, the United States suggests that:

Other delegations also identify examples of specific trade obligations in the agreements listed in WT/CTE/W/160/Rev.1;

the CTE in Special Session focus on those on which there appears to be a consensus that they are specific trade obligations without precluding discussion on other provisions raised by delegations; and

on this basis, the CTE in Special Session could invite individual delegations to provide information on their experiences with respect to negotiation and implementation of these specific trade obligations in light of WTO rules.

附表（略）

（二）

TN/TE/W/21

10 February 2003

Committee on Trade and Environment Special Session

Paragraph 31(i)

Contribution by Switzerland

We agreed at the last meeting to turn our attention today to the question of "specific trade obligations" set out in MEAs. As we emphasized in our previous submissions (TN/TE/W/4 and TN/TE/W/16), Switzerland considers that the terms contained in the Doha Ministerial Declaration need to be clarified in order to establish a link with so-called conceptual issues.

In the most recent deliberations, various categories were identified and discussed by a number of delegations. Allow me, Madam Chairman, to make some substantive comments and to outline our position as set forth in our submissions:

- Switzerland considers that the purpose of this exercise should not be to analyse the consistency of MEAs, and the measures for which they provide, with WTO rules. On the other hand, we expect this discussion to result in greater transparency with regard to the interpretation given by Members of the concept of "specific trade obligations", as referred to in the Doha mandate.
- In this connection, Switzerland is of the view that **two categories** come under the heading of "specific trade obligations":

Trade measures that are explicitly provided for and mandatory under MEAs: This first category comprises all MEAs which explicitly mention a trade measure adopted in pursuit of a specific objective. This is the case of the CITES, for example, under which trade in species threatened with extinction – which are or could be affected by trade – is permitted only in exceptional circumstances. To illustrate our point, let us take plant X included in Appendix I to the CITES, which lists the species that are affected by trade and are subject to strict regulation. If Member A prohibits the import of plant X pursuant to Appendix I of the CITES, such a measure should be regarded as a specific trade obligation and would hence be covered by the solution negotiated among the WTO Members under paragraph 31(i). The other MEAs covered by this first category are the following: Stockholm Convention (POPs), Protocol on Biosafety (Cartagena), and the Basel Convention.

Other measures that are appropriate and necessary to achieve an MEA

objective: This second category comprises all MEAs setting out types of measures and policies that can and must be adopted in pursuit of a specific objective negotiated by the contracting parties. These MEAs give contracting parties some latitude with regard to the trade-related measure to be adopted. One example is the Kyoto Protocol which has as its objective to reduce emissions of greenhouse gases. The measures to be taken to that end may relate to a number of spheres – taxation, rules and standards, and so forth (Article 2.1 of the Protocol). (Let us take Member A, which is listed in Annex I to the Protocol along with the other countries that have undertaken greenhouse gas reduction commitments. If Member A prohibits the importation and use of emission filters for industry on the grounds that they do not meet national standards in terms of retention of substances that adversely affect the concentration of greenhouse gases, such a measure should be regarded as a specific trade obligation covered by the solution negotiated among WTO Members under paragraph 31(i). Indeed, it contributes to the implementation and achievement of the object of the Protocol, which provides for an "obligation de résultat" (obligation to achieve results). This second category thus encompasses MEAs which specify:

- an obligation to achieve results, and
- the spheres in which a measure may be taken. Measures that may be adopted in order to fulfil the obligation to achieve results are thus not explicitly named but implicitly derive from the sphere in which they should be taken (e.g. the fiscal sphere implies fiscal measures).

Other MEAs covered by this second category are the following: Rotterdam Convention (PIC), Montreal Protocol, ICCAT, CCAMLR, CBD and ITTO.

All the trade-related measures provided for in any of the MEAs referred to above are presumed to be necessary for the protection of the environment. Such mandatory trade obligations, as explicitly provided for in an MEA, may be deemed to be consistent with the WTO rules among the MEA parties. This principle obviously requires Members negotiating an MEA to make sure that the MEA does not include unnecessary, arbitrary, protectionist or unjustifiably discriminatory trade-related measures. It should be noted, however, that the practical implementation of trade-related measures might still be challenged where a Member has used its discretion in a manner out of keeping with its WTO obligations.

（三）

TN/TE/W/22

10 February 2003

Committee on Trade and Environment Special Session

Discussion paper on The Concept of Specific Trade Obligations (STOs)

Paragraph 31(i)

Canada

1. Introduction

At the CTESS meetings in October and November 2002, Members agreed to examine specific trade obligations (STOs) set out in certain multilateral environmental agreements (MEAs) as the next step in the analytical stage of the negotiations. Members agreed that a conceptual analysis could complement that review. We believe that both approaches are essential if we are to reach a common understanding.

Some Members proposed that the initial discussion should focus on STOs in six MEAs: the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES), *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol); the *Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal* (Basel Convention), the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade* (PIC), the *Cartagena Protocol on Biosafety* (Biosafety Protocol), and the *Stockholm Convention on Persistent Organic Pollutants* (POPs).

Canada supported this approach. The purpose of this paper is to assist in this discussion by outlining a number of issues for consideration and providing illustrative examples. It is submitted as a non-paper and without prejudice. An in-depth examination of provisions in these six MEAs can provide Members with useful information to inform our negotiations. Canada's support for the examination of specific provisions in these six MEAs does not mean that we view them as the definitive list of all MEAs which contain STOs but we believe that examination of these six can provide significant insights. Although the PIC and POPs Conventions and the Biosafety Protocol are not yet in force, each of them has a significant number of signatories, 73, 151 and 100 respectively (WT/CTE/W/160/Rev.1), indicating broad participation by the global community in the negotiations of the MEA. Hence, it is appropriate that these should be included in our analysis at this time.

In each of these six MEAs, trade-related measures are important tools to

achieve the underlying environmental conservation and protection objectives in an efficient, effective and timely fashion. These measures take different forms such as bans, restrictions or conditions on international trade in products, substances or species. In some cases, this is accompanied by restrictions or bans on domestic production and/or use (e.g. POPs Convention, Article 3 and Montreal Protocol, Article 2). In the Basel Convention, Parties seek to minimize the transboundary movement of hazardous wastes and, when these do occur, that it is done in a manner that will protect human health and the environment.

2. Analysis of some of the factors relevant to the concept of specific trade obligation

In undertaking our examination of specific provisions of each of these MEAs, based on the document WT/CTE/W/160/Rev.1, we must take into account that this document does not reproduce all provisions in each MEA. It may be necessary to examine a specific provision in the context of other provisions of the MEA and its objectives. A Party to an MEA expects other Parties to that Agreement to respect all of their MEA obligations in the same way that WTO Members expect other Members to respect all of their WTO obligations.

An examination of trade related provisions in these six MEAs reveals that an obligation may be contained in one specific article or a combination of several articles that taken together could constitute a specific trade obligation. Some of these provisions provide further information on how and/or when the trade-related measure should be implemented. For example, Articles 4.1 and 4.2 of the Montreal Protocol each deal respectively with the import and export of substances in Annex A. However, the process for listing of substances in Annexes is governed by Articles 2 & 6. We note that in its very useful submission TN/TE/W/13, the Republic of Korea classifies Articles 5, 6, 7, 8, 10.4, 10.9, 11.2, 12.1 and 13.2 together as precise and mandatory PIC procedures. Articles 5, 6, 7 & 8 of the PIC Convention are provisions dealing with the notification of national regulatory actions and mechanisms for additions to the annexes. These would appear not to be directly related to trade. Should the full range of provisions that support or contribute to the trade-specific articles be considered to be part and parcel of the STO?

Members have raised the question of whether decisions of the Parties should be included in our discussions of STOs set out in MEAs. The question arises when MEAs use decisions to further specify when and/or how a given provision referencing a trade-related measure is to be used. Whether decisions by the Parties at Conferences of the Parties, or through some other agreed procedure, are obligations within the definition of an STO as that term is used in the Doha Declaration, or are to be used in the interpretation of these obligations, requires a careful examination of the specific MEA. There would appear to be no

legitimate reasons for excluding them *a priori.*

Members have also raised the issue of whether amendments to an MEA should be included in our examination. The Montreal Protocol is an example of a protocol that has been amended four times: London Amendment in 1990, Copenhagen Amendment in 1992, Montreal Amendment in 1997 and the Beijing Amendment in 1999. In some cases, these amendments have added new substances or, altered or added obligations, which are trade related. There would appear to be little justification for not including amendments to MEAs in the definition of "set out in MEAs" in para. 31(i) for those WTO Members who are also Parties to the amendments and if the amendments include measures that are STOs.

Precision and clarity in provisions simplify the task of identification of an STO. For example, Article 3 of the POPs Convention provides for a Party to ban the import or export of the controlled substances or wastes subject to certain conditions. Although no details are provided on the procedures to be utilized by a Party to put these bans into effect, they clearly set forth the result (to eliminate the import or export) to be achieved while the Party still has to determine which and if "legal or administrative measures are necessary". In Article 3.2 (b), the POPs Convention requires a Party to take measures to restrict the export of certain chemicals "taking into account any relevant provisions in existing international prior informed consent instruments". While there are no details, the language is fairly precise in nature. Can this particular aspect of the obligation in Article 3.2 be considered to be a specific obligation?

It is perhaps easier to identify a provision as an STO if it affects traditional areas of trade law i.e. import and export bans and restrictions on trade (Article 4.1 Montreal Protocol, Article 3 POPs Convention) but an STO may also include provisions that affect trade such as notifications, technical regulations, packaging and labelling requirements all of which are subject to WTO rules (e.g. Article 4.7 (b) Basel Convention; PIC). In all six MEAs, while the trade effect can be similar, that is to ban, restrict or condition trade, there is diversity in the approach taken to achieve these similar ends in the MEAs. This diversity should be encouraged, as a one-size-fits-all approach to trade-related measures is unlikely to effectively address all environmental problems. For example, the PIC Convention and the Basel Convention both include prior informed consent procedures but the procedures and details of the obligations vary.

There are other complexities in trying to scope out the key issues when looking at the concept of STO. In some instances, an STO does not become an obligation of one Party until another Party has asserted a right or privilege (Article 4.1 (a), (b) & (c) of the Basel Convention). Should the right or privilege be captured by the concept of the STOs when its exercise results in a mandatory trade obligation?

Trade related provisions in MEAs may also include processes with a discretionary element which further complicates the analysis of STOs. For example, Article 4.2 (d) of the Basel Convention requires each Party to take the appropriate measures to "ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement". It requires Parties to put in place technical regulations ("measures") to achieve this objective. It is mandatory and a transboundary movement should qualify as international trade. However, the standard of "minimum consistent with" may be subject to various interpretations and a Party will have some discretion in its application although this discretion is limited by the precision of the phrase "environmentally sound management" which is defined under the Convention and further delineated by technical guidelines for specific waste streams.

Similarly, Article 4.2 (e) of the Basel Convention which requires Parties to take appropriate measures to not allow the export of hazardous wastes to a country "if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner, according to criteria to be decided by the Parties at their first meeting". Some discretion is left to the Party in the application of the provision but it would have to be consistent with criteria to be developed by the Parties and technical guidelines.

Some MEAs provide that the convention does not prevent a Party from imposing additional requirements (e.g. Basel Article 4.11 and PIC Article 15(4)). These provisions are not trade specific nor are they mandatory. Some MEAs provide that any additional requirements are to be consistent with international law which would include international trade rules.

In some cases, MEAs include preambular language and/or general principles (e.g. Biosafety Protocol, PIC Convention) that refer to the international trade regime. Members should take into account the potential legal implications of such references in examining the relationship between WTO rules and specific trade obligations set out in MEAs.

Some Members have also suggested that the *United Nations Framework Convention on Climate Change* (UNFCCC) and its *Kyoto Protocol* should be included in our examination of MEAs containing STOs. Our preliminary analysis indicates that there is nothing in the UNFCCC or the Kyoto Protocol that could be considered an STO. Therefore, at this stage, we do not believe that any issues raised by the UNFCCC and the Kyoto Protocol are within the mandate of paragraph 31(i) of the Doha Declaration.

3. Conclusion

In defining what is an STO set out in an MEA, there are a number of factors to be considered. A complete analysis may require an examination of a single provision in an MEA or a combination of provisions and may also include amendments or decisions of the Parties depending on the specific circumstances of each MEA. The more explicit the language in the provision(s) as it relates to trade, the easier the task of identification of an STO. Some MEAs include trade related measures to meet environmental objectives and an understanding of both is required. A core concept for distinguishing amongst trade-related measures appears to be the level of "discretion" left to a Party in the choice of a range of measures, and the implementation and the design of a measure. Members should consider whether provisions in MEAs which permit considerable discretion should have the same relationship to WTO rules as those with little or no discretion.

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TN/TE/W/23

20 February 2003

Committee on Trade and Environment Special Session

RELATIONSHIP BETWEEN SPECIFIC TRADE OBLIGATIONS SET OUT IN MEAs and WTO RULES Paragraph 31(i)

India

1. Introduction

Several submissions have been made in the Committee on Trade and Environment Special Session (CTESS) attempting to understand and clarify the mandate contained in paragraph 31(i) of the Doha Ministerial Declaration (DMD). The submissions have underlined the need to clarify the terms that form the cornerstone of the mandate under paragraph 31(i) of the Doha Declaration.

It is in this regard that India would like to contribute to the negotiations by sharing its interpretation of:

(a) The types of "multilateral environmental agreements" (MEAs); and

(b) the "specific trade obligations" (STOs)

that may form the core of these discussions. With this in view, a "Table of Trade Measures" has been annexed to this submission. This Table is expected to lead the discussion towards consideration of the practical consequences of any interpretation and moving away from an overly-theoretical debate.

It is underlined that this is neither an exhaustive list of provisions in the MEAs analysed, nor is it a comprehensive list of MEAs that have STOs, nor an assumption that these necessarily need a solution under paragraph 31(i). The analysis is intended to be an illustration of the approach to and the nature of work required in the negotiations on the mandate in paragraph 31(i) of the Doha Declaration.

2. Types of Multilateral Environmental Agreements

The debate on what constitutes an MEA is not new, but it acquires a particular meaning in light of the Doha Mandate. India is of the view that the criteria for considering an environmental agreement as an MEA should have the

following elements:

(i) It should have been negotiated under the aegis of the United Nations or specialized agencies like UNEP;

(ii) its procedures should stipulate that participation in the negotiations is open to all countries;

(iii) there must have been effective participation in the negotiations by countries belonging to different geographical regions and by countries at different stages of economic and social development; and

(iv) the Agreement should provide for procedures for accession of countries which are not its original members and on terms that are equitable in relation to those of its original participants.

India believes that the term "MEAs" contained in paragraph 31(i) of the Doha Mandate must necessarily mean an MEA that has entered into force.

Japan's qualification of an MEA as one that "*...reflects the interests of major Parties concerned, such as Parties with substantial trade interests, actual and potential major producers and consumers of materials concerned*" [1] is perhaps more appropriate for a plurilateral agreement since it introduces a distinction between WTO Members by dividing them into formal categories – "major Parties" and "others". This qualification, in our view, is not relevant in the present context.

3. Specific Trade Obligations

A number of delegations have given their views regarding what constitutes a STO. India believes that the term "*specific trade obligation*" has three elements that must be considered together i.e. the provision must be *specific* with a *trade* element and should be in the nature of an *obligation*. Thus, any provision in an MEA to qualify as an STO must be specific and mandatory in character, and so precise in its direction that there can be no doubt about the action or restraint that a party to the MEA must adopt.

MEAs contain a number of trade related measures, which could be categorised as follows:

(i) A trade measure that is both mandatory and specific in its entirety.

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[1] See Submission by Japan, TN/TE/W/10, 3 October 2002, paragraph 10.

Article 4.1 (b), (c) of the Basel Convention according to which Parties are obliged to prohibit export of covered waste to Parties that have banned such imports or do not consent in writing to the specific import.

(ii) only the outcome to be achieved is identified with a list of appropriate measures that Parties could implement to achieve the desired outcome.

Article 6.2 of the Basel Convention requires the State of import to respond to the notifier in writing, by either consenting to the movement with or without conditions, or denying permission for the movement, or requesting additional information.

(iii) the outcome to be achieved is identified, however the measures which could be implemented to achieve that outcome are not specified.

Article 16 of the Cartagena Protocol dealing with "Risk Management" states that the Parties shall, taking into account Article 8 (g) of the Convention, establish and maintain appropriate mechanisms, measures and strategies to regulate, manage and control risks identified in the risk assessment provisions of this Protocol associated with the use, handling and trans-boundary movement of living modified organisms. This provision fails to be specific as to the nature of the measure, although it contains an obligation.

(iv) additional and more stringent measures to achieve the overall objectives of the MEA which are more in the form of a right granted to a Party as opposed to an obligation.

Article XIV.1 of CITES states that the provisions of the Convention shall in no way affect the right of Parties to adopt stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species (whether included in the Appendices or not) or the complete prohibition thereof.

India believes that the mandate given under paragraph 31(i) of Doha Declaration refers to only the first category of trade measures that are both mandatory and specific in their entirety. In India's view, non-specific provisions cannot qualify as an STO. Also if the provision set out in the MEA does not contain the crucial "*obligation*" element, such provisions too would fail to qualify.

While identifying STOs several other aspects are also relevant in considering the specificity, as a number of trade obligations are not specific in their entirety, that is, they contain non-specific elements as well. For instance, Article 13.1 of the Rotterdam Convention states that: *"The Conference of the Parties shall encourage the World Customs Organization to assign specific Harmonized System customs codes to the individual chemicals or groups of chemicals listed in Annex III, as appropriate. Each Party shall require that, whenever a code has been assigned to such a chemical, the shipping document for that chemical bears the code when exported".* The second sentence of the provision could qualify as an STO but the first sentence would clearly not. Furthermore, several provisions have to be read with another provision containing a trade obligation to understand whether it is specific or not.

4. Conference of the Parties

Another related and important issue is how to deal with the decisions, resolutions and recommendations of the Conference of Parties of MEAs. When approaching the question of whether STOs contained in COP decisions, resolutions, and recommendations should be treated as "STOs set out in MEAs", as per the Doha Mandate, one may seek guidance from general principles pertaining to MEAs and the role of COPs. This issue is attempted to be clarified hereunder.

Typically, the Conference of the Parties (COP) exist to:

- Review implementation based on reports submitted by governments;
- consider new information from governments, NGOs and individuals to make recommendations to the Parties on implementation;
- make decisions necessary to promote effective implementation;
- revise the treaty if necessary;
- act as a forum for discussion on matters of importance.[2]

A COP decision, resolution, and recommendation may differ in several manners. The question is whether the COP decisions, resolutions and recommendations which generally help in *directing the work of the COP*, i.e. are more of internal procedures or are substantive in nature? However, it seems that, exceptionally, COPs may have genuine law-making powers, such as the power to amend the Annexes attached to an MEA, as under Article XV of CITES.[3] In that case, an amendment must be adopted by a specified majority of Parties. The amendment so adopted, shall enter into force after the lapse of a specified

[2] Global Environment Outlook (GEO)-2000, Chapter 3, "MEAs and Non-Binding Instruments".
[3] See also Article XI.3(b) of the CITES.

time-frame and will be binding on all Parties, except for those Parties that made reservations. India believes that another relevant question is whether STOs contained in COP Decisions can be viewed separately from their incorporation in the MEA text, Annex or Protocol?

Considering the above, it appears that the nature of each COP decision must be scrutinized prior to asserting that STOs contained in such decisions are to be treated as "set out in MEAs".

5. Brief Comments on Member Submissions

The submission of the European Communities contains four broad categories of "measures arising from trade obligations".[4] As a general observation, it needs to be considered whether the usage of civil law terminology, such as "*obligation de résultat*", with its well-recognized connotations, is adequate to further the dialogue with a large number of WTO Members with common law or other legal regimes in place. Further clarification is required on the term "*obligation de résultat*" in common law.

On a more specific level, other delegations submitted examples of MEA provisions that could qualify as "trade measures explicitly provided for and mandatory under MEAs". However, India believes that some of these provisions require closer scrutiny. For instance, Japan states that Articles 6 to 9 of the Basel Convention are "trade measures explicitly provided for and mandatory under MEAs".[5] This is a rather broad statement, as may be illustrated by an analysis of Article 9, which comprises five subheadings. The *first*, defines "illegal traffic" and does not contain a trade obligation in itself. The *second*, requests the State of export to ensure that wastes are taken back, or "otherwise disposed of"; and the *third*, that these would be disposed of in an "environmentally sound manner"; the *fourth* that these would be disposed of "as soon as possible in an environmentally sound manner" – terms that all fail to meet the standard of "specificity". The *fifth*, requests the Parties to introduce "appropriate national/domestic legislation to prevent and punish illegal traffic" and encourages Parties to "co-operate with a view to achieving the objects of this Article". Article 9 is a clear illustration of provisions that, in our view, are not

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[4] Submission by the EC, TN/TE/W/1, 21 March 2002, paragraph 25. To know: (1) "Trade measures explicitly provided for and mandatory under MEAs"; (2) "Trade measures not explicitly provided for nor mandatory under the MEA itself but consequential of the "obligation de résultat" of the MEA"; (3) "Trade measures not identified in the MEA which has only an "obligation de résultat" but that Parties could decide to implement in order to comply with their obligations"; (4) "Trade measures not required in the MEA but which Parties can decide to implement if the MEA contains a general provision stating that parties can adopt stringent measures in accordance with international law".

[5] Submission by Japan, TN/TE/W/10, 3 October 2002, paragraph 11.

specific as to the means to achieve an outcome (not specific in its entirety), and hence would not qualify as an STO.

6. Conclusion

India sees benefit in furtherance of the negotiations in identifying the STOs set out in MEAs prior to discussing its outcome, since it would help appreciate the likely consequences as well as strengthening the logic behind any of the suggested outcomes. In this regard, it is hoped that the "Table of Trade Measures" will help the delegations in identifying STOs set out in MEAs.

India believes that the mandate given under paragraph 31(i) of the Doha Declaration refers only to the trade measures that are mandatory and specific in their entirety. In cases where specificity and obligation depend on other related factors or decisions, work must be undertaken to clarify the exact nature of such provisions. Further it proposes sharing of information and examination by the WTO and MEA Secretariats of the precise legal nature of various COP instruments to help understand their implications for the Doha Mandate as contained in paragraph 31(i).

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TN/TE/W/24

20 February 2003

Committee on Trade and Environment Special Session

Statement by Hong Kong, China at the meeting of the Special Session of the Committee on Trade and Environment of 12-13 February 2003 Paragraph 31(i)

Hong Kong, China

The four papers from the United States, Switzerland, Canada and India all, to some extent, discuss how negotiations should proceed. Instead of commenting on the four papers individually, my delegation would like to set out Hong Kong, China's view on how we should organize our work in the next phase.

Hong Kong, China shares Members' views that the CTESS had conducted useful exchanges of views on a host of issues on paragraph 31(i) of the Doha Declaration last year. Members should by now have a better understanding of the issues in question. In this connection, I would like, first of all, to join others in thanking the Secretariat for compiling a useful reference on Members' submissions (TN/TE/S/3). The Secretariat paper serves as a handy reference in understanding Members' positions. We support the Secretariat updating the paper regularly to take into account Members' submissions as the negotiation progresses.

Hong Kong, China fully endorses the views of previous speakers that the CTESS has entered into a new stage of work. In particular, we very much share the views of the United States that: "the existence of the compilation in WT/CTE/W/160/Rev.1 makes it unnecessary to debate in the abstract the meaning of such terms as "MEA", "obligation", "trade", etc. The sense of delegations regarding these terms will come to the surface through a concrete review of the examples they identify in the document".[6] Hong Kong, China strongly believes that it would bring us nowhere if we were to continue to dwell on those definitional issues. Time has come for us to proceed with discussions on paragraph 31(i) in a "more concrete, analytical manner", a phrase used by the United States. We support starting practical and pragmatic discussions now.

The last informal consultation agreed that we should "focus on STOs in relevant MEAs, without precluding Members from addressing definitional or other issues". In its paper (TN/TE/W/20), the United States has made a few useful suggestions to take forward the discussions. Hong Kong, China supports

[6] TN/TE/W/20, 10 February 2003, *Submission by the United States*, Paragraph 31(i).

this approach, especially the idea of identifying concrete examples of STOs, and experience sharing of the negotiation and implementation of these STOs. As a further suggestion to make our discussions more structured and focused, Hong Kong, China proposes that Members may start examining the MEAs identified in the Secretariat Matrix and the STOs therein one by one, perhaps beginning with those MEAs which have entered into force, with a more universal membership and global application. We believe Members would benefit more if we are to examine those MEAs which have been in existence for a longer time. It should however be emphasized that we are not suggesting a new modality of discussion. Our suggestion is meant to facilitate the discussions and help Members better understand the STOs in individual MEA through a concrete review of actual examples and experience. Our suggestion is based on a few considerations.

First, it is a more structured approach as Members could make reference to the Secretariat Matrix which usefully provides a snapshot of pertinent information such as MEA status, membership, trade-related measures, provisions for disputes and non-parties, etc. It is also a more efficient approach to facilitate Members' deliberations and helps make the discussions more focused. This is particularly the case for small delegations which do not necessarily have the resources to undertake their own analysis of individual MEA provisions and come up with examples of STOs identified.

Second, a sequential examination of MEAs will allow Members to share their implementation experience of the STOs therein in a more structured and efficient manner. It also helps identify and isolate current problems associated with their implementation. A more structured way of discussion may also provide some insights on possible means to address potential conflicts between WTO rules and MEA provisions, if any. In this respect, we note that quite a number of Members have already commented that given the diversity of approaches to tackle environment concerns in MEAs, it might not be feasible, and indeed dangerous, to find a one-size-fits-all solution to the question of WTO/MEA relationship. Hong Kong, China fully subscribes to this view. Canada for example raises a number of valid and soul-searching questions in its paper (TN/TE/W/22). We believe Members would not be able to find answers to those questions without examining and discussing respective MEAs one by one in detail.

Third, Members would be able to better involve respective MEA Secretariats and tap their expertise if the discussion is conducted sequentially one MEA by another. In this respect, we support the Chair's suggestion of inviting MEA Secretariats to participate in relevant discussion of the CTESS on an *ad hoc*, meeting-by-meeting basis. We consider it a pragmatic suggestion, without prejudice to the outcome of the horizontal discussion of the observership issue at the General Council.

The Secretariat has identified 14 MEAs with trade-related measures. According to the compilation of Members' submissions prepared by the Secretariat (TN/TE/S/3), the same 14 MEAs are also referred to in Members' submissions so far. The United States mentions in its paper that STOs are set out in only six MEAs listed in the Secretariat Matrix. Since the number is not prohibitive, without prejudice to the number of MEAs Members may wish to examine, a sequential examination starting with the more representative ones may appear to be a manageable way forward.

In deliberating the sequence of examination of MEAs and the STOs therein, Members may wish to make reference to aspects like the status of implementation, membership and scope of application, etc. We note that the US paper has listed STOs in the six MEAs identified. Of the six MEAs identified, we note that only three have entered into force, i.e. the CITES, Montreal Protocol and Basel Convention. On membership of these MEAs, Members may wish to note that according to the Secretariat Matrix, there are at present 154 parties to the CITES and 10 WTO Members are not parties. The corresponding numbers for the Montreal Protocol and Basel Convention are 175/3 and 146/22. On products affected by these MEAs, Members may agree that the products in question are relatively easier to identify cross borders, e.g. endangered species in the CITES appendices, controlled ozone depleting substances under the Montreal Protocol, and hazardous wastes under the Basel Convention. Given the longer time of existence of these MEAs, Members should have more experience on the implementation of the STOs therein, such as import and export bans, restrictions, notifications and licensing, etc. A sequential examination of MEAs may allow a more systematic sharing of experience. In this respect, Hong Kong, China notes that Canada has already attempted to examine some STOs in these MEAs in its paper. To help structure and focus our discussions, Hong Kong, China proposes that Members should, as a start, conduct detailed examination of these three MEAs sequentially.

Some might argue that a horizontal approach of discussing STOs in relevant MEAs might be more efficient as some STOs are similar. Hong Kong, China does not believe it is easy to generalize a set of common criteria from the MEAs. Nor do we think it is feasible to find a one-size-fits-all solution. Some Members have mentioned that we might need to categorize the STOs identified in the MEAs in a few baskets at some stage with a view to finding tailor-made solutions to only those which Members accept as STOs in the end. Hong Kong, China considers it a sensible way forward. We strongly think that a sequential examination of individual MEA is prudent and would help thrash out all the implications of the STOs therein through sharing of actual implementation experience. Meanwhile, it does not preclude some generalization at a later stage if some sort of commonalities could be drawn through in-depth examination and discussions of the MEAs sequentially.

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TN/TE/W/25

20 February 2003

Committee on Trade and Environment Special Session

Contribution by Norway based on its intervention at the Special Session of the Committee on Trade and Environment of 12-13 February 2003 Paragraph 31(i)

Norway

Based on the Doha Ministerial Declaration, paragraph 31(i), Norway submits the following contribution to the discussion of specific trade obligations (STOs) in relevant MEAs

1. Definitions

Several members have brought forward proposed definitions of central parts of the mandate. We agree with Switzerland that our focus should be on the interpretation given by Members of the concept of STO.

A. STO

A *specific trade obligation* needs to fulfil three criteria; it has to be specific, relate to trade and it must be an obligation:

> **SPECIFICITY** criterion; that it has to be clearly and precisely defined in the Agreement what measure to implement; i.e. measures are explicitly provided for and clearly identified in the Agreement.
>
> > For illustrative purpose we may refer to CITES, Article 3, according to which the export of any specimens of species included in Appendix 1 shall require the prior grant and presentation of an export permit, and the import of such specimens to require the prior grant and presentation of an import permit and either an export permit or a re-export certificate. Furthermore, the article spells out the conditions for granting said permits.

In our view the specificity criterion is not limited to provisions identifying only one single measure. It also applies to provisions providing well-defined, alternative measures.

An example might be the Rotterdam Convention, Article 10, which spells out that a response to the Secretariat concerning the future import of the chemical concerned shall consist of either a final decision ((i) to consent to import/ (ii) not to consent to import/ (iii) to consent to import only subject to specified conditions) or an interim response (which may include (i) to consent or not consent to imports/ (ii) statement that a final decision is under active consideration...).

On the other hand, provisions which allow Parties to adopt stricter domestic measures, without identifying those measures, or measures adopted by Parties to fulfil an objective of the MEA, do not fulfil the specificity criterion and fall outside our mandate.

TRADE criterion; the measure to adopt has to relate to imports and exports; i.e. it should cover those measures that we all recognize from a WTO context, i.e. packaging, labelling, notification, prior informed consent measures, etc.

Examples include the export prohibition of Article 4.1.b-c in the Basel Convention and the export and import licence requirements in CITES Articles III and IV.

OBLIGATION criterion; clearly includes all mandatory provisions in the Agreements. It also covers those cases in which the Parties are required to implement at least one of several well-defined measures provided for in the Agreement while other provisions or requirements of the said Agreement may provide further guidance as to the criteria to be applied.

An example of the latter is the Cartagena Protocol Article 10 on decision procedure, which spells out the different possible options of the Party of import while making it clear (Article 10.1) that any decision taken, shall be in accordance with the risk assessment in Article 15.

To sum up, an STO would have to be:

- **Specific**, meaning that measures to be implemented are explicitly provided for and clearly identified in the Agreement, including

well-defined alternative measures;

- **Trade related**, meaning measures we all recognize from a WTO context with respect to import and export;

- **Obligation**, meaning all mandatory provisions or a combination of several articles that taken together could constitute a specific trade obligation.

B. "AMONG PARTIES"

Our mandate is limited to "among parties to the MEA in question". It is understood that when an agreement allows for reservations to certain provisions in the agreement, a Party having made such a reservation is to be treated as a non-party with respect to this provision.

2. General comments

It is clear that it is not an easy task to draw an exact line between those provisions that contain obvious STOs and those that fall outside the mandate. We have a "grey area" of provisions that some Members believe are STOs while others disagree. Also, as pointed out by Peru, identifying STO by STO would imply individual interpretation only, and will not bring us any closer fulfilling our mandate. This illustrates the importance of developing some sort of a definition rather than going through the various trade measures one after the other and decide whether they can be considered STOs.

The mandate does not include negotiations of the relationship between MEAs and WTO rules as such. MEAs include a number of different measures, some of which could be defined as trade measures, or could otherwise have trade implications. Such measures are, however, not covered by the exercise we are engaged in under the Doha mandate. Consequently, these negotiations should not have any bearing on how a panel is to deal with a potential conflict arising from the applications of measures pursuant to an MEA with no STOs.

The mandate determines that the negotiations should not add nor diminish the rights and obligations of members under the existing WTO agreements.

In our view, this would imply:

- That the negotiations cannot limit any Members' right to take what is perceived as a breach of WTO rules to a panel – regardless of whether the measure is applied pursuant to or outside the scope of

an MEA.

- the negotiations should not have any bearing on measures taken pursuant to an MEA, on the grounds that the measure is not an STO.

What is the value added of these negotiations? We agree with Switzerland that this exercise should not be to analyze the consistency of MEAs with WTO rules. Given the limitations in the mandate, we would find it useful if the negotiations could reaffirm the mutual supportiveness between relevant WTO rules and STOs in MEAs, and that there is no hierarchy between them. Also, our aim should be to prevent that the conflicts between Parties to an MEA occur in the WTO. In addition the process would hopefully increase the awareness in the WTO of objectives, provisions and measures negotiated in MEAs and vice versa. This would contribute to national coherence throughout negotiations of both sets of agreements and reduce the potential of conflicts between them.

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TN/TE/W/26

25 April 2003

Committee on Trade and Environment Special Session

THE RELATIONSHIP BETWEEN WTO RULES AND SPECIFIC TRADE OBLIGATIONS SET OUT IN MEAS Paragraph 31 (i)

Japan

1. INTRODUCTION

During the discussions in Special Sessions of the CTE during the year of 2002 and in the last Session in 2003, several Members presented the conceptual clarification of specific trade obligations, and others focused on specific provisions in MEAs which could be deemed as specific trade obligations. The Republic of Korea, the United States and India7 submitted their analysis of specific trade obligations on the basis of trade measures described in Secretariat document WT/CTE/W/160/Rev.1 at the Special Sessions of the CTE last October and this February. Some Members also suggested the criteria and other issues to be taken into account in identifying specific trade obligations in their proposals. In particular, Canada's submission8 provides good "food for thought" in this regard. Japan believes that such clarification of the concept of specific trade obligations is useful and should be undertaken in parallel with the analysis of specific provisions set out in MEAs.

Japan analyzed the trade measures set out in six MEAs[9] and tried to identify specific trade obligations according to their specificity and their obligations. The results are summarized in the matrix attached hereto. Then Japan distilled some observations through the analysis.

As noted in Japan's previous submission, with respect to the relationship between existing WTO rules and specific trade obligations set out in MEAs, it is

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[7] Republic of Korea (TN/TE/W/13), United States (TN/TE/W/20), India (TN/TE/W/23).

[8] TN/TE/W/22.

[9] Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention), Cartagena Protocol on Biosafety to the Convention on Biological Diversity (Biosafety Protocol), Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC), Stockholm Convention on Persistent Organic Pollutants (POPs). The analysis includes the MEAs which have already been adopted and/or signed but have not yet entered into force (Biosafety Protocol, PIC, POPs).

of benefit to all WTO Members to ensure the legal stability and enhance predictability on the compatibility between both rules. The discussion of the CTE should contribute to this purpose and could achieve this end.

Japan submits this paper for the purpose of contributing to a further discussion of the CTE. This paper is meant neither to prejudice the rights of any Member enshrined in both WTO agreements and MEAs to which it is a party, nor to present Japan's definitive interpretation of all provisions of both WTO rules and MEAs. Thus, the matrix is not an exhaustive list of all MEAs which are considered to contain specific trade obligations and Japan's submissions, as well as the proposals, interpretations and concepts presented therein, could also be amended and supplemented at a later stage in the negotiations.

2. Analysis of specific trade obligations set out in MEAs

In line with its preliminary consideration presented in its previous submission, Japan made its analysis on the basis of the classification of the trade measures taken under MEAs into the following four categories:

- The trade measure in question is explicitly provided for as mandatory under an MEA;
- "*Obligation de résultat*" is explicitly provided for in an MEA and the trade measure in question is identified in that MEA as potential means to meet that obligation;
- "*Obligation de résultat*" is provided for in an MEA but the trade measure in question is not identified in that MEA, while the decision on the measure(s) to be taken to fulfil that obligation is left at the full discretion of each Party thereto;
- The trade measure in question is not mentioned in an MEA but the Parties to that MEA are obligated to take that measure in accordance with relevant decisions made under the framework of that MEA.[10]

Japan considers that the trade measures corresponding to category 1 above could be deemed as specific trade obligations compatible with WTO rules among MEA Parties. With regard to the trade measures corresponding to category 2, Japan considers that they could be rebuttably presumed to be the specific trade obligations consistent with WTO rules, if such substantial requirements as indicated below are to be introduced:

- The trade measure in question, pursuant to an MEA to achieve its

[10] TN/TE/W/10, paragraph 11. The wording of the definition of four categories is modified for syntactic reasons.

environmental objectives, is based on scientific principles.

- The scope of the trade sho measure in question is proportional in range and degree in the pursuit of the MEA objectives (Proportionality).

On the other hand, trade measures categorized in 3 and 4 above uld be deemed to be outside the scope of the mandate provided in the Doha Ministerial Declaration. Each trade measure classified in these two categories, if necessary, should be deliberated on a case-by-case basis.

In picking up the provisions from six MEAs, we excluded the provisions that are applied exclusively to trade between Parties and non-Parties, such provisions being outside the mandate given in the Doha Ministerial Declaration.[11] For example, Article 4.5 of the Basel Convention provides for the restriction on import and export of hazardous wastes or other wastes in the relation with a non-Party. Japan understands that Article 4.6 of Basel Convention is also outside the scope of the mandate, because this article regulates the transport of hazardous wastes to the Antarctic area which does not fall in the meaning of "trade" as is generally understood under WTO rules. On the other hand, Article 4 (from 1 to 4ter.) of the Montreal Protocol should be considered as specific trade obligations within the Doha mandate as long as they are applied among those States which are parties both to the original Protocol and its 1992 amendment (London Amendment). Article 4.9 of the Protocol, which was introduced by the 1992 amendment, stipulates that: "For the purposes of this Article, the term "State not party to this Protocol" shall include, with respect to a particular controlled substance, a State or regional economic integration organization that has not agreed to be bound by the control measures in effect for that substance." and thus should always be read in combination with other provisions of Article 4 as among Parties to the 1992 amendment. In the same vein, Article 3.2(b)(iii) of POPs should be deemed as within the Doha mandate as long as it is applied among Parties to POPs pursuant to the provisions of Article 3.2(d).

Provisions conferring rights on the contracting Parties, which are not specific trade "obligations" by definition, are excluded. For example, Japan has excluded Article 4.1(a) of the Basel Convention from the matrix.

Subject to the criteria outlined in the preceding paragraphs, Japan has picked up the provisions from six MEAs which fall within category 1 or 2 in accordance with the classification proposed in paragraph 5 above. Japan believes that they could be considered as illustrations of trade obligations, as summarized in the matrix attached hereto. Following are some of the points identified during the

[11] The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question.

conduct of this exercise which merit the deliberation of the Committee.

A. Degree of Discretion

One of the most important factors to be examined in this exercise is the degree of discretion allowed for each Party to an MEA in taking trade measures pursuant to the MEA in question. The classification in four categories of trade obligations suggested by Japan is intended to incorporate this factor into the framework to assess the compatibility of MEA obligations with WTO rules. In examining the concrete provisions of six MEAs, Japan has observed the following:

- The provisions of MEAs which clearly obligate Parties to achieve a trade ban and/or restriction should be recognized as constituting specific trade obligations. Such recognition seems to be shared by all WTO Members in view of the past discussions on this subject. For example, sub-paragraphs (e) and (g) of Article 4.2 of the Basel Convention clearly require the ban on trade in specified circumstances and thus should be sufficiently specific, although the main sentence of the Article seems, at first glance, to allow discretion in the choice of concrete modalities to achieve them ("shall take appropriate measures to..."). Article 4.9 of Basel Convention, Articles 3.1(a)(ii) and 6.1(d)(iv) of POPs, Article 11.1(b) of PIC and Article 8.1 of CITES should also be understood in the same vein.

- Article 4.2(e) of the Basel Convention seems to allow a certain room for discretion as to when to trigger the stipulated trade measure ("if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner"). However, the trade measure which shall be taken is stipulated in a very concrete manner ("Not allow the export of hazardous wastes or other wastes to an economic and/or political integration organization that are Parties, particularly developing countries,") and the requirements for triggering this trade measure are also circumscribed by the criteria developed by the deliberating organ created by the Convention ("... in an environmentally sound manner, according to criteria to be decided on by the Parties at their first meeting". See also paragraph 14 below.);

accordingly, the Article should be deemed as setting out a trade obligation in a sufficiently specific manner. Such analysis could also be relevant to Article 4.2(g) of the Basel Convention.

- Article 18.1 of the Biosafety Protocol allows each Party a certain degree of discretion as to concrete modalities to achieve the result. However, the Article sets out the result to be achieved in a fairly clear manner ("living modified organisms that are subject to intentional transboundary movement ... are handled, packaged and transported under conditions of safety") and complements it with the reference to other international instruments ("taking into consideration relevant international rules and standards". See also paragraph 10 below), thus circumscribing considerably room for discretion in choosing specific methods of handling, packaging and transport. Such provisions could possibly be considered as sufficiently specific.

- It is to be noted that the provisions which should or could be considered as sufficiently specific in line with the considerations outlined in (1), (2) and (3) above correspond to the provisions falling within categories 1 or 2.

B. Reference to Other International Instruments

Regarding the trade obligation referring to other related international instruments, it could be considered as a specific one if such other instruments themselves are sufficiently specific and if the compliance with such instruments is mandatory. For example, Article 4.7(b) of the Basel Convention clearly obligates its Parties to comply with "generally accepted and recognized international rules and standards in the field of packing, labeling and transport " and thus could be considered as a specific trade obligation. On the other hand, further consideration would be needed on whether the provisions of MEAs which obligate their Parties only to "take into account" other instruments, could also be considered as specific trade obligations. Examples are such as the latter part of Article 4.7(b) of the Basel Convention ("due account is taken of relevant internationally recognized practices"), Article 3.2(b) of POPs[12] ("taking into account any relevant provisions in existing international prior informed consent

[12] The Article is classified as category 1 because sub-paragraphs (i), (ii) and (iii) specify in a sufficiently specific manner the conditions under which the chemicals shall be exported.

instruments,") and Article 16.1 of the Biosafety Protocol.

C. Form of specific trade obligations

As pointed out in paragraph 10 of Canada's submission[13], there is no doubt that the provisions including bans and restrictions on transboundary movement of goods constitute specific trade obligations. The scope of specific trade obligations should also cover the provisions including notifications, technical regulations, packaging and labeling requirements, which could affect trade and accordingly whose compatibility with WTO rules (such as Articles VIII and XI of GATT, the TBT Agreement, the SPS Agreement, etc.) should be clarified. For example, Article 4.7(b) of the Basel Convention and Article 12 of PIC fall within the latter category.

A specific trade obligation may take the form of either one specific article or a combination of several articles which should be read together. For example, Japan considers that the provisions regarding notifications on trade transactions, though purely procedural ones, should be deemed as falling within the scope of the category 1 mentioned above (in paragraph 5) if such notifications are mandatory requirements for realizing those transactions (for example, Articles 6.1, 6.2 and 6.3 of the Basel Convention). Article 15.1 of the Biosafety Protocol (risk assessment), which could seem at first glance to refer to purely domestic procedures related to the regulation of living modified organisms, should be read together with other articles of the Protocol and also be deemed as a specific trade obligation because the Protocol requires its Parties to take any decision either allowing or prohibiting the import of living modified organisms on the basis of the risk assessment mentioned thereto (Articles 10.1 and 15.2 of the Protocol). In such case, the full range of provisions which could constitute a specific trade obligation should be considered as a whole. Each article should not be considered in isolation, which would lead to the misleading conclusion that the article is not a specific trade obligation.

Questions could be raised as to whether the obligation to re-import (for example, Articles 8 and 9.2(a) of the Basel Convention) is a "trade" obligation subject to WTO rules, or should be conceived as a kind of cooperation in the enforcement of the importing State's domestic regulations. Japan considers that such obligation should be considered as a specific trade obligation, as it seems to merit examination in light of Articles I and XI of 1994 GATT.

D. Decisions of the Deliberating Organ

Regarding the relation between the provisions of an MEA and the decisions

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[13] TN/TE/W/22.

adopted by the deliberating organ (Conference of the Parties, Meeting of the Parties, Commission, etc.) created under the MEA, two distinguished cases could be envisaged:

- The trade measure in question is explicitly provided for in an MEA and the elaboration of the details for implementation of the measure is explicitly entrusted to the deliberating organ;
- The trade measure in question is not provided for in an MEA and the decision of adopting the measure lies with the deliberating organ.

Japan considers that, in the case (1), the relevant provisions of the MEA fall within the category 1 and the trade measure in question could be deemed as the measure in accordance with the specific trade obligation consistent with WTO rules. Further discussion may be necessary to clarify that relation if additional requirements need to be introduced to evaluate the conformity of such case with WTO rules. For example, questions could be raised as to whether the corresponding trade measure taken by a Party to the MEA prior to the adoption of, or in case of failure in adopting, the implementing documents should be considered not to be the implementation of a "specific" trade obligation. Japan considers that such measure could be deemed as the measure implementing a "specific" trade obligation and thus could be seen to be consistent with WTO rules if the provisions in question set out substantial requirements in a sufficiently clear manner (as is the case for the first sentence of Article 18.2(a) of Biosafety Protocol) and if the measure is in compliance with these requirements.

3. Toward future discussions

Japan has picked up the provisions from six MEAs, which fall within category 1 or 2 according to the classification suggested in its previous submission and thus should be considered as specific trade obligations consistent with WTO rules. Japan invites Members to discuss, share and exchange views on points identified and to analyze illustrative examples of specific trade obligations.

It would be useful for MEAs secretariats to attend the CTE Special Session and share their relevant experience and expertise. Members, in order to facilitate examination of specific trade obligations thoroughly, could compile specific questions with environmental experts' inputs and transmit them for clarification from MEAs secretariats prior to each CTE Special Session.

附表請參考原文

(八)

TN/TE/W/28

30 April 2003

Committee on Trade and Environment Special Session

Paragraph 31(i) of the Doha Declaration – Specific Trade Obligations set out in Multilateral Environmental Agreements – Implementation of CITES in Hong Kong, China

Hong Kong, China

1. INTRODUCTION

Hong Kong, China proposed at the Special Session of the Committee on Trade and Environment (CTESS) in February 2003 that Members might start examining a few multilateral environmental agreements (MEAs) sequentially to identify concrete examples of specific trade obligations (STOs) therein.[14] To follow up on our suggestion, Hong Kong, China has attempted to examine relevant provisions in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in the light of our implementation experience. Without prejudice to our position in the negotiations, we would like to share our observations with Members. In accordance with the scope set out in paragraph 31(i) of the Doha Declaration, the ensuing discussions are limited to trade between Parties to CITES.

2. TRADE OBLIGATIONS IN CITES

As an international treaty to protect wildlife against over-exploitation and to prevent international trade from threatening species with extinction, CITES has been in existence since 1973 with a wide membership. The Convention was extended to Hong Kong back in 1976. To discharge fully the obligations under the Convention, a comprehensive regime regulating import, export or possession of endangered species is implemented by virtue of the Animals and Plants (Protection of Endangered Species) Ordinance. Details of our implementation experience are set out in the Annex.

In comparison with other MEAs, the trade-related provisions of CITES are relatively simple and straightforward. They aim at regulating trade of endangered species of wild fauna and flora through the granting of import/export

[14] TN/TE/W/24, "Statement by Hong Kong, China at the meeting of the Special Session of the Committee on Trade and Environment of 12-13 February 2003", Paragraph 31(i), 20 February 2003.

permits and certificates under specified conditions. Specifically, Articles III, IV and V of CITES stipulate the conditions for granting the required permits/certificates. Article VI of CITES further provides for the way of granting and handling these permits/certificates. These Articles specify explicitly trade measures Parties shall follow for the protection of endangered species. Supplementing these provisions, Article XIV of CITES allows Parties to take stricter domestic measures for, among others, the trade of endangered species. It however imposes no specific and clear obligation among Parties for action, and allows freedom in the choice of measures to be taken.

While implementation of the trade-related provisions of CITES such as Articles III, IV, V and VI are relatively straightforward because of their specificity, it is not so for those in Article XIV because of their non-obligatory and open nature. In the case of Hong Kong, China, in order to ensure an appropriate level of protection for the endangered species concerned, we have introduced some requirements not specifically envisaged under Articles III, IV and V of CITES, but allowable under Article XIV. For example, Article IV of CITES only requires prior presentation of either an export permit or a re-export certificate for the trade of endangered species listed under Appendix II of CITES, and an import permit is not required. For the purpose of strengthening import control, the requirement for an import permit is instituted in Hong Kong, China. It should be noted that the additional requirement for an import permit for CITES Appendix II species is not uncommon among OECD countries. However, this does not mean that these stricter domestic measures constitute trade obligations specifically stipulated under CITES. The concern remains that non-specific trade measures leave much room for Parties to implement the types of measures they consider necessary, whether or not considerations like WTO consistency, effectiveness of control and trade facilitation have been taken into account. In this respect, Hong Kong, China has been conscious of striking a balance between control and trade facilitation. We have recently conducted a comprehensive review of the stricter domestic measures. Actions are being taken to streamline the existing control with a view to further facilitating legal trade.

Having examined our implementation of CITES, Hong Kong, China is convinced that an STO in an MEA should include at least the following elements: (a) it must be obligatory in nature; (b) it must specify explicitly the actions which Parties shall take to fulfill the relevant obligations in the MEA; and (c) it must be a trade measure that affects the free flow of goods. On (c), we note that the primary focus of the current discussion on WTO/MEA relationship is to consider the need for and possible ways of accommodating trade measures taken pursuant to MEAs under relevant WTO disciplines. Therefore, we also believe that the trade measure concerned must be hindering the free flow of goods, contrary to the principles and disciplines in relevant GATT/WTO provisions. In light of the foregoing, our preliminary view is that Articles II, III, IV, V and VI of CITES

contain STOs, with the exception of paragraphs 1, 2 and 3 under Article II and paragraph 7 both under Articles IV and VI. The need for accommodating these Articles under relevant WTO disciplines is, however, an issue subject to further consideration.

3. THE WAY FORWARD

The CTESS has hitherto conducted useful exchanges of views on a host of issues on paragraph 31(i) of the Doha Declaration. The time has come for Members to start a pragmatic and concrete review of a few MEAs and the STOs therein. A few Members have started working in this direction in their submissions. Hong Kong, China would like to contribute to the process by sharing its implementation experience of CITES. The exercise demonstrates the possible complications in identifying and recognizing STOs in MEAs. This echoes the need to examine each MEA in detail to look at possible problem areas. It also shows that it is futile to continue to dwell on debates on definitional issues. Hong Kong, China does not believe it is easy to generalize a set of common criteria for defining STOs from the MEAs. Nor do we think it is feasible to find a "one-size-fits-all" solution. A possible way forward is to screen trade obligations in different MEAs with a view to considering whether they are deemed as STOs, and if so, whether some tailor-made solutions are required. A detailed examination of the trade-related provisions in a few MEAs represents the first concrete step towards that direction. Hong Kong, China firmly believes that through sharing of actual experience, Members should have a better understanding of STOs across different MEAs. We hope that the exercise could help move forward the discussions on the relationship between WTO rules and STOs in MEAs.

附表請參考原文

（九）

TN/TE/W/29

30 April 2003

Committee on Trade and Environment Special Session

PARAGRAPH 31(i) OF THE DOHA MINISTERIAL DECLARATION

Malaysia

1. Introduction

During the February 2003 meeting of the Committee on Trade and Environment in Special Session, there was a very informative exchange of views on specific trade obligations (STOs) set out in relevant Multilateral Environmental Agreements (MEAs).

A number of useful submissions contributed by several Members provided an illustration of the examples of specific trade obligations referred to in the Doha mandate of paragraph 31(i).

Malaysia would like to contribute to these negotiations by providing some views and observations on specific trade obligations and related issues under the paragraph 31(i) mandate. These views are preliminary and are intended to further facilitate the discussion of the issues under negotiation.

2. The Doha Mandate

Paragraph 31(i) of the Doha Ministerial Declaration provides that "With a view to enhancing the mutual supportiveness of trade and the environment, we agree to negotiations, without prejudging their outcome, on:

(i) *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 any member that is not a party to the MEA in question."*

In Malaysia's view, the negotiations clearly centre on the relationship between existing WTO rules and specific trade obligations set out in MEAs. They cannot be undertaken in isolation without clarity of the parameters of the mandate. It is also clear from previous submissions that there are differing views on the terms used in the mandate, which could lead to differences in the

determination of the scope and outcome of the negotiations.

For us, it is important that at the outset, the mandate itself has clarity, that it refers to the relationship between existing WTO rules and specific trade obligations as set out in multilateral environmental agreements.

Having said this, it is noted that the discussions so far have highlighted several aspects of the mandate which would need to be further examined and addressed as the negotiations progressed. These are:

- What are MEAs?
- Do the negotiations encompass only MEAs in force?
- What are specific trade obligations set out in MEAs?

3. Multilateral EnvironmentAL Agreements

Regarding what constitutes an MEA, Malaysia shares a number of views expressed in both the Argentinian paper (TN/TE/W/2) and the Indian paper (TN/TE/W/23) on the elements of an MEA. In our opinion, a multilateral environmental agreement under the paragraph 31(i) mandate should demonstrate the following characteristics:

(a) Its multilateral character is demonstrated by the fact that:

- It was negotiated under the auspices of the United Nations;
- negotiations leading to this agreement were opened to countries from all regions and that there was active participation from both the developed and developing member countries;
- membership in the agreements reflects the diversity of the UN/WTO membership;

(b) its environmental character is defined by the objective of the agreement which is environmental protection; and

(c) it has the character of an agreement when ratified and its provisions are in force.

In view of this, regional MEAs that do not possess the elements described in paragraph 8 would seem not to be relevant to the negotiations under paragraph 31(i).

4. Specific Trade Obligations

An initial examination of STOs by some delegations points to some common elements. STOs involve the commitment to undertake a particular measure or to refrain from a particular action, and that they contain the elements of mandatoriness and specificity in terms of the measures prescribed for the conduct of trade. Argentina (TN/TE/W/2) noted that STOs have the features of an obligation that is both specific in its outcome and with regard to the measure employed to achieve the result. Korea (TN/TE/W/13) interprets STOs on the basis of its ordinary meaning, which also comes to the conclusion that STOs are binding trade obligations that set forth not only the result to be achieved but also the measures used to achieve the result. India (TN/TE/W/23) further stated that for a provision in an MEA to qualify as an STO, it must be specific and mandatory in character, and so precise in its direction that there can be no doubt about the action or restraint that a party to an MEA must adopt. The United States (TN/TE/W/20) also recognized that an STO is one that requires an MEA to take or refrain from taking a particular action as set out in MEAs.

Others like the European Communities (TN/TE/W/1) and Switzerland (TN/TE/W/21) also identified one category of trade obligations as trade measures that are explicitly provided for and mandatory under MEAs.

In Malaysia's view, STOs in the Doha mandate, by the use of such terms as "specific" and "obligations" and "trade" do provide indications that these are MEA provisions which have the character of a binding commitment set within a prescribed specific course of action or which prescribe a specific restriction, where they relate to the conduct of trade.

In this respect, the mandate is clear and precise and there can only be one category of specific trade obligations, where the trade obligations are mandatory and specific.

The issue has also been raised of whether decisions, resolutions, and recommendations of the Conference of Parties of MEAs, which may contain STOs should form part of the mandate of these negotiations. It has been argued that the mandate refers to STOs as set out in MEAs. Malaysia concurs that the phrase "as set out" is significant in reference to MEA provisions. Therefore, STOs only where they are contained in Annexes, Protocols and amendments to MEAs adopted by Parties and where they have been ratified by the broader membership, have the possibility of falling within the mandate of the negotiations. Decisions and resolutions of COP which are not set out in MEAs are not an integral part of the MEA itself and therefore would fall outside the mandate of the negotiations. Further views on this would be useful.

5. Identification of Specific Trade Obligations

Many Members have submitted previous inputs contributing their views on examples of provisions in MEAs that constitute STOs. On the basis that we have outlined in the preceding paragraphs, Malaysia also attempts to identify STOs in three MEAs that are in force and contain the elements of an MEA thereof.

In examining MEA provisions contained in these three agreements, it is found that some provisions contained the binding element as illustrated by the use of the words "shall" and some are accompanied by the prescription of a specific prescribed course of action, but not all are related to trade.

Where the measures are mandatory and specific, but only prescribe administrative actions not directly linked to trade, we have indicated that these may not fit the profile of an STO.

The accompanying table provides some illustrations, but these are preliminary views, and we do not claim that these are exhaustive. In addition, we reserve the right to come back to these provisions at a later stage.

6. Conclusion

Malaysia welcomes the discussions that have been taking place to achieve a greater understanding of what constitutes an STO. This will assist us further with the mandate of paragraph 31(i) negotiations. We are of the view that based on the submissions so far, the vast majority of Members share the view that the STOs in the paragraph 31(i) mandate refer to provisions in MEAs that involve an obligation for the conduct of a specific measure directly relevant to trade.

附表請參考原文

（十）

TN/TE/W/30

30 April 2003

Committee on Trade and Environment Special Session

INFORMATION EXCHANGE AND OBSERVER STATUS Paragraph 31(ii)

Switzerland

1. Introduction

The mandate given to the CTE Special Session in paragraph 31(ii) opens the door to a coherent development of MEA regimes on the one hand and the WTO system on the other. Switzerland welcomes the very fruitful discussion that has taken place on this item so far. With this submission, Switzerland would like to present its views and contribute to the discussion with a view to reaching a decision on the two complementary elements that constitute the mandate of paragraph 31(ii) of the Doha Declaration, that is to say

(a) "Procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and"

(b) "the criteria for the granting of observer status".

Switzerland welcomes the document submitted by the United States[15] and the European Communities (EC)[16] on paragraph 31(ii) of the Doha Declaration and both WTO Secretariat documents "Existing forms of cooperation and information exchange between UNEP/MEAs and the WTO"[17] and "Observer Status".[18]

The need for closer cooperation between UNEP, MEA secretariats and the WTO Secretariat has proved to be essential for a coherent development of the environmental and trading systems. The plan of implementation of the World Summit on Sustainable Development negotiated in Johannesburg calls for efforts to "strengthen cooperation among UNEP and other United Nations bodies and specialized agencies, the Bretton Woods institutions and WTO, within their mandates".[19] The WTO and UNEP concluded, in 1999, a cooperation

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[15] TN/TE/W/5.
[16] TN/TE/W/15.
[17] TN/TE/S/2.
[18] TN/TE/S/4.
[19] Paragraph 136 of the WSSD Plan of Implementation. See WT/COMTD/W/106/Rev.1, WT/CTE/W/220/Rev.1, 20 December 2002, "Report of the WSSD on Sustainable Development", Note by the Secretariat, Revision.

arrangement in order to "improve efforts towards the objective of sustainable development", and establish "further effective cooperation between the two Secretariats in areas of mutual interest and to help achieve the aims of the Rio Declaration".[20] UNEP organized a number of back-to-back meetings with the CTE meetings. Since 1999, the Secretariat of the WTO has started the practice of inviting UNEP, the United Nations Conference on Trade and Development (UNCTAD), and MEAs to participate in the regional seminars on trade and environment. The CTE invited a number of MEA secretariats to participate in Information Sessions from 1997 to date.[21] So far, the modes of cooperation were developed on a voluntary and ad hoc basis. However, the calls for a more regular and structured cooperation between MEA secretariats, UNEP, and the WTO Secretariat are more and more recurrent.

2. Procedures for information exchange between MEAs Secretariats and the CTE

Switzerland considers that one of the main objectives of information exchange is the promotion of mutual supportiveness of the environmental and trading systems and the promotion of coherence between the said systems.

There are numerous benefits in enhancing cooperation between the secretariats of the MEAs and the CTE. They include: (i) international and national coordination; (ii) efficiency in capacity building and technology transfer; and (iii) prevention of conflicts between MEAs and WTO rules. Information exchange at the international level is an essential element to achieve complementarities between trade and environmental institutions. Moreover, it provides Members with the instruments necessary for a better coordination of trade and environment policies at the national level. Enhanced international dialogue, and capacity building which grows out of information exchange will strengthen national policy coordination. Technical cooperation and research initiatives are improved by a better exchange of information. Lastly, enhancing information exchange should improve the understanding of WTO and MEA legal systems and therefore contribute to avoiding potential conflict. Switzerland believes that because of the benefits of cooperation, its instruments – i.e. the information exchange or the granting of observer status – need to be strengthened, and adequate procedures set up and institutionalized.

Since September 1997, the CTE has held seven information sessions with the participation of MEA secretariats, which have been successful in informing WTO Members of the recent developments of trade-related issues in the respective MEAs. Switzerland considers that the timing chosen for these events is

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[20] Press Release – Press/154 – 29 November 1999. See TN/TE/S/2, p. 2.
[21] TN/TE/S/2 p. 5.

appropriate since the holding of meetings back-to-back with Special Sessions of the CTE enabled CTE Members to approach the topics of negotiations with a better understanding of MEAs' trade-related issues. The meetings also had the advantage of bringing together trade and environment officials. This will progressively enable an integrated approach towards both topics on a national level and better national coordination between trade and environmental issues.

The whole range of MEAs dealing with trade-related aspects[22], whether they have or have not yet entered into force, should be invited to participate in information sessions, as well as UNEP and other UN agencies involved in trade and environmental issues.

Because of the numerous benefits resulting from the information sessions, Switzerland believes that these should be formalized and integrated into a regular and institutionalized structure. We, therefore, support the idea put forward by the EC and other Members, that information sessions become officially institutionalized. In our view, this should mean that:

- The meetings should be held regularly, e.g. twice a year.
- Annotated agendas and background papers should be provided to participants of each session.
- Background papers prepared jointly by UNEP, MEAs and the WTO on specific issues should be provided for the meetings.
- The access to official documents should be facilitated in accordance with the newly approved General Council rules on document derestriction.

The information flow should be considered as an instrument of information exchange as much for the WTO as for UNEP and MEAs. The CTE and some MEAs could together sponsor information sessions on specific topics that are defined in the Doha mandate. Each session could be devoted to one or more subjects with the prior consent of both sides. During the last information session held on 11 November 2002 in Geneva, the participants explored the policy areas that could benefit from further information exchange, such as capacity building and technology transfer, and trade-related obligations in MEAs.[23]

Other issues upon which information exchange could be very beneficial to both WTO Members and MEAs parties include, *inter alia,* compliance and dispute settlement mechanisms in MEAs and the WTO; subsidies; integrated

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[22] See Annex.
[23] TN/TE/INF/2 pp.8-10.

assessments of trade liberalization; and labelling for environmental purposes.

Switzerland also believes that the Internet would be an appropriate instrument to enhance information exchange between the WTO, UNEP, and MEAs. A new website could be created or, better, existing websites could be adapted. In our view, a new website or specific pages on the existing websites of the WTO, UNEP, and the MEAs, should serve the following purposes:

- Information would be posted, for instance on trade measures in MEAs, on environmental measures in WTO, and papers from other analytical sources on this inter-relationship;
- It would provide the dates of CTE meetings and relevant documents from the MEAs and delegations;
- It would list the links to other related websites, such as those of the MEAs, the WTO, UNEP and other UN agencies which deal with environmental and trade issues.

3. Observer Status

The definition of the criteria for the granting of observer status is the second major element of the mandate of the Doha Declaration with regard to paragraph 31(ii). Granting observer status is a very important means for increasing cooperation between trade and environmental institutions and achieving "mutual supportiveness between trade and environment".

Switzerland welcomes the decision taken by the CTE Special Session at its meeting in February to invite, to the meeting of May 2003, six MEAs (the Convention on Biological Diversity (CBD), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the International Tropical Timber Organization (ITTO), the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), the United Nations Framework Convention on Climate Change (UNFCCC), and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention)), and UNEP as observers. The granting of this ad hoc observer status to these institutions is a very encouraging first step towards fulfilling our mandate under paragraph 31(ii). By the same token, we recognize the fact that the issue regarding the granting of observer status is an issue which is also discussed on a horizontal level. However, as the CTE has received a specific mandate in paragraph 31(ii), it must work towards the development of criteria for the granting of observer status at its level.

UNEP as well as four MEAs enjoy observer status in the CTE Regular:[24] the CBD, the CITES, the International Commission for the Conservation of Atlantic Tunas (ICCAT), and the UNFCCC. One MEA request for observer status in the CTE is pending, that of the ITTO. However, there are nine more MEAs that have shown their interest in the CTE's work by participating in the information sessions.[25] All in all, thirteen conventions, as well as the Kyoto Protocol (UNFCCC) and the Cartagena Protocol (CBD), the International Plant Protection Convention (IPPC) and the CITES, which are recognized as having an important trade component – as indicated in the "Matrix" elaborated by the WTO Secretariat[26] – should be considered as eligible for the granting of observer status for the CTE.

The granting of observer status to MEA secretariats, UNEP, and UN agencies dealing with trade and environmental issues should be destined to both CTE Regular and Special Sessions, because MEA secretariats can actually benefit from topics discussed in both sessions. MEA secretariats would have the opportunity to integrate this information in the discussions with regard to the relevant MEAs, to encourage a coherent development of the different systems and thus to help prevent legal discrepancies.

Most MEAs define the criteria of observership of international organizations in their statutes. In general, international organizations are allowed to attend meetings as observers by simply expressing an interest in doing so. In document TN/TE/S/2, several examples in MEAs are mentioned.

As regards to the WTO, the guidelines for observer status are set in Annex 3 of the Rules of Procedure for the Sessions of the Ministerial Conference and Meetings of the General Council (WT/L/161). Three issues should in our view be highlighted in this context:

- First, the decision should be made on the basis of a written request and on a case-by-case basis for each request.

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[24] WT/CTE/W/41/Rev.8, 19 September 2001.

[25] 1. Basel Convention,
2. Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR),
3. Montreal Protocol,
4. Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention),
5. Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention),
6. United Nations Convention on the Law of the Sea (UNCLOS),
7. United Nations Fish Stocks Agreement,
8. United Nations Forum on Forests (UNFF), and
9. UNFCCC.

[26] WT/CTE/W/160/Rev.1.

- Second, the "direct interest" of the international organization requesting observer status should be specified so as to encompass UNEP and any MEA having a substantial interest in the Doha negotiations related to trade and environment, and in particular in the promotion of mutual supportiveness of the environmental and trading systems. The participation in information sessions should be an important indication of such interest. Annex 3 of the Guidelines may need some clarifications in this respect.

- Third, reciprocal treatment must be provided. The WTO Secretariat does not seem to have faced problems in this respect up to date.

These procedures should progressively facilitate the granting of observer status in the CTE Regular and Special Sessions. This will encourage cooperation at the international level and complement and facilitate national level coordination and cooperation between trade and environment officials.

The process of inviting MEA secretariats that have shown an interest in participating in CTE Regular and Special Sessions as ad hoc observers should be maintained and regularized until a definitive decision is taken on the granting of observer status.

4. Conclusion

Information exchange and the granting of observer status are two important issues in the framework of the Doha negotiations on trade and environment.

The modes of information exchange developed by the WTO, UNEP, and MEAs have proved to be efficient and, therefore, need to be regularized and institutionalized. Information sessions should be developed in a specific framework where meetings would focus on specific topics and where background papers could be prepared jointly by the WTO, UNEP, and the MEAs.

The CTE Special Session is given a mandate in the Doha declaration to define the criteria for the granting of observer status (paragraph 31(ii)) at its own level. It is Switzerland's view that the CTE Special Session should develop flexible criteria based essentially on interest and involvement in trade policies. The process would progressively lead to reciprocal observer status between MEA secretariats and the WTO Secretariat, which is a fundamental part of achieving complementarities between trade and environmental institutions.

Switzerland favours the idea that the granting of observer status should be applied to both Regular and Special Sessions. Interested MEAs should be

invited to attend CTE Regular and Special Sessions as ad hoc observers until a final solution is reached.

Information exchange and the granting of observer status are important means to enhance cooperation between trade and environmental institutions. They should, however, not be understood as an end in itself, but should rather lead to enhanced cooperation between UNEP, the MEAs and the WTO and thereby improve mutual supportiveness between trade and environment.

(十一)

TN/TE/W/31

14 May 2003

Committee on Trade and Environment Special Session

The Relationship between MEAs and WTO Agreements: "set out in MEAs"

Paragraph 31 (i)

European Communities

In the CTE's ongoing discussion on the concepts laid out in paragraph 31(i) of the Doha Development Agenda (DDA) mandate, the European Communities (EC) continues to favour an approach where concepts are discussed on the basis of examples which allow to clarify and illustrate the concepts and principles at stake, but which are not intended to provide an exclusive nor exhaustive list of examples.

At the meeting of the Committee on Trade and Environment in Special Session (CTESS) on 12-13 February 2003, the EC raised a number of basic concepts in the mandate that needed to be examined in order to advance the negotiations on paragraph 31(i) of the DDA. One of the concepts on which we believe, along with a number of other delegations, that some clarification would be useful is the meaning of the words "*set out in MEAs*", as flagged by the EC at the February CTESS meeting. Clarification is important as these words have horizontal implications, and as we need to take due account of the "real world" of MEAs to best secure a mutually supportive outcome for trade and environment for these negotiations.

The EC shares the view expressed by other delegations at the last CTE SS that the wording "set out in MEAs" should not be interpreted as being limited to the treaty itself, as originally adopted, but should also cover all subsequent decisions by the Conference of the Parties (COP), provided that they qualify as "Specific Trade Obligations". It is therefore useful to further clarify the extent to which COP decisions should be covered by these negotiations. For the purpose of this submission, we would wish to focus in particular on the legally binding[27] nature and effect of COP decisions, without prejudice to other equally important aspects of the mandate. We would therefore have the following remarks:

The Conference of the Parties is usually in charge of taking mostly (internal) administrative decisions, and in particular, of adopting the budget. Beyond such administrative powers, however, it is also generally vested with "substantive

[27] When the term "legally binding" is used in this submission, relevant procedures for ratification and entry into force have to be respected.

powers" of decision-making. Such powers are provided for and specified in the treaty. The decision-making powers are delegated powers derived directly from the Contracting Parties and limited to the extent of that delegation.

In practice, the denomination of the acts or measures taken by a COP may vary, although the legal status may be the same. It seems in particular that the Regional Fisheries Agreement, and in particular the International Convention for the Conservation of Atlantic Tuna (ICCAT), use a different terminology compared to other MEAs (in ICCAT, COP decisions are referred to as recommendations). Below we will use the term "decisions" for ease of reference.

COP decisions can be broadly categorized as follows:

(a) COP decisions introducing amendments to the MEA. This category encompasses:

(i) Decisions to amend the MEA Treaty itself. Such amendments will usually become legally binding for the Parties having ratified them upon their entry into force, in accordance with the applicable amendment procedure.

Examples include: Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer (e.g. London, Copenhagen, Montreal and Beijing); Article 21 of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC); Article 21 of the Stockholm Convention on Persistent Organic Pollutants (POPs); Article 17 of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel).[28]

(ii) Decisions adopting or modifying technical annexes. Such decisions are also legally binding, upon procedures laid down in the Treaty. Such Annexes or their modifications are "assimilated" to the MEA itself in the sense that they form part of the "MEA corpus" (e.g. PIC Article 22.1, which states that "Annexes to this Convention shall form an integral part thereof and, unless expressly provided otherwise,

[28] The main procedures are the following: (1) normal ratification process, (2) so-called "opt-out" procedure where the decision becomes legally binding if a Party has not notified its intention not to be bound after a fixed period of time or (3) decisions adopted by consensus and binding on all Parties on a date specified in the decision.

a reference to this convention constitutes at the same time a reference to any annexes thereto").

Examples include: Basel Article 18; PIC Article 22, POPs Article 22

The above COP decisions, being legally binding, can therefore qualify as STOs.

(b) COP decisions aimed at interpreting or at further specifying the concrete implementation by Parties of certain provisions of the original MEA or subsequent COP decisions

In many cases, such COP decisions are not legally binding on Parties (e.g. technical guidelines on the interpretation of the terms "environmentally sound management" under the Basel Convention). However, whether they are legally binding or not should be assessed on a case-by-case basis and will eventually depend on the concrete terms of the decision.

These COP decisions, even if not legally binding, can nevertheless have an important role to play in the interpretation of MEA provisions, including that of STOs contained in the MEA. In this respect, and while not qualifying as STOs in the sense of these negotiations, one should nonetheless recognize their potential role in interpreting STOs with a view to implement them in the most effective way.

(c) COP decisions of a purely general and political nature

By their very nature, such COP decisions are not legally binding and therefore do not contain "obligations". However, such COP decisions can, to some extent and depending on the concrete language, be used to interpret MEA provisions and the intentions and objectives of Parties, which also means that such COP decisions can have a role to play in the interpretation of MEAs.

CONCLUSION

The EC is of the view that, within the context of these negotiations, the wording "set out in MEAs" should be interpreted as covering not only original MEA Treaties, but also all subsequent COP decisions that, in the "real world of MEAs", form part of MEAs.

The EC considers that all COP decisions that are legally binding should be covered by these negotiations if and to the extent they contain obligations within

the definition of an STO. This is in particular the case for COP decisions of the first category identified above (amendment to the Treaty itself and adoption/amendment of annexes), which are clearly legally binding. For other COP decisions, and while recognizing that the very great majority of them is not legally binding, the assessment of their legally binding nature should be made on a case-by-case basis and be done in the language used.

In most cases, there is no doubt on the legally binding nature of COP decisions. However, should doubts arise, such a nature will eventually depend on the concrete terms of the decision and the issue should be settled, if need be, by MEAs.

While fully recognizing that non-legally binding COP decisions do not qualify as STOs, the EC would wish to point out that these categories of COP decisions, notably when they aim at interpreting or providing guidance on the implementation of STOs contained in MEAs, can play an important role in the interpretation of STOs, which is an important aspect to keep in mind.

（十二）

TN/TE/W/32

13 May 2003

Committee on Trade and Environment Special Session

Statement by Switzerland at the meeting of the Special Session of the Committee on Trade and Environment of 1-2 May 2003 Paragraph 31 (i)

Switzerland

We would like to thank the delegations of Japan, Malaysia, the European Communities and Hong Kong, China for their contribution on this important issue, and the Secretariat for the revision of the two very valuable and useful working documents. We also welcome the presence of representatives of several MEAs at this session. We have had an interesting discussion on this issue during the last meetings, as well as at this meeting. At this stage, I would like to make a few comments on several aspects related to paragraph 31(i).

As discussions have shown, one of the main problems when dealing with paragraph 31(*i*) of the Doha Declaration is to know what exactly is a "specific trade obligation (STO) set out in a Multilateral Environmental Agreement (MEA)". As we have already pointed out several times, we do not favour the listing of provisions within specified MEAs as a means to define the scope of paragraph 31(i), but would rather like to develop criteria that allow the identification of STOs in a more conceptual way. We are of the opinion that a listing of provisions is not an adequate means to fulfil the mandate given to us in Doha because, *inter alia,* of the following reasons:

As Canada has pointed out in its last communication, as well as Japan in its contribution submitted in view of this meeting, an STO must not necessarily be provided for in one single article of an Agreement, but can result from a set of provisions of an MEA. Such cases could not adequately be dealt with by simply listing provisions. In the same context falls the question raised by Canada, and by the European Communities and other delegations at this meeting, of whether STOs can also be decided by the Parties of an MEA in the form of decisions of the relevant bodies of the agreement. This question cannot be answered in general since it depends on whether a specific agreement gives the authority to the Conference of the Parties or other bodies to take such decisions, and on the nature of the decision to be taken. In this context, the contribution by the European Communities is very useful, as it differentiates between different kinds of decisions and helps the clarification process. Switzerland is of the view that it is possible to create STOs by the means of a decision.

On the other hand, it seems very clear that, legally speaking, amendments to

an MEA stand, once they enter into force, on the same level as the agreement itself and can therefore also contain STOs. Finally, we are of the opinion that the mechanism we should develop should enable us to take into consideration future developments of MEAs and new provisions to be negotiated within international environment fora. If we have to adapt the list every time a new measure is negotiated and has entered into force, this will result in a very cumbersome and inefficient procedure. In view of all these possibilities, a list enumerating provisions that contain specific trade obligations could never be complete. Therefore, Switzerland continues to favour a more conceptual approach which defines criteria that allow to identify STOs on a more general basis, as mentioned in our proposal regarding the categorization of STOs.

So let me turn now to the issue of categorization of STOs. Japan has made a very concrete proposal in this respect and my capital is studying it very carefully. It is a useful document and does not prejudge at all the outcome of the negotiation. At the last CTESS meeting in February, Switzerland presented two categories which should fall under the heading of "specific trade obligations", which are:

(1) Trade measures that are explicitly provided for and mandatory under MEAs; and

(2) other measures that are appropriate and necessary to achieve an MEA objective.

With regard to the first category, there seems to be a general view among WTO Members that such measures are to be considered as STOs.

With regard to the second category proposed, we have illustrated this category last time by giving an example of the Kyoto Protocol, which contains a number of areas out of which specific trade measures can be taken in order to achieve the objective of reducing emissions of greenhouse gases. It was the wish of many delegations that Switzerland further elaborate on this second category of our typology by providing some more examples. We welcome this opportunity to provide some further examples to help clarify and illustrate concepts and principles at stake, but by doing this, we do not intend to provide an exhaustive list of examples.

Before turning to these examples, let me first reiterate briefly the reasoning behind this second category. Trade obligations in MEAs may be designed in a way so as to leave a large "*marge de manoeuvre*" to the members of the MEA with regard to the measure that can be taken. Contracting Parties to such MEAs, which are in almost all cases also Members of the WTO, negotiated this "*marge de manoeuvre*" so that each Party can implement the MEA in a way it considers appropriate to achieve the MEA's objectives. Such "*marge de manoeuvre*" has

been explicitly provided for in the MEA by the parties who have negotiated it. It is precisely because the parties to this MEA have decided to leave to the parties such "*marge de manoeuvre*" that we, as Members of the WTO, must develop a mechanism which ensures that WTO rules do not interfere with the sovereign right of a party to make use of this "*marge de manoeuvre*". However, a WTO Member should be able to intervene in the framework of the WTO, if another WTO Member misuses this "*marge de manoeuvre*" by choosing to implement a measure in a protectionist or unjustifiably discriminating manner.

Let me now illustrate this second category by giving two other examples of MEAs. First, let us take the Stockholm Convention on Persistent Organic Pollutants (POPs). While Article 3.1 of the POPs Convention is considered by some delegations, including ours, as referring to an STO, by mentioning explicitly that "*each Party shall (a) prohibit and/or take the legal and administrative measures necessary to eliminate its production and use of the chemical listed in the Annex and necessary to eliminate its import and export of the chemicals listed in Annex B...*", Article 3.2 of this same Convention does not refer in the same explicit and specific manner to STOs, but gives Parties some latitude with regard to the trade-related measures to be adopted, namely by mentioning that "*each Party shall take measures to ensure (a) that a chemical listed in Annex A or B is imported only for the purpose of environmentally sound disposal as set forth in paragraph 1(d) of Article 6.*" According to our typology, such an STO falls into our second category and should therefore be regarded as an STO covered by the mechanism to be negotiated among WTO Members under paragraph 31(i).

Second, let us turn to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. While Article 4.1, which "*obliges Parties to prohibit export of covered waste to Parties that have banned such imports*", is considered by a majority of delegations as an STO and belongs to our first category, Article 4.7 of the Basel Convention refers to specific areas where Parties must take measures in order to safely handle the transboundary movement of hazardous wastes by specific packaging, labelling and transport measures. This provision would not seem to pass the test of an STO according to some delegations' view. It is our understanding, however, that this provision is an STO and should be covered by the solution negotiated among WTO Members under paragraph 31(i).

In conclusion, this brief illustration and the various views among delegations on STOs indicate that the exercise of elaborating a definitive list of STOs, which would be subject to the mechanism we should elaborate, does not seem to be an efficient and useful way to move forward. Some of the submissions presented at this meeting, containing very different views on the very same provisions, illustrate this point. It is therefore not futile at all to continue to dwell on more conceptual issues. Indeed, besides the fact that the negotiation of such a list would probably never be concluded, a list enumerating provisions that contain

specific trade obligations could never be complete and would thus need to be adapted continuously. This is why we continue to favour a more conceptual approach which defines criteria that allow to identify STOs on a more general basis, and will also enable us to take into consideration the developments of MEAs in the future.

I would like to briefly recapitulate here the mechanism we would like to elaborate under paragraph 31(i) as we think that we should pursue the discussion on what is an STO in parallel with the discussion of the mechanism which should be adopted.

As Switzerland has pointed out in previous statements and submissions, the fact that an STO is set out in an MEA clearly shows that the Parties to this MEA considered the relevant trade measures to be necessary to achieve the objectives of the Agreement. It would, therefore, in our view, not be adequate if the necessity of a specific trade measure based on an STO set out in an MEA could be examined again within the WTO. There has to be a presumption that any such measure, if it is covered by an STO, is necessary to achieve the objectives of the MEA. This presumption does mean that if a party is able to show that its trade measures are covered by the provisions of an MEA, the necessity of this measure cannot be objected any more under Article XX of GATT. It would still be possible to examine the question of whether a specific measure is applied in a manner that constitutes a means of arbitrary or unjustifiable discrimination or a disguised trade restriction. If it cannot be proved that a measure constitutes a mean of arbitrary or unjustifiable discrimination or a disguised trade restriction, this measure has to be considered to be in conformity with Article XX of the GATT.

Finally, we are confident that this concept is compatible with paragraph 32 of the Doha Declaration, as it does not add to or diminish the rights and obligations of Members under existing WTO agreements. The protection of WTO Members against unnecessary trade restrictions remains untouched, and also against arbitrary or unjustifiable discrimination or disguised trade restrictions. Our concept just says that the fact that a very large number of nations, i.e. the Parties to an MEA, consider a measure to be necessary shall be sufficient for WTO to equally consider this measure as necessary. We do not change or even abolish the requirement of necessity as written down in Article XX of the GATT. The only thing we do is to set up a procedural rule saying that if the measure is covered by an STO, the necessity test has already been made, namely by the parties to the MEA concerned, which are also WTO Members. Why should a WTO Member come to a different conclusion as the member of an MEA and as a Member of WTO with regard to the necessity of an STO? In summary, the clarification we seek does not change the existing rights and obligations with regard to the WTO rules and specifically with regard to Article XX of the GATT. It merely clarifies the way these rights and obligations should be interpreted in

order to ensure the mutual supportiveness of the trading and environmental systems, as mandated by the Doha Declaration.

（十三）

TN/TE/W/35

27 June 2003

Committee on Trade and Environment Special Session

IDENTIFICATION OF MULTILATERAL ENVIRONMENTAL AGREEMENTS (MEAs) AND SPECIFIC TRADE OBLIGATIONS (STOs) Paragraph 31(i)

China

1. INTRODUCTION

China shares the views of many Members that the CTESS has entered into an analytical stage of work. It is very helpful for Members to submit their views and experiences in identifying STOs from MEAs under the Paragraph 31(i) mandate. A consensus among us could be more easily reached through a pragmatic and analytical discussion on Paragraph 31(i).

China wishes to contribute through this submission to the analytical work of the CTESS by elaborating criteria for the identification of an MEA and an STO. In Part IV of this paper, we try to categorize the STOs from various perspectives. This categorization is China's technical input for the identification of STOs. It does not intend to prejudge the outcome of future work in these negotiations. The four selected MEAs in the Annex are only used as an example to identify STOs in the provisions of various MEAs.

2. CRITERIA FOR IDENTIFYING AN MEA

MEAs are international treaties designed to protect and improve the ecological environment, and properly exploit environmental resources. The contracting parties of an MEA should implement the obligations stipulated in the MEA. We believe that MEAs referred to in Paragraph 31(i) should be identified in light of the following elements:

AUTHORITATIVENESS

MEAs should have been negotiated under the auspices of the United Nations system. The Agreements should be deposited with Secretary-General of the UN or Director-Generals of the relevant specialized agencies of the UN.

UNIVERSALITY

An MEA in question should have a substantial number of contracting parties which account for a majority of WTO Members.

OPENNESS

The agreement should be open for accession by any WTO Member, which is eligible on the terms applied to the original Members of the agreement.

IMPACT ON TRADE

MEAs should contain explicit trade measures; the implementation of these measures should exert a substantial impact on trade.

EFFECTIVENESS

A selected MEA should be in force.

China welcomes the work carried out by the CTE Secretariat and considers that document WT/CTE/W/160/Rev.1, *"Matrix on Trade Measures Pursuant to Selected MEAs"*, provides useful information for WTO Members in the analytical exercise of identifying STOs, although not all of them can be regarded as MEAs under Paragraph 31(i).

3. CRITERIA FOR IDENTIFYING AN STO

MEAs have a wide range of protection targets. However, each MEA has its own speciality that is revealed in the name of the MEA. Among the measures designed to achieve the objective of an MEA, some are trade-related. We believe that only those trade measures that are specific and mandatory can qualify as STOs under Paragraph 31(i). STOs can be identified in the light of the following elements:

OBJECTIVE - The measures are designed to achieve the objective of MEAs, i.e. to protect the ecological environment.

TRADE-RELATED - Measures that we all recognize from the WTO context as being related to import and export, and whose implementation can exert an actual impact on trade.

RELEVANCE - Trade measures stipulated in MEAs that are related to WTO disciplines.

MANDATORY - Trade measures that are explicitly provided for and mandatory in MEAs. In case a trade measure is not explicitly stipulated as mandatory in an MEA, however, some trade measures must be taken to achieve the objective identified in the MEA. Whether these trade measures fall within the scope of STOs, they should be treated differently in consideration of the following situations:

> In the event that Member countries can take more than one trade measure to achieve the objective, these trade measures should not be

considered as STOs.

If a trade measure has to be implemented in a specific trade transaction, otherwise the desired outcome cannot be achieved, this trade measure should be qualified as an STO.

In case that an MEA has provided a number of optional non-mandatory measures, they cannot be regarded as STOs.

SPECIFICITY - Measures to be implemented must be explicitly provided for and clearly identified in the Agreement. They must not be arbitrarily interpreted or substituted by other measures.

4. CATEGORIZATION OF STOs

STOs set out in MEAs can cover a wide spectrum of possibilities. We have categorized STOs from various perspectives with a view to understanding and implementing STOs adequately and addressing their relationship with WTO disciplines.

Categorization According to the Source of STOs

STOs under preamble of MEAs;

STOs under provisions of MEAs;

STOs under annexes of MEAs;

STOs under amendments of MEAs;

STOs in the decisions of the Conference of Parties (COP) of MEAs.

STOs set out in the provisions and annexes of MEAs are the least disputable. It is reasonable to regard the amendments of MEAs and decisions by the COPs as constituent parts of MEAs. However, given the various situations in which the amendments and decisions were made, it is preferable that STOs contained therein be identified on a case-by-case basis.

Categorization according to the impacts of STOs on Trade

Category A: Trade Restrictions or Bans

（十四）

TN/TE/W/36

3 July 2003

Committee on Trade and Environment Special Session

THE RELATIONSHIP BETWEEN WTO RULES AND "SPECIFIC TRADE OBLIGATIONS SET OUT IN MEAS" Paragraph 31 (i)

Taiwan

1. OVERVIEW

Regarding the negotiations on the relationship between WTO rules and specific trade obligations (STOs) set out in MEAs, delegations have made substantial contributions to the elaboration of the mandate in the meetings of the Committee on Trade and Environment in Special Session (CTESS). Some delegations single out certain provisions with trade obligatory implications within individual MEAs and identify examples of STOs. Other submissions tend to favour the illumination of the negotiations in a more conceptual way. The Government of the separate customs territory of Taiwan, Penghu, Kinmen and Matsu is of the opinion that these two approaches by their nature are not mutually exclusive. In fact, they should be able to complement each other. A deliberation on the basis of a mixture of approaches appears desirable and constructive.

