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WORLD TRADE ORGANIZATION

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Committee on Trade and Environment

REPORT OF THE MEETING HELD ON 20-21 JUNE 1996

Note by the Secretariat

1. The Committee on Trade and Environment met on 20 and 21 June 1996 under the chairmanship of Ambassador Juan Carlos Sánchez Arnau of Argentina. The agenda contained in WTO/AIR/353 was adopted.

Item 1: The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements

2. The representative of Korea introduced his delegation's non-paper (dated 12 June 1996). In defining a mechanism for reconciling MEAs with the multilateral trading system, existing WTO rules should be used where possible and modifications to WTO rights and obligations minimized. Korea's proposals would enhance *ex ante* predictability, while maintaining *ex-post* scrutiny as a safety net. The CTE should concentrate on the following: (i) reiterate the WTO-inconsistency of unilateral trade measures to address environmental concerns beyond national jurisdictions; (ii) define a procedure for notifying environment-related trade measures and develop a cooperative mechanism between the WTO and MEAs; and (iii) explore the possibility of setting differentiated disciplines for trade measures. Differentiated disciplines referred to a methodology introduced by New Zealand to analyze environment-related trade measures based on their specificity and use among MEA Parties or against non-parties. Specific trade measures were based on MEA obligations. Non-specific trade measures were based on MEA authorization. Trade measures related to, but not mandated in an MEA were unilateral. When trade measures were taken among MEA Parties, Korea proposed an *ex ante* approach based on codification with conditions, including elements to the effect that a specific trade obligation set out in an MEA would prevail over the WTO Agreement to the extent of their inconsistency. WTO Members' rights to invoke the DSU would not be affected. WTO accommodation of discriminatory trade measures applied against MEA non-parties was premature. The CTE Report to the Ministerial Conference in Singapore ("the Report") should clearly recognize unilateral action to address environmental concerns extraterritorially was not allowed by existing WTO rules. The focus should be on general policy directions to be adopted in Singapore.

3. The representative of the United States said his delegation believed in multilateral approaches to global and transboundary environmental challenges and was a committed participant in current MEAs and the negotiation of new ones. Prudently used, trade measures were an important tool to achieve the goals of some MEAs. MEA negotiators were best positioned to determine when this tool was needed. Proper use of such instruments required coordination in capitals between environment and trade officials. Coordination had not always been as close as it should be and steps to do better should be taken. Coherence between the WTO and MEAs should

be ensured. The Secretariat's practice of observing MEA meetings and reporting to Members helped facilitate cooperation between trade and environment officials. Efforts on this Item could strengthen respect for multilateral approaches to environmental issues by underlining that the WTO welcomed them. However, the task was not to regulate MEA negotiations. Several proposals appeared to place new strictures on MEA negotiators' work, which sent a signal that the good sense of environmental colleagues negotiating MