

respect to MEAs. Following the Chair's departure, its mandate was broadened to include the entire MEA section. The Secretariat then prepared a draft, that while not an agreed text, nevertheless took into account the views expressed by delegations with a minimum number of square brackets. This November 1st draft was the basis for the marathon negotiating session -and once again, much of the substance of the October 10 draft had been preserved, albeit in more neutral and balanced terms.¹⁵

In the marathon session of November 6-7, discussion focussed on a number of issues. First, the issue of consistency with WTO rules when trade measures were considered for inclusion in a MEA. The debate ranged between those who wanted to ensure that MEA trade measures were consistent, to those that wanted governments to consider whether the trade measures were consistent (i.e., governments could decide to "override" consistency), and the USA/EU formulation that governments should consider the relation between the trade measures and WTO rules. No consensus was possible and reference was dropped in final report.

There was also no consensus in terms of possible approaches to future work on MEAs (e.g., whether to focus on issues related to parties/non-parties) and thus the reference to future work in paragraph 176 of the final report is deliberately general.

Dispute settlement (paragraph 178 of the final report) was equally contentious. The issue was largely the degree to which WTO Members could send a positive signal to the environmental community by urging WTO Members to not undermine MEA objectives through recourse to WTO dispute settlement. Canada tabled a reference that noted that more effective compliance and dispute settlement mechanisms within MEAs would encourage resolution of any disputes within the MEA. Developing countries such as Nigeria tabled drafting suggestions that stressed the right to WTO dispute settlement. In the marathon negotiating session, the text had become hardened by making the reference to "always" having the right. USA led the opposition to such a categoric formulation, noting that in certain circumstances, WTO Members may have waived WTO rights; a point supported by most OECD countries. There was no consensus on this paragraph until the end when the USA and others, given the hour (8 AM) and movement on other issues, resigned themselves to the final formulation.¹⁶

On November 7, much of the core "factual" part of the draft survived with the more contentious political or "spin" messages disappearing between 7 and 9 AM. This final draft language, as in other sections of the report, was adopted by the CTE unchanged on November 8, with a number of delegations making statements for the record where they disagreed with certain aspects of the report. However, key messages that remained include:

- need for policy coordination between trade and environment officials;
- WTO and MEAs are equally representative of shared international goals, and due respect must be offered to both;
- trade measures may be needed to achieve environmental objectives;
- WTO provides considerable scope for the use of trade-related measures, including, implicitly, WTO inconsistent measures;