It should be noted that the term "STOs" was formulated by the WTO delegations. No comparable expression can be found in the context of MEAs or international environmental law. However, since any discussion of STOs would have to touch upon the basic design of the MEAs, it would be of notable help if contributions and aspiration will be given from international environmental communities, especially from those MEAs incorporating trade obligations.

In order to make our negotiations more thorough and fruitful, we continue to hold that "STOs set out in MEAs" should be understood in a broader sense.[29] As long as such trade measures provided for under MEAs are with binding effect among their parties, they should be within the scope of STOs in MEAs. As will be explained further, our finding is that, in addition to STOs provisions in MEA treaties, certain decisions made by the Conference of the Parties (COPs) of the MEAs, including those under compliance procedures, create obligations among the contracting parties and do have binding effect. There is apparent reason to cover such decision in our negotiations.

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[29] TN/TE/W/11 (submission by the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu).

Here, we would also like to express our views on the consistency between STOs in MEAs and WTO rules. As will be explained, although it may be indisputable that STOs are necessary and essential to fulfil the goal of MEAs, it might not be desirable for WTO Members to accept unconditionally that all implementations of the STOs should be deemed legitimate under the WTO rules.

2. FURTHER ELABORATION OF THE BROADER VIEW ON "SET OUT IN MEAS"

The Government of the separate customs territory of Taiwan, Penghu, Kinmen and Matsu would like to elaborate further some ideas in its previous statement in light of the comments and submissions by delegations. The concept of MEAs in the context of paragraph 31(i) of the Doha Declaration should be perceived to cover not only MEA treaties themselves, but also regimes with institutional function, which engage in law-making process and create mandatory regulations among their contracting parties. We believe that most MEAs will not merely confine their legally binding norms to the treaty context. Thus we agree with the proposal of the European Communities (EC) in that certain decisions made by a competent organ of an MEA, including, *inter alia*, the Conference of Parties (COP), the Meeting of Parties (MOP) and its sub-committees are likely to be perceived as legally binding.[30]

In addition to the three categories of COP decisions with different degrees of mandatory implications raised by the EC, we would also like to point out another type of decisions - COP/MOP decisions authorizing trade measures in accordance with compliance procedure established under MEAs. Under such mechanisms, trade restrictive measures or trade sanctions are usually applied to ensure observance of the Conventions. For instance, in Annex IV[31] of the Montreal Protocol, entitled "Non-compliance Procedure", an Implementation Committee was established in order to supervise the national implementation of the Protocol. According to paragraph 9 of the Annex, the Committee shall report to the MOP of the Protocol, including any recommendations it considers appropriate. Then, based upon the report, the Parties may decide upon and call for necessary measures to enforce full compliance with the Protocol. To avoid controversy and confine the extent and content of the measures the Parties may take, Annex V of the Protocol sets up a list of measures in a straightforward manner. Apart from non-coercive and incentive means, in paragraph C of the Annex, suspension of trade is clearly specified.

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[31] According to Article 10, paragraph 1 of Convention for the Protection of the Ozone Layer, "The annexes to this Convention or to any protocol shall form an integral part of this Convention, ... ".

Hence, the Montreal Protocol, being equipped with the enforcement mechanism, has an institutional and legal basis to order trade sanctions against violators. We consider it difficult to assume such MOP decisions involving trade bans are not legally binding. We invite delegations to ponder whether such a decision of trade measures amounts to STOs.

In addition to the Montreal Protocol, delegations might also want to pay attention to other MEAs having a similar configuration or device as that of the Montreal Protocol. We certainly find that some other MEAs, such as CITES or ICCAT, do have or are developing similar mechanisms in dealing with the non-compliance issue, although there may be a lack of solid institutional basis as that of the Montreal Protocol.

3. COMPATIBILITY BETWEEN WTO RULES AND STOS IN MEAS

As some concepts embodied in paragraph 31(i) and the work of listing STOs in MEAs have been presented in the negotiations, delegations start to consider the consistency between STOs in MEAs and WTO rules, especially provisions in the GATT 1994, as shown in the submissions of the U.S., Japan, and Switzerland.

In paragraphs 5 and 15 of Japan's submission[32], the Japanese delegation considers STOs under their definition consistent with WTO rules. We remain sceptical towards the conclusion that such measures are always compatible with WTO rules[33], even if we might eventually reach a consensus that STOs should be interpreted in a relatively restrictive sense, only covering trade measures explicitly specified and mandatory in the treaty context of MEAs.

Firstly, delegates are authorized to negotiate the "relationship" between the two regimes in question. It is doubtful whether it should be within our mandate to make final judgement over the "legality" of "STOs" in MEAs under the WTO rules. Without such a mandate, the discussions or conclusion might not have any binding effect on future dispute settlement cases involving such a legality issue.

Secondly, although, in principle, we agree with the U.S. view that the MEAs and WTO are working together well[34], the harmony between two sides, we believe, mainly results from mutual respect and constraint. One cannot jump to the conclusion that the use of STOs in MEAs, especially those measures relating to the ban on exportation or importation of goods, by a WTO Member against another WTO Member, would never violate any relevant WTO rule. It should be clear that whether a specific STO is in line with WTO rules should always be decided under WTO jurisprudence, although WTO jurisprudence would take into

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[32] Japan (TN/TE/W/26).

certain.

[34] Paragraph 5 of the U.S. submission. (TN/TE/W/20).

account the need of environmental protection.

It is understandable that when parties to an MEA, which are also WTO Members, have accepted an STO, such parties should be expected to refrain from expressing different views by bringing a complaint against the measures in question to the WTO. But we should also be mindful that the willingness to be bound by an obligation under MEAs is one thing; the legitimacy of the implementation of an STO under the WTO might be another. The process of implementation may run in conflict with a number of very important principles, such as non-discrimination, proportionality, necessity, transparency and due process of law, which have already been recognized in the WTO jurisprudence.

4. CONCLUSION

In conclusion, while the opinions regarding certain concepts, such as STOs, have gradually converged, we then have to decide the exact relationship between STOs set out in MEAs and existing WTO rules. Our view is that the goal of securing the mutual supportiveness of both regimes should not deprive the rights of a WTO Member to challenge STOs in question under the WTO legal system. We understand and even share the view of Switzerland that the value and necessity of STOs[35] should not be questioned in the trade regime by a party both to MEA and to WTO. However, to ensure the proper functioning of the trade regime, the WTO should still be allowed to examine the legitimacy of the application of certain STOs if a dispute arises.

[35] See paragraph 13, 14 of Switzerland's submission (TN/TE/W/32)

二、環境商品與服務業

（由於所有附件之頁數過多，在此僅挑選數份 **2002** 年以後之 **CTE** 文件原文）

編號	標　題	文件編號	日　期	提出者/作者
（一）	**NEGOTIATIONS ON ENVIRONMENTAL GOODS: EFFICIENT, LOWER-CARBON AND OLLUTANT-EMITTING FUELS AND TECHNOLOGIES**	**TN/TE/W/19 TN/MA/W/24**	**28 January 2003**	**the State of Qatar**
（二）	LIST OF ENVIRONMENTAL GOODS	TN/TE/W/18	22 November 2002	Committee on Trade and Environment Secretariat
（三）	**ENVIRONMENTAL GOODS**	**TN/TE/W/14**	**9 October 2002**	**the State of Qatar**
（四）	**NEGOTIATIONS ON ENVIRONMENTAL GOODS**	**TN/TE/W/8**	**9 July 2002**	**United States**
（五）	**ENVIRONMENTAL GOODS**	**TN/TE/W/6**	**6 June 2002**	**New Zealand**
（六）	**MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS**	**TN/MA/W/18/Add.5 TN/TE/W/38**	**7 July 2003**	**U.S. Contribution on an *Environmental Goods* Modality Addendum**
（七）	**OECD JOINT WORKING PARTY ON TRADE AND ENVIRONMENT: ENVIRONMENTAL *GOODS*: A COMPARISON OF THE *APEC AND OECD LISTS***	**WT/*CTE*/W/228 TN/TE/W/33**	**21 May 2003**	**OECD Secretariat**
（八）	**LIBERALIZING ENVIRONMETNAL *GOODS* IN THE WTO: *APPROACHING* THE DEFINITION ISSUE**	**TN/TE/W/34 TN/MA/W/18/ADD.4**	**19 June 2003**	**United States**

附件二、環境服務業

編號	標　題	文件編號	日　期	提出者/作者
（一）	ENVIRONMENTAL GOODS AND SERVICES: AN ASSESSMENT OF THE ENVIRONMENTAL, ECONOMIC AND DEVELOPMENT BENEFITS OF FURTHER GLOBAL TRADE LIBERALIZATION	WT/CTE/W/172	20 October 2000	OECD Secretariat
（二）	**DISCUSSION PAPER ON THE ENVIRONMENTAL EFFECTS OF SERVICES TRADE LIBERALIZATION**	**WT/CTE/W/218**	**3 October 2002**	**Committee on Trade and**

				Environment Secretariat
（三）	UNCTAD EXPERT MEETING ON STRENGTHENING CAPACITIES IN DEVELOPING COUNTRIES TO DEVELOP THEIR ENVIRONMENTAL SERVICES SECTOR	WT/CTE/W/96	3 August 1998	UNCTAD
（四）	ENVIRONMENTAL BENEFITS OF REMOVING TRADE RESTRICTIONS AND DISTORTIONS	WT/CTE/W/67/Add.1	13 March 1998	Committee on Trade and Environment Secretariat
（五）	LIBERALIZATION OF TRADE IN ENVIRONMENTAL SERVICES AND THE ENVIRONMENT	WT/CTE/W/70	21 November 1997	United States
（六）	ENVIRONMENT AND SERVICES	WT/CTE/W/9	8 June 1995	Committee on Trade and Environment

附件一、環保商品

(一)

WORLD TRADE ORGANIZATION

TN/TE/W/19，TN/MA/W/24

28 January 2003

(03-0583)

Committee on Trade and Environment Special Session Negotiating Group on Market Access

Original: English

NEGOTIATIONS ON ENVIRONMENTAL GOODS: EFFICIENT, LOWER-CARBON AND POLLUTANT-EMITTING FUELS AND TECHNOLOGIES

Submission by the State of Qatar

Paragraph 31 (iii)

I. INTRODUCTION

1. In view of the structure adopted by the Trade Negotiations Committee and the subsequent responsibilities entrusted with the Committee on Trade and Environment in Special Session (CTESS) and the Negotiating Group on Market Access (NGMA), this paper is submitted for consideration by both the CTESS and the NGMA.

2. In the initial communication by the State of Qatar to the Third Meeting of the CTESS (TN/TE/W/14), we emphasized the necessity of compilation of definitions and classification for environmental goods and services by the CTESS. Although the work conducted by the OECD and APEC is a useful contribution to the negotiation on environmental goods, it must be considered as a basic framework that requires further comprehensive elaboration and coverage.

3. A clear methodology capable of defining and assessing the scope and characteristics of environmental goods and technologies is a fundamental necessity for their compilation and for enhancing the negotiations by the NGMA and the CTESS on the eligibility of the concession list of environmental goods, technologies and services.

II. DEFINITION OF ENVIRONMENTAL GOODS

4. It is essential that the specific environmental protection end-use criteria adopted in selecting particular environmental goods, technologies or services

are clearly identified. Inherent environmental and wider sustainable development benefits that warrant the inclusion of these goods and technologies in the concession list subject to negotiation by the CTESS and the NGMA must be demonstrated as accurately as possible. This will lead to better classification and ranking of the environmental goods, technologies and services. Moreover, it will enhance the synergies and mutual supportiveness between MEAs and the WTO and strengthen their complementary benefits to sustainable development particularly for developing countries.

III. EFFICIENT, LOWER-CARBON AND POLLUTANT-EMITTING FUELS AND TECHNOLOGIES

5. Identification and evaluation of the merits of environmental goods, technologies and services in relation to MEAs are important steps in order to define the scope and eligibility of these goods and services for trade liberalization negotiations by the WTO.

6. In the previous submission by the State of Qatar to the third Meeting of the CTESS, we recommended that combined-cycle natural gas fired generation systems and advanced gas-turbines systems, known for their energy efficiency and sustainable development potential, be included in the list of environmental goods.

7. This paper attempts to define and assess the economic and environmental merits of these systems and other related efficient lower-carbon and pollutant-emitting fuels and technologies. Table 1 contains a list of the proposed goods and technologies and their merits. Although the assessments for these systems were made with reference to standard technologies and products, there is no question as to their significance in relation to MEAs and sustainable development. We propose that the list in Table 1 be included in the OECD illustrative categories of environmental goods, Section B relating to cleaner technologies and products.

IV. RATIONALE FOR TRADE LIBERALIZATION

8. Emission of greenhouse gases (GHGs) due to combustion of fossil fuels is believed to be the primary cause of the observed global climate change. A

principal target of the United Nations Framework Convention on Climate Change (UNFCCC) is, LIST OF PROPOSALS submitted under paragraph 31 (i) of the Doha declaration therefore, the gradual shifting of global energy systems from carbon intensive energy sources to carbon-free renewable energy sources in order to reduce the emission and build-up of GHGs in the atmosphere. Since renewable energy sources will be unable to meet most of the global energy demand for some time, natural gas and other related cleaner fuels, e.g. cryogenic and chemical gas to liquid fuels derived from natural gas, are an essential bridge to a carbon-free era.

9. Synergism between natural gas and renewable energy sources already exists. Hybrid systems utilizing natural gas fired generating units provide backup power for intermittent renewable technologies such as photovoltaic and wind in order to enhance their value. A simple cycle gas turbine and wind farm achieve a combined capacity factor as high as 75%.

10. Hybrid renewable energy sources and natural gas are also linked through their role in a renewable hydrogen economy. Currently most hydrogen is manufactured using natural gas. Since hydrogen can be stored, it frees intermittent renewable energy technologies from reliance on backup power from conventional energy sources. For similar reasons it provides a clean energy source for the transportation sector. It is anticipated that natural gas will, most likely, provide the initial source for any large-scale penetration of hydrogen into the global energy market.

11. According to the IEA global energy outlook, natural gas is the second fastest growing energy source after non-hydro-renewables (geothermal, solar, wind, tide, wave energy, biomass and waste). Although projected to be the fastest growing primary energy sources over the outlook period, renewable energy sources' share of the global energy market will only be 3% by 2020 compared to the current value of 2%. On the other hand, global demand for natural gas is projected to increase steadily, reaching a share of 26% in 2020 compared to 22% today.

12. Natural gas has been recognized in the Kyoto Protocol negotiations as part of the solution to stabilize greenhouse gases in the atmosphere. Implementation of articles 4.8 and 4.9 of the convention and articles 3.2 and 3.14 of the Kyoto Protocol has the following paragraph: Paragraph (31):

"Encourages Annex-II Parties to promote investment in, and to support and cooperate with, developing country parties in the development, production, distribution and transport of indigenous, less greenhouse gas emitting, environmentally sound, energy sources including natural gas, according to the natural circumstances of each of these parties". The IPCC Assessment Reports have recommended increased use of natural gas over other fossil fuels as a way to reduce greenhouse gas emissions.

13. Assessment results of the potential merits of the proposed list of environmental goods and technologies (Table 1) show that their relative merits, compared to standard fuels and technologies, are substantial and broader when viewed within the perspective of multilateral environmental agreements (MEAs). They offer, in addition to climate change mitigation opportunities, a wide range of sustainable development socio-economic benefits including: (i) higher energy efficiency; (ii) reduced toxic air pollution emissions and waste generation; (iii) improved air quality conditions and decreased adverse environmental impacts on human health, human welfare and on biodiversity. The broad range of benefits offered by the combination of lower-carbon and pollution-emitting fuels and technologies are primarily due to the intrinsic chemical and physical characteristics of natural gas and its cryogenic and chemical gas to liquid derivatives which are virtually free of sulphur, nitrogen, aromatics and ash content. These properties, in addition to lower carbon content, result in the superior environmental performance of these fuels when combined in use with available advanced energy technologies.

V. TRADE BARRIERS

14. The reduction or elimination of tariffs on the global trade of efficient lower-carbon and pollutant-emitting fuels and technologies is an important step to lower their cost and enhance their global diffusion. In addition, non-tariff barriers (NTB) are serious impediments to global trade in these goods.

15. The current energy-related fiscal measures and policies concerning imports to developed countries are distorted. They do not clearly reflect the large economic benefit and wider sustainable development merits resulting from enhanced utilization of efficient lower-carbon and pollutant-emitting fuels and technologies such as natural gas. Progressive phasing out of market

imperfection e.g. subsidies, fiscal incentives, tax and duty exemptions in all pollution emitting sectors is imperative. Restructuring of the carbon tax to reflect the carbon and pollutant contents of fuels is also important in order to realize the objectives of global environmental protection and sustainable development, particularly for the developing countries.

16. Energy Market Liberalization is economically beneficial through the efficiency gains within the existing systems and through enhanced technological dynamism.

VI. CONCLUSION

17. Efficient, lower-carbon and pollutant-emitting fuels and technologies have wider sustainable development merits that include socio-economic and environmental benefits, climate change mitigation potential, improved fuel efficiency and reduced adverse impacts to human health. An assessment of these advantages, for a selection of environmental goods and technologies, is presented in Table 1.

18. The State of Qatar proposes the inclusion of these items, as summarized below, in the OECD list of environmental goods and technologies, Section B on cleaner technology and goods.

19. The merits of this proposal are sound. It is sincerely hoped that the discussions by the CTESS and NGMA will lead to trade liberalization of these efficient lower-carbon and pollutant-emitting fuels and technologies, leading to subsequent improvements in the availability and affordability of these products in the global energy market.

（附表：略）

（三）

WORLD TRADE ORGANIZATION

TN/TE/W/14

9 October 2002

(02-5427)

Committee on Trade and Environment

Special Session

Original: English

ENVIRONMENTAL GOODS

Submission by the State of Qatar

Paragraph 31(iii)

I. BACKGROUND

1. The Doha Ministerial Declaration, Paragraph 31(iii), calls for negotiation on the reduction, or removal, of tariffs and other barriers to environmental goods and services. The negotiating structure adopted by the Trade Negotiations Committee comprises three negotiation entities: (i) the Negotiating Group on Market Access; (ii) Council for Trade in Services in Special Session and (iii) Committee on Trade and Environment (CTE) in Special Session.

2. There is a general understanding that, while negotiation on environmental goods is to be conducted in the Market Access Negotiation Group, the Council for Trade in Services will deal with environmental services. Moreover, there is an agreement that the CTE Special Session would be entrusted with clarification of the concept of environmental goods in addition to playing a monitoring role.

3. A fundamental task for the CTE in Special Session will be the compilation of definitions and classifications for environmental goods and services. This is a prerequisite in order to facilitate the scope of negotiation and define the specific roles of the CTE in Special Session and the Market Access Negotiating Group. The present submission by the State of Qatar is designed to address a selected set of environmental goods and services in the energy sector, with the view of promoting their trade liberalization.

II. PROPOSAL ON ENERGY SECTOR

4. The State of Qatar values the work of the World Trade Organization on trade

liberalization, particularly its efforts to liberalize trade in environmental goods and services. The importance of this activity is becoming more evident as the relationship between global trade and environmental policy becomes increasingly interrelated. This is very clear in the case of global energy trade upon which the economy and welfare of the State of Qatar are dependent.

5. The environmental goods, services and technologies in the energy sector proposed by the State of Qatar for trade liberalization were selected based upon their merits using sustainable development criteria. The criteria include:

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* Climate Change Mitigation Potentials
* Wider Issues of Sustainable Development
* Air Pollution Emissions and Toxic Waste Generation
* Human Health and General Environmental Protection
* Energy Efficiency Potentials

III. CATEGORY OF SUGGESTED ENVIRONMENTAL GOODS AND TECHNOLOGIES

6. The economic and environmental benefits of energy efficiency due to utilization of natural gas fired combined cycle systems and advanced gas turbines are well established. They include attributes related to the criteria briefly described in section 5.

In this submission the Technologies only are listed. The specifics regarding the services, units' description and product specification are deferred for further compilation at a later stage. The list includes:

* Combined-cycle natural-gas-fired generation systems
* Advanced-gas turbine systems (industrial and utility turbines).

IV. RECOMMENDATION

7. The State of Qatar recommends that energy efficient technologies such as combined-cycle natural-gas-fired generation systems and advanced gas-turbine systems known for their energy efficiency and sustainable development potential must be subtitled and elaborated in the definition of environmental goods.

TN/TE/W/14

（四）

WORLD TRADE ORGANIZATION

TN/TE/W/8*

9 July 2002

(02-3826)

Committee on Trade and Environment Special Session

Original: English

NEGOTIATIONS ON ENVIRONMENTAL GOODS

Communication from the United States

Paragraph 31(*iii*)

The following communication, dated 1 July 2002, has been received from the Permanent Mission of the United States.

I. INTRODUCTION

1. In the light of the responsibilities of the Committee on Trade and the Environment (CTE) in Special Session and the Negotiating Group on Market Access, we present this initial contribution identifying the issues to be considered in defining the scope of environmental goods subject to negotiations and the negotiating process. Given the nature of this issue, we are submitting this paper to both the Committee on Trade and the Environment in Special Session and the Non-Agricultural Market Access Negotiating Group.

2. Widespread application of environmental technologies is integral to maximizing the beneficial effects of trade liberalization for the environment. Trade initiatives to eliminate or reduce tariffs and non-tariff barriers to trade in environmental goods will facilitate access to and encourage the utilization of environmental technologies which will in turn stimulate the development and application of innovative solutions to environmental issues. Developed and developing countries alike enjoy comparative advantages in the production of environmental goods that can benefit from greater market access. This negotiation will simultaneously advance the commercial, environmental, and development interests of all WTO Members, thereby producing a "win-win-win" outcome.

II. COORDINATION

3. The Special Session of the Committee on Trade and Environment agreed at is first meeting on 22 March 2002 that the negotiations on environmental goods should be conducted by the Market Access Negotiating Group with continued coordination with the CTE, particularly on the concept of goods (TN/TE/R/1). The United States fully supports this decision and agrees the CTE should provide regular input to the environmental goods negotiations. In this regard, Members should submit papers regarding environmental goods to both negotiating bodies and, as necessary, the Chairman of the Market Access Negotiating Group should keep the CTE apprised of progress in the negotiations. As appropriate, the CTE and Market Access Negotiating Group may also wish to meet jointly during key periods of the negotiations.

III. DEFINING ENVIRONMENTAL GOODS

4. As noted by New Zealand in a recent paper (TN/TE/W/6) submitted to the CTE, a substantial amount of work to identify the scope of environmental goods has been done by APEC. The United States agrees the APEC product list is a useful contribution to help Members develop the scope of the WTO negotiations. However, given the evolutionary nature and speed with which advances occur in the environmental goods sector, and the wider membership of the WTO, the Negotiating Group will have to come to its own agreement on scope. This will require Members to consult with their domestic industries, NGOs, and other interested stakeholders to identify new products that could be included and to develop a WTO list. Members should aim to finalize a common list of environmental goods by the time the Market Access Negotiating Group agrees on modalities for the overall market access negotiations.

5. The APEC product classification process focused on end use (i.e., goods which are used to clean the environment or to contain or prevent pollution) and related parts or components and also considered certain alternative technologies, such as solar power equipment. The United States welcomes the views of Members regarding additional products that could be considered for inclusion in the list for the non-agricultural market access negotiations; however, the APEC experience serves as a useful guide. While the United States encourages the production of goods in an environmentally sound manner, using such a criterion as the basis for developing a list will pose difficulties of definition. Moreover, such a process

risks prolonged discussions that could pit one Member's views that are based on their own environmental conditions, priorities, and values against those of another. Finally, production based criteria has the potential for erecting a new set of standards and/or customs classifications, and Member's ability to comply may differ substantially.

6. Development of a list of environmental goods also could benefit from the work undertaken by the OECD Joint Working Party on Trade and the Environment (JWPTE), which published in 2001 "The Environmental Goods and Services Industry: Manual on Data Collection and Analysis." Accordingly, the United States proposes that the OECD authors be invited to brief the Market Access Negotiating Group and CTE regarding its findings.

IV. REDUCTION OR ELIMINATION OF NON-TARIFF BARRIERS

7. While reducing the cost of environmental goods through the elimination of tariffs is an important means of making environmental goods more affordable and available, non-tariff barriers (NTBs) can be equally or even more significant impediments to trade in such goods. Ministers recognized this situation in both paragraph 16 and 31(iii) by also mandating the reduction or elimination of NTBs. As the Market Access Negotiating Group considers the scope and process for addressing NTBs, it may wish to consider whether a separate examination of NTBs affecting environmental goods is warranted.

8. In this regard the United States notes the work already undertaken by the OECD's JWPTE warrants further analysis and may serve as a useful basis for identifying the types of NTBs currently faced by environmental goods. To the extent they are not covered generally by other disciplines or within the context of the new market access negotiations, Members should establish a mechanism for dealing with NTBs on environmental goods specifically, including through bilateral negotiations.

V. CONCLUSION

9. The CTE and Market Access Negotiating Group should maintain close coordination as the negotiations proceed. Market access negotiators should endeavour, as a first step, to agree on a common list of environmental goods that would be subject to negotiations, taking advantage of work already

conducted in other fora. The negotiations also should seek to address non-tariff barriers in general and those that correspond to environmental goods in particular.

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* This document has previously been issued in the Negotiating Group on Market Access as TN/MA/W/3.

TN/TE/W/8

Page 2

TN/TE/W/8

Page 3

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WORLD TRADE ORGANIZATION

TN/TE/W/6

6 June 2002

(02-3150)

Committee on Trade and Environment Special Session

Original: English

ENVIRONMENTAL GOODS

Submission by New Zealand

Paragraph 31(iii)

I. SUMMARY

1. This paper points to previous work that may help clarify the concept of environmental goods. That clarification will be needed to provide a basis for the CTE's role in monitoring the negotiations.

II. BACKGROUND

2. Paragraph 31(iii) of the Doha ministerial declaration calls for negotiations on the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services. Under the negotiating structure adopted by the Trade Negotiations Committee in February, negotiations on market access for non-agricultural products were to take place in the Negotiating Group on Market Access and negotiations on services in the Council for Trade in Services in Special Session, while negotiations on trade and environment were to take place in the Committee on Trade and Environment in Special Session.

3. At the March Special Session there was discussion on the roles of the CTE and the Negotiating Group on Market Access in relation to the 31(iii) mandate. The Chair, in summarising, noted that there was broad support for conducting negotiations on environmental goods and services in the market access negotiating group and the Council for Trade in Services respectively. The Chair also noted that the CTE Special Session could work towards clarifying the concept of environmental goods, provided that no sequencing would be involved between that work and the actual market access negotiations in the Negotiating Group on Market Access. The Special Session could also keep track of the work

done in the Committee on Agriculture Special Session. Finally she added that there appeared to be broad support for the idea that the CTE Special Session play a monitoring role.

4. "Environmental goods" are not further defined in the Doha declaration. However there is earlier material on the issue which can help clarify the scope of this negotiation and assist in defining the respective roles of the CTE in special session and the market access negotiating group.

III. ATL: ENVIRONMENTAL GOODS

5. A paper submitted by New Zealand in 1999 on the basis of work by APEC members (WT/GC/W/138/Add.1) included details of a sectoral liberalisation proposal on environment. The proposal was developed over a two-year period to the point where it was able to attract support from a cross-section of developed and developing economies in the Asia-Pacific region. It addressed goods (including non-tariff measures) and, to a lesser extent, services.

6. Both the working definition and the proposals for product coverage based on that definition are relevant to the negotiation called for under paragraph 31(iii) of the Doha declaration.

7. The descriptive section of the 1999 proposal (see WT/GC/W/138/Add.1) reads as follows:

At the APEC Economic Leaders meeting, in November 1997, the environmental goods and services sector was one of nine sectors selected to be advanced under the accelerated liberalization initiative. Over the course of 1998 a series of technical experts meetings took place to elaborate the details of this trade liberalization proposal. The resultant proposal that was presented and endorsed by APEC Leaders at their annual meeting in Kuala Lumpur, in November 1998, was a comprehensive initiative that included undertakings on the following four elements:

(1) tariffs

(2) services

(3) non-tariff measures, and

(4) economic and technical cooperation (Ecotech)

The nominating APEC economies recognized the challenges in defining and

classifying these goods and services (including technologies) in a manner that would readily serve as the basis for reaching agreement on trade liberalization. For this exercise, APEC economies utilized the OECD definition that the environment industry is defined as consisting of "activities which produce goods and services to measure, prevent, limit or correct environmental damage to water, air, and soil, as well as problems related to waste, noise and eco-systems. Clean technologies, processes, products and services which reduce environmental risk and minimize pollution and material use are also considered part of the environment industry." Proceeding from this definition, APEC economies identified, by their Harmonized System (HS) codes, a list of goods to be covered under the agreement. This process was further guided by the list of categories of environmental goods presented in Annex III.1.

Trade barriers faced by the sector

Identifying barriers to trade in environmental goods (and services) will be facilitated by the development of an increasingly precise definition of scope. In general terms, barriers to trade may arise from specific market access restrictions, e.g., tariffs, non-tariff barriers or restrictions on commercial presence.

Driven by the burgeoning world demand for energy efficiency and renewal, for the sustainable management of natural resources and biodiversity, and for more global responsiveness to issues such as climate change and ozone layer depletion, many economies within the APEC region have already felt the need to have access to the most advanced and efficient environmental goods, services and technologies. Trade liberalization in this vital sector will help all countries to better respond to the many environmental challenges which have arisen in recent years. The improved selection and availability of environmental goods and services at lower cost will help improve the overall quality of the basic environmental infrastructure, lower costs of environmental protection and promote further growth in a sustainable manner while minimizing economic, health and social costs.

8. The annex referred to above setting out proposed "categories of environmental goods" is attached. The paper also included an annex giving details of proposed product coverage for environmental goods and a further annex giving estimates of import levels of those goods for APEC economies.

Though they were developed specifically for the purposes of the APEC initiative, and therefore have to be regarded as only indicative, both are useful in illustrating the potential impact of reduction or elimination of tariff and non-tariff barriers to environmental goods in the current WTO negotiations. The annexes are attached in their original form.

IV. ENVIRONMENTAL SERVICES

9. There is close linkage between the goods and services elements of "environmental goods and services", reflected in the fact that published commentaries on the subject typically examines both together. Further material on possible scope of work on environmental services can be obtained from papers submitted to the CTE in recent years. An early United States paper (WT/CTE/W/70 of November 1997) comments on definition as well industry structure and outlook, together with trade dimensions. The Secretariat produced a detailed overview paper in 1998 (WT/CTE/W/67/Add.1 of 13 March 1998) which included material on scope and definition. WT/CTE/W/96 summarises the results of a 1998 UNCTAD Expert Meeting on Strengthening Capacities in Developing Countries to Develop their Environmental Services Sector. The OECD in 2000 produced a comprehensive study, Environmental Goods and Services: An Assessment of the Environmental, Economic and Development Benefits of Further Trade Liberalisation, a summary of which was circulated by the OECD Secretariat (WT/CTE/W/172 of 20 October 2000).

V. CONCLUSION

10. Material previously circulated in WTO bodies provides a good starting point for discussion on the CTE's role in clarifying the concept of environmental goods and monitoring the negotiations on environmental goods and services.

ANNEX III.1 to WT/GC/W/138.Add.1

(22 April 1999)

Developing Coverage for an Agreement on Environmental Goods

Proceeding from the working definition that environmental goods and services are those "used to measure, prevent, limit or correct environmental damage to water, air, and soil, as well as problems related to waste, noise and eco-systems, and may also include clean technologies, processes, products and services

which reduce environmental risk and minimize pollution and material use", the following table, derived in part from the April 1995 work of the OECD/Eurostat informal working group on the environment industry, provides a useful summary categorization of those goods and services that are included under this initiative. An example (with corresponding HS/CPC code) is presented for each. It is expected that for each of the categories cited below, a variety of goods and their components with corresponding HS codes, as subsequently agreed, would be covered under the terms of the broader agreement.

（附表：略）

（六）

WORLD TRADE ORGANIZATION

TN/MA/W/18/Add.5

TN/TE/W/38

7 July 2003

(03-3670)

Negotiating Group on Market Access

Committee on Trade and Environment

Original: English

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

U.S. Contribution on an Environmental Goods Modality Addendum

The following communication, dated 4 July 2003, has been received from the Permanent Mission of the United States.

1. In discussions in both the Committee on Trade and Environment (CTE) in Special Session and the Non-Agricultural Market Access (NAMA) Negotiating Group, a variety of views have been expressed on how to proceed with negotiations on environmental goods. Some Members favor either the APEC or OECD lists as a starting point for negotiations. Others express reservations about using either one, or both, of these lists for this purpose. Questions have arisen about whether "environmentally friendly" products should be included. Still other Members have provided specific lists of additional products (i.e., that are not on either the APEC or OECD lists) which they suggest should be included in WTO market access negotiations on environmental goods. Notably, several developing countries have expressed interest in more products of export interest to developing countries being included. At this point, most delegations have indicated that it would not be helpful to use non-product process and production methods (PPMs) as a basis for defining environmental goods under the Doha mandate in paragraph 31(iii).

2. The United States welcomes the efforts undertaken by delegations to contemplate various elements of the environmental goods negotiations. Collectively, Members' papers and interventions in both the CTE in Special Session and the NAMA Negotiating Group have effectively identified the challenges inherent in defining this sector, and the United States suggests that

the time has come to more systematically approach and address these issues. Accordingly, we have started to outline a possible approach to modalities for moving environmental goods negotiations forward in a creative and flexible manner that could begin to accommodate a wide variety of views and interests. Ultimately we believe this approach can further reinforce the mutual supportiveness of trade and environmental policies, as envisioned by Ministers at Doha.

Basic Concept

3. Participants in the negotiations could develop two lists of environmental goods: a core list and a complementary list. The core list would comprise products on which there is consensus that they constitute environmental goods. A second complementary list could be developed for additional products on which definitive consensus could not be reached but for which there is a high degree of acknowledgment that they can have significance for environmental protection, pollution prevention or remediation, and sustainability. For the core list, Members would be required to reduce tariffs and non-tariff barriers, or, as appropriate, eliminate them altogether, within a certain period, recognizing that discussions regarding non-tariff barriers may also take place in other relevant WTO bodies. For the complementary list, however, Members would be required only to identify specific products representing a certain percentage of the total tariff lines on the list and subject these products to the same reduction/elimination agreed for the core list products.

Core List

4. Reflecting on lessons learned in previous attempts to develop a list of environmental goods (e.g., in APEC), environmental goods on the core list should fall into one of two categories: 1) environmental remediation or pollution prevention; or 2) "clean technologies." In TN/TE/W/34 and TN/MA/W/18/Add.4, the United States discussed these categories in some detail in terms of the practical difficulties associated with developing a list that could be practically implemented.

- Environmental Remediation and Pollution Prevention: This category includes goods used to clean the environment or to contain or prevent pollution. Some examples of these products are smokestack scrubbers, sewage treatment equipment and solid waste recycling systems.

- Clean Technologies: This category includes goods designed for a particular industrial or consumer function the use or disposal of which results in lesser impact on the environment than alternative goods designed for similar functions.

Complementary List

5. Members should strive for a core list that is as comprehensive as possible to maximize positive outcomes for the environment, trade and development. In the event, however, that consensus can not be reached for particular goods, individual Members could nominate these goods to be included in a central complementary list that would be available for consideration of all Members. For purposes of liberalization, Members would be allowed to pick those goods on the list for which they are committed to liberalize, but these goods would have to constitute a certain minimum x percentage of the total products on the complementary list. If such an approach were pursued, procedures would be necessary for determining the process for nominating products and the criteria that would have to be met for products to be included. For example, in the interests of clarity and practicality, delegations should refrain from nominating goods based on non-product PPMs for purposes of this negotiation since procedures used to classify goods in the Harmonized System do not easily accommodate distinctions other than those based on physical characteristics or function. Additionally, it should be expected that inclusion of a particular good on the list has some support from other Members and is not merely a wish list item for a single isolated Member.

Rates of Liberalization

6. Core list: In recognition of the attention given to this sector by Ministers in Doha and consistent with the U.S. negotiating proposal in TN/MA/W/18, tariffs should be eliminated for all products on the core list as soon as possible but no later than 2010.

7. Complementary list: Individual Members would not have to liberalize all products on the complementary list as part of the sectoral negotiations; however, in order to maximize the opportunities for ensuring that these negotiations contribute to mutual supportiveness of trade liberalization and environmental protection, Members would be required to liberalize a certain percentage of these products. The United States suggests that Members would

be required to eliminate tariffs on a certain x percent of these tariff lines by 2010, within the same time-frame as environmental goods on the core list. The specific products that each country chooses to include in this percentage would be by self-selection. The exception would be for a country that was export competitive in a particular product, in which case it would be required to eliminate tariffs no later than 2010 (i.e., over the same period as products on the core list). This product would be counted toward the percentage required for the complementary list.

8. Less Than Full Reciprocity: To reflect the less than full reciprocity provisions in the Doha mandate for NAMA, developing countries would be required to eliminate tariffs on a lesser percentage of products on the complementary list than the x percent that would apply to developed countries.

Conclusion

9. While it would be ideal for delegations to be able to reach consensus on a single list of environmental goods for purposes of NAMA negotiations, discussions in the CTE in Special Session and the NAMA Negotiating Group have highlighted many of the difficulties associated with that effort. For this reason, the United States suggests that it is time for delegations to consider a modality for environmental goods that allows for some flexibility in designation of particular products. At the same time, we welcome suggestions from other delegations on how to incorporate an approach for environmental goods into broader modalities to be agreed for the NAMA negotiations.

TN/MA/W/18/Add.5

TN/TE/W/38

Page 2

TN/MA/W/18/Add.5

TN/TE/W/38

Page 3

（七）

WORLD TRADE ORGANIZATION

WT/CTE/W/228

TN/TE/W/33

21 May 2003

(03-2729)

Committee on Trade and Environment

Committee on Trade and Environment Special Session

Original: *English*

OECD JOINT WORKING PARTY ON TRADE AND ENVIRONMENT:ENVIRONMENTAL GOODS: A COMPARISON OF THE APEC AND OECD LISTS

Information Note by the OECD Secretariat

The attached paper has been received from the OECD Secretariat and is being circulated to Members of the CTE and the CTESS for information..

FOREWORD

This report has been prepared in response to a request from the Joint Working Party on Trade and Environment (JWPTE). It was drafted by Ronald Steenblik in the Trade Policy Linkages Division of the Trade Directorate, under the supervision of Dale Andrew. The Secretary-General has agreed to declassify the document under his responsibility, as recommended by the JWPTE, with the aim of bringing information on this subject to the attention of a wider audience.

The report, which is also available in French, can be found on the OECD website at the following address: http://www.oecd.org/trade and http://www.oecd.org/trade/env

TABLE OF CONTENTS

I. EXECUTIVE SUMMARY

1. Paragraph 31(iii) of the Doha Ministerial Declaration calls for negotiations on "the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services." "Environmental goods" were not further defined in the Doha declaration. However, a substantial amount of work to identify the scope of environmental goods had already been undertaken by the OECD and APEC, culminating in two product lists of candidate goods, one from each organisation.

2. Counting only entries with corresponding Harmonized System (HS) codes, the OECD list appears to be about 50% longer than the APEC list. However, when one eliminates multiple listings at the 6-digit level, they are more similar in length: there are 132 unique HS codes in the OECD list, compared with 104 in the APEC list. The composite list has 233 entries identified with an HS code, covering 198 different goods. These magnitudes are small compared with the total numbers of lines contained in WTO Members' national tariff schedules, which range from less than 6 000 (in the schedules of Australia and India) to

over 11 000 (in the schedules of Hungary, Korea, Mexico, and Turkey). In all, less than 30% of the goods are common to both lists. The greatest areas of overlap are found in the categories of air-pollution control, recycling, incineration, and measuring and monitoring equipment.

3. In reviewing the developmental history of the OECD and APEC product lists of environmental goods, it is clear that the two exercises were interlinked and informed each other. For example, the drafters of the APEC list consciously based their categories of environmental goods in large part on the work being undertaken at the time by the OECD/Eurostat informal working group on the environment industry. However, the objectives of the two exercises differed, as did the procedures for generating the lists.

4. The OECD list was the result of an exercise intended to illustrate, primarily for analytical reasons, the scope of the "environment industry." The selection of categories of goods could therefore be broad, because there were no specific policy consequences of adding products to the list. Moreover, the OECD's larger list was created deductively: starting from general categories based on the classifications appearing in the environment industry manual, and adding more specific examples, in order to produce an estimate of average tariffs on a previously undefined class of goods.

5. The APEC approach started with nominations - not unlike the request/offer procedures traditionally used in trade negotiations - yielding a list of goods which was then arranged according to an agreed classification system. Further, since the aim of the APEC list was to obtain more favourable tariff treatment for environmental goods, APEC member economies limited themselves to considering only those specific goods that could be readily distinguished by customs agents and treated differently for tariff purposes. For this reason, issues related to "like products", products defined by particular processes or production methods, and products defined by their life-cycle impacts, were not addressed, with the result that some goods were left off the list that could be included on the OECD list. This constraint of practicality could be relaxed in the OECD's analysis because its aim was merely to illustrate what could potentially be included.

6. Perhaps the most elementary observation to make from any comparison of the various lists of environmental goods that have been produced to date is that

the number of goods that could be included in an eventually agreed list is potentially large. Clearly, both the OECD and the APEC lists have helped frame the current WTO negotiations on environmental goods. But it is also clear that many, if not most, WTO members regard the lists as just that: helpful but not definitive.

II. ENVIRONMENTAL GOODS: A COMPARISON OF THE APEC AND OECD LISTS

A. INTRODUCTION

7. Paragraph 31(iii) of the Doha Ministerial Declaration calls for negotiations on "the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services." "Environmental goods" were not further defined in the Doha declaration. However, a substantial amount of work to identify the scope of environmental goods had already been undertaken by the OECD and APEC1, culminating in two product lists of candidate goods, one from each organisation. Though these lists were developed for purposes other than the WTO negotiations, and therefore have to be regarded as only indicative, several countries have considered them to be useful starting points for those negotiations. Indeed, in September 2002 the WTO Secretariat was requested to circulate the two lists to the Negotiating Group on Market Access (NGMA), which is the WTO body conducting negotiations on environmental goods2, and subsequently to the Committee on Trade and Environment in Special Session (CTESS), with which the NGMA closely co-ordinates.3 Since then, Japan has submitted a proposal which includes some goods from both of these lists.

B. GENESES OF THE TWO LISTS

8. The dynamic nature of their market, together with the role they can serve in strengthening environmental protection, have made environmental goods obvious candidates for a trade-liberalisation initiative, one that could both benefit the environment and boost international trade. A basic difficulty confronts trade negotiators, however: there is no well-defined sector known as "the environmental goods sector." Rather, environmental goods are spread across a wide range of industrial and trade classification nomenclatures. In the words of one analyst, "This is less a sector than an agglomeration of providers of many types of goods, services and technologies that are usually integrated into

production processes and are often hard to tease out as separate items" (US Office of Technology Assessment, 1994, p. 149).

9. Specific end-of-pipe pollution abatement and clean-up technologies - such as catalytic converters for automobile exhausts - are obvious candidates for any list of environmental goods. But they are not the only goods used for environmental improvement. Classifying goods from outside this narrow area as "environmental" raises fundamental issues, however. Many goods that are used for environmental protection and resource management potentially have other uses: pumps can be used in a wastewater treatment facility, or in a variety of other industrial uses not related to environmental remediation. Other goods may be considered "good for the environment" by virtue of their relative (as opposed to absolute) performance in use - a criterion with the potential to render the definition extremely broad, as almost all goods and technologies have substitutes that are cleaner or more efficient. No attempt is made here to resolve these classification issues, but readers are advised to bear them in mind when considering the product coverage of any list of environmental goods.

10. In the following two sub-sections, the geneses of the OECD and APEC lists are treated separately. In fact, their developmental phases closely paralleled each other and intersected at several points, the one exercise informing the other. That is not surprising, as six (eventually seven) countries4 were members of both organisations. However, the purposes that the lists were intended to serve differed from the start. The OECD list was the result of an exercise intended to illustrate, primarily for analytical reasons, the scope of the "environment industry." The selection of categories of goods could therefore be broad, because there were no specific policy consequences of adding products to the list. By contrast, the APEC list resulted from policy discussions directed toward anticipated changes in tariffs. And whereas the OECD list was meant to be indicative, particularly as a framework for undertaking economic analyses in general, and of trade flows and tariff barriers in particular, the APEC list - for which the negotiation process came to an end before full consensus was reached - was the direct result of negotiated offers in the context of a trade-liberalisation initiative.

1. The OECD list

11. OECD interest in the environmental goods and services arose initially as part of its work on environmental policy and industrial competitiveness. A report prepared by the Industry Committee in 1992 described market developments in the environment industry and the role of environmental policies (OECD, 1992). A subsequent report (OECD, 1996a) expanded and deepened the analysis, collected available data, and showed a clear need for improving information on the industry and undertaking further analysis.

12. Publication of these results prompted numerous questions. What had been the record in exporting environmental technologies? Could the impact on industrial competitiveness due to the application of cleaner technologies be measured? How could environmental and economic policy be modified to encourage and support growth, job creation and trade in goods and services of the environment industry? It soon became apparent that answering these questions would require addressing major statistical and methodological difficulties related to problems of industry delimitation and data availability.

13. In 1994 the US Government (the Environmental Protection Agency and the Department of Commerce) hosted a meeting of experts in Washington, D.C. The main aim of this meeting was to identify ways in which more-comprehensive and consistent information could be collected - particularly on production, employment, trade, investment and R&D - so as to provide a solid foundation for policy analysis (OECD, 1996b). Before statistics could be gathered, however, a clearer definition and classification of the environmental goods and services industry had to be developed. To this end, the OECD, in collaboration with Eurostat (the Statistical Office of the European Communities), formed an Informal Working Group on the Environment Industry composed of experts from OECD countries who, as part of their work at national ministries for economics or industry, national statistical offices, or public or private research institutes, were responsible for collecting and analysing data on the environmental goods and services industry.

14. At its first meeting in Luxembourg, in April 1995, the OECD/Eurostat Informal Working Group agreed on an interim definition of, and classification system for, the environment industry (OECD, 1996c). After considering various alternatives, the Working Group agreed on the following definition:

The environmental goods and services industry consists of activities which

produce goods and services to measure, prevent, limit, minimise or correct environmental damage to water, air and soil, as well as problems related to waste, noise and eco-systems. This includes cleaner technologies, products and services that reduce environmental risk and minimise pollution and resource use.

15. The Working Group went on to add, "For cleaner technologies, products and services, despite their importance, there is currently no agreed methodology which allows their contribution to be measured in a satisfactory way" (OECD/Eurostat, 1999, p. 10). This limitation is why, for example, products defined in terms of their energy efficiency were not included in the original OECD list.

16. The definition and classification were tested during 1996 and 1997 by collecting new data and re-organising available data in OECD countries. In the mean time, Canada, the Commission of the European Communities, France and the United States started using the OECD/Eurostat classification to design and carry out new surveys and studies on the environment industry.

17. During 1997 the OECD/Eurostat Informal Working Group continued to refine and improve its interim definition and classification system. Meanwhile, the OECD's Joint Working Party on Trade and Environment (JWPTE) began to take an interest in the subject. The OECD/Eurostat Informal Working Group was concentrating on defining relevant industry activities covering both goods and services, to improve analysis and develop coherent, comparable statistics for national surveys, whereas the JWPTE's interest was on developing a framework for future trade liberalisation efforts in the environmental goods and services (EGS) sector. In the absence of any internationally agreed product list of environmental goods, an attempt was made to develop such a list - identified by 6-digit HS (Harmonized System) trade nomenclature product numbers - and arranged according to the groups, categories and sub-categories of environmental goods that had been developed by the Informal Working Group. Inherent in the nature of the OECD/Eurostat classification system, it was possible to identify a greater number of HS product numbers for the six sub-categories of group A ("Pollution Management"), than for the two sub-categories of group B ("Cleaner Technologies and Products") or the ten sub-categories of group C ("Resources Management"). The final list, which is

reproduced in Annex Table 1 to this document, was completed in 1998 and published subsequently in both a working paper of the JWPTE (OECD, 1999a) and the final report of the Informal Working Group (OECD/Eurostat, 1999b). It was also reproduced, unchanged, in the publication Environmental Goods and Services: The Benefits of Further Global Trade Liberalisation (OECD, 2001).

18. It must be stressed that the OECD list was meant to be illustrative rather than definitive, particularly for use in analysing levels of tariff protection. As the "Note" to the list published in the OECD/Eurostat (1999b) Manual explains, "The list is not exhaustive; not all environmental goods are covered. Some environmental goods have no equivalent HS commodity code. Some HS commodity codes include goods which may not be environmental goods." It is with respect to the last point where some of the most important differences between the OECD and APEC lists are to be found. In producing the OECD list, no attempt was made to go beyond the 6-digit (sub-heading) HS codes and identify only those goods that could be considered "environmental". By contrast, as described below, the APEC list was produced through an essentially "bottom up" process, and includes many "ex-headings" (nationally defined tariff lines) of goods falling under more aggregate commodity descriptions.

2. The APEC list

19. The roots of the APEC list of environmental goods trace back to a November 1995 meeting in Osaka, Japan, wherein APEC Leaders agreed to identify industries in which the progressive reduction of tariffs could have a positive impact on trade and on economic growth in the Asia-Pacific region, or for which there was regional industry support for early liberalisation. A year later, at their meeting in Subic Bay, Philippines, APEC Leaders issued more-precise instructions, directing Ministers responsible for trade5 to "identify sectors where early voluntary liberalisation would have a positive impact on trade, investment and economic growth in the individual APEC economies as well as in the region and submit recommendations on how this can be achieved."

20. At their May 1997 meeting in Montreal, APEC Trade Ministers directed officials to identify possible sectors that might be candidates for early voluntary liberalisation. Following this invitation, a wide variety of APEC economies put forward 62 sectorally based nominations, in total covering more than 40 sectors,

for initial consideration at a subsequent meeting of senior officials held in August. Most proposals were supported by several economies, but few were supported by all (Yamazawa and Scollay, 2003). Environmental goods and services, as a distinct category, was proposed by four economies - Canada, Japan, Chinese Taipei and the United States - drawing on the original working OECD definition of the environmental sector to guide initial classification work (Dee et al., 1998). Ultimately, a total of nine economies proposed goods under this category.

21. By the time of the November 1997 APEC leaders' meeting in Vancouver, the nominations had been arranged into 41 sectors. Out of that meeting, a subset of 15 sectors emerged as clearly enjoying the greatest support for EVSL among member economies. These fifteen sectors were then further divided into two tiers. The first tier comprised nine sectors identified for fast-track treatment: environmental goods and services, fish and fish products, forest products, medical equipment and instruments, energy, toys, gems and jewellery, chemicals, and a telecommunications mutual-recognition agreement. The second tier comprised those sectors (oilseeds and oilseed products, food, rubber, fertilisers, automotive and civil aircraft) that APEC member economies deemed would require more preparatory work before they would be ready for implementation.6

22. Acting on the decisions of Leaders and Ministers in Vancouver, senior officials instructed sectoral co-ordinators to finalise agreements or arrangements that would include, in addition to market opening, elements of facilitation and economic and technical co-operation. Building on extensive work as undertaken in the fall of 1997, including extensive inter-sessional work, two further rounds of experts' meetings were held in Penang and Kuala Lumpur to further develop the Vancouver proposals in advance of the June 1998 Kuching meeting of APEC Trade Ministers. By the time of this meeting of Ministers, a framework for addressing EVSL, including draft product lists, end tariff rates and timetables, had been worked out. Both at Kuching and in subsequent meetings in 1998, including in Kuantan, work continued to further develop each of the proposals. A copy of the revised, consolidated list of environmental goods (also known as the "Kuantan version") is attached to this document as Annex Table 2. This is the list that would eventually be transmitted to the WTO.

（Table 1 APEC's EVSL for environmental goods: 略）

23. Because environmental goods are not defined as a sector in the HS nomenclature, liberalisation by necessity had to be pursued on a product-specific basis (Oxley, 1999). Proceeding from the OECD definition of what activities form part of an environmental industry, APEC economies identified, by HS codes, a positive list of products to be covered under the agreement. Tariffs for these specified products were, in principle, to be completely eliminated by 1 January 2003.7 However, in recognition of the need to deal with product-specific concerns raised by individual economies in each sector, some flexibility was allowed. In the case of environmental goods, elimination of some tariffs could be delayed until 2005 for a small number of products, or by 2007 in the case of developing economies (Table 1).

24. This negotiating context gave rise to a certain amount of caution on the part of some economies, who may not have wanted to see items with high tariffs be targeted for liberalization. In addition, some economies were quite sensitive to the "dual use" issue. They reasoned that, while some items might have a use, even an important use, in an environmental context, they might also be used in other industries, with the result that the effects of tariff liberalisation would not be limited to the environment sector. Further, even where HS tariff lines contained items that were essential to the environment industry, there might also be other products that fell within the same 6 or 8 digit tariff heading that were not so environmentally-focused.

25. The APEC economies found ways to address many of these concerns through, for example, (1) the inclusion of a 6-digit heading if the products were predominantly environmental, or so central to environmental uses that their exclusion was absolutely necessary; or (2) the specification of an "ex-heading" where APEC economies essentially wished to provide duty-free treatment to a specific product. In the latter cases, it would have been left up to individual economies to specify how that product would be reflected in their own national tariff schedules. All of these issues tended to make economies more cautious about inclusion of HS headings and products, and made the APEC list shorter than it otherwise might have been.

26. Notably absent from the consolidated list of environmental goods were chemicals used for processes such as water purification or waste-water treatment. Chemicals were left off the environmental goods list, not because

they were regarded as non-essential for environmental protection and remediation, but because APEC Members wanted to avoid entangling the EVSL initiative for environmental goods with the one for chemicals, particularly as the EVSL initiative for chemicals called only for harmonising tariff rates (Annex Tables 3 and 4). The proposal for EVSL of chemicals had a longer history, beginning with the Uruguay Round's Chemical Tariff Harmonization Agreement (CTHA), to which several APEC economies had already become signatories as part of their Uruguay Round tariff commitments (Box 1).

27. The logic of avoiding overlap between EVSL lists was not applied to goods from the medical equipment and instruments sector, 36 of which are included in the environmental goods list under the category for monitoring and analysis equipment.8 There is also some overlap between the list for energy and the list for environmental goods, but it is smaller, with only 17 tariff lines common at the 6-digit level, of which 10 refer to different ex-headings.

28. During the remainder of 1998 additional technical experts' meetings took place to elaborate the details of the various EVSL frameworks. The resultant proposal, presented to Trade Ministers and APEC Leaders at their annual meetings in Kuala Lumpur in November 1998, was a comprehensive package that included undertakings on four elements: tariffs; services; non-tariff measures; and economic and technical co-operation (Ecotech). While noting the progress made in 1998 in finalising the EVSL package, Ministers could not agree to move forward on its tariff elements. A decision was therefore taken to refer the tariff elements of the EVSL proposals to the WTO, for possible adoption on a binding basis by the full WTO membership. In so doing, the Ministers also pledged to work "constructively to achieve critical mass in the WTO necessary for concluding agreement in all 9 [first-tier EVSL] sectors."9 Malaysia, as APEC Chair, communicated this outcome to the WTO General Council in December 1998.

29. New Zealand, as APEC Chair for 1999, later circulated two papers to the WTO Members, explaining the history of the EVSL initiative, and providing details on the liberalisation targets, flexibility approaches, and the positions reached by APEC economies for each sector by the time of the Kuala Lumpur Ministerial and Leaders' meetings. The expectation was that the tariff elements of the "Accelerated Tariff Liberalisation" (ATL) initiative - as the EVSL initiative

became known in the WTO - would be advanced as a whole for consideration and adoption at the Third WTO Ministerial Conference in Seattle (December 1999). Due to the complicated nature of the Seattle Ministerial, however, little progress was made on the package.

The EVSL initiative for chemicals

Chemicals such as hydrated lime and magnesium dioxide are used in many environmental processes, such as water purification, waste-water treatment and air-pollution control. They were left off APEC's Early Voluntary Sectoral Liberalization (EVSL) initiative for environmental goods because they were covered under a separate EVSL initiative for chemicals.

The chemicals EVSL initiative - later to become part of the Accelerated Tariff Liberalization (ATL) initiative - had its origins in the Uruguay Round of multilateral trade negotiations. In 1991, chemical associations from several countries proposed that chemical tariffs be harmonised at 0%, 5.5% or 6.5%, depending on the class of the chemical product. The harmonisation initiative covered all of HS Chapters 28-39, except for a handful of items that were considered to be part of the Uruguay Round agricultural negotiations. The industry proposal became the basis for the Uruguay Round Chemical Tariff Harmonization Agreement (CTHA), to which about two-dozen countries became signatories.* Since then, several other countries have adopted the CTHA as part of their WTO accession commitments, and others still in the process of acceding have signalled their willingness to undertake the CTHA commitments. Currently, over 30 (mainly OECD member) countries are now in the process of implementing the CTHA, with more to join once their accession negotiations are completed.

When APEC Ministers called for the nomination of sectors for Early Voluntary Sectoral Liberalization in mid-1997, the United States and Singapore each nominated the full range of products covered by the CTHA and the tariff rates agreed to in the Uruguay Round for those products. Australia and Hong Kong, China joined with the United States and Singapore to co-sponsor a broad chemical initiative. Several other proposals were also received for subsectors of the chemical sector, and fertilisers was selected by APEC Ministers as a separate sector for liberalisation beyond that provided in the CTHA.

* At the end of the Uruguay Round, the CTHA encompassed the Quad (Canada,

the European Commission (on behalf of the 12 EU Member States) Japan, and the United States), Korea, Norway, Singapore and Switzerland. In 1995 this number increased with the addition of three new Member states to the European Union.

Source: Government of New Zealand, "Preparations for the 1999 Ministerial Conference - APEC's 'Accelerated Tariff Liberalisation' (ATL) Initiative - Communication from New Zealand - Addendum", Document no. WT/GC/W/138/Add.1 (22 April 1999), World Trade Organization, Geneva.

30. Meanwhile, work on other aspects of the EVSL initiatives - namely, reducing non-tariff barriers, facilitating trade, and encouraging economic and technical co-operation - has continued within APEC. For example, APEC members have been encouraged to submit and support proposals for economic and technical co-operation projects that will facilitate trade in environmental goods. An APEC Cleaner Production Strategy10 has been developed and approved that includes a list of generic, illustrative activities for implementing the strategy: (i) cleaner-production training modules; (ii) sector-based demonstration projects and case studies; (iii) technical conferences and seminars; (iv) environmental management systems (e.g. ISO 14001) workshops and training activities; (v) study tours and cleaner-production fellowships; (vi) technical exchanges; (vii) electronic information exchanges; (viii) use of industrial-extension support systems to promote cleaner production among SMEs; and (ix) development of guidebooks and manuals. In 2003, the APEC Secretariat plans to study the impacts on APEC economies of measures to liberalise and facilitate trade in environmental services.

C. COMPARISON OF THE OECD AND APEC LISTS

31. Annex Table 5 combines the OECD and APEC lists of environmental goods into one composite list, to facilitate comparison. Goods have been organised according to the categories and sub-categories used in the OECD/Eurostat scheme and, within those sub-categories, ordered by 6-digit HS nomenclature sub-headings. In most cases, categories used in the APEC list correspond to those in the OECD list,11 and hence the assignment of goods from the APEC list to OECD categories is straight-forward, though for a few goods assumptions had to be made as to which sub-categories they should be assigned. Also, in nine

cases (see endnote to table), goods from the APEC list have been assigned here to OECD categories other than those to which they appear in the original APEC list. An example is ozone, an ex-heading under HS sub-heading 8543.89: in the APEC list it appears under the category of waste-water management; for the purposes of compiling a composite list it has been assigned also to potable water treatment.

32. Counting only entries with corresponding HS codes, the OECD list appears to be about 50% longer than the APEC list (Table 2). However, when one eliminates multiple listings at the 6-digit level, they are more similar in length: there are 132 unique HS codes in the OECD list, compared with 104 in the APEC list. The composite list has 233 entries identified with an HS code, covering 198 different goods. These magnitudes are small compared with the total numbers of lines contained in WTO Members' national tariff schedules, which range from less than 6 000 (in the schedules of Australia and India) to over 11 000 (in the schedules of Hungary, Korea, Mexico, and Turkey).12

33. Strictly speaking, the two lists do not overlap much at the level of six-digit HS codes. In all, less than 30% of the goods in the combined list are common to both lists, and about half of the goods on either list can be found on the other. The greatest areas of overlap are found in the categories of recycling equipment (OECD sub-category A.3.6), incineration equipment (sub-category A.3.7), and measuring and monitoring equipment (sub-category A.6.1). Even then, for about one-quarter of the common goods, the APEC list refers to one or two specific goods, rather than to all the goods contained within the tariff line. For example, the OECD product list refers to "Parts for spark-ignition internal combustion piston engines", whereas the APEC list covers only the ex-heading category of industrial mufflers.

Table 2 Summary statistics of APEC and OECD lists of environmental goods （略）

34. One reason for the surprising lack of overlap is a difference of emphasis. Under the category Heat/energy savings and management, the OECD list specifies 14 tariff lines and the APEC list only 3. The OECD list contains 5 tariff lines each under the sub-categories Hazardous waste storage and treatment equipment and Waste collection equipment; the APEC list contains none. On the other hand, the APEC list contains a much larger number of goods under the category Environmental monitoring, analysis and assessment, including some

goods not mentioned in the OECD list, such as gas and electricity meters. Almost all of the goods contained in the OECD list under this category appear also on the APEC list.

35. Another reason for the small degree of overlap is the omission of some tariff lines from the APEC list because the particular goods were already included on lists prepared for other EVSL initiatives - notably that for chemicals. Thus, whereas particular chemicals, such as chlorine, hydrogen peroxide and magnesium hydroxide, all falling within HS chapters 28 through 39, are sprinkled across the OECD product list under categories ranging from air-pollution control to renewable energy (in the case of methanol), with most listed under waste-water management, they are with one exception13 entirely absent from the APEC list for environmental goods. However, all of the chemicals appearing on the OECD list were covered by APEC's separate EVSL proposal for chemicals (see paragraph 17, above), which was more encompassing.

36. In several cases, the APEC list provides greater specificity for goods that are mentioned in the OECD list but for which no HS codes were provided. Examples are trash compactors and parts for trash compactors (corresponding to the OECD's sub-category "compactors"), electromagnets (OECD: "magnetic separators"), inflatable oil-spill recovery barges (OECD: "oil spillage cleanup equipment"), wind-powered electric generating sets (OECD: "wind turbines"), and hydraulic turbines and water wheels (OECD: "hydroelectric plant"). No doubt had the OECD gone into greater detail in these sub-categories the degree of overlap between the two lists would have been greater.

37. Notably, the APEC list includes some specific products - including several goods from or for agriculture - corresponding to categories of goods suggested by the OECD but for which not only no HS codes were specified but no concrete product examples were provided. For example, New Zealand had nominated biodegradable erosion-control matting and ecologically-safe ground covers (both ex-headings of HS code 4601.20), as well as hot-water weed-killing systems (an ex-heading of HS code 8436.80), for EVSL. All three of these items are classified in the APEC list as relating to waste-water management. (Under the OECD list they would more logically be classified as goods used to make agriculture more sustainable.) Similarly, Canada nominated booms or socks

consisting of ground cobs of corn (maize) contained in a textile covering (an ex-heading of HS code 2302.10) as an environmental good used in remediation and cleanup.

D. OTHER LISTS

38. In November 2002 Japan submitted a list of environmental goods as part of a broader proposal on market access for non-agricultural products communicated to the NGMA and CTESS (reproduced in this document as Annex Table 6).14 Japan's list, which contains 166 entries (corresponding to 157 unique HS codes), incorporates many goods from both the OECD and the APEC lists, plus an additional 30 products that do not appear on either list. Most of the newly proposed products appear under the heading "Cleaner Technology and Products", and almost all are less-polluting or more energy- or resource-efficient versions of similar goods covered by the same 4- or 6-digit HS codes. Examples include "inverter type air conditioners" (an ex-heading under HS heading 8415), "ultrasonic dish-washing machines" and "dish-washing machines capable of saving detergents" (ex-headings under HS code 8422.11), and "double-hulled oil tankers" (an ex-heading under HS code 8901.20).

39. Other candidate lists of environmental goods are currently under preparation by several other WTO Members and are expected to be submitted to the NGMA and CTESS during 2003. In all likelihood, these lists, too, will incorporate goods from both the OECD and the APEC lists, as well as propose some new ones. The variation reflects to some extent national priorities in the negotiations on trade in goods in general. But it also reflects differences in views regarding which goods countries consider to be truly "environmental".

E. CONCLUSIONS

40. In reviewing the developmental history of the OECD and APEC product lists of environmental goods, it is clear that the two exercises were interlinked and informed each other. For example, the drafters of the APEC list consciously based their categories of environmental goods in large part on the work being undertaken at the time by the OECD/Eurostat informal working group on the environment industry.15 At the broad level, therefore, the two lists are quite similar.

41. However, the objectives of the two exercises differed, as did the procedures for generating the lists. The OECD's larger list was created deductively: starting from general categories based on classifications appearing in the environment industry manual, and adding more specific examples, where available, in order to produce an estimate of average tariffs16 on a previously undefined class of goods. The APEC approach started with nominations - not unlike the request/offer procedures traditionally used in trade negotiations - yielding a list of goods which was then arranged according to an agreed classification system.

42. It is important also to understand the APEC list in the context of the larger Early Voluntary Sectoral Liberalisation (EVSL) initiative with which it was associated. Environmental goods constituted only one of 15 sectors falling under the EVSL initiative, and one of 9 when it was referred to the WTO and became part of the Accelerated Tariff Liberalisation (ATL) initiative. Neither the APEC nor the OECD exercise sought to exclude any particular categories of goods a priori. However, because of the broad coverage of the EVSL initiative and its segmentation into distinct sectors, each with a different set of liberalisation target dates and rates, certain goods such as chemicals, which clearly are necessary for limiting or correcting environmental damage, were not included in the EVSL initiative for environmental goods. This was more apt to be the case the further the liberalisation targets for other sectors diverged from those for environmental goods.

43. Further, since the aim of the APEC list was to obtain more favourable (different) tariff treatment for environmental goods, APEC member economies limited themselves to considering only those specific goods that could be readily distinguished by customs agents and treated differently for tariff purposes. For this reason, issues related to "like products", products defined by particular processes or production methods, and products defined by their life-cycle impacts, were not addressed, with the result that some goods were left off the list that may have been included in the OECD list. This constraint of practicality could be relaxed in the OECD analytical study because its aim was to illustrate what could potentially be included.

44. Perhaps the most elementary observation to make from any comparison of the various lists of environmental goods that have been produced to date is that the number of goods that could be included in an eventually agreed list is

potentially large. Clearly, both the OECD and the APEC lists have helped frame the current WTO negotiations on environmental goods. But it is also clear that many, if not most, WTO members regard the lists as just that: helpful but not definitive.

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ANNEXES （略）

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1. Asia-Pacific Economic Cooperation.

2. Under the negotiating structure adopted by the Trade Negotiations Committee in February 2002, negotiations on market access for non-agricultural products were to take place in the Negotiating Group on Market Access, and negotiations on services to take place in the Council for Trade in Services in Special Session. Negotiations on trade and environment were to take place in the Committee on Trade and Environment meeting in Special Session.

3. The lists are contained, respectively, in WTO documents TN/MA/S/6 and TN/TE/W/18.

4.Australia, Canada, Japan, Korea (which joined the OECD late in 1996), Mexico, New Zealand and the United States.

5.Hereinafter simply "Trade Ministers".

6.Proposals for the second tier of sectors were further developed for assessment and review by APEC Ministers at the Kuching meeting in June 1998 (Dee et al., 1998).

7.Targets for the environmental goods and services sectors were initially "to be determined" and were only finalised subsequent to the June 1998 Kuching meeting of APEC Trade Ministers.

8 Several products included on the list (particularly under HS headings 9027 and 9031) also form part of the schedule of commitments entered into by Parties to the WTO's Information Technology Agreement, several of whom are also members of APEC.

9 The APEC Ministers also noted that "This process of expanding participation beyond APEC will not prejudice the position of APEC members with respect to the agenda and modalities to be agreed at the Third WTO Ministerial Conference."

10.See http://www.amz.com/apec2/HomePage/cp_strategy.html

11.The exception is the APEC category "Other Recycling Systems" (ORS), which

corresponds to the OECD sub-category "3.6 Recycling Equipment" under the general category of "3. Solid Waste Management".

12.WTO Secretariat, "WTO Members' Tariff Profiles", WTO Doc. No. TN/MA/S/4/Rev.1, Geneva.

13.The exception relates to two products listed under HS code 3926.90 (Other articles of plastics and articles of other materials of headings 3901 to 3914; other): bio-film medium that consists of woven fabric sheets that facilitate the growth of bio-organisms; and rotating biological contactor consisting of stacks of large (HDPE) plates that facilitate the growth of bio-organisms. The APEC list includes these under the category of waste-water management.

14.Government of Japan, "Market Access for Non-Agricultural Products - Communication from Japan", WTO document no. TN/MA/W/15 & TN/TE/W/17, 20 November 2002, World Trade Organization, Geneva.

15.See WTO document no. WT/GC/W/138.Add.1 (22 April 1999).

16.For the latest information on tariffs, see the table at http://www.oecd.org/env.

WT/CTE/W/228

TN/TE/W/33

Page 4

WT/CTE/W/228

TN/TE/W/33

Page 5

WT/CTE/W/228

TN/TE/W/33

Page 56

WT/CTE/W/228

TN/TE/W/33

Page 57

（八）

WORLD TRADE ORGANIZATION

TN/TE/W/34; TN/MA/W/18/Add.4

19 June 2003

(03-3266)

Committee on Trade and Environment Special Session

Negotiating Group on Market Access

Original: English

LIBERALIZING ENVIRONMENTAL GOODS IN THE WTO: APPROACHING THE DEFINITION ISSUE

Submission by the United States

Paragraph 31 (iii)

1. In Paragraph 31(iii) of the Doha Ministerial Declaration, Ministers instructed delegations to carry out negotiations on "the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services". During the course of negotiations since the Doha Ministerial, delegations have identified the issue of the definition of environmental goods as a key point that requires further clarification in the process of developing relevant negotiating modalities. Various delegations have pointed to the fact that there is no clear definition of "environmental goods" in the Harmonized System tariff nomenclature. Information has also been circulated regarding attempts by other organizations, notably the OECD and APEC, to create a listing of environmental goods. Of these two, the APEC list was developed in a context and for a purpose that closely mirrors the mandate from WTO Ministers. That is, the APEC list was created in a process involving developing and developed

countries with a view to it serving as a basis for trade liberalization in the environmental goods sector.

2. The United States believes that the underlying process and environmental rationale that went into developing the APEC list deserves attention as WTO Members undertake a similar process for identifying environmental goods for purposes of trade liberalization negotiations. Accordingly, we offer the following background information for WTO Members regarding the process by which the APEC list was developed. Irrespective of the specific approach that is ultimately adopted for these negotiations, delegations may wish to consider the lessons learned from the APEC process.

I. REASONS FOR THE LIBERALIZATION OF ENVIRONMENTAL GOODS

3. Before describing how the APEC chose to define environmental goods, it is useful to focus briefly on why it is important to identify and reduce or eliminate barriers that impede trade in this sector.

* Ministerial Mandate: WTO Ministers singled out environmental goods and services for liberalization. Apart from agriculture, no other sector was specifically identified in the Doha mandate for market access liberalization. Ministers directed that these products merit particular attention in terms of tariff and non-tariff barrier liberalization in the Doha Round. A significant liberalizing result in this sector also will help demonstrate to various constituencies, including civil society, that trade liberalization and environmental protection are indeed mutually supportive

* Economic benefits: With the reduction/elimination of barriers to market access and increased trade flows, domestic purchasers, including business and governments at all levels, will be able to acquire environmental technologies at lower costs. The savings realized will help business and governments to stretch their capital investment budgets further.

* Environmental benefits: Improved access to high quality environmental goods at lower costs should help improve the effectiveness of environmental

investment programmes undertaken by business and governments. This can lead to direct quality of life benefits for citizens in all countries in terms of a cleaner environment and indirectly to developing greater regulatory capacity in environmental protection.

* Sustainable development benefits: Liberalization will not only improve the availability of environmental technologies at lower cost, but also will allow locally based, globally competitive industries to expand their market opportunities. As barriers are removed to products for which developing countries have, or develop, competitive advantage, these countries can realize economic growth and development patterns that are more environmentally sustainable over time. Furthermore, liberalization in this sector can assist developing countries in obtaining the tools needed to address key environmental priorities as part of their on-going development strategies, such as those they have identified in the WSSD Johannesburg Plan of Implementation.

II. DIFFERENCES IN APPROACH TO DEFINING ENVIRONMENTAL GOODS - APEC VERSUS OECD

4. The APEC and OECD environmental goods lists were created for significantly different reasons and thus have different characteristics. The OECD list was developed as part of an analytical exercise to define the conceptual scope of the sector. As such, analysts who drew up the list were focused on creating a broad-brush view of goods that could be considered as part of the environment industry. In drawing up the OECD list, analysts were focused on the particular industrial usages for these goods and did not need to focus on practical questions of how the goods they were defining as "environmental" differ from identical or similar products used in other industries.

5. The APEC list, on the other hand, was clearly intended to serve as the basis for tariff liberalization/elimination among participating economies. As such, the negotiators who drew up the APEC list were constrained by a number of practical realities. While these will be discussed in some detail below, these factors included, inter alia, questions of customs administration, "dual use" issues,

differing national nomenclatures below the HS 6-digit level and WTO legal issues (e.g., like products and process and production methods or PPMs). It was often for these practical reasons that products were left off the APEC list that might otherwise have been worth including from a purely conceptual perspective.

III. WHAT ARE ENVIRONMENTAL GOODS?

6. The APEC list is made up of a combination of goods in the following two categories:

1. Environmental remediation/pollution prevention (e.g., smokestack scrubbers, sewage treatment equipment, solid waste recycling systems). Goods used to clean the environment or to contain or prevent pollution. APEC economies began by concentrating on goods of this type.

2. "Clean technologies" (e.g., solar cells and water heating systems, wind and hydraulic turbines). Goods which are designed for a particular industrial or consumer function whose use or disposal results in lesser impact on the environment than alternative goods designed for similar functions. APEC economies also sought to include clean technologies proposed by participants.

7. Some WTO Members have also argued that the environmental goods should include goods produced in an environmentally friendly manner (e.g., goods identified on the basis of PPMs). They argue that this would seek to reward industrial or consumer goods produced in a manner that has lower impact on the environment than alternative goods with similar functions. APEC economies did not include goods produced in a manner that is arguably "environmentally friendly" (i.e., differentiated on the basis of PPMs) in the APEC list. The main reasons for not including such goods were the practical and WTO-legal issues surrounding tariff discrimination on the basis of PPM criteria. In the Doha negotiations, there similarly appears to be an overwhelming majority view that WTO rules should not be changed to introduce tariff differentials between otherwise like products solely based upon differences in their method of production.

IV. APEC APPROACH

8. During APEC early voluntary sectoral liberalization (EVSL) negotiations, economies made strong progress in tackling the most difficult definitional issues in developing a list of environmental goods. As discussions proceeded, ideas for dealing with these difficulties in defining environmental goods for purposes of tariff liberalization were evaluated against several criteria.

(a) Can the product distinctions be practically implemented by customs officials? -Clearly customs officials need to be able to effectively implement liberalized tariff treatment for the environmental goods identified. APEC economies agreed that this precludes the use of end-use certificates, where, for example, importers would certify that pumps were to be used for sewage treatment plants in order to receive favorable tariff treatment, even though the same pumps could equally be used for other industrial purposes. It is noteworthy that ITA participants also rejected the use of end-use certificates in the implementation of liberalized tariff treatment for information technology goods. This practical implementation test also precluded use of goods designated as environmental on the basis of their PPMs.

(b) Many Harmonized System Tariff headings contain more than just environmental goods - "Environmental goods"are not a discrete section of the tariff code, nor are all goods within a single HS tariff line item necessarily part of the environment industry. Few HS headings at the internationally harmonized six-digit level are comprised uniquely of goods that could be considered part of the environmental industry. APEC economies decided to follow a pragmatic approach based both upon the prevalence of the environmental goods in a given tariff heading and the importance of the good for the environment industry. For example, if all or the majority of a six-digit HS category served an environmental purpose, all products within that six-digit HS category were included on the list. If a minority of products of a six-digit category was environmental, but APEC economies agreed that these products were critically important to the environmental sector, again the entire six-digit HS category was included on the list. This was the rationale for inclusion on a list of what might be viewed as "core" environmental products at the six-digit HS level,

including filters to purify industrial emissions into the air and water, sewage treatment equipment, potable water treatment equipment, recycling equipment, etc.

(c) National HS tariff lines are not uniform below the 6-digit level - In other cases, economies wanted to include a specific environmental good that was best described in terms of the product descriptions found at the narrower, national tariff line level (i.e., the eight- or nine-digit level, as appropriate). There was still an issue regarding how to address these situations in the APEC list since HS product descriptions are not necessarily consistent at the national tariff-line level. In fact, this issue is not unique to the environment industry, but is a feature of the international tariff nomenclature system. Again, APEC economies chose a pragmatic approach. If economies could not reach agreement at the internationally harmonized six-digit level but still felt that coverage of a specific good was warranted, economies agreed to incorporate environmental products by including the detailed break-outs in their own tariff schedule. Basically, economies would agree, for example, to cover a product like solar cells and leave it up to each individual economy to reflect that coverage in their national tariff schedule in an appropriate manner. This explains the use of "ex" headings in the APEC list.

(d) What can be done about "dual use" issues? - Goods which are important to the environmental industry often have dual or multiple uses, including non-environmental as well as environmental uses. As in the above example, a given type of pump might be able to be used for sewage treatment or other non-environmental purposes. Given that end-use certificates were deemed to be impractical, APEC economies next faced the question what to do about goods that could be used both for environmental and non-environmental purposes. Here APEC economies made choices to include products that were viewed to be important tools or components for environmental protection.

V. CONCLUSIONS

9. As the United States has said in submissions and interventions in both the Negotiating Group on Non-Agricultural Market Access and the CTE in Special

Session, we encourage delegations to consider the APEC list of environmental goods as the starting point for discussions. Such an exercise would allow all Members to benefit from the core lessons learned of previous trade negotiators who found workable solutions to some of the most inherently difficult aspects of environmental goods negotiations. It is in this spirit that the United States submits these highlights and clarifications of the APEC negotiations for delegations that were not involved in that process. The lessons learned in that context could be helpful in informing our current work in the WTO

10. Ultimately, WTO Members must style an environmental goods modality that fits their broad and diverse interests. This includes identifying environmental products of interest to developed and developing countries alike. This should be done in a manner than can be readably implemented by customs officials and that, in turn, will allow for both economic and environmental benefits.

TN/TE/W/34

TN/MA/W/18/Add.4

Page 2

TN/TE/W/34

TN/MA/W/18/Add.4

Page 3

附錄二、環保服務業

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WORLD TRADE ORGANIZATION

WT/CTE/W/218

3 October 2002

(02-5320)

Committee on Trade and Environment

DISCUSSION PAPER ON THE ENVIRONMENTAL EFFECTS OF SERVICES TRADE LIBERALIZATION

Items 6 and 9

Note by the Secretariat

This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO

I. INTRODUCTION

1. At the October 2001 meeting of the CTE, the WTO Secretariat was requested to prepare a background document on the effects of services trade liberalization on the environment.1 This paper looks at three selected areas: tourism, land freight transport (inter-urban) and environmental services. Subsequently, it briefly considers the horizontal issue of how to assess environmental effects of services trade liberalization. The objective of the paper is to stimulate debate in the CTE under Items 9 and 6 of the CTE Work Programme (Annex).2

2. As a Secretariat note, this document does not attempt to assess the environmental effects of services trade liberalization. Such an assessment is best done at the national level, whether by governmental bodies or others. While the optimal scenario would have been to have a number of completed national assessments, specific to the issue at hand, such studies are difficult to come by. This has been a significant constraint. Few national assessments of trade negotiations are specific both to services trade liberalization and potential associated environmental effects. Furthermore, the diversity of services trade is likely to imply that environmental effects - both positive and negative - may differ significantly between sectors, and it is difficult to attempt to identify clear-cut horizontal issues.

3. This lies behind the choice of looking at specific cases, even within services sectors. The selection of cases was based on their usefulness in exposing potential interlinkages between services trade liberalization and the environment. This choice should not be seen as an indication of the non-relevance of other sectors, or sub-sectors.

II. SERVICES TRADE

4. Unlike goods, the supply of services is not subdivided into a precise multi-digit tariff-line classification system such as the Harmonized System. Nor is its trade as easily tracked across borders. Under GATS, services trade is generally subdivided under 12 sectors and the trade itself is characterized by four modes of supply (Tables 1 and 2, below). Barriers to trade typically take the form of market access and national treatment limitations (such as requirements relating to government approval or authorisation). Liberalization entails the progressive removal of these barriers.

Table 1: Service Sectors

1

business (including professional and computer) services

2

communication services

3

construction and related engineering services

4

distribution services

5

educational services

6

environmental services

7

financial (insurance and banking) services

8

health-related and social services

9

tourism and travel-related services

10
recreational, cultural and sporting services
11
transport services
12
other services not included elsewhere
Source: Services Sectoral Classification List, Sector (A-D) in MTN.GNS/W/120, 10 July 1991
Table 2: Modes of Supply
"Mode 1"
cross-border supply (the service itself crosses the national border, such as the supply of advice by electronic means)
"Mode 2"
consumption abroad (for example, the consumer travels abroad for tourism, education or medical treatment)
"Mode 3"
commercial presence (for example, the establishment of branch offices or agencies of a foreign supplier in the territory of another WTO Member; note that this does not necessarily require the presence of foreigners)
"Mode 4"
presence of natural persons (the admission of foreign nationals to another country to provide services there)
5. While the nature of services trade liberalization is not dealt with here,3 four general contextual points are made before considering the specific examples.
6. Current context. Members have agreed, inter alia, that the direction of the on-going negotiations is one of progressive liberalization. These negotiations are taking place within the existing structure of the GATS and with the existing schedules as the starting point. It is recalled that the existing structure of the GATS allows countries flexibility in terms of the scheduling of commitments, as well as with respect to the conditions that governments chose to impose on foreign suppliers of services. Services trade liberalization is to take place with due respect for national policy objectives, the level of development and the size of economies of individual Members, both overall and in individual sectors. 4
7. Regulatory adjustment. While liberalization involves the progressive removal

of barriers to services supply, this does not necessarily diminish the role of government. Quite to the contrary, liberalization might even sharpen the need for appropriate regulation so as to achieve certain policy objectives. Environmental policy, for instance, might strive to mitigate negative environmental effects of services trade liberalization or enhance such positive effects, or both. In this sense, the environmental impact of liberalization in any individual sector may ultimately depend on whether or not liberalization proceeds under current regulatory conditions or with regulatory adjustments. New regulations may be needed to ensure continued compliance with environmental policy objectives when trade is liberalised.5 If appropriate regulation is in place, and prices reflect the full cost of production (including environmental cost), liberalization should benefit the environment because it leads to more efficient resource use.

8. A strong link between services liberalization and the environment may not be sector-specific (which is the focus of this paper), but depend also on a chain of causation that runs from liberalization to development and from development to environment. Ultimately, positive environmental impact will depend on the availability of resources a society is able to invest to protect the environment. In turn, resource availability is determined by the level of development. In other words, there is a positive link between freer trade and economic growth which can lead to reduced poverty and higher standards of living, including a better environment.

9. Attributing potential environmental effects. It is difficult to distinguish between on the one hand those environmental effects which may be attributable to services trade, and, on the other hand, those environmental effects which may arise due to other factors. Once the link to services trade has been established, a second and separate consideration is whether liberalization thereof makes things better or worse. Yet another step in this exercise is estimating the extent to which services trade liberalization can be attributed to liberalization under GATS. For the purposes of this paper the vehicle for liberalization is not key: it is the environmental effect arising from services trade liberalization, irrespective of its origin, which is of interest. It could be equally relevant to consider the environmental effects - both positive and negative - of not liberalizing services trade.

10. Link to goods. While a supplied service is generally intangible, its direct environmental impact could be measured by the effect it has on the consumption of associated goods. With respect to transport, for example, consumption of fuel causes a negative environmental effect (CO2 emissions). On the other hand, the export of a service may bring with it know-how and technology which leads to more efficient and environmentally friendly fuel extraction. Furthermore, the provision of some services may be linked to that of goods. In considering the environmental effects of services trade liberalization, effects that arise from the supply and consumption of associated goods need to be kept in mind.

III. SELECTED EXAMPLES

1. Tourism

11. In a 1998 Secretariat note, it was noted that environmental problems were an important challenge facing the tourism industry.6 Tourism is one of the largest industries in the world and while growth was affected by the events in 2001, the World Tourism Organization (hereafter "WTO/OMT") expects a recovery in 2002.7 In the debate on tourism, "sustainability" has grown in importance.

12. "Sustainable tourism" is defined as one that:

"meets the needs of present tourists and host regions while protecting and enhancing opportunities for the future. It is envisaged as leading to management of all resources in such a way that economic, social and aesthetic needs can be fulfilled while maintaining cultural integrity, essential ecological processes, biological diversity and life support systems".8

13. At the 1992 Rio UN Conference on Environment and Development, tourism was not an issue. But in September 2002, at the World Summit on Sustainable Development (WSSD) in Johannesburg, tourism received considerably more attention and the WTO/OMT launched a publication on sustainable tourism and the alleviation of poverty.9 In recognition of the growing importance of the issue, the United Nations designated the year 2002 as the International Year of Ecotourism. Ecotourism can be seen as one instrument to achieve the more ample goal of sustainable tourism; it encompasses the notion of a contribution, or direct promotion of nature conservation.10 As a sector within the tourism

industry, it has grown rapidly.

14. The concept of sustainable tourism includes three aspects: environmental, socio-cultural and economic impacts of tourism. Focusing on the environmental impact, one of the basic threats of expanded tourism activities comes from added pressure on natural resources associated with additional consumption. Although this threat is relevant to several environmental media - be it air, water, land, wild fauna or flora - biodiversity is a key area of concern.11 The Convention on Biological Diversity (CBD) and the United Nations Environment Programme (UNEP) have jointly developed draft guidelines for activities related to sustainable tourism in this respect. These guidelines note, for instance, that "to be sustainable, tourism should be managed within the carrying capacity and limits of acceptable change for ecosystem ... [t]ourism should be restricted, and where necessary prevented, in ecologically sensitive areas".12

15. Having said the above, the tourist industry's potential contribution to sustainable development, particularly in developing countries, is not in question. Nor is the policy objective of protecting the environment. But there is the obvious point that damage done to the very environment which is often at the heart of the tourists' attraction will, at the end of the day, affect the viability of the sector in the long term. Hence the issue becomes one of finding ways and means of taking this concern into account while removing obstacles in international trade in a manner consistent with the goal of progressive liberalization in the services sector.

16. It is perhaps interesting that a study by the International Institute for Environment and Development (IIED) on sustainable trade, addressing inter alia the tourist sector, found among its conclusions that the market appeared to play little role in stimulating social and environmental responsibility, and that legislation appeared to be a greater driver in this respect.13 Along the same lines, the CBD notes in its Decision on Biological Diversity and Tourism, that self-regulation of the tourism industry for sustainable use of biological resources has only rarely been successful.14 Hence, the promotion of adequate regulations and harmonized approaches could in itself play a key role in promoting - and thereby enhancing - sustainable tourism.

17. Regarding harmonized approaches, the WTO/OMT has developed a "Global Code of Ethics for Tourism"15 which is aimed at, inter alia, minimizing the

negative impacts of tourism on the environment. This was included in their contribution to the WSSD in Johannesburg. Awareness-raising has been identified as an important tool in this respect, both at the level of the consumer in the originating country - as well as local authorities in the destination country - to accelerate the implementation of sustainable development in the tourism sector. The WSSD Plan of Implementation, adopted in Johannesburg in September 2002, in promoting sustainable tourism, contains actions aimed at stimulating awareness and the diversification of economies, including through the facilitation of access to markets.16

18. The term "leakage" of profits often arises in this context. "Leakage" of profits is described by the UNCTAD as a process "whereby part of the foreign exchange earnings generated by tourism, rather than being retained by tourist-receiving countries, is either retained by tourist-generating countries or remitted back to them".17 The concern here is that such leakage should not lead to reduced resources available for environmental protection. Ideally, the exact opposite should be the case: to maintain sustainability, some benefits should be re-invested in the maintenance of the environmental resource being exploited thereby harnessing some proportion of the tourism resources to this end. "Leakage" is not exclusively relevant to services trade - it is equally relevant to goods. In considering whether a country is made better or worse off because of increased tourism, a more relevant question may relate to the level of net earnings which remain in the destination country. A WWF study on the environmental and social effects of liberalization of tourism services concluded that the impacts on sustainable development from such liberalization would be both positive and negative.18 Hence, it is the net effect which is interesting. Important in this context is the extent to which both foreign and local operators are accountable for environmental costs. The host country's regulatory framework - and enforcement thereof - will be a significant factor in this regard.

19. Turning to the on-going negotiations, compared to other services sectors, tourism is generally more liberalised, with a relatively high level of commitments under GATS. Several developing countries attribute considerable importance to the sector for their economy and there have been calls for broader and more in-depth commitments, particularly in Mode 2 (consumption abroad) and Mode 3 (commercial presence).19 At the same time, the need for

flexibility to address environmental concerns has been called for. For example, Kenya notes, in its proposal on services, the right of Members in the GATS to use necessary flexibility to pursue legitimate policy objectives such as the encouragement of eco-tourism for sustainable development.20 Cuba stresses that "liberalisation of tourism services should not give rise to contradictions with national policies with regard to environment preservation".21 Other Members are more general but the fundamental point is the same.22 Members may wish to discuss to what extent current rules are a constraint in this regard, or whether the constraints lie elsewhere.

2. Land freight transport (inter-urban)

20. The transport sector covers a wide range of activities involving the movement of goods or passengers over land, in the air, or at sea. The contribution transport makes to the efficient production and allocation of resources is not questioned. International transport is what makes trade possible and an efficient use of resources is in itself beneficial to the environment. As transport is an activity that is bound to increase, it matters, from an environmental point of view, how this growth takes place. Unlike what was the case for tourism, Agenda 21 contains a section which directly addresses transportation (in the context of the protection of the atmosphere). Therein it is stressed that transportation has an essential role to play in economic and social development and that transportation needs would undoubtedly increase. But Agenda 21 also points at the environmental challenges: inter alia, the need to limit, reduce or control harmful emissions and other adverse environmental effects of the transport sector. 23

21. While there is a wealth of information regarding negative environmental effects resulting from transport, there is not a vast number of national assessments of services trade liberalization in the transport sector which address potential links between the two. One significant difficulty, again, is to distinguish between increases in freight transport due to trade liberalization and increases due to other reasons, such as overall economic growth. Ideally, one would analyse the transport sector by constructing a matrix with the mode of transport on one axis (air, land and sea) and the environmental effects on the other (i.e., consumption of fossil fuels that contribute to CO2 emissions, noise,

biodiversity loss, introduction of invasive species). But that would go beyond the scope of this paper.

22. When comparing various modes of freight transport, the OECD concluded, in 1997, that energy use and air pollutant levels were markedly higher for trucking than for other modes of freight transport (being air, shipping and rail).24 Guided by this, and for the purpose of illustrating the issue, we focus on one row of that imaginary matrix: inter-urban freight transport over land and related environmental concerns. This is not to say that there may not be other modes of transport - along with associated environmental effects - also worth exploring.25

23. Using an "Analytical Framework",26 a study on "NAFTA Transportation Corridors"27 was undertaken by the North American Commission for Environmental Cooperation (NACEC) to examine environment-related shifts along two specific trans-boundary border regions between Mexico, Canada and the United States.28 It analysed environmental indicators for air, water, biodiversity and "quality of life". The study noted that the pace of environmental protection related to NAFTA transportation corridors had lagged behind that of trade. It questioned why highway expansion activities rather than rail improvements were being pursued. It also emphasized the need to better understand, inter alia, what barriers might exist (economic, regulatory, etc.) which limited the use of alternative modes of transport.

24. Looking at the liberalization of the transport sector in North America, the OECD29 noted among its conclusions that although environmental impacts of transportation almost always increased with the volume of goods transported, it was possible that when trade was liberalized the environmental impact per unit of consumption would decrease due to the use of a more efficient mix of resources, technology and transportation. The report noted, for instance, that the use of energy by rail freight in the United States had declined significantly from 1980 to 1993, while rail ton-miles had increased. This was in part due to the use of more efficient locomotives and improved infrastructure.

25. A separate study30 on Europe painted a bleaker picture. It concluded that EC policy had been implemented in a manner that had favoured the environmentally less friendly modes of transport and that environmental advantages of rail and water ways had not been transformed into market

advantages. However, efforts are currently underway to bring change to the common transport policy. The European Commission's White Paper on "European Transport Policy for 2010: Time to Decide"31 attempts to adapt the common transport policy to the requirements of sustainable development. Among the proposed specific measures are guidelines aimed at revitalizing the railways sector, including efforts to bolster competition between railway companies both at the national as well as international level.

26. The Norwegian Ministry of Foreign Affairs has completed an assessment on the environmental consequences of trade liberalization in the transport sector.32 Their report concludes that the likelihood of negative environmental effects resulting from the ongoing rounds of negotiations "seems small". However, along the lines of the points made above, possible negative effects may arise if liberalization distorts relative competitiveness in favour of more road transportation. On the positive side, liberalization could lead to more effective employment of transport capacity.

27. While the environmental effects of services trade liberalization in the transport sector have not been a major issue in the on-going GATS negotiations, on a general note, the European Communities recalls in its transport proposal the right to regulate in pursuance of non-trade objectives such as safety, environment and social cohesion.33

28. The above has provided an example of the importance of regulatory adjustments along with liberalization. Environmental impact of liberalization can be expected to depend on whether or not liberalization proceeds under status quo regulatory conditions or with regulatory adjustments. For example, to the extent that transport activities lead to the consumption of fossil fuels and thereby contribute to CO2 emissions, there is a negative environmental effect. And as international freight transport is not likely to diminish, this puts the spotlight on technology. The industrial development of fuel efficient engines and advanced exhaust gas treatment will - and have - countered some of the negative environmental effects. But industry responds to incentives. Regulatory measures, including the setting of standards, and the use of taxes, could help creating the incentives (and removing the disincentives) for the right "mix" of transport modes which could address legitimate environmental concerns.

3. Environmental Services

29. Before considering what environmental services are, it is useful to look at the definition of the environmental goods and services industry itself. The OECD/Eurostat definition reads as follows:

"The environmental goods and services industry consists of activities which produce goods and services to measure, prevent, limit, minimise or correct environmental damage to water, air and soil, as well as problems related to waste, noise and eco-systems. This includes cleaner technologies, products and services that reduce environmental risk and minimise pollution and resource use".34

30. In other words, environmental services is one segment of the environmental industry.35 The global environmental industry (including goods and services) was estimated at US$453 billion in 1996, growing to 522 billion in 2000 and 540 billion in 2001 (the services part of this was about half). The largest markets are in the United States, Western Europe and Japan, but the strongest growth is taking place elsewhere, particularly in developing country regions.36 As the market for international trade in environmental services has grown, the focus on barriers to such trade has sharpened, in particular with respect to limitations on commercial presence (Mode 3) and the employment of nationals of a company's home country (Mode 4). Along with this trend comes a growing debate on the role of government and, more broadly, the social, developmental and environmental effects of such liberalization.37

31. Having asserted now that environmental services is one part of the industry, the next issue is the characterization of the environmental services sector itself. This is a less simple task. The focus of the current GATS classification, which dates back to 1991, is on pollution control and waste management (sewage, refuse disposal, sanitation and similar services and "other").38 Since 1991, there has been a significant shift in demand away from these traditional "end-of-pipe" solutions and towards those services related to prevention, control and monitoring. In the ongoing negotiations, some Members have called for a classification which would better reflect this.39 It is noted here that irrespective of how environmental services are classified, governmental services which are not supplied on a commercial or competitive basis are not subject to the GATS. They are, thus, outside the scope of the current

negotiations.40

32. As classification is not the main issue here for the purposes of this note, we turn to the environmental effects.41 It could be argued that by their very nature, environmental services have a positive effect on the environment as the service itself is about delivering improved environmental quality. Moreover, national legislation in some countries could be an important driver for industry to build up knowledge and expertise in this area. To the extent that international trade entails transfer of such technology and know how - and greater access to the end-product, i.e., clean water, reduced wastage, recycling - the reduction of barriers to such trade is intrinsically positive to environmental protection.42 In fact, considering that environmental services encompasses areas such as the provision of services for air pollution control, waste water management and hazardous waste collection, it could be argued that it is in the interest of all that environmental services be as widely distributed as possible. Yet, as can be seen from the example of water sanitation, the role of government remains crucial to ensure adequate regulatory framework.

33.The need to improve water and sanitation services and facilitate greater access was stressed by UN Secretary General, Kofi Annan, at the WSSD.43 In Johannesburg, countries agreed to commit themselves to the target date of 2015 for reducing the number of people who lack access to proper sanitation. This complemented the previously agreed "Millennium Development Goal" of halving the proportion of people who lack access to clean water (which was reaffirmed in Johannesburg). Water illustrates the close link between health, environment and poverty: one billion people lack access to safe water and two billion lack access to safe sanitation.44 Hence, while water is an environmental resource, it is also a necessity for life, and a cornerstone for development. Water sanitation services can play an important role in addressing part of this problem, including the environmental aspects. Government policy may need to strike a balance between, on the one hand, the short-term need of the poorer consumer, and, on the other hand, the longer-term and ultimately crucial need to ensure that the costs of exploiting the water, as a resource, is accounted for. Herein lie two separate aspects: (i) the value of the service of bringing the water to the consumer and taking care of it afterwards and (ii) the value of water as a resource.

34. As put by Cuba in its proposal on environmental services, the commitments made by developing countries should be based on the right to adopt appropriate environmental policies. In this respect, the process of liberalization needs to respect inter alia, the lack of development and the size of economies - and allow Members a degree of flexibility. 45

IV. ASSESSMENT

35. A red line through much of the literature on which the above discussion is based is the paucity of data. Data collection is resource-intensive. Taking into consideration that environmental effects may not everywhere be a priority concern, particularly where financial resources are scarce, the choice of what data to collected is important. Hence the need to choose the sectors or sub-sectors where the environmental effects can be assumed to be most significant. And this leads us to the importance of methodology.

1. Environmental assessments

36. Before looking at the methodology, a few words on assessment in the context of the services negotiations are called for. Assessment of trade in services, according to the Services Guidelines, is to be an "ongoing activity of the Council [for trade in Services] and negotiations shall be adjusted in light of the results of the assessment".46 Naturally, assessing the effects of services trade liberalization is an exercise which is broader in scope than an assessment which is limited to exploring environmental effects. An environmental assessment could, for instance, be part of a broader assessment, along with other "non-economic considerations" such as health.47 As noted elsewhere in this paper, few assessments are specific to services trade liberalization and the environmental effects thereof.

37. Focusing on the environment, there is no one globally accepted definition of an environmental assessment. The definition tends to depend on who the assessor is. It is characterized as an exercise which involves the identification of potential economic, social and developmental effects of trade and trade liberalization. A previous document circulated in the CTE48, illustrates how the approach taken by the assessor will vary depending on:

(a) the reason for choosing to undertake the assessment;

(b) which effects are looked at; and,

(c) how the link between the effects of trade liberalization and the environmental impacts are established.

38. The three examples in the above-mentioned document are still relevant today. The footnotes indicate where up-to-date information on on-going work in this respect can be obtained.

(a) Canada: Framework For Conducting Environmental Assessments Of Trade Negotiations49

(b) European Communities: Sustainability Impact Assessment50 It is noted here that the University of Manchester has now posted its "Inception Report" (under Phase Three), on the website. This includes a section on environmental services.51

(c) United States: Guidelines for Implementation of Executive Order 13141: Environment Review of Trade Agreements52

2. Methodology53

39. In January 2002 the OECD Joint Working Party on Trade and Environment circulated a methodology for the assessment of the environmental effects of services trade liberalization involving six steps:

(a) Scoping services sectors for environmental effects

(b) Building scenarios of services trade liberalization

(c) Assessing environmental effects associated with economic changes

(d) Assessing regulatory effects arising from rule-making

(e) Screening for significance of environmental effects

(f) Determining appropriate policy responses

40. This initial step, "scoping", is aimed at providing an overview of the services sectors showing potential environmental pressure points at the national level, as well as revealing areas of potential positive effects. It helps reduce the extent of the assessment by focussing on those areas of most concern to a country. More concretely, it involves the identification of direct environmental effects as well as indirect ones. Direct effects would include those which have a high specific impact on the environment at the source or facility (for example air transport, electricity utilities, hospitals) but also those that have a cumulative impact from several sources. It also includes indirect effects, which are less obvious, such as influence of client behaviour of consulting activities, or

technology choice with subsequent impacts from construction and operation (consulting engineering).54

41. The next challenge is that of identifying those environmental effects associated with those economic changes which in turn are associated with trade liberalization. Hence, this second step entails building scenarios on the scope or degree of liberalization (status quo, partial, complete, etc.).

42. The next two steps look at the environmental effects induced by both the economic and regulatory changes. On economic effects, the OECD makes a further sub-division: (i) estimating the economic changes arising from liberalization of main restrictions, and then (ii) assessing the environmental effects of these economic changes. Regarding the former (economic changes), it is of interest to assess not only the direction but also the extent of these economic changes in order to, in turn, assess the environmental effects which result from these. The latter (environmental effects) includes an analysis of (i) scale effects, (ii) structural (or composition), (iii) technology effects and (iv) product effects.

43. Regulatory effects are considered separately. Key questions here revolve around the changes made, for example, in GATS rules which might affect domestic regulatory capability: How will the ability of a Member to select regulatory mechanisms to meet national environmental policy objectives be affected by new rules?

44. The last two steps involve an identification of those effects which are significant and the determination of a policy response to this. Appropriate policy responses could include:

(a) modification of some aspect of the trade agreement, including environmental safeguards in the trade measure or agreement; or

(b) implementation of complementary environmental mechanisms to accompany the trade measure or agreement; or

(c) putting emphasis on designing "flanking" measures (boost positive, buffer negative).

V. CONCLUDING REMARK

45. This paper has attempted to expose linkages between services trade liberalization and the environment in the areas relevant to tourism, transport

and environmental services. At the root of the discussion is the question: What are the constraints for the policy objective of protecting the environment when liberalizing services trade? Three distinct issues arise in considering this question: (i) the need to identify, in each specific sector or sub-sector, economic policy tools that translate into incentives and/or disincentives that promote legitimate environmental objectives; (ii) the extent to which flexibility under current rules would allow for their implementation; and (iii) whether regulatory capacity (know-how, resources) exists to implement and enforce them. As priorities may vary among Members, a methodology which helps focus policy on the most significant environmental effects (be they positive or negative) will be key.

Annex

CTE Work Programme

Item 9

The work programme envisaged in the Decision on Trade in Services and the Environment

(S/L/4 of 4 April 1995)

DECISION ON TRADE IN SERVICES AND THE ENVIRONMENT

Ministers decide to recommend that the Council for Trade in Services at its first meeting adopt the decision set out below.

The Council for Trade in Services,

Acknowledging that measures necessary to protect the environment may conflict with the provisions of the Agreement; and

Noting that since measures necessary to protect the environment typically have as their objective the protection of human, animal or plant life or health, it is not clear that there is a need to provide for more than is contained in paragraph (b) of Article XIV;

Decides as follows:

1. In order to determine whether any modification of Article XIV of the Agreement is required to take account of such measures, to request the Committee on Trade and Environment to examine and report, with recommendations if any, on the relationship between services trade and the environment including the issue of sustainable development. The Committee shall also examine the relevance of inter-governmental agreements on the

environment and their relationship to the Agreement.

2. The Committee shall report the results of its work to the first biennial meeting of the Ministerial Conference after the entry into force of the Agreement Establishing the World Trade Organization.

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.

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1 WT/CTE/M/28, 31 October 2001, Report of the Meeting held on 4 October 2001, Note by the Secretariat, paragraphs 5-13.

2 While the request for this paper was made under Item 9, it also has a bearing on Item 6 and it is therefore circulated under both these items. This document does not consider the legal aspects of the relationship between Paragraph (b) of Article XIV of the GATS and Article XX of GATT 1994. This was considered in more detail in a previous Secretariat note (WT/CTE/W/9 of June 1995).

3 For more detail on the ongoing negotiations, see the "Services" pages at www.wto.org. A useful source reviewing the literature on the relationship between services and the environment is: Andrew, D., Services trade liberalization: assessing the environmental effects, in The Environmental Effects of Free Trade, pp.361-389, North American Commission for Environmental Cooperation (NACEC), Montreal, 2002.

4 S/L/93, 29 March 2001, Trade in Services, Guidelines And Procedures For The Negotiations On Trade In Services, paragraph 14.

5 For more on services assessment per se see S/CSS/W/117, 15 November 2001, Council for Trade in Services, Special Session, Assessment Of Services Liberalization: Potentially Relevant Considerations And Criteria, Note by the Secretariat, paragraph 11.

6 S/C/W/51, 23 September 1998, Council for Trade in Services, Tourism Services, Background Note by the WTO Secretariat, paragraph 3.

7 A year after "11-S": climbing towards recovery, News Release from the WTO/OMT, 9 September 2002, Madrid, Spain (www.world-tourism.org).

8 WTO/OMT definition.

9 For more information on the publication see www.world-tourism.org

10 For definitions on eco-tourism see the joint publication of UNEP and the International Ecotourism Society: Ecotourism: Principles, Practices & Policies for Sustainability, Megan Epler Wood, UNEP, 2002. More useful information on ecotourism is contained in the Final Report of The World Ecotourism Summit, Quec, Canada, 19-22 May 2002 (www.ecotourism2002.org).

11 For more detail, see Environmental Impacts of Tourism at UNEP's website at: http://www.uneptie.org/pc/tourism/sust-tourism/.

12 Draft International Guidelines For Activities Related To Sustainable Tourism Development In Vulnerable Terrestrial, Marine And Coastal Ecosystems And Habitats Of Major Importance For Biological Diversity And Protected Areas, Including Fragile Riparian And Mountain Ecosystems, contained in Annex 1 of the Report Of The Workshop On Biological Diversity And Tourism, Santo Domingo, 4-7 June 2001, UNEP/CBD/WS-Tourism/4. See, in particular, Guideline 6 on Impact Management for the text quoted here. A summary of these Guidelines is contained in: http://www.biodiv.org/programmes/socio-eco/tourism/guidelines.asp.

13 Overview Report - Stimulating Sustainable Trade, Phase 2, Nick Robins and Tom Fox eds., International Institute for Environment and Development (IIED), November 2000, UK. See in particular the section on Tourism in South Africa.

14 CBD, Decision V/25 on Biological Diversity and Tourism, Adopted By The Conference Of The Parties To The Convention On Biological Diversity, COP5, Nairobi, 15-26 May 2000, see in particular paragraph 6 under "B. Tourism and environment".

15 Approved in October 1999 by the Members of the WTO/OMT at their 13th General Assembly, Santiago, Chile.

16 WSSD Plan of Implementation, paragraph 41.

17 Report of Expert Meeting on Strengthening the Capacity for Expanding the Tourism Sector in Developing Countries ..., UNCTAD, Geneva, 8-10 June 1998, see in particular paragraph 7 of the Chairperson's Summary.

18 Juda, N. and S. Richardson (2001), Preliminary assessment of the environmental and social effects of liberalisation in tourism services, Gland: WWF, WWF International Discussion Paper.

19 See, for example, the proposals from Costa Rica (S/CSS/W/128), Mercosur (Argentina, Brazil, Paraguay and Uruguay, in S/CSS/W/125) and Cuba

(TN/S/W/1).

20 Kenya in S/CSS/W/109, paragraph 10.

21 Cuba in TN/S/W1, paragraph 10.

22 For examples, see Switzerland in S/CSS/W/79, paragraph 14 or the point made by the United States in S/CSS/W/31, paragraph 6 and reiterated in S/CSS/M/13, paragraph 303.

23 Agenda 21, Chapter 9 on "Protection Of The Atmosphere", Section "B. Promoting sustainable development" contains a section on "Transportation".

24 Freight and the Environment: Effects of trade liberalization and transport sector reforms, OECD, 1997, Paris, p.12.

25 For more detail on environmental effects linked to transport, see UNEP at http://www.uneptie.org/energy/act/tp/index.htm.

26 The Analytical Framework is a methodology designed, inter alia, to develop an understanding of the connections between trade and the environment and to develop policy tools to better mitigate negative impacts and maximize positive ones. It was developed by the North American Commission for Environmental Cooperation (NACEC) assisted by a NAFTA Effects Project Team, in order to consider the environmental effects of NAFTA. The NACEC is an international organization created by Canada, Mexico and the United States under the North American Agreement on Environmental Cooperation (NAAEC). It was established to address regional environmental concerns, help prevent potential trade and environmental conflicts, and promote the effective enforcement of environmental law. The Agreement complements the environmental provisions of the North American Free Trade Agreement (NAFTA). The Analytical Framework is available at www.cec.org.

27 NAFTA Transportation Corridors: Approaches to Assessing Environmental Impacts and Alternatives, by Sierra Club and Shelia Holbrook-White, Texas Citizen Fund, with technical support from WWF-US, in The Environmental Effects of Free Trade, NACEC, Montreal, 2002.

28 The study is specific to two case studies of the most heavily impacted border communities: Laredo, Texas/Nuevo Laredo, Tamaulipas on the US/Mexican border and Detroit, Michigan/Windsor, Ontario on the US/Canada border.

29 Liberalization in the Transport Sector in North America, OECD, 1997, Paris, in particular p.5 and 23.

30 Liberalization and Structural Reform in the Freight Transport Sector in Europe, OECD, 1997, Paris, pp.41-43.
31 See: http://europa.eu.int/comm/energy_transport/en/lb_en.html.
32 Miljonsekvenser av mer liberal handel med transporttjenester, Notat 92/01, Econ Senter for onomisk analyse, Oslo, March 2002. Note that this study is mostly in Norwegian. However, it contains an English summary. It is available from the Norwegian Ministry of Foreign Affairs.
33 Communication From The European Communities, GATS 2000: Transport services, S/CSS/W/41, 22 December 2000, paragraph 29. See also the general point in S/CSS/W/32, GATS 2000: Sector Proposals, 22 December 2000, paragraph 6.
34 The Environmental Goods & Services Industry, Manual for Data Collection and Analysis, OECD/Eurostat, 1999, p.9.
35 Other business activities within the environmental goods and services industry includes equipment manufacturing, research and development, engineering services and construction and installation of facilities (Supra, p.17).
36 Environmental Business International (EBI), San Diego, United States.
37 Due to the "public good" nature of this type of service (sewage and refuse disposal, for example), and high level of investment required (i.e., for distribution networks) this sector lends itself to monopoly and has traditionally had a high level of government involvement.
38 Services Sectoral Classification List, Sector (A-D) in MTN.GNS/W/120, 10 July 1991. Note that the use of this classification, however, is not mandatory.
39 The European Communities, for instance, have called for a classification which would be broader and reflect the environmental media (such as water, air, solids and hazardous wastes), rather than the type of service itself (sewage, refuse disposal) (S/CSS/W/38). Other Members focus less on the need to change the current list of "core" services contained in the Services Sectoral Classification List (W/120) while recognizing that there are related services found elsewhere that are important to the delivery of environmental services (see, for example, Canada in S/CSS/W/51).
40 While GATS applies in principle to all service sectors, Article I(3) excludes "services supplied in the exercise of governmental authority". These are services that are supplied neither on a commercial basis nor in competition with

other suppliers. Currently, Members are not obliged to grant market access and national treatment to government procurement (GATS Article XIII).

41 For more detail on classification and definitional issues, see: S/C/W/46, 6 July 1998, Environmental Services and WT/CTE/W/67/Add.1, 13 March 1998, Environmental Benefits Of Removing Trade Restrictions And Distortions, Environmental Services, (both are Secretariat background notes).

42 For more on environmental and developmental benefits, see Environmental Goods and Services, The Benefits of Further Global Trade Liberalization, OECD, 2001, Paris.

43 The Earth's Second Chance, Financial Times, 29/5/2002.

44 Water Supply & Sanitation Blue Pages, The World Bank Sector Guide 2000, World Bank, 2000. See also: www.worldbank.org/water.

45 S/CSS/W/142, paragraph 4

46 S/L/93 supra, paragraph 14.

47 S/CSS/W/117, supra.

48 WT/CTE/W/171, 20 October 2000, Environmental (Sustainability) Assessments Of Trade Liberalization Agreements At The National Level, Item 2 of the work programme, Note by the Secretariat.

49 See: (i) WT/CTE/W/183, 15 March 2001, Framework For Conducting Environmental Assessments Of Trade Negotiations, Communication from Canada; and, (ii) www.dfait-maeci.gc.ca/trade/tna-nac/EAF_Sep2000-e.asp.

50 See: (i) WT/CTE/W/208 (also circulated as WT/COMTD/W/99 and TN/TE/W/3), 3 June 2002, Sustainability Impact Assessment, Communication from the European Communities; (ii) http://idpm.man.ac.uk/sia-trade.

51 The exact address for this is: http://idpm.man.ac.uk/sia-trade/Phase%203A/SectStudIncRep.pdf.

52 The Executive Order 13141 on "Environmental Review of Trade Agreements", signed in 1999, directed the United States Trade Representative (USTR) and the Council for Environmental Quality (CEQ) to develop these guidelines. For an example of the application of these Guidelines, see http://www.ustr.gov/environment/environmental.shtml. The Guidelines themselves can also be obtained from this website.

53 This section draws entirely on: Assessing the Environmental Effects of Services Trade Liberalization: A Methodology, OECD,

COM/TD/ENV(2000)123/FINAL, 15 January 2002, Paris.

54 See also Services Trade Liberalization: Assessing the Environmental Effects, presentation by Dale Andrew (OECD Trade Directorate), supra note 3.

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WT/CTE/W/218

Page 12

WT/CTE/W/218

Page 11

三、環保標章

編號	標　題	文件編號	日　期	提出者/作者
(一)	**NEGOTIATIONS ON ENVIRONMENTAL GOODS: EFFICIENT, LOWER-CARBON AND OLLUTANT-EMITTING FUELS AND TECHNOLOGIES**	**TN/TE/W/19 TN/MA/W/24**	**28 January 2003**	**the State of Qatar**
(二)	**A POSITIVE AGENDA on labelling REQUIREMENTS for environmental purposes**	**JOB(03)/130**	**27 June 2003**	**European Communities**

(一)

WT/CTE/W/225

6 March 2003

Committee on Trade and Environment

labelling for environmental purposes

European Communities

1. Introduction

Paragraph 32 (iii) of the Doha Ministerial Declaration mandates the WTO Committee on Trade and Environment (CTE) "in pursuing work on all items on its agenda within its current terms of reference, to give particular attention to labelling for environmental purposes" and "report to the Fifth Session of the WTO Ministerial Conference, and make recommendations, where appropriate, with respect to future action, including the desirability of negotiations." [36]

This paper builds on the previous discussion in the CTE, the outcome of the World Summit on Sustainable Development (WSSD), the existing international standard for environmental labelling schemes developed by the International Organization for Standardization (ISO) and the recent submission on labelling by the EC to the Committee for Technical Barriers to Trade (TBT) and the Committee for Trade and Environment (CTE).[37]

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[36] WT/MIN(01)/DEC/1. Ministerial Declaration. November 2001

[37] G/TBT/W/175 and WT/CTE/W/212. Labelling; Submission by the EC. June 2002

The use of various types of environmental labelling schemes to promote environmental objectives has increased considerably in recent years and the use of such schemes is no longer confined solely to developed countries as developing countries have started to design such schemes themselves.

Examples of developing countries that have developed voluntary eco-labelling schemes based on life-cycle approach and are members of the Global Eco-labelling Network (GEN, for further details and full list of members, see the attached Annex I) are Korea, China, India, Brazil, Thailand, Indonesia and Malaysia. Moreover, Colombia and Sri Lanka are in the process of establishing their own eco-labelling schemes. Furthermore, GEN has recently received inquiries on how to set up an Eco-label scheme from Cuba, Malawi, Tunisia, Chile, Jamaica, Georgia, Nicaragua and Jordan.

This trend inevitably has consequences for international trade and it is important to ensure that such schemes are prepared, adopted and applied in a transparent way that promotes the mutual supportiveness of trade, environment and development objectives.

The Doha mandate covers different types of environmental labelling. This first EC contribution to the debate focuses on governmental and non-governmental voluntary eco-labelling schemes based on a life-cycle approach. It is clear that the discussion on voluntary eco-labelling schemes shall not prejudge following discussions on other types of eco-labelling schemes, including mandatory environmental labels, or in any way change the rights and obligations of WTO Members on labelling in general.

There are several reasons for this:

(a) Such schemes are market-based and generally represent the most trade-friendly means to achieve environmental objectives.

(b) Such schemes have been the subject of long standing discussion in the CTE since 1995 and there has already been substantial work on the subject.

