Labour/Management Programme

TRADE AND ENVIRONMENT

Report on a meeting of management experts held under the OECD Labour/Management Programme

Paris, 26th April 2001
OECD LABOUR/MANAGEMENT PROGRAMME

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# TABLE OF CONTENTS

**FOREWORD** ....................................................................................................................... 4

**AGENDA** ........................................................................................................................... 5

**QUESTIONS FOR DISCUSSION** .......................................................................................... 6

**INTRODUCTION** ................................................................................................................... 6

a. The purpose and organisation of the meeting ................................................................. 6

b. The context of the meeting ............................................................................................ 7

**PANEL 1: TRADE AND SUSTAINABLE DEVELOPMENT** ...................................................... 7

a. The issues .................................................................................................................. 7

b. Discussion points ........................................................................................................ 8

**PANEL 2: PRECAUTION** .................................................................................................... 9

a. The issues .................................................................................................................. 9

b. Discussion points ........................................................................................................ 9

**PANEL 3: TRADE MEASURES AND MULTILATERAL ENVIRONMENTAL AGREEMENTS** .. 10

a. The issues ................................................................................................................ 10

b. Discussion points ....................................................................................................... 10

**PANEL 4: FUTURE PRIORITIES FOR WORK ON TRADE AND ENVIRONMENT** .............. 11

a. The issues ................................................................................................................ 11

b. Discussion points ....................................................................................................... 11

**FINAL REPORT ON THE MEETING** ................................................................................... 13

**THE CHAIRMAN’S INTRODUCTION** .................................................................................. 13

**PANEL 1: TRADE AND SUSTAINABLE DEVELOPMENT** ...................................................... 13

a. The social dimension of sustainable development ...................................................... 14

b. The role of open markets in sustainable development .................................................. 14

c. Promoting the facts in environmental debates ............................................................ 15

d. Improving the quality of environmental policy making ................................................ 15

**PANEL 2: PRECAUTION** .................................................................................................... 16

a. The proliferation of precautionary approaches .............................................................. 16

b. The issues related to precaution .................................................................................. 16

c. Solutions/Ways forward ............................................................................................. 17

**PANEL 3: TRADE MEASURES IN MEAS** ........................................................................ 18

a. The issues: Potential conflicts between MEAs and WTO rules .................................... 18

b. Solutions/Ways forward ............................................................................................. 19

**PANEL 4: FUTURE TRADE AND ENVIRONMENT PRIORITIES** ......................................... 21

**THE RAPPORTEUR’S SUMMARY OF THE MEETING** ......................................................... 22

**ANNEX — LIST OF PARTICIPANTS** .................................................................................. 24
FOREWORD

Under the OECD Labour/Management Programme for 1999, a meeting of management experts on "Trade and Environment" was held in Paris on 26th April 2001. The meeting was prepared in collaboration with the Business and Industry Advisory Committee to the OECD (BIAC).

Below you will find the Agenda for this meeting, along with the “Questions for Discussion” paper and the overall report of the discussions of the meeting of experts, both prepared by Mr. Michael Hansen, designated as General Rapporteur for this activity.

THE OPINIONS EXPRESSED AND ARGUMENTS EMPLOYED IN THIS REPORT ARE THE RESPONSIBILITY OF THE AUTHOR AND DO NOT NECESSARILY REPRESENT THOSE OF THE OECD
# AGENDA

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<th>Panel 1</th>
<th>Trade and Sustainable Development</th>
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<td></td>
<td>The linkages between trade, investment and the environmental and social issues need to be analysed including the role of existing policies in each of these areas. Provided effective polices are implemented, trade and investment liberalisation can make a major contribution to sustainable development and lead to improved resource allocation, economic growth, and ultimately welfare. The objective of this session is to set the theme for the meeting and discuss preparations for the OECD May 2001 Council Ministerial on sustainable development.</td>
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<th>Panel 2</th>
<th>Precaution</th>
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<td>The “Precautionary Principle” is generally understood to call for cost-effective measures to address potential risks of serious or irreversible damage to human health or the environment, based on available – if incomplete – scientific information. Because the ‘precautionary approach’ is subject to a wide range of definitions and interpretations, it is essential to ensure that it is not misused politically to hamper free trade. It is important to rely on sound science criteria and avoid dilution of the sound science discipline that would open the door for protectionism and technological gridlock.</td>
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<th>Panel 3</th>
<th>Trade Measures and Multilateral Environmental Agreements (MEAs)</th>
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<td>BIAC has long supported multilateral environmental co-operation. Indeed, multilateral environmental agreements (MEAs) are the preferred means to deal with trans-boundary or global pollution problems. Many MEAs provide for the use of trade measures to achieve their environmental objectives. In general, we believe that trade measures for such purposes should be a last resort after consideration of other policy options. This panel is intended to allow for detailed discussion among business representatives on the use of trade measures in MEAs.</td>
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<th>Panel 4</th>
<th>Future Priorities for work on Trade and Environment</th>
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<td>This session is intended to provide an overview on what OECD is planning to do related to trade and environment, to be followed by a brainstorming session about future priorities to be addressed in this area from the perspective of the business community.</td>
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<th>Summary by the Rapporteur</th>
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<tr>
<td>Concluding Remarks</td>
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QUESTIONS FOR DISCUSSION

by
Mr. Michael Hansen
Assistant Professor
Copenhagen Business School
(Denmark)

INTRODUCTION

a. The purpose and organisation of the meeting

The management expert meeting on Trade and Environment organised under the OECD Labour/Management Programme is intended to address key issues for both BIAC and the OECD in the area of trade and environment and to offer guidance for future work on trade and environment for both BIAC and the OECD. This note, ‘Questions for Discussion’, is intended as a source of inspiration for expert discussions but should not be taken to exclude any other issues or concerns that may be raised during the meeting. The note has been prepared by the rapporteur to the meeting, with input from the OECD and BIAC Secretariats and does not necessarily reflect the views of either the OECD or the BIAC. In order to focus the discussion, it is suggested that each panel session address three dimensions:

- Issue identification: What is the context of the panel theme? What are the major issues and principles to be discussed?
- Business experiences and cases: Management experts are invited to present cases and examples of their practical experiences in addressing the trade and environment issues on the agenda.
- Strategy and action: What are the questions that need to be clarified, in particular in regard to OECD’s ongoing work on trade and environment issues? What are the data and documentation needs? What are the co-ordination and collaboration needs?

<table>
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<th>Issues</th>
<th>Trade and sustainable development</th>
<th>Trade and Precaution</th>
<th>Trade measures in MEAs</th>
<th>Future trade and environment priorities</th>
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<td>Experiences and cases</td>
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<td>Co-ordination and collaboration activities</td>
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b. The context of the meeting

The expert meeting takes place in a context where debates on the linkages between trade, foreign direct investment and the environment are gaining in importance as indicated by the deliberations in not only the OECD but also the WTO, the United Nations, multilateral environmental agreements (MEAs), and regional trade and investment agreements. Behind the immense complexities of these often highly technical and context specific debates, two distinct categories of issues can be identified. On the one hand, trade and investment liberalisation increases the need to understand and address issues related to the effects of economic globalisation on the environment and on environmental policy. On the other hand, the implementation of environmental measures in open economies increases the need to understand and address issues related to trade and competitiveness effects of environmental policy, not only those effects that concern industries and firms located in OECD countries but also those affecting industries and firms located in developing countries.

Business interest in the environmental impact of trade liberalisation may vary depending on whether a firm operates globally or only domestically; whether it is based in a country or countries with strong environmental regulation; whether it possesses leading-edge environmental technology; and/or whether it has active environmental management systems. However, in spite of ambiguous business interests, the business community will generally tend to be supportive of environmental policies and measures that are consistent with more liberal trade and investment frameworks and sceptical toward infringements in trade and investment.

International business associations including BIAC are co-ordinating business deliberations on specific trade and environment issue areas, including climate change, trade in waste, bio-diversity, biotechnology, etc. The meeting on ‘Trade and Environment’ will focus on three generic trade and environment issues: trade and sustainable development; trade measures and precaution; and trade measures and multilateral environmental agreements. A fourth session is intended to provide an overview of what OECD is planning to do related to trade and environment and discuss future business priorities and activities in that regard.

PANEL 1: TRADE AND SUSTAINABLE DEVELOPMENT

a. The issues

The results of the three-year OECD horizontal project on Sustainable Development will be presented and discussed at the 2001 OECD Council Ministerial and the OECD Forum. The Secretariat has prepared extensive background documentation for that purpose. In an analytic report and a policy report, the Secretariat examines linkages between trade and investment liberalisation and sustainable development.

Increasingly, since about 1990, there has been a tendency on the part of many stakeholders (e.g. NGOs and the media) to view trade and investment liberalisation as part of the problem rather than part of the solution in sustainable development debates. Those stakeholder groups tend to conceive economic globalisation as causing increased resource degradation, leading to an international division of labour based on pollution, facilitating the transfer of obsolete technologies to developing countries, and eroding governments’ ability to pursue national environmental objectives. Responding to this conception, business tends to emphasise that trade and investment liberalisation is an engine of sustainable development. Apart from the widespread positive social and economic effects, trade and investment liberalisation is seen as contributing directly to environmental improvements in several ways. First, business argues that growth in GNP spurred by trade

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and investment makes environmental measures more affordable and strengthens peoples’ environmental preferences. Second, it is argued that trade and investment liberalisation only rarely causes industrial flight to pollution havens. In fact, as the OECD analytic report makes clear, the evidence to support claims “… that economic activity will tend to move away from areas where environmental regulations are stringent, toward those where they are not … is not generally strong in support of this idea” 3. Third, business argues that open trade and investment regimes encourage more efficient and thereby cleaner production. Finally, it is pointed out that growing trade and investment integration facilitates the transfer and diffusion of cleaner technologies, production methods and management systems.

b. Discussion points

The expert group may wish to consider how a -- seen from a business perspective -- more balanced view on the interface between economic globalisation and sustainable development can be most effectively conveyed to the OECD Ministerial Meeting in May. While the OECD report ‘Policies to Enhance Sustainable Development’ acknowledges the importance of international trade and investment for economic growth and development, business has argued 4 that the report contains a more sceptical tone in regard to environmental implications of trade and investment liberalisation than what was the case in previous OECD publications 5.

- What outreach activities can the OECD undertake to promote a balanced perspective on sustainable development and globalisation? Activities targeting governments? Activities targeting the civil society? Activities targeting international organisations?
- How can the OECD best document and use measurements of positive externalities (such as diffusion and spill over effects) from trade and investment liberalisation that will be of value to policy-makers? How can business support OECD efforts to develop consistent and comparable methodologies for assessing environmental effects of trade and investment liberalisation?
- A pivotal element in the pro trade case is that developmental and environmental win-win scenarios are abundant in OECD countries’ trade and investment relations with developing countries. However, documentation on such scenarios is limited. How can business contribute to the collection and dissemination by the OECD of best cases from developing countries?
- Business calls for a broader approach to sustainable development than that offered by the OECD reports. How can business best promote a definition that emphasises the positive economic and social dimensions of sustainable development in addition to the environmental dimensions?

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5 For instance, BIAC points out that the report argues that the net direct effects of trade and investment liberalisation are ‘uncertain’ (p 43) which is a more sceptical interpretation from that offered in the 1998 report ‘Open Markets Matter’. Moreover, BIAC points out that the 2001 OECD report appears to focus on internalisation of environmental costs through market type regulations such as tradable pollution permits, green accounting, green taxes etc. but that the positive environmental externalities from trade and investment and openness are inadequately emphasised in the report. See BIAC: In Response: OECD Draft Report Policies to Enhance Sustainable Development, BIAC, 2001.

6 For instance by consolidating best cases, emphasising dynamic gains from trade liberalisation, or providing cases of cleaner technology transfer, etc.
PANEL 2: PRECAUTION

a. The issues

Despite numerous proposals and invocations of the “precautionary principle” as a fundamental theme of national and international environmental rules, there is no international consensus on this concept. The 1992 Rio Declaration seems to best describe the intended balance: “In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” The Rio Declaration also stressed the need to pursue international consensus approaches and avoid unilateral trade measures. The WTO’s Sanitary and Phytosanitary (SPS) Agreement provides another example of an internationally agreed approach to precaution.

While business supports precautionary approaches, it is concerned that any diversion from ‘sound science’ criteria may expose trade policies to protectionism and technological gridlock. In the view of business, recently adopted agreements contain language that could indicate a potential erosion of the sound science basis of the precautionary approach. These concerns are shared by many developing countries who fear that precautionary approaches may provide a justification for the use of protectionist measures in OECD markets.

The bottom line for business is that precaution should be shielded against arbitrary interpretation. This can according to business be done, for instance by basing risk assessment solidly on ‘sound science’ criteria, including those procedural and transparency enhancing requirements embedded in multilateral agreements such as the Convention on Prior Informed Consent and the Codex Alimentarius.

b. Discussion points

The expert group may wish to consider how a consistent and sound science based approach to precaution is promoted in national regulatory frameworks and international policy. In this regard, a series of more specific questions could be addressed by the experts:

- What kinds of outreach activities can the business community undertake to promote a sound science interpretation of precaution?
- What role is there for the OECD in addressing the issue of precaution in its work?
- How can the scientific basis of regulation in general and trade measures in particular be strengthened? How can the OECD encourage increased co-operation on scientific and technical issues related to trade and environment among OECD countries?
- Is there any evidence, including evidence from developing countries, demonstrating that the use or misuse of precaution has had significant adverse trade effects or has been used as a protectionist disguise?
- In cases with high degrees of scientific uncertainty, an alternative to invoking the precautionary principle through regulation may be to leave the ultimate risk assessment with consumers through labelling schemes. Is the critical position on labelling adopted by some business groups consistent with a restrictive interpretation of precaution?

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7 Many MEAs already refer to the principle, including the Convention on Biodiversity, the Kyoto Protocol, or the Cartagena Protocol on Biosafety. Interestingly, also individual corporations make reference to the principle in their policies.

8 E.g. the Biosafety Protocol or the EU ‘Communication from the EC Commission on the Precautionary Principle’.
PANEL 3: TRADE MEASURES AND MULTILATERAL ENVIRONMENTAL AGREEMENTS

a. The issues

The 1998 Ministerial meeting in its call for OECD work on sustainable development ‘stressed the importance of promoting effective integration of environmental considerations in the multilateral (trade and investment) system’. In this regard, the business community generally supports international co-operation in the form of MEAs as the preferred means of addressing transboundary or global environmental problems. Increasingly, MEAs contain trade measures to enforce environmental objectives. Business has long contended that the use of trade measures to enforce MEAs should be a last resort, not a first choice option.

So far, trade measures in MEAs have not been challenged under the WTO but the business community nevertheless has several concerns: First, it is concerned that trade measures in MEAs may be invoked without all other non-trade-distorting options having been exhausted. In most instances, business will argue, alternative implementation measures (capacity building, technical assistance, sharing of good practices, technology co-operation or business self regulation) will be fully effective at achieving the objective at lower cost. Second, business has concerns regarding the scope and applicability of MEA trade measures. For instance, it is unclear whether and when trade measures as part of MEAs can be used against non-signatories. In general, business tends to argue that there is a need to develop internationally agreed criteria for the use of trade measures within the context of MEAs. The objective is to minimise opportunities for protectionist and trade disruptive purposes, to provide an effective guide for the development and design of trade measures in MEAs, and to ensure mutual consistency between international environmental and trade law.

b. Discussion points

The lack of coherence between MEA commitments and WTO disciplines is likely to become more pronounced in the future especially when MEAs affecting even larger economic interests (e.g. agreements on climate change or biotechnology) are implemented. Business faces an important challenge in seeking MEA approaches - e.g. regarding wording, definition of concepts, implementation procedures or compliance and enforcement systems - that are consistent with trade and investment disciplines. In this regard, the experts may wish to consider the following issues:

- How can a coherent business approach to trade measures in MEAs be promoted across the numerous sectors and environmental areas addressed by MEAs?
- How can business promote rigorous analysis by governments and the OECD on the linkages between WTO disciplines and MEAs given the continuing stalemate in such bodies as the WTO’s Committee on Trade and Environment?
- Are there actual or prospective cases of significant adverse economic effects of trade measures in MEAs?9

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9 From an economic perspective, the domain of MEAs is fairly straightforward: If pollution arises in production, production based environmental policies in the exporting country are most relevant. If pollution arises in connection with consumption, consumption based policies in the consuming country are appropriate. Only if pollution is transboundary or inflicted on global commons, international regulation may be considered because each country cannot be expected to fully internalise such externalities.

10 To put things in perspective, trade disputes related to the environment affect less than 1% of global trade and of those disputes only few (none?) are related to MEAs. Moreover, it is unlikely that countries that are parties to both WTO and MEAs will challenge MEA trade measures under WTO. This reduces significantly the potential for conflict. Furthermore, a recent study by the OECD of three of the most proliferated MEAs - the Basel convention, the Montreal Protocol and the CITES - suggested that the economic risks of MEAs could be minimised if appropriate care is taken in the design of trade measures from the beginning (OECD: Trade Measures in Multilateral Environmental Agreements, OECD, 2000, p. 45)
How can business contribute to make such measures as aid, technical assistance, and technology transfer effective alternatives to trade sanctions and how can this contribution be documented?

Is there a need to undertake additional quantitative and qualitative analysis of the cost, benefits and effectiveness of trade measures vis-à-vis alternative implementation measures?

PANEL 4: FUTURE PRIORITIES FOR WORK ON TRADE AND ENVIRONMENT

a. The issues

Linkages between trade and environment are likely to become increasingly important in the coming decades. Trade and investment liberalisation could significantly affect environmental conditions in countries around the world and the course of environmental policy may significantly affect global trade and investment patterns. International business associations face a huge challenge in ensuring transparent and coherent international trade and investment regimes that reduce transaction and co-ordination costs for business operating internationally. The chief objective is to enhance trade and investment’s contribution to welfare and to avoid a resurgence of protectionism.

Business faces a fine balancing act in international negotiations on trade, investment and environmental legal frameworks. It must accommodate legitimate environmental concerns of stakeholders without compromising trade and investment objectives. The greatest danger seen from a business perspective may be that the current trade and investment liberalising momentum is jeopardised by a backlash related to globalisation. The MAI experience and the Seattle WTO meeting suggest that the trade and investment liberalisation progress can by no means be assured and that business need carefully to read and understand the political context in which trade and investment liberalisation is debated.

However, beyond the challenges related to the evolution of legal frameworks lurks trade and environment issues of even greater significance for business. In sectors such as agriculture, fisheries, and energy, the course of trade and investment liberalisation will have significant implications for environmental conditions around the world. And vice versa, attempts to address environmental challenges related to issues such as climate change, genetically modified organisms, water availability or farming practices may have immense implications for the competitiveness of countries, industries and companies around the world.

An important trade and environment challenge of the 21st century is related to the growing integration of developing countries into the world economy. It will be an enormous challenge for OECD countries to design environmental measures in ways that do not impede development objectives and that secure optimal conditions for private sector development in developing countries. Moreover, the integration into the global economy of developing countries with weak environmental infrastructures and low de facto environmental standards will put even larger pressure on those voices seeking to prevent environmentally disguised protectionism in OECD countries.

b. Discussion points

Experts may wish to consider how business can contribute to OECD work on trade and environment. An important objective in that regard could be to ensure that the business voice is represented and heard in the various OECD committees that consider these issues.

In general, what are the short, medium and long-term priorities for business activities in relation to OECD’s trade and environment agenda?

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11 For an analysis of the environmental implications of further liberalisation of trade in agricultural products see OECD, Domestic and International Environmental Impacts of Agricultural Trade Liberalisation, COM/AGR/ENV(2000)75/FINAL.
How can business help ensure that the environmental implications of trade and investment liberalisation and the trade implications of environmental policies are adequately reflected in future BIAC and OCED work programs?

A key to a business strategy in the trade and environment arena could be developing countries, whose interests in trade and investment liberalisation in many instances are consistent with those of business. Developing countries are those likely to gain most from trade and investment liberalisation and lose most from environment related trade measures. In this connection, how can non-OECD business interests be best represented in fora like the OECD and BIAC? And how can business collaboration and co-ordination with development oriented organisations such as the World Bank, UNCTAD and the ITC be optimised within the trade and environment field?

A business position on the division of labour between international organisations on trade and environment issues may be considered in order to ensure that the organisation best positioned to a given task undertakes this task and in order to avoid duplication. In this regard, what is the comparative advantage of the OECD vis-à-vis other international organisations in addressing these issues?

The linkages between foreign direct investment and trade are increasingly strong; 2/3 of world trade is in the hands of transnational corporations and 1/3 of all trade is taking place within transnational corporations. It could be considered whether the environmental implications of trade and foreign direct investment linkages are adequately reflected in future BIAC and OECD work programmes?
FINAL REPORT ON THE MEETING

by
Mr. Michael Hansen
Assistant Professor
Copenhagen Business School
(Denmark)

This report summarises the main points of interest and concerns expressed by management experts at a meeting held at OEDC Headquarters on 26th of April 2001. The meeting was a joint undertaking between BIAC and the OECD Labour/Management Programme. The meeting was intended to offer a platform for an exchange of views on pertinent trade and environment issues between the OECD and business and to provide business input to OECD’s current work on trade and environment. Twenty-eight trade and environment experts participated in the meeting, eighteen of whom came from business or business associations (see annex for list of participants). The meeting’s agenda (see page 5 of this paper) is outlined in the document “Descriptive Note and Draft Agenda” (PAC/AFF/LMP(2001)1). In advance of the meeting, the Rapporteur had prepared “Questions for Discussion” (PAC/AFF/LMP(2001)2) -- see page 6 of this paper -- intended to outline the issues on the agenda and stimulate the discussion. To further assist the discussion, seven experts had prepared oral presentations. During the meeting, the Rapporteur recorded the following points of interest and concerns expressed by the management experts.

THE CHAIRMAN’S INTRODUCTION

The experts were welcomed by the meeting’s chairman, Mr. Farfone, Chairman of the BIAC Committee on Trade and Vice President of the Dow Chemical Corporation. He described the background to the meeting and emphasised the importance of the issues on the agenda, not least in light of the upcoming OECD Council Ministerial on Sustainable Development. Mr. Farfone expressed the hope that the experts would get a chance to analyse and discuss in depth some of the important linkages between trade and sustainable development, thus providing input to the OECD process. The Chairman further thanked the OECD for its support of the meeting and expressed the hope that both the OECD and business would continue to see the advantages of this kind of collaboration in the future. Finally, Mr. Farfone described the background to and purpose of the four panel sessions.

PANEL 1: TRADE AND SUSTAINABLE DEVELOPMENT

1. The first panel dealt broadly with the issue of trade and sustainable development and was intended to set the tone of the meeting. The session was opened with a presentation by Mr. Farfone, who offered his reflections on how business can operationalize sustainable development dimensions. He illustrated his reflections by sharing concrete experiences with implementing sustainable development principles in the Dow Chemical Company. The subsequent debate focussed on four issues, namely: a) How to operationalize the social dimension in sustainable development? b) What is the role of open markets in sustainable development? c) How can the OECD and business collaborate on promoting ‘facts’ in environmental debates? d) How can the quality of environment policy be improved?
a. The social dimension of sustainable development

2. Mr. Farfone’s presentation offered a pragmatic definition of sustainable development as containing three dimensions, namely economic growth, social equity and environmental protection. Each of these dimensions are mutually supportive and are all necessary ingredients in sustainable development. Mr. Farfone argued that companies ‘are becoming the practitioners of sustainable development’ and that there is movement among leading companies to implement sustainable development principles in their day-to-day operations. A business expert added that various industry associations such as the ICC (International Chamber of Commerce) or the ICME (International Council on Metals and the Environment) have adopted sustainable development guidelines for their members.

3. In the subsequent debate, several experts confirmed that sustainable development also has a social dimension and that business needs to emphasise this dimension. The social dimension is typically taken to denote ‘development issues’. However, it was argued that this is ‘too narrow a conception’ and that social and equity dimensions within OECD countries are also relevant. A representative from the OECD reported that the OECD has had ‘difficulties’ coming to grips with the social dimension of sustainable development in its analytical work. The current position of the OECD is that the social dimension denotes not only development issues, but also equity within the OECD, social capital issues and issues related to the effects of economic transition. In terms of future OECD work on the social dimension it was agreed that business can provide important inputs as many companies already have experience working with this dimension.

b. The role of open markets in sustainable development

4. An OECD expert argued that there are many trade-environment-equity win-win-win cases ‘out there’ that need to be examined and explored. However, some observers tend to conceive trade as the solution to the environmental ills around the world. Here, the OECD has adopted what this expert labelled ‘a more nuanced approach’ in that the OECD argues that trade can be beneficial if effective environmental policies are in place. The OECD approach is that conclusions regarding the effects of trade liberalisation essentially depend on the net impact of scale effects, structural effects, technology effects, and regulatory effects. The conclusion from analytical work on technology and structural effects is ‘generally positive’. Looking at scale effects however, the message is more ‘mixed’ and according to this expert, countries are no longer ‘rallying around the Environmental Kuznets Curve’ hypothesis. Moreover, the OECD expert argued that there is an indication that trade liberalisation in some instances has a ‘chilling effect’ on regulation and that industrial flight to pollution havens may take place in specific sectors. Nevertheless, the position of the OECD is that the solution to potential problems of open markets is to improve environmental regulation, not to restrict trade and investment.

5. The OECD expert’s intervention spurred a debate on whether the OECD has changed its position on the issue of trade’s role in sustainable development between the 1998 report “Open Markets Matter” and the 2001 report “Policies to Enhance Sustainable Development” (SG/SD(2001)5). One business expert stated that business had welcomed the 1998 report due to its clear and unambiguous endorsement of trade liberalisation and wanted to know ‘what kind of evidence had made the OECD change its position’. An expert from the OECD responded that the OECD’s view is ‘unchanged’: the position is that trade...
6. Another comment on the 2001 report “Policies to Enhance Sustainable Development” was that it does not adequately take into account the findings of the OECD Growth Project, in particular its conclusions regarding the social dimension (The Growth Project is to be concluded in June 2001). In this regard, an OECD expert responded that the OECD ‘did not want to say exactly the same things in the ‘Policies Report’ as in the Growth Project’. In general, this OECD expert ‘felt’ that the 2001 ‘Policies Report’ is ‘balanced’ in that it emphasises the market’s central role in sustainable development, ‘but maybe this could be explained better’.

7. Finally, a business expert requested to know whether the conclusions of a transport conference held in Vienna in October last year reflected the views of the OECD. According to this business expert, the message of this conference was that mobility is ‘bad’, that constraints on transport should be welcomed, and that more environmentally friendly modes of transport should ‘substitute’ for cars and trucks. The OECD expert responded that the OECD is not ‘against transportation’ and that trade needs good transportation systems. However, it is also realised that ‘adequate safeguards’ must be provided as transport expands.

c. Promoting the facts in environmental debates

8. Several business experts stressed the need to promote ‘the facts’ in debates on trade and sustainable development. For instance, one business expert argued that while the fact of the matter is that the benefits of trade ‘are huge’ and the costs ‘are small’ this rarely comes through in public debates. There is, according to this expert, a strong need to promote examples and facts of ‘the real effects’ of trade to counterweight political interpretations of facts: ‘Intellectual honesty demands facts, not perceptions of facts’. In line with this, another business expert pointed out that while it is ‘extremely important to demonstrate good practices, it is difficult for business to promote itself as Dow does’. Thus it was reported that many companies refrain from publishing good practices out of fear of exposing themselves to unfair NGO and media scrutiny. A general message from the business experts was that ‘business needs the OECD to get the facts right’ and that the OECD should be ‘a safe haven’ in terms of providing facts.

d. Improving the quality of environmental policy making

9. In the debate on trade’s potential ‘chilling effects’ on environmental policy making, one expert argued that the problem is not ‘chilling effects’ but rather that regulation becomes ‘protectionist’. Another business expert noted that not all environmental regulation is beneficial and that a chilling effect sometimes is in order to halt ‘haphazard’ regulation. If environmental policy is badly designed, business will simply locate elsewhere. Therefore, according to this business expert, it is extremely important that regulation is formulated in dialog with business, a message that the business experts repeated throughout the meeting. To this, an OECD expert responded that - apart from the fact that relocation of polluting industry sometimes may be appropriate for efficiency reasons – business should support governments in the development of effective, high quality environmental regulation.
PANEL 2. PRECAUTION

10. The panel on precaution heard three presentations. Mr. Deal, Senior Vice-President of the US Council for International Business, warned against the dangers associated with the indiscriminate use of precautionary approaches. Mr. Delemotte from the European Council for Chemical Manufacture Associations (CEFIC) described some of the legal problems associated with the growing use of precautionary approaches and outlined how the private sector would like to see the precautionary principle implemented. Mr. Jones from the OECD Environment Directorate presented some preliminary findings and conclusions of OECD’s ongoing work on precaution.

a. The proliferation of precautionary approaches

11. All three presentations pointed out how precautionary approaches have found their way into several national and international regulations. Reference to precaution is now a standard feature in food and health legislation and increasingly also in environmental regulation. Moreover, precautionary approaches are present in a growing number of international agreements. Sometimes references to precaution are implicit (e.g. the Vienna Convention), sometimes they are explicit but with no guidelines for implementation (e.g. the Rio Declaration) and sometimes they are explicit and contain guidelines for implementation (e.g. the Biosafety Protocol). Also trade agreements such as GATT (Art. XX), the TBT Agreement and the SPS Agreement utilise precautionary approaches. Mr. Jones concluded his presentation by stating that precautionary approaches are rapidly evolving, their interpretation varies among different agreements, and they are applied where there is uncertainty. The Chairman added that governments do not know what to do with the precautionary principle, but there is an accelerating concern among the public over safety of products and therefore it is not likely that ‘the issue is going to go away’.

b. The issues related to precaution

12. The two business experts’ presentations emphasised the potential dangers related to the proliferation of precautionary approaches in international agreements as well as in national regulation.

13. Mr. Deal examined three issues in his presentation. Firstly, what is precaution? Second, is there a precautionary principle? And third, how does it relate to trade? Precaution understood as ‘prudent foresight’ has long been supported and applied by business. As stated by Mr. Deal, “we clearly recognise that precaution is necessary in instances where scientific uncertainty exists and where there is potential for serious or irreversible damage to the environment or the health and safety of consumers”. However, precaution is not equivalent to ‘zero risk’. One business expert added that some NGOs have advanced the ‘apocalyptic’ position that absolutely no diffusion of GMO products should take place. Mr. Deal continued that precaution is not a ‘principle’ established in international law/customary law, nor is there one single agreed legal formulation or principle of precaution that can be used in all contexts. Rather precaution is a way to deal with cases where scientific information remains insufficient and then, only after a thorough risk assessment. According to Mr. Deal, the misapplication of the precautionary principle is ‘a major concern for US business’ and may result in products being removed from the market ‘only on the assertion of risks’. Business acknowledges that sustainable development demands integrated approaches, but an indiscriminate use of the precautionary principle can adversely impact all sectors of society.

The potential costs of ill-conceived use of precaution

Mr. Deal offered three illustrations of the potential costs of ill conceived precautionary approaches:

- The campaign against DDT in the 1960s made Sri Lanka cease spraying wetlands with DDT. The result was a ‘skyrocketing’ in malaria incidents.
- Based on international pressures to phase out chlorination of drinking water, Peru stopped chlorination, a decision that lead to an acceleration and spread of the 1990s cholera epidemic in Peru.
- The EU ban on hormone beef may cost American farmers as much as $300 million in lost exports.
14. In his presentation, Mr. Delemotte argued that the problem is that there are numerous often conflicting definitions and interpretations of precaution. The result is unrealistic approaches, growing public fears, and room for abuse. Mr. Delemotte argued that we must not allow non-scientific concerns (political, social, cultural) to enter regulations and ensure the promotion of science in cases of uncertainty. One problem is that NGOs and the media sometimes seem to believe that there are no regulations constraining new products. But there are, Mr. Delemotte stressed, highly elaborate regulations and procedures that companies have to observe before products can be introduced to the market -- partly they are companies’ internal regulations and procedures, and partly regulations of the state.

c. Solutions/Ways forward

1. Conceptual clarification of precaution

15. One business expert argued that part of the problem is lack of clarity in the definition of the precautionary principle and that work aimed at clarifying the principle is desirable. In his presentation, Mr. Jones agreed that it is important to clarify those situations in which precaution will be judged appropriate and that this probably is ‘the most thorny issue’ in the trade and environment debate.

16. In his presentation, Mr. Delemotte argued that some level of clarification and harmonisation of the interpretation of the principle is needed, preferably at the international level. In Mr. Delemotte’s view, we must bring together trade and environment policy; bring together what is feasible with public expectations. When trying to clarify the principle, it is important, Mr. Delemotte argued, to ensure that it becomes ‘a management instrument’ and to avoid its evolving into ‘a frozen principle’. Thus, the precautionary principle should respect that we cannot guarantee zero risk; it should be compatible with WTO rules; and it should be used only as a last resort. Finally, Mr. Delemotte outlined various criteria for implementing the principle: 1. Conduct preliminary risk assessment; 2. Science should show that there is a risk; 3. The proportional principle should be observed; 4. The least trade distorting principle should be observed; 5. Measures based on the principle should be limited in time; 6. The principle should be applied in a clear and transparent manner.

17. In a similar way, Mr. Deal argued that invoking precaution should only be allowed when scientific evidence suggests that there is a risk. In such cases, decision-makers should take into account the degree of 1. Uncertainty; 2. The magnitude and possible consequences of the risks; 3. The ability to manage the risks; 4. The potential product and technology benefits; 5. Analysis showing that precautionary responses are effective, feasible, cost effective and fair. Mr. Deal stressed that when seeking clarification of precaution, negotiators could find inspiration in the SPS agreement, the TBT agreement, the PIC Convention and other arrangements such as Codex Alimentarius. All these agreements contain precautionary approaches that ‘reflect an international consensus’.

2. Harmonisation of environmental regulation

18. One business expert argued that business should acknowledge that the precautionary principle is ‘here to stay’ and that it, instead of seeking a legal definition of the principle, should promote harmonisation of regulation. This is, this expert argued, ‘the real thorny issue’. Another expert added that it has in fact been possible to achieve harmonisation of standards and regulations in the EU by adopting ‘a sector by sector approach’.

GATT Art XX already allows wide interpretation of precaution

One business expert argued that GATT Art. XX allows for a much broader application of precautionary approaches than do the SPS and TBT agreements. You can justify just about any measure under XX. As an example it was mentioned that the US FDA has banned import of blood products from the UK based on an extremely low risk of Mad Cow Disease contamination of the blood.
3. Toward more consistent decision making procedures

19. Other experts argued that to aim for outright harmonisation of regulation is ‘a bit too far’ given the differences in government structures and political systems in the OECD countries. Rather than harmonisation, what is needed is a decision making tool that secures ‘consistency in responses’. In this connection, it was suggested that the OECD could come up with ‘guidelines’ or a ‘reference manual’ for decision making in the face of uncertainty. To this request, an OECD expert responded that ‘if asked by Member Countries to undertake such a role, the OECD would respond’.

20. In his presentation, Mr. Delemotte stressed that no international agreement on the precautionary principle can be envisaged without the participation of the private sector. This is not least because the private sector has fully incorporated precautionary approaches in its daily procedures and routines. The OECD expert agreed that if negotiations on precaution were to be initiated, business would likely be asked to participate in an appropriate manner. As a model of an inclusive process, the OECD expert referred to the negotiations of the recently adopted OECD Guidelines on Multinational Enterprises.

4. Other approaches to precaution

21. One business expert proposed that another way to address the issue of precaution would be to search for ways to ‘restore consumer confidence in risk assessments’.

PANEL 3: TRADE MEASURES IN MEAS

22. The panel session on trade measures in MEAs heard two presentations, one by Mr. Quick from the German Association of Chemical Industries (VCI) and one from Mr. Houston from the International Council on Metals and the Environment (ICME). Mr. Quick described the potential conflicts between MEAs and trade rules, examined the flaws of various proposals as to how to resolve this potential conflict, and concluded by outlining a concrete proposal that might resolve the conflict. Mr. Houston also examined the various proposals for resolving the potential conflict between WTO and MEA disciplines. Because of the possible consequences for international trade and the multilateral trading system, he concluded that business should exercise caution and, in so doing, encourage governments to develop more innovative proposals for addressing this issue.

a. The issues: Potential conflicts between MEAs and WTO rules

23. The point of departure for both presentations was the view that a growing number of MEAs contain trade measures (e.g. CITES, the Montreal Protocol, the Basel Convention, the Cartagena Protocol on Biosafety or the Stockholm Convention on Persistent Organic Pollutants).

24. Mr. Quick argued that trade measures in MEAs may sometimes be in order, e.g. when trade itself is the problem and/or when environmental free riding of non-parties to the MEA has to be prevented. Other experts added that trade measures in MEAs may compensate for various enforcement problems and appease stakeholders.
Examples of potential conflicts between MEA and WTO disciplines

- Several experts used the Basel convention as an example where the potential conflict between MEAs and trade rules is evident. Here trade measures often are disproportionate and fail to meet the requirements to exemptions according to GATT Art XX. In particular, the not yet ratified Art. 4a of the Basel Convention is based on membership of OECD and is probably incompatible with WTO law.

- One expert mentioned that in CITES, a WTO member had considered challenging the discriminatory sales of ivory from southern Africa stockpiles.

