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SUB-COMMITTEE ON TRADE AND ENVIRONMENT

**TRADE MEASURES FOR ENVIRONMENTAL PURPOSES TAKEN PURSUANT TO  
MULTILATERAL ENVIRONMENTAL AGREEMENTS:  
RECENT DEVELOPMENTS**

**Note by the Secretariat<sup>1</sup>**

This note has been prepared by the Secretariat in response to requests from delegations that they should be provided with additional information on recent developments in the negotiation, implementation and administration of trade-related provisions in multilateral environmental agreements (MEAs).

There are currently 180 international treaties and other agreements on the state of the environment,<sup>2</sup> of which only 18 contain trade provisions.<sup>3</sup> None of the treaties or instruments adopted since the United Nations Conference on Environment and Development (UNCED) in June 1992 contains trade provisions, although several do have aspects which are trade-related. This note supplements L/6896, TRE/W/1 and TRE/W/10/Rev.1 which provide factual descriptions of the trade provisions contained in MEAs. It covers also MEAs that have begun to be developed in the period since the UNCED. These include the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity and the International Convention on Desertification. In addition, since the UNCED, the International Tropical Timber Agreement has been renegotiated and is pending ratification and a Protocol on Sulphur Emissions has been adopted.

The note also provides information on two voluntary instruments which have been elaborated to assist in the trade in banned or severely restricted chemicals. The Amended London Guidelines were adopted to assist governments and the Code of Ethics on International Trade in Chemicals builds on these Guidelines to assist private parties.

1. Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973
2. Montreal Protocol on Substances that Deplete the Ozone Layer, 1987
3. Basel Convention on the Movement of Hazardous Wastes, 1989
4. Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, 1989
5. United Nations Framework Convention on Climate Change, 1992
6. Convention on Biological Diversity, 1992

<sup>1</sup>The secretariats of the relevant MEAs and instruments described have been asked to confirm the information contained in this note. While the GATT Secretariat is grateful that several have responded to the requests made to them in this respect, answers had not been received from all at the time this document was issued. The GATT Secretariat, therefore, takes full responsibility for any errors the document may contain, and undertakes to revise it in the light of further information that it receives.

<sup>2</sup>United Nations Environment Programme, *Register of International Treaties and Other Agreements in the Field of the Environment*, (Nairobi: Legal Division, UNEP, October 1994).

<sup>3</sup>Appendix I of GATT's *International Trade 1990-91* (Volume 1, pages 45-47), describes 17 MEAs containing trade provisions as of mid-1991. To this list should be added the Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, bringing the number of MEAs containing trade provisions to 18.

7. International Convention to Combat Desertification in Those Countries Experiencing Serious Drought and Desertification, 1994
8. Oslo Protocol to the Convention on Long-range Transboundary Air Pollution on Further Reductions of Sulphur Emissions, 1994
9. International Tropical Timber Agreement, 1994
10. Amended London Guidelines for the Exchange of Information on Chemicals in International Trade, 1989
11. Code of Ethics on International Trade in Chemicals, 1994

1. Convention on International Trade in Endangered Species of Wild Fauna and Flora, (CITES), 1973<sup>4</sup>

CITES entered into force 1 July 1975 and currently has 124 parties.<sup>5</sup>

CITES regulates trade in endangered species by defining conditions under which import and export permits may be issued. The conditions are differentiated according to a classification system based on three appendices of protected species. Appendix I includes all species threatened with extinction which are or may be affected by trade. Trade in these species is subject to particularly strict regulation through both import and export permits which may be issued only in exceptional circumstances. Species in Appendix II may become threatened with extinction unless their trade and the trade in species that resemble them is subject to strict regulation; trade in Appendix II species is regulated by the issue of export permits. Appendix III covers species identified by an individual Party as being subject to regulation within its jurisdiction and for which it requests the cooperation of other Parties in the control of trade. The import, from whatever source, of Appendix III species requires a certificate of origin and, where the import is from a country which has specifically listed that species in Appendix III, an export permit is required.<sup>6</sup>

No specific measures are provided for in CITES for Parties to enforce the Convention. Article VIII(1) requires that "Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit the trade in specimens in violation thereof" including "to penalize trade in, or possession of, such specimens, or both." Each Party, therefore, is left to determine the "appropriate measures" through which it will enforce the Convention. Article XIV specifically states that the provisions of CITES shall in no way affect the right of Parties to adopt stricter domestic measures regarding the conditions for trade of specimens whether or not they are included in the Appendices.

Parties rely on recommendations of the Animals and Plants Committees and the CITES Secretariat to determine whether species are correctly categorized according to the three appendices and for indications of areas where domestic measures may need to be applied in order to ensure that trade in these species is regulated properly. In two cases, Thailand (1991-1992) and Italy (1993), the Standing Committee recommended to the Parties under Article 14.1 to impose import and export prohibitions for CITES species on those countries. In the case of Italy, the recommendation was suspended as the conditions set out by the Committee with respect to compliance with CITES provisions were met. The objective of the Standing Committee recommendations was to put pressure on those countries to adopt and implement domestic legislation in order to put into effect CITES provisions. In March 1994, the Standing Committee

<sup>4</sup>The date next to the title of the agreement is the date at which it was adopted.

<sup>5</sup>The number of ratifications to each agreement is as of 7 October 1994.

<sup>6</sup>See L/6896, pages 80-84.

expressed concern about the continued illegal trade in rhinoceros horn and tiger bone products in Southeast Asia, and called upon Taiwan to take further steps.

There are two management quota systems provided for in CITES which are determined by the Conference of the Parties. Under the first system, some countries have the right to export a limited number of Appendix I species for non-commercial uses (e.g. the leopard). Under the second system, species have been transferred from Appendix I to II, subject to annual quotas which limit trade in the specimen on a country-by-country basis (e.g. crocodile species).

The next meeting of the Conference of the Parties to CITES in November 1994 will work towards revising the criteria for listing species in Appendixes I and II and consider a Report by the Secretariat concerning alleged infractions of CITES provisions. In addition, several Parties are proposing to add amendments to the Appendices, some requesting that tropical timber species be included in Appendix II of CITES.

With respect to non-Parties, Article X permits trade with a non-Party if the competent authorities in the non-Party have issued comparable documentation which substantially conforms with the requirements of CITES. Given the number of abuses of this provision, CITES now requires proof concerning the competence of national authorities and scientific institutions issuing the documentation.

## 2. Montreal Protocol on Substances that Deplete the Ozone Layer, 1987

The Montreal Protocol entered into force on 1 January 1989 and has been ratified by 137 parties. The Protocol was amended substantially at the Second Meeting of the Parties in London in 1990<sup>7</sup> and again at the Fourth Meeting of the Parties in Copenhagen in 1992. The London Amendments have been ratified by 88 parties and the Copenhagen Amendments by 28 parties. The Copenhagen Amendments accelerated the timetable for the phase-out of controlled substances listed in Annexes A and B of the Protocol and added hydrobromofluorocarbons (HBFCs), hydrochlorofluorocarbons (HCFCs) and methyl bromide to the list of controlled substances. HBFCs are to be phased-out by 1996 and HCFCs by 2030. The consumption of methyl bromide is to be frozen by 1995 and further control measures will be decided thereafter based on further study.<sup>8</sup>

Several developments are relevant to the subject addressed by this note.

First, at the Fifth Meeting of the Parties in November 1993 it was decided that it was not feasible technically to impose a ban or restrictions on the import of products produced with, but not containing, controlled substances in Annex A. A ban of this nature had been foreseen in the Montreal Protocol which, in Article 4.4, required the Parties to determine the feasibility of such a ban. The Report of the Technology and Economic Assessment Panel stated that it was not technically or economically feasible to determine whether controlled substances were used as little, if any, residue of controlled substances would be present or detectable in the products concerned. In addition, the Report stated that nearly all countries with major manufacturing capacity of the products concerned had already ratified the Protocol and the number of non-Parties with major manufacturing capacity that might be made subject to the trade ban was considered to be

<sup>7</sup>For a description of the coverage of products and general obligations under the Montreal Protocol see L/6896, pages 58-64; and for the London Amendments see TRE/W/10/Rev.1, page 7.

<sup>8</sup>The total world-wide production of CFCs is estimated to have declined by sixty per cent since 1988. Halon production and consumption by developed countries was phased out on 1 January 1994. Halons are the most destructive ozone depleting substances. CFCs contained in Annexes A and B of the Protocol are to be phased-out by industrialized countries by 1 January 1996.

insignificant. The Panel was, nevertheless, requested to continue to review this issue at regular intervals.

Second, Parties noted the potential implications of the Basel Convention for the import and export of recycled and used ozone-depleting substances under the Montreal Protocol.<sup>9</sup> Ozone-depleting substances that are subject to transboundary movements could be considered hazardous wastes as defined by the Basel Convention. The transfer of certain recycled and used ozone-depleting substances between Parties to the Montreal Protocol, which exhibit the "hazardous characteristics" described as toxic in Annex III of the Basel Convention, might be impeded. The Technology and Economic Assessment Panel has recommended that recycling programmes are necessary to the Protocol to minimize emissions of ozone-depleting substances, ensure that controlled substances are available to service existing equipment beyond phase-out, and off-set the demand for ozone-depleting substances in developing countries.<sup>10</sup>

Third, based upon a recommendation in the 1994 Panel Report, the Sixth Meeting of the Parties in October 1994 decided that it was neither feasible nor necessary to elaborate a list of products containing controlled substances from Annex B in order to ban the import of products containing those substances from non-Parties as had been done for Annex A. An elaboration of this nature had been foreseen in Article 4.3 of the Protocol, but was no longer considered necessary given the accelerated phase-out schedule for Annex B substances from 1 January 2000 to 1 January 1996.

### 3. **Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1989**

The Basel Convention entered into force in May 1992 and has been ratified by 72 countries and the European Union.

The Second Meeting of the Conference of the Parties in March 1994 adopted a Decision to ban all exports of hazardous wastes which are destined for final disposal from OECD to non-OECD countries and phase out by 31 December 1997 all transboundary movements of hazardous wastes which are destined for recycling or recovery operations from OECD to non-OECD countries. Intra OECD and intra-non-OECD transboundary movements of hazardous wastes will continue pursuant to the Convention's procedures of prior informed consent (PIC).<sup>11</sup> Some Parties consider that this interpretive Decision, which was adopted by consensus, is not legally-binding.

The next step is to effectively implement and monitor this ban. There is a great degree of flexibility in the definition of what constitutes hazardous wastes at the national level. The Convention lists hazardous waste streams and specific characteristics of hazardous wastes in three annexes.<sup>12</sup> The classification of hazardous wastes is particularly complex with respect to wastes destined for recycling and recovery. The conditions for the transboundary movement of hazardous wastes for recycling or recovery are given in Article 4.9. Parties are required to take the appropriate measures to ensure that the transboundary movement of hazardous wastes only be allowed if: (a) the State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an

<sup>9</sup>UNEP/OzL.Pro.5/9.

<sup>10</sup>*Technology and Economic Assessment Panel Report to the Parties*, UNEP/OzL.Pro/WG.1/10/3, page 10. April 1994.

<sup>11</sup>For the obligations of Parties under the Basel Convention see TRE/W/10/Rev.1, pages 7-9; and L/6896, pages 65-69.

<sup>12</sup>For a description of the Annexes see L/6896, pages 70-73.

environmentally-sound and efficient manner; or (b) the wastes in question are required as a raw material for recycling or recovery industries in the State of import; or (c) the transboundary movement in question conforms to the Convention's objectives.

With respect to trade with non-Parties, Article 4.5 prohibits Parties from exporting hazardous wastes to, or importing hazardous wastes from non-Parties. However, Article 11.1 allows Parties to enter into bilateral, multilateral or regional agreements and arrangements regarding transboundary movement of hazardous wastes with non-Parties. This is permitted provided that these agreements and arrangements do not derogate from the environmentally-sound management of wastes as required by the Convention, take into account the interests of developing countries and are notified to the Secretariat. The following bilateral, multilateral and regional agreements and arrangements concluded by Parties have been notified to the Convention's Secretariat under Article 11:

(multilateral) OECD Decision on the Control of Transfrontier Movements of Wastes Destined for Recovery Operations; (regional) Central American Agreement on the Transboundary Movement of Hazardous Waste and the Convention on the Protection of the Black Sea Against Pollution; (bilateral) Austria-Germany, Canada-US, Finland-Germany, Finland-Ireland, Mexico-US, Romania-Germany, Switzerland-Germany.

4. Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, 1989

The Wellington Convention entered into force on 17 May 1991 and currently has 9 parties. Its objective is to restrict and prohibit the use of driftnets in the South Pacific region in order to conserve marine living resources. The Convention built on bilateral and regional efforts to counter the effects of the use of driftnets on the high seas, in addition to five United Nations General Assembly resolutions.<sup>13</sup> In 1989, the General Assembly recommended that all members of the international community agree to implement a moratorium on driftnet fishing on the high seas by 30 June 1992, which was subsequently extended to 31 December 1992.

The Wellington Convention requires Parties, pursuant to Article 3, to prohibit driftnet fishing by their own nationals and vessels, and not to assist or encourage the use of driftnets within the South Pacific region. Parties are also required to prohibit the use of driftnets and transhipment of driftnet catches and are encouraged to prohibit the landing and processing of driftnet-caught fish within areas under their jurisdiction, as well as restricting port access to driftnet fishing vessels. In addition, Parties are also invited to prohibit the possession of driftnets on board any fishing vessel within their own fishery zones. The trade provisions provided for in Article 3.2(c) of the Convention state that: "Each Party may also take measures consistent with international law to ... prohibit the importation of any fish or fish product, whether processed or not, which was caught using a driftnet." In addition, Article 3.3 states that nothing in the Convention prevents a Party from taking measures against driftnet fishing activities which are stricter than those required by the Convention.

5. United Nations Framework Convention on Climate Change, 1992

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<sup>13</sup>Resolution 44/225 of 1989; Resolution 45/197 of 1990; Resolution 46/215 of 1991; Resolution 47/443 of 1992; and Resolution 48/445 of 1993.

The Framework Convention on Climate Change entered into force on 21 March 1994 and has been ratified by 95 countries.

In 1994 negotiations focused in general on the preparation for the First Meeting of the Conference of the Parties (COP1) in Berlin from 28 March to 7 April 1995. This included a review of measures by Annex I countries (OECD and Eastern Europe) to stabilize greenhouse gas emissions at 1990 levels by the year 2000, and the funding needs of developing countries to participate in the Convention. The further elaboration of commitments at COP1, which most Annex I Parties agree are not adequate, will likely be contained in protocols to the Convention.

There are no trade provisions in the "Commitments" section of the Convention and there are no trade provisions with respect to non-Parties. There has been no discussion of the one trade-related principle, Article 3, paragraph 5, which contains the following (and only) reference to trade:

The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

The multilaterally-negotiated provisions of the Convention are implemented through national commitments to reduce greenhouse gases. The reliance on national commitments to further the objectives of the Convention explains the above reference in Article 3 to any measures to combat climate change that are unilaterally-defined.

#### 6. Convention on Biological Diversity, 1992

The Convention on Biological Diversity entered into force on 29 December 1993 and currently has 89 ratifications.

The Convention is an agreement to conserve and protect biological diversity in which individual Parties determine the manner in which to implement its provisions which are expressed as overall objectives and policies. The objectives of the Convention are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. This includes the appropriate access to genetic resources and transfer of relevant technologies which take into account all rights over those resources to technologies. The definition of "biological diversity" is provided in Article 2 as the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species (genetic diversity), between species and ecosystems.

In 1994, negotiations focused on the preparation of the agenda for the First Meeting of the Conference of the Parties (COP1) in Nassau, 28 November to 9 December 1994. At this stage, Parties are concerned with the institutional, procedural and financial aspects of the Convention in preparation for COP1.

There are no trade provisions provided for in the Convention. However, there are trade-related aspects of the Convention which concern intellectual property rights (IPRs), which are mentioned in Article 16. In this respect, there have been discussions concerning the relevance of

the provisions of the TRIPs Agreement to the Biological Diversity Convention. In Article 16, which deals with access to, and transfer of technology, Parties recognize that IPRs may have an influence on the implementation of the Convention and that Parties should cooperate to ensure that such rights are supportive of the Convention's objectives. The report of the Convention's Expert Panel concluded that in order to facilitate access to, and joint development and transfer of technology under the Convention, it is necessary for Article 16 to be interpreted as favouring IPRs relating to biotechnology. Article 16(5) of the Convention states that:

The Contracting Parties, recognizing that patents and other intellectual property rights may have an influence on the implementation of this Convention, shall cooperate in this regard subject to national legislation and international law in order to ensure that such rights are supportive and do not run counter to its objectives.

7. International Convention to Combat Desertification in Those Countries Experiencing Serious Drought and Desertification, 1994

The International Convention to Combat Desertification was adopted on 17 June 1994 and opened for signature in October 1994.

The Convention to Combat Desertification outlines the basic approach for national action programmes which will identify the factors contributing, and the practical measures necessary to combat desertification. This treaty was specifically recommended in Chapter 12 of Agenda 21.

The Convention is centred around commitments and procedures for their elaboration in the form of national and subregional action programmes which take into account variations in the processes of desertification. There are four Regional Implementation Annexes, to be modified to respond to changing circumstances, for Africa, Asia, Latin America and the Caribbean, and the Northern Mediterranean. The roles of government, local communities and land users are specified in the individual annexes, but generally include the incorporation of long term strategies to combat desertification and mitigate the effects of drought.

There are no trade provisions in the Convention and there are no specific provisions for trade with non-Parties. However, the general obligations in Article 4.2(b) provide that:

Parties must give due attention, within the relevant international and regional bodies, to the situation of affected developing country Parties with regard to international trade, marketing arrangements and debt with a view to establishing an enabling international economic environment conducive to the promotion of sustainable development.

8. Oslo Protocol to the Convention on Long-range Transboundary Air Pollution on Further Reductions of Sulphur Emissions, 1994

The Oslo Protocol to combat emissions of sulphur dioxides was adopted on 14 June 1994 and signed by 5 countries and the European Union. It requires 16 ratifications in order to enter into force. The Protocol was adopted by the Parties to the Convention on Long-range Transboundary Air Pollution, an international treaty on the reduction of atmospheric pollution in Europe and North America which came into force in March 1983 and currently has 39 parties.

The Oslo Protocol builds on a 1985 Protocol on sulphur which obliged its Parties to reduce sulphur emissions by 30 per cent from the levels of 1980 by 1993. In the Oslo Protocol,

emission targets are set for each Party, taking into account differences in ecological sensitivities in the region and individual capacities for reductions. Requirements are specified for emission limits of certain stationary combustion sources (power plants) and the sulphur content of gas oil (including diesel fuel), and techniques for reducing emissions are recommended.

Whereas the Convention itself does not contain any references to trade, the preamble to the Oslo Protocol states:

Bearing in mind that measures taken to reduce sulphur emissions should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international competition and trade.

#### 9. International Tropical Timber Agreement, renegotiated 1994

The International Tropical Timber Agreement of 1983, a commodity agreement among the 50 members of the International Tropical Timber Organization (ITTO), was renegotiated in January 1994 under the auspices of UNCTAD at the fourth round of negotiations. The International Tropical Timber Agreement (ITTA), 1994 may enter into force on 1 February 1995, or any date thereafter, for an initial period of four years.<sup>14</sup>

The ITTA 1994 was renegotiated in the context of Agenda 21 which recognized that international commodity agreements, with specific reference to tropical timber, could contribute to, and play an important role in environmental considerations.<sup>15</sup>

The central aspects of the renegotiation of the ITTA involved the scope of the agreement, the role of trade discrimination, the achievement of sustainable forest management, and the financing and functioning of the ITTO. The ITTA applies to tropical timber although there is scope for an effective framework for consultation, international cooperation and policy development among all members with regard to all relevant aspects of the world timber market. In this regard, consumer countries recognized the importance of achieving the conservation and sustainable management of all types of forests by the year 2000 in a formal statement.

The ITTA is a project-oriented agreement and it does not contain any economic or price regulating provisions. It makes the following reference to the use of trade measures in Article 36:

Nothing in this Agreement authorizes the use of measures to restrict or ban international trade in, and in particular as they concern imports of and utilization of, timber and timber products.

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<sup>14</sup>The ITTA will enter into force definitively on 1 February 1995, or any date thereafter, if 12 governments of producing countries holding at least 55 per cent of the total votes and 16 governments of consuming countries holding at least 70 per cent of the total votes have signed the Agreement or have ratified, accepted or approved it. If the Agreement has not entered into force definitively by then, it will enter into force provisionally if 10 governments of producing countries holding at least half of the total votes, and 14 governments of consuming countries holding at least 65 per cent of the total votes have taken the above-mentioned action or have notified that they will apply the Agreement provisionally. If the requirements have not been met on 1 September 1995, the Secretary-General of the UN shall invite those governments which have become parties to the Agreement to decide whether to apply the Agreement provisionally or definitively among themselves, in whole or in part.

<sup>15</sup>Chapters 11 and 2 of Agenda 21 underline the importance of international commodity agreements and arrangements and support the renegotiation of the ITTA, 1983.

### VOLUNTARY INSTRUMENTS

#### 10. Amended London Guidelines on the Exchange of Information on Chemicals, 1989

The Amended London Guidelines were adopted in May 1989 as a voluntary instrument to assist governments in regulating banned or severely restricted chemicals through the exchange of scientific, technical, economic or legal information on chemicals in international trade. The voluntary exchange of information under the Amended London Guidelines, based on the Prior Informed Consent (PIC) procedure, allows importing countries to register consent or prohibition of imports of industrial chemicals or pesticides banned or severely restricted in the country of export.<sup>16</sup> Several governments have already enacted, or are in the process of developing national legislation for the implementation of the PIC procedure. As of October 1994, 180 Designated National Authorities from 125 countries and the European Union had registered with FAO/UNEP.