(c) The 1999 ISO standard 14024 has created an internationally agreed criteria for such schemes.

(d) The recent WSSD has given strong support to the use of market based mechanisms in promoting sustainable development.

In view of the above, it should be possible at least in this sub-part of the DDA Mandate for the CTE discussion to make progress by the 5th WTO

Ministerial in Cancun next September.

The discussion in the CTE should result in a higher degree of certainty for both those using voluntary eco-labelling schemes and those seeking to ensure that such schemes do not create unnecessary barriers to trade, but on the contrary operate as vehicles for enhanced market access by even small producers in developing countries.

The discussion should fully take into account developing country concerns and should identify means to help developing countries to reap the benefits from using such labels in their export markets, to help them participate in relevant international work as well as to help them prepare and apply, as appropriate, such schemes.

The discussion should also take into account the varied nature of the operators of voluntary eco-labelling schemes. Such schemes are not only run by governmental bodies or large NGOs but also by small organisations with limited capacity and very local reach. The small-scale of such organisations as well as their private and non-profit character needs to be understood and respected.

2. Background

Labelling for environmental purposes has been an important element of the CTE work. The conclusions and recommendations of the CTE to the 1996 Singapore Ministerial Conference, stated that *"Well-designed eco-labelling schemes/programmes can be effective instruments of environmental policy to encourage the development of an environmentally conscious public."* [38]

In the recent World Summit on Sustainable Development (WSSD) WTO members, along with other UN members, debated and recognised the importance of consumer information related to sustainable consumption. The Summit concluded in paragraph 14(e) of the Implementation Plan that countries should take action to *"Develop and adopt, where appropriate, on a voluntary basis, effective, transparent, verifiable, non-misleading and non-discriminatory consumer information tools to provide information relating to sustainable production and consumption, including human health and safety aspects. These tools should not be used as disguised trade barriers."* [39]

At the WSSD, WTO members – again, in their role as UN members - also called for all to support voluntary market-based initiatives for the creation and expansion of markets for environmentally friendly goods and services, including organic products, and related technical assistance. It is clear to the European

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[38] WT/CTE/1. Report (1996) of the Committee on Trade and Environment. November 1996
[39] WSSD. Report of the WSSD. September 2002

Communities that the WTO can contribute to this objective by its work under paragraph 32 (iii). It is also clear that DDA work on TRTA is relevant to this WSSD conclusion. It is logical that WTO members should continue to support in the WTO what they have called for at the WSSD.

The International Organization for Standardization (ISO) has developed standards for environmental labelling in the ISO 14020 series. These standards contain guiding principles for the development and use of certain types of environmental labels.

Labelling in general has been discussed in the WTO Committee for Technical Barriers to Trade (TBT). The second triennial review of the TBT Agreement concluded "*that concerns regarding labelling were raised frequently in the Committee meetings during discussion on the implementation and operation of the Agreement. In this regard, the Committee reiterated the importance of any such requirements being consistent with the disciplines of the Agreement, and in particular stressed that they should not become disguised restrictions on trade.*" [40]

Debate in the TBT Committee is on-going and the Community has supported the organisation of an informal TBT Committee workshop on labelling that would be open to participants in other WTO Committees, in particular, the Committee on Trade and Environment.

3. Labelling for environmental purposes

Several types of labelling for environmental purposes can be identified. Each labelling type has different structures of preparation, adoption and application and are being used in both developed and developing country WTO members.

Environmental-labelling schemes can be classified according to their legal status (mandatory *versus* voluntary), according to the rule-setting body (governmental *versus* non-governmental), according to the review mechanisms for criteria (static *versus* evolutionary), according to the geographic scope (national *versus* international) and finally according to whether they use or not criteria based on non-product related process and production methods (product related PPMs *versus* non-product related PPMs).

This paper emphasises that the above mentioned categories have very different degrees of impact on international trade. Thus, for the discussion in the CTE, it is important to recognise these differences, even though the discussion would initially concentrate on governmental and non-governmental voluntary

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[40] G/TBT/9. Second Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade. Committee on Technical Barriers to Trade. November 2000

eco-labelling schemes based on a life cycle approach, which can provide an effective way to meet environmental objectives and as such would lessen the need to resort to other less trade-friendly means to achieve such objectives.

However, in some cases the use of any type of environmental labelling schemes cannot replace regulatory measures to achieve legitimate environmental objectives.

4. ISO Standards on environmental labelling

The International Organization for Standardization (ISO) has developed standards for certain types of environmental labelling in the ISO 14020 series. These standards contain guiding principles for their development and use.

The standards in the ISO 14020 series cover voluntary eco-labelling schemes based on life-cycle analysis, self-declared environmental claims and qualified product information profiles.

Standard 14024 in the ISO series, which covers voluntary eco-labelling schemes based on the life-cycle approach, is relevant for the purposes of this paper. Voluntary eco-labelling schemes covered by this standard are based on pre-set criteria developed by third parties, following extensive consultation, to evaluate products environmental effects through its life-cycle. Examples of these are the Nordic *Swan* and the EU's *Flower* labels.

5. Developing country needs: Market Access and Technical Assistance

By definition, voluntary eco-labelling schemes based on a life cycle approach do not deny market access to a product. However, where such schemes exist, those products that use such schemes can have important commercial advantages. For developing countries, effective participation in related international work, particularly in the ISO work, and ability to translate that into their own labelling schemes is a challenge. The ability to qualify for such labels is also a challenge. This is not only the case for trade between developed and developing countries but increasingly between developing countries as well.

Properly designed and transparent eco-labelling schemes can facilitate market access for developing countries. For instance, the EU eco-label has favoured the access to European niche markets of a number of non-EU companies. Indeed, the EU eco-label was awarded to several non-EU companies, including companies from Developing Countries (China, Korea, South Africa, Hong Kong/China, Ivory Coast). The instrument used by the EC to facilitate applications from companies located in DCs is a special and reduced fee.

In trying to ensure that developing countries can reap a share of the potential benefits from trade in products with such labels, WTO members should further consider technical assistance needs to help developing countries to develop their own schemes and/or comply with eco-labelling schemes in export markets. It should be noted that any technical assistance needs to be demand driven and must be based on clearly identified needs. In order to promote coherence and convergence, such assistance should be designed and carried out in co-ordination with relevant international governmental and non-governmental organisations such as GEN, ISO, UNCTAD, UNEP, WTO TRTA, Capacity-Building Task Force on Trade, Environment and Development etc.

The EC is already supporting Sustainable Trade Innovation Centers (STIC). This new global partnership, presented at WSSD as a Type 2 initiative, is designed to help developing country producers integrate environmental factors into their export strategy. Because the main drivers of this pressure to integrate environmental factors are business requirements from international buyers and growing consumer demand, STIC will put emphasis on facilitating the dialogue on voluntary codes between developing country producers and developed countries. Two initiatives will start soon: one on textiles and another one on electronics eco-design.

6. Proposed Approach

Based on the above, the EC believes that the CTE debate could focus usefully on the following possible principles:

(a) The use of voluntary eco-labelling schemes based on a life-cycle approach contributes to achieving environmental objectives in line with the outcome of the WSSD.

(b) The use of such schemes should provide an opportunity for developing countries to enter markets where environmental considerations are important and the WTO should take steps to facilitate this, in line with the outcome of the WSSD.

(c) The use of *voluntary eco-labelling schemes based on a life-cycle approach* is legitimate within the rights and obligations of the WTO Agreements. The use of relevant international standards when preparing, adopting and applying such schemes further ensures that such schemes do not become unnecessary barriers to international trade.

(d) Further positive support is needed to enable developing country governments, producer organisations and other relevant stakeholders to have the fullest possible access to the definition and operation of such schemes. WTO members should examine the possibility of notification or other appropriate means of consultation and publicity for existing and new schemes.

(e) Those using such schemes should to the extent possible be encouraged to reflect the principles of the TBT Code of Good Practice, including its objective of transparency, in their operations, and to keep their schemes under review.

To help developing countries apply and use such schemes and reap the benefits associated with the markets for such products, the WTO members should:

(a) Agree to identify any related technical assistance needs in relation to compliance with such schemes in export markets, participation in relevant international work, particularly in the ISO work, as well as in the preparation and application of developing countries' own schemes and in doing so take into account and not duplicate any existing work in this field.

(b) Encourage all concerned actors to consider reduced fees for DCs to acquire such labels where possible and consider funding in whole or in part the early years of smaller exporters use of such schemes and thus favour their entrance to niche markets in developed countries.

(c) Agree to support STICs in facilitating dialogue on voluntary codes between developing country producers and developed countries.

(d) Agree to consider various tools to support co-operation between different schemes.

Based on discussion, the CTE should consider the means by which the CTE recommendations and the 5th Ministerial would advance these issues.

附表請參考原文

(二)

JOB(03)/130

27 June 2003

COMMITTEE ON TRADE AND ENVIRONMENT

A POSITIVE aGENDA on labelling REQUIREMENTS for environmental purposes

European Communities

The following elements should be part of the result in Cancún:

In order to enhance the mutual supportiveness of trade, environment and development policies and in accordance with the commitment under paragraph 32 (iii) of the DDA to give particular attention to labelling requirements for environmental purposes, the CTE Regular Session shall before the end of 2004 hold, 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).

In view of the role of voluntary eco-labelling schemes as market-based tools to promote more sustainable production and consumption patterns in line with Agenda 21 and the WSSD Plan of Implementation, the "dedicated sessions" shall pay particular attention to the following elements:

(i) Study the existing voluntary eco-labels and review how these schemes can foster trade in environmentally friendly products, notably those originating in developing countries; the discussion in the CTE shall aim at identifying instruments to facilitate applications for eco-labels from companies located in developing countries as well as to increase market access opportunities for sustainably produced goods from developing countries;

(ii) Exchange information on relevant activities underway and consider what further positive support is needed to enable developing country governments, producer organisations and other relevant stakeholders to have the fullest possible access to the definition and operation of such schemes; in particular, the CTE shall consider the role of technical assistance to developing

countries in designing eco-labelling schemes and in participating in the international standardisation process; technical assistance should also focus on the difficulties faced by developing countries when applying for eco-labels in export markets;

(iii) Consider how best to ensure that eco-labelling schemes are developed and administered in a non-protectionist, non-discriminatory, transparent and participatory way, e.g. as laid out in Standard 14024 of the International Organization for Standardization (ISO) series; in particular, the CTE shall examine ways to increase transparency and publicity for existing and new schemes;

(iv) Study tools to support co-operation between different eco-labelling schemes and consider the issue of mutual recognition/equivalency agreements for voluntary eco-labelling schemes.

The CTE Regular Session shall encourage participation of officials with relevant expertise, including on TBT matters, and share the reports of its deliberations on the "dedicated sessions" with all relevant WTO Committees (e.g. TBT Committee, Non-Agricultural Market Access Committee, Trade and Development Committee).

This enhanced work on voluntary eco-labelling schemes, notably those based on LCA, shall be carried out in close co-ordination with the relevant international organisations (Global Eco-labelling Network - GEN, ISO, UNCTAD, UNEP, WTO TRTA, Capacity-Building Task Force on Trade, Environment and Development, etc.).

The CTE shall make recommendations, as appropriate, for further action to the Ministerial Conference. The work of the CTE on the basis of this intensified work agenda on voluntary eco-labelling is without prejudice to the discussions on other types of eco-labelling schemes, including mandatory eco-labels.

WORLD TRADE ORGANIZATION

TN/TE/W/36
3 July 2003

(03-3550)

Committee on Trade and Environment
Special Session

Original: English

THE RELATIONSHIP BETWEEN WTO RULES AND "SPECIFIC TRADE OBLIGATIONS SET OUT IN MEAS"

Submission by the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu

Paragraph 31 (i)

I. OVERVIEW

1. Regarding the negotiations on the relationship between WTO rules and specific trade obligations (STOs) set out in MEAs, delegations have made substantial contributions to the elaboration of the mandate in the meetings of the Committee on Trade and Environment in Special Session (CTESS). Some delegations single out certain provisions with trade obligatory implications within individual MEAs and identify examples of STOs. Other submissions tend to favour the illumination of the negotiations in a more conceptual way. The Government of the separate customs territory of Taiwan, Penghu, Kinmen and Matsu is of the opinion that these two approaches by their nature are not mutually exclusive. In fact, they should be able to complement each other. A deliberation on the basis of a mixture of approaches appears desirable and constructive.
2. It should be noted that the term "STOs" was formulated by the WTO delegations. No comparable expression can be found in the context of MEAs or international environmental law. However, since any discussion of STOs would have to touch upon the basic design of the MEAs, it would be of notable help if contributions and aspiration will be given from international

environmental communities, especially from those MEAs incorporating trade obligations.

3. In order to make our negotiations more thorough and fruitful, we continue to hold that "STOs set out in MEAs" should be understood in a broader sense.[1] As long as such trade measures provided for under MEAs are with binding effect among their parties, they should be within the scope of STOs in MEAs. As will be explained further, our finding is that, in addition to STOs provisions in MEA treaties, certain decisions made by the Conference of the Parties (COPs) of the MEAs, including those under compliance procedures, create obligations among the contracting parties and do have binding effect. There is apparent reason to cover such decision in our negotiations.
4. Here, we would also like to express our views on the consistency between STOs in MEAs and WTO rules. As will be explained, although it may be indisputable that STOs are necessary and essential to fulfil the goal of MEAs, it might not be desirable for WTO Members to accept unconditionally that all implementations of the STOs should be deemed legitimate under the WTO rules.

II. FURTHER ELABORATION OF THE BROADER VIEW ON "SET OUT IN MEAS"

5. The Government of the separate customs territory of Taiwan, Penghu, Kinmen and Matsu would like to elaborate further some ideas in its previous statement in light of the comments and submissions by delegations. The concept of MEAs in the context of paragraph 31(i) of the Doha Declaration should be perceived to cover not only MEA treaties themselves, but also regimes with institutional function, which engage in law-making process and create mandatory regulations among their contracting parties. We believe that most MEAs will not merely confine their legally binding norms to the treaty context. Thus we agree with the proposal of the European Communities (EC) in that certain decisions made by a competent organ of an MEA, including, *inter alia*, the Conference of Parties (COP), the Meeting of Parties (MOP) and its sub-committees are likely to be perceived as legally binding.[2]
6. In addition to the three categories of COP decisions with different degrees of mandatory implications raised by the EC, we would also like to point out another type of decisions - COP/MOP decisions authorizing trade measures in

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[1] TN/TE/W/11 (submission by the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu).

TN/TE/W/31 (submission by the European Communities).

accordance with compliance procedure established under MEAs. Under such mechanisms, trade restrictive measures or trade sanctions are usually applied to ensure observance of the Conventions. For instance, in Annex IV[3] of the Montreal Protocol, entitled "Non-compliance Procedure", an Implementation Committee was established in order to supervise the national implementation of the Protocol. According to paragraph 9 of the Annex, the Committee shall report to the MOP of the Protocol, including any recommendations it considers appropriate. Then, based upon the report, the Parties may decide upon and call for necessary measures to enforce full compliance with the Protocol. To avoid controversy and confine the extent and content of the measures the Parties may take, Annex V of the Protocol sets up a list of measures in a straightforward manner. Apart from non-coercive and incentive means, in paragraph C of the Annex, suspension of trade is clearly specified.

7. Hence, the Montreal Protocol, being equipped with the enforcement mechanism, has an institutional and legal basis to order trade sanctions against violators. We consider it difficult to assume such MOP decisions involving trade bans are not legally binding. We invite delegations to ponder whether such a decision of trade measures amounts to STOs.
8. In addition to the Montreal Protocol, delegations might also want to pay attention to other MEAs having a similar configuration or device as that of the Montreal Protocol. We certainly find that some other MEAs, such as CITES or ICCAT, do have or are developing similar mechanisms in dealing with the non-compliance issue, although there may be a lack of solid institutional basis as that of the Montreal Protocol.

III. COMPATIBILITY BETWEEN WTO RULES AND STOS IN MEAS

9. As some concepts embodied in paragraph 31(i) and the work of listing STOs in MEAs have been presented in the negotiations, delegations start to consider the consistency between STOs in MEAs and WTO rules, especially provisions in the GATT 1994, as shown in the submissions of the U.S., Japan, and Switzerland.
10. In paragraphs 5 and 15 of Japan's submission[4], the Japanese delegation considers STOs under their definition consistent with WTO rules. We

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[3] According to Article 10, paragraph 1 of Convention for the Protection of the Ozone Layer, "The annexes to this Convention or to any protocol shall form an integral part of this Convention, ... ".

[4] TN/TE/W/26 (submission by Japan).

remain sceptical towards the conclusion that such measures are always compatible with WTO rules[5], even if we might eventually reach a consensus that STOs should be interpreted in a relatively restrictive sense, only covering trade measures explicitly specified and mandatory in the treaty context of MEAs.

11. Firstly, delegates are authorized to negotiate the "relationship" between the two regimes in question. It is doubtful whether it should be within our mandate to make final judgement over the "legality" of "STOs" in MEAs under the WTO rules. Without such a mandate, the discussions or conclusion might not have any binding effect on future dispute settlement cases involving such a legality issue.
12. Secondly, although, in principle, we agree with the U.S. view that the MEAs and WTO are working together well[6], the harmony between two sides, we believe, mainly results from mutual respect and constraint. One cannot jump to the conclusion that the use of STOs in MEAs, especially those measures relating to the ban on exportation or importation of goods, by a WTO Member against another WTO Member, would never violate any relevant WTO rule. It should be clear that whether a specific STO is in line with WTO rules should always be decided under WTO jurisprudence, although WTO jurisprudence would take into account the need of environmental protection.
13. It is understandable that when parties to an MEA, which are also WTO Members, have accepted an STO, such parties should be expected to refrain from expressing different views by bringing a complaint against the measures in question to the WTO. But we should also be mindful that the willingness to be bound by an obligation under MEAs is one thing; the legitimacy of the implementation of an STO under the WTO might be another. The process of implementation may run in conflict with a number of very important principles, such as non-discrimination, proportionality, necessity, transparency and due process of law, which have already been recognized in the WTO jurisprudence.

IV. CONCLUSION

14. In conclusion, while the opinions regarding certain concepts, such as STOs, have gradually converged, we then have to decide the exact relationship

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[5] In paragraph 14 of our last submission, we said, "The government shares the same view expressed by certain Members that an STO provided for in an MEA should not automatically be presumed to be in conformity with WTO rules."(TN/TE/W/11).

[6] Paragraph 5 of the U.S. submission. (TN/TE/W/20).

between STOs set out in MEAs and existing WTO rules. Our view is that the goal of securing the mutual supportiveness of both regimes should not deprive the rights of a WTO Member to challenge STOs in question under the WTO legal system. We understand and even share the view of Switzerland that the value and necessity of STOs[7] should not be questioned in the trade regime by a party both to MEA and to WTO. However, to ensure the proper functioning of the trade regime, the WTO should still be allowed to examine the legitimacy of the application of certain STOs if a dispute arises.

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[7] See paragraph 13, 14 of Switzerland's submission (TN/TE/W/32)

WTO 貿易與環境委員會 2003 年 7 月之第三次會議及我國提出之立場文件

本次會議於 2003 年 7 月 7 日至 8 日計先後舉行一般會議及特別會議，我國以台澎金馬獨立關稅領域之名義，由國貿局會同環保署官員及學者專家出席該次會議。首日一般會議主要審定呈報於本年 9 月於墨西哥坎昆舉行之 WTO 第五屆部長會議之最後版本。其中較大爭議在於「為環保目的所為之標示」，即環境標示的協商；部分代表認為 CTE 不必做實質討論，蓋應屬對貿易之技術障礙（TBT）委員會之職權範圍；相反地，特別如歐盟則積極地從 CTE 架構的觀點，表達看法。我方在相關議題之討論，由於尚未形成國內共識，故無特定立場。

次日舉行特別會議。主要協商議題包括繼續討論 WTO 貿易規則與多邊環境協定（MEAs）之特定貿易義務之關係；與 MEAs 資訊交換的程序與授與 MEAs 秘書處觀察員身份的標準；以及如何降低環境商品與服務業的關稅與非關稅障礙。在第一項議題，我國則延續去年的首次立場文件的精神，參酌前數次各國的立場及談判進度，繼續深化我國立場的論述。本次立場文件包括二點一般觀察及二項較深入的主張：

一、一般觀察

各國代表對此議題已提出為數可觀的立場文件。有些致力於將 MEAs 中所列的貿易義務予以列舉；其他國家則傾向採取較概念式的詮釋方式，描繪所謂 MEAs 的特定貿易義務。我國認為此二種方式本質上並不互斥，而是處於互補關係。此外，我們也提醒與會代表，所謂的特定貿易義務一詞係 WTO 所自創，在 MEAs 中並無類似的表述。因此若能由國際環境社群，特別是由規範貿易義務的 MEAs 提供資訊，將有利於特別會議在此議題的諮商。

二、基本主張

1、繼續深化「MEAs所標明的特定貿易義務」應採較廣的見解

前次文件中，我方僅提出顯現於MEAs中具有拘束力和強制力的條文、附件、修正案，決定的決議等應列入此範圍中。

本次文件首先指出通常MEAs的概念並不僅指所謂的公約條文而言，而係泛指一個體制（regime），它能持續地進行造法（law-making）活動，並在締約國間創造出具義務性的規範。

因此，由MEAs的締約國大會（the Conference of Parties, COPs）或締約國會議（the Meeting of Parties, MOP）等機關所為決定（decision）亦可能具拘束力。嗣後，我方舉出根據蒙特婁議定書的履約機制（Compliance Procedure）所為貿易措施或制裁的決定對該議定書的締約國而言應具拘束力。該機制係由該議定書的附件四所確立，並設立執行委員會以監督各國的執行並呈報MOP其建議，MOP可決定為確保執行成效所應實施的措施，而在附件五中更明列「終止貿易」係其中之一的選項。我們認為該議定書對締約國實施貿易制裁具有法律基礎，且有拘束力。雖然我們不立刻主張該貿易措施之決定係所謂之特定貿易義務，但應將之列為協商之內容。

此外，我們亦強調除蒙特婁議定書外，其他之MEAs諸如CITES或ICCAT，已有或正發展類似之續約機制，儘管其欠缺如同蒙特婁議定書之法律基礎，我們初步觀察認為其決定並無義務性，故應排除於協商之外。

2、WTO規則與多邊環境協定特定貿易義務之相容性

當一些基本概念與列舉MEAs之特定貿易義務的工作，已陸續呈現時，我國文件對於認為二者關係應屬相容的主張，抱持審慎的態度。

儘管目前WTO並未發生會員控訴遭受實施MEAs貿易措施的案件，WTO與MEAs關係表面上似乎也未有衝突局面，惟此現象並不表示二者在法律上已完全相容。我們認為在同時具備WTO與MEAs締約身份的會員，既然已在MEAs中同意實施貿易義務，應該不允許其在WTO為相反的主張，惟必須注意在執行該義務的過程中仍有可能牴觸WTO所認定的一些重要原則，諸如不歧視原則、比例原則、必要原則，正當之法律程序等。

因此，我國主張追求WTO與MEAs相互支持的目標不應

剝奪 WTO 會員在 WTO 的法律制度下，去挑戰 MEAs 特定貿易義務的權利。我們同意諸如瑞士的看法，一同時具備 WTO 會員與 MEA 締約國身份的國家不應再於 WTO 下去質疑特定貿易義務的價值與必要，然而 WTO 應可在爭端發生時，檢視執行特定貿易義務的合法性。

Response to the Comments and Views of CTESS Delegations on the Submission by Chinese Taipei (TN/TE/W/36): "The Relationship between WTO rules and Specific Trade Obligations set out in MEAs"

Drafted by Kuei-Jung Ni

Issue 1: MEAs and COP/MOP decisions

Comment: Some delegations favor a narrow perspective of MEAs and express their reluctance to include MEAs' decisions into our negations in paragraph 31(i) of the Doha Agenda.

Response:

We believe the most preliminary and critical issue faced with CTESS and all delegations at the current stage of negotiations is to figure it out what is the true meaning and substance of "MEAs". Although respective MEA, strictly speaking, is not a sound international organization as WTO, it does have some institutional arrangements, such as COP/MOP, sub-committees, working groups, and Secretariat. According to Article IX, titled "Decision-Making" of the Marrakesh Agreement Establishing the World Trade Organization, paragraph 2 accords the Ministerial Conference and the General Council the exclusive authority to adopt interpretations of this Agreement and of the Multilateral Trade Agreements. Paragraph 3 allows the Ministerial Conference to waive an obligation of a Member. Such a decision of the WTO shall be mandatory and could be specific. These organs of the WTO are able to engage in law-making and formulate WTO rules. By the same token, it seems undeniable that COP/MOP decisions of MEAs may generate an identical legal effect, if those decisions have an institutional and legal basis.

If we all decide that the term "MEAs" provided in paragraph 31(1) only refer to treaties' provisions, annexes, and amendments, any decisions made by COP or MOP irrespective of any legally binding effect certainly would not fall into our negotiation. By contrast, if we do not manage to ignore the common sense of MEAs, which by nature have their broader implications with institutional functions as that of the WTO, it may be questionable to rush to exclude the possibility that COP/MOP decisions, under some circumstance, may create trade obligations among their contracting parties, which could also be specific enough.

We are fully aware that the Doha mandate in the negotiations on the relationship between WTO rules and STOs in MEAs is limited. Thus, we do not consider that all decisions of the COP/MOP, even involving trade measures, should be covered in this special session. We also have to emphasize that not all COP/MOP decisions or recommendations should be legally binding, and then not all of them amount to specific trade obligations. However, it is more beneficial to identify some examples of those decisions that may be suitable to be included in the negotiations.

Therefore, we agree with the approach proposed by several delegations, including Korea, Thailand, Malaysia, and China etc., that whether COP decisions of legally binding trade measures constitute "STOs set out in MEAs" should be addressed on a *case-by-case* basis.

Issues 2: Trade sanctions specified in the Montreal Protocol's Annexes and normally invoked through a decision of MOP

Comment: Few substantial comments on the case of Montreal Protocol we proposed in the last meeting

Response:

The *case* we brought to the special session regarding the compliance procedure set up in the Annex of the Montreal Protocol appears quite unique one. The invocation of trade sanctions is by no means from a random decision. Rather, the trade measure against non-compliance with the Protocol is clearly provided in its Annex, namely "suspension of trade." The particular type of decision, if initiating, has its sound legal basis, creating trade obligations among parties of the Protocol, as that of trade sanctions authorized by the U.N. Security Council. The decision of authorizing trade sanctions could be specific if the decision clearly specifies what content and length of trade restrictions should be imposed against non-compliance of offending parties. Although no such trade sanctions have ever been applied so far against parties to the Protocol, it would not be desirable to jump into conclusion that this type of trade obligations definitely should be excluded from the negotiation while a thorough discussion and debate has not yet been taken.

Probably, due to the constraints of time and our late submission, few comments can be heard in last meeting in July regarding whether trade sanctions set out in the Annex of the Montreal Protocol should be included in our negotiation. We invite delegations to consider the case carefully and more in-depth analysis and deliberation is even more welcomed.

Issue 3: "Set out" in MEAs

(i) Comment: Some delegations inquire how we identify the term "set out", which they found it meaningful.

Response:

Admittedly, in our previous submissions, we don't put too much ink in the matter, mainly because we considered that the more critical issues in the mandate of paragraph 31(i) of the Doha Agenda is to decide first what is MEAs, as we argued shortly, and, secondly, to identify the range and examples of specific trade obligations. We hate to say "set out" is a redundancy. Rather, we found the term is an expression, which should be interchangeable with the term "specified", "shown", "indicated", incorporated" or "adopted" for the negotiation's purpose. If we insist that the term does carry peculiar legal implications, it will be helpful if we may build the case that there do have some trade obligations "*not* set out" in MEAs. If all the trade obligations should be considered to be "set out" in MEAs, it is better not to spend too much time in figuring out the true meaning of the term.

Issue 4: "STOs"& Legally Binding Effect

(ii) Comment: Some delegations doubted whether legally binding effect of a trade obligation is the only element in interpreting STOs.

Response:

At the current stage, we do not hold legally binding is the only condition, but should be the most important one.

Issue 5: The Exact Relationship between WTO Rules and STOs in MEAs: Are they really consistent?

Comment: Some delegations request further elaboration on our approach regarding compatibility between WTO rules and STOs.

Response:

We agree, as Australia and several delegations pointed out, it might be premature to discuss the exact relationship between WTO rules and STOs in MEAs at current stage. Nevertheless, we simply feel cautious and uncomfortable about the preliminary judgment regarding WTO rules and STOs in MEAs by choosing some term, such as "consistent", "compatible", as shown in some delegations' statement. We believe such a term has an identical meaning as that of legal, legitimate. Actually, it is true that no dispute over the application of trade obligations of an MEAs in question has been brought to the WTO Dispute Settlement Body. Also, it is hard to imagine how a party bound by an MEA who is a WTO member would deny the trade obligations required by MEAs under the WTO system. Nevertheless, the control over trade activities mandated by MEAs, such as prohibition on imports of CFC like substance in the Montreal Protocol, arguably violates some basic principle of the GATT, especially *Quantitative Restrictions* in Article XI. And, there is no guarantee that the implementation of such a trade obligation definitely will survive the test of Article XX of the GATT. Therefore, at this forum, it would be safe if we may refrain from making judgment over the legality of STOs.

If trade sanctions type of Montreal Protocol will be included in our negations, we need to be even more cautious regarding the relationship between such a STO and WTO rules. In light of insufficient dispute settlement institution in most MEAs, the party under sanctioning may be treated in a manner that violates some basic requirements, such as due process of law and proportionality and so on established under the WTO jurisprudence.