- Another expert pointed out that conflicts between the Biosafety Protocol and the WTO are likely to occur in the future.

The costs of the Basel Convention for developing countries

According to Mr. Houston, an UNCTAD study of the Philippine battery industry showed that the Basel ban on export of waste has caused significant adverse economic effects. The ban has diminished trade in recyclables, restructured the industry in favor of the informal sector, and undermined the competitive position of the Philippine industry.

25. However, both Mr. Quick and Mr. Houston emphasised that there is a series of problems related to the inclusion of trade measures in MEAs and both presentations provided concrete examples of those problems. In his presentation, Mr. Quick emphasised the kinds of conflicts that may arise when MEAs include trade measures which contradict basic WTO principles, in particular the MFN and NT principles or prohibitions of quantitative restrictions. In his presentation, Mr. Houston emphasised the kinds of problems that may arise if the WTO allows for more widespread use of trade measures in MEAs. Thus, Mr. Houston argued that such proposals could undermine the GATT principle of non-discrimination, pave the way for PPM-based trade restrictions instead of alternative policy instruments, and create a precedent leading to demands to reinterpret WTO rules to address other elements of sustainable development (e.g., human rights, labour standards, etc). Adoption of such proposals would also be tantamount to changing WTO member rights and obligations and developing countries would likely be seriously impacted by such developments.

26. An OECD expert reported that the OECD has adopted an approach where each MEA is seen as ‘specific’ and where assessments are made about what has worked and what has not. This approach is inter alia presented in the report “Trade Measures in Multilateral Environmental Agreements” (COM/ENV/TD(98)127/FINAL). The OECD is, according to this expert, aware that ‘there are problems’, e.g. the North-South split in the Basel Convention.

b. Solutions/Ways forward

1. Adopting an ‘interpretative understanding’ in the WTO

27. In his presentation, Mr. Quick argued that it is necessary to resolve the potential conflict between WTO and MEA disciplines and he examined various proposals to resolve that conflict. These were:

   1. WTO subordination to MEAs;
   2. MEA subordination to WTO;
   3. Adopt a waiver for MEAs;
   4. Change the DSU. According to Mr. Quick, none of these models are satisfactory/possible. Instead he outlined a fifth model that is based on an ‘interpretative understanding and reversal of the burden of proof’. The idea is that the WTO would adopt an ‘interpretative understanding’ (GATT Art. IX.2) regarding the interpretation of GATT Art XX in case of a dispute between WTO and MEA provisions. The understanding should outline the trade policy considerations that MEA negotiators should take into account when adopting a trade measure (e.g. that the measure is ‘necessary’ to achieve the agreement’s environmental goal). This solution would achieve: 1. That disputes between WTO/MEA members are avoided, as it can be expected that once a country has ratified a MEA it will not attack provisions that it has ratified in different contexts; 2. That a non-signatory to a MEA challenging the MEA in the WTO has to prove not only that the MEA provision contradicts WTO principles, but also that the trade-measure is not justifiable under Art XX in the WTO (reversal of burden of proof). The advantage of this model is that
-- while creating a bias in favour of MEAs – it also forces MEA negotiators to think about the trade law implications of trade measures. Thereby, the model addresses the problem that MEAs frequently are negotiated by people unfamiliar with trade law.

2. Is there a need to change WTO rules in light of MEA trade measures?

28. Mr. Houston also examined various models for accommodating WTO and MEA disciplines, e.g. ‘the reversal of the burden of proof’ approach, ‘the principle and criteria’ approach, and ‘the principle and criteria approach with reversal of burden of proof’. While there could be benefits related to such proposals (e.g. scope for future conflict reduced; more favourable public perceptions of the WTO), Mr. Houston reported that ICME has major concerns with proposals to amend WTO rules to facilitate use in MEAs of discriminatory trade measures against WTO members who are non-signatories to MEAs (i.e., the non-party issue). Any reinterpretations of WTO rules should be, Mr. Houston argued, based on a fuller understanding of the consequences for the multilateral trading system and assurances that the benefits outweigh the costs. In this context, Mr. Houston made reference to a recent proposal by the Government of New Zealand. Arguing that trade measures are ‘blunt instruments’, New Zealand calls for MEAs to establish voluntary consultative mechanisms to assist parties in identifying first best instruments from a range of policy options (e.g., capacity building, technical assistance, etc) to resolve environmental issues. While not ruling out the use of trade measures in MEAs, the advantage of this proposal is, Mr. Houston argued, that it provides an opportunity to resolve potential conflicts between MEA and WTO rules while maintaining the integrity and benefits of the existing multilateral system (e.g., status quo). A US business expert reported that the US Government’s approach appears to be similar. Thus, it argues that it is ‘impracticable’ to resolve the potential conflict between WTO and MEAs ‘here and now’, and that the resolution of the conflict should rely on the evolution of ‘jurisprudence’.

29. Other business experts argued that it is in fact necessary to clarify relations between trade rules and MEAs. For instance, one business expert argued that ‘we do not want the case to come up’. If it does, it could have ‘serious consequences’ for either MEAs or the WTO or both. The status quo may lead to legal uncertainty and regulatory chill, and allow MEAs to adopt Basel-type North-South bans. In the view of this business expert, it is not politically feasible to keep the status quo, nor to leave the impression that the WTO rules take precedence. A US business expert agreed that clarification between MEAs and WTO is ‘in order’. Seen from a US perspective, the implications of the US becoming a party to a MEA-WTO case is problematic and ‘if the Congress becomes involved it could create havoc’. An OECD expert added that a clarification of this potential MEA-WTO conflict remained very important to the EU’s position on trade and environment.

30. In light of the difference of views on this issue, experts noted a proposal for the OECD to undertake an examination of the costs and benefits of the various proposals that have been put forward to reinterpret WTO rules to accommodate the use of discriminatory trade measures in MEAs. However, priority to undertake such work would have to be established by Member countries.

3. Strengthening alternative implementation measures

31. In continuation of the debate on the proposal from the Government of New Zealand to promote alternative implementation measures in MEAs, Mr. Houston argued that there is a need to strengthen those international institutions ‘that are positioned to respond to the needs for international technical cooperation’. In other words, the capacity building capacity of organisations such as UNEP, UNCTAD, UNDP and the World Bank in the MEA field must be strengthened to address the ‘if effective environmental policies are in place’ part of the trade, investment and environment debate’.