The Second Meeting of the Task Force in March 1994 continued discussions on the operation of the PIC procedure. Both the Amended London Guidelines and the FAO Code of Conduct on the Distribution and Use of Pesticides contain provisions for the identification of chemicals to be included in the PIC procedure. Currently, 17 chemicals have been included in the procedure, although the FAO/UNEP Joint Group of Experts has formulated additional criteria for identifying which chemicals should be introduced.

Once the procedure is fully operational, any notification of a ban or severe restrictions on a chemical which entered into force after 1 January 1992 will result in the chemical's inclusion in the procedure. Now, only chemicals which are regulated in five or more countries are included. In addition, the Guidelines provide for the inclusion of acutely hazardous pesticides that are not necessarily banned or severely restricted in any country, but which are known to cause health or environmental problems, particularly in developing countries.

When a chemical is identified for inclusion in the PIC procedure, a Decision Guidance Document is developed by the secretariats consisting of a summary of information and the control actions on the chemical. These documents, which are reviewed by the FAO/UNEP Joint Group of Experts and made available to governments, provide a summary of toxicological and environmental characteristics and regulatory actions taken by some countries to ban or severely restrict the chemical. The inclusion of a specific industrial chemical or pesticide in the PIC procedure is not a recommendation to ban or severely restrict that chemical. Rather, it is a procedure for formally disseminating the decisions of importing countries as to whether they will receive future shipments of chemicals included in the procedure. The Decision Guidance Documents, therefore, are intended to help governments analyse the potential hazard connected with the handling and use of chemicals, and assist them in regulating the import of chemicals.<sup>17</sup>

The Task Force continued the work of elaborating the possible elements which might be included in a legally-binding instrument for the mandatory application of the PIC procedure. It discussed the following two elements which are particularly relevant.

First, the Guidelines provide for trade-related provisions to be incorporated. These provisions may include the following obligations for Parties to a legally-binding PIC procedure and would take into account any progress made since their adoption in addressing the linkages

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<sup>16</sup>For the objectives and nature of the London Guidelines and an explanation of the PIC procedure see TRE/W/10/Rev.1, pages 10-11; and L/6896, pages 74-79.

<sup>17</sup>See UNEP/PIC/WG.1/4/3, 17 March 1994.

between environmental and trade policies and ensure that the ability to take measures to protect human health and the environment was fully maintained:

- (a) Ensure that governmental control measures or action taken with regard to an imported chemical for which information has been received in implementation of the instrument are not more restrictive than those applied to the same chemical produced for domestic use or imported from a State other than the one that supplied the information, recognizing that government authorities have the right to take actions that might [discriminate][be trade restrictive] in some circumstances, and under certain conditions, to protect health and the environment.
- (b) Recognize the right of government authorities to take action more stringently protective of health and the environment than that called for in this instrument.

Second, there was a proposal to set out measures concerning the control of trade of chemicals subject to the PIC procedure between Parties and non-Parties. The Task Force noted that it would be necessary to address this issue on the basis of careful study.

#### 11. Code of Ethics on International Trade in Chemicals, 1994

The Code of Ethics on International Trade in Chemicals is the outcome of a series of UNEP consultative meetings for private sector parties convened between May 1992 and April 1994.<sup>18</sup>

Through the implementation of this code, private sector parties voluntarily commit to help achieve the objectives of the Amended London Guidelines by increasing chemical safety and enhancing the sound management of chemicals through the exchange of information on chemicals in international trade. The code complements the Amended London Guidelines and adheres to its definitions of "banned chemical," "severely restricted chemical," and "prior informed consent." It outlines general principles and guidance for private sector parties governing standards of conduct in the production and management of chemicals in international trade.

The code clarifies that it should not be used by governments or intergovernmental organizations to sustain or create tariff or non-tariff barriers to trade in chemicals.

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<sup>18</sup>The Governing Council of UNEP in May 1991 requested various private sector parties involved in international trade in chemicals to be invited: (a) to enter into commitment aimed at achieving the objectives laid down in the Amended London Guidelines; and (b) to prepare a Code of Ethics on International Trade in Chemicals in consultation with the international organizations concerned.