4. Assessing the effectiveness of trade measures vis-à-vis other measures

32. One business expert called upon the OECD to conduct an analysis of the costs and effectiveness of trade measures vis-à-vis other policy instruments. In response, an OECD expert reported that several
groups in the OECD had in past work assessed the effectiveness of various environmental policy instruments. In the context of MEAs there is now ‘consensus around the package approach’, so an assessment of the effectiveness of trade measures vis-à-vis other measures is a ‘little bit of a has-been’.

5. Co-ordinating MEAs and the WTO

33. Several experts pointed out the importance of co-ordinating the activities and approaches of MEAs. There appeared to be broad agreement that the WTO is not the right place for environmental policy making. An OECD expert reported that UNEP currently is strengthening its co-ordinating role in regard to the MEAs. Also, the staff of MEAs is becoming increasingly aware of the potential trade implications of MEA provisions. Moreover, regular sessions between the WTO, CTE and MEAs are being held, something that further contributes to co-ordination between WTO and MEA disciplines. In general, it is the impression of this expert that ‘a good educational process is underway in Geneva’ and that ‘the landscape of MEAs - WTO has changed significantly’ in recent years.

PANEL 4: FUTURE TRADE AND ENVIRONMENT PRIORITIES

34. In the brief concluding session, Mr. Andrew from the OECD Trade Directorate presented OECD’s ongoing work programme on trade and environment (see C/MIN(99)14). Mr. Andrew emphasised the following activities: 1. Environmental assessment of trade agreements: This issue has ‘high priority’ in the OECD and among members. In connection with this work, manuals and methodologies for assessments are being developed; 2. Polluter Pays Principle: Mr. Andrew reported that the scope of this principle has been substantially extended since its original formulation in the OECD in 1972. Consequently, the OECD is examining what implications this extension has for trade; 3. Precaution: Mr. Andrew reported that the OECD is currently drafting a paper on this issue. The process has been ‘challenging’. Mr. Andrew said that the OECD will welcome comments from business on this issue; 4. Transparency guidelines: The OECD has made over a dozen case studies of Member country practices and procedures for consulting with civil society. The OECD hopes to come up with a catalogue of good practices; 5. The developing country dimension: According to Mr. Andrew, in consultations NGOs have emphasised that the OECD needs to take up the developing country dimension. Previously, the OECD has focussed on intra-OECD aspects of trade and environment, but after Seattle, ‘it has become clear that the OECD needs to be spending more time on this dimension’. The development-oriented work of the OECD trade and environment team may cover such aspects as: Work with UNEP on environmental assessments; Identification of win-win-win scenarios from a sectoral perspective; General outreach activities to share key findings of OECD’s analytical work; A project on strengthening developing country capacity to meet environmental standards for export markets. This project, it is hoped, can build collaborative efforts with UNEP and UNCTAD through their joint Capacity Building Task Force (CBTF).
THE RAPPORTEUR’S SUMMARY OF THE MEETING

<table>
<thead>
<tr>
<th>Issues</th>
<th>Trade and precaution</th>
<th>Trade measures in MEAs</th>
<th>Future trade and environment priorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>The social dimension of sustainable development</td>
<td>The dangers associated with growing use of precautionary approaches</td>
<td>Are conflicts between MEAs and WTO a problem?</td>
<td>The OECD’s present and future trade and environment work programme</td>
</tr>
<tr>
<td>The role of open markets in sustainable development</td>
<td>Is there a need to clarify the precautionary principle at the international level?</td>
<td>Is there a need to resolve the potential conflicts between MEAs and WTO?</td>
<td></td>
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<tr>
<td>The role of facts in environmental debates</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>The quality of environmental policy making</td>
<td></td>
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<td></td>
</tr>
</tbody>
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<tr>
<th>Experiences and cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dow Chemical’s Guiding Principles of Sustainable Development</td>
</tr>
<tr>
<td>ICC and ICME Sustainable Development Guidelines</td>
</tr>
<tr>
<td>DDT phase out and Malaria in Sri Lanka</td>
</tr>
<tr>
<td>Water purification in Peru and cholera</td>
</tr>
<tr>
<td>The EU ban on Hormone beef</td>
</tr>
<tr>
<td>FDA ban on import of blood products from the UK</td>
</tr>
<tr>
<td>GMOs versus pharmaceuticals</td>
</tr>
<tr>
<td>Potential conflict between the Basel Convention Ban Amendment (e.g. Art 4.a) and WTO</td>
</tr>
<tr>
<td>Potential conflict between CITES, (limited access to ivory stockpiles) and WTO</td>
</tr>
<tr>
<td>Potential conflicts between the Biosafety Protocol and WTO</td>
</tr>
</tbody>
</table>

22
# THE RAPPORTEUR’S SUMMARY OF THE MEETING
(continued)

<table>
<thead>
<tr>
<th>Proposals for strategy and action</th>
<th>Future data and documentation needs</th>
<th>Co-ordination and collaboration activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The OECD could explain the role of markets in sustainable development better.</td>
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<td>• Business should support governments in designing high quality environmental regulation.</td>
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<td>• The OECD should be ‘a safe haven’ for facts in environmental debates.</td>
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<td>• Dialogue between business and the OECD on the social dimension.</td>
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<td>• Outreach to developing countries of OECD’s analytical work.</td>
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<td>• Harmonisation of environmental standards.</td>
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<td>• Clarify the precautionary principle.</td>
<td>• Clarify the precautionary principle.</td>
<td>• Provide tools and methodologies for decision-makers to ensure consistent responses.</td>
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<td>• Business input to OECD’s work on precaution.</td>
<td>• Business input to OECD’s work on precaution.</td>
<td>• Restore consumers’ confidence in risk assessments.</td>
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<tr>
<td>• Examine the costs and benefits of proposals to reinterpret WTO rules in light of MEA trade measures.</td>
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<td>• Strengthen international organisations’ capacity to provide technical assistance to developing country parties to MEAs.</td>
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<tr>
<td>• Analyse the costs and benefits of trade measures vis-à-vis alternative implementation measures.</td>
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<td>• Support for developing countries in their dealings with MEAs.</td>
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<tr>
<td>• Provide real life examples from developing countries.</td>
<td>• Provide real life examples from developing countries.</td>
<td>• Support of UNEP-UNCTAD, capacity building task force.</td>
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<td>• Environmental assessment of trade and trade agreements.</td>
<td>• Environmental assessment of trade and trade agreements.</td>
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# MANAGEMENT EXPERTS

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<th>Name</th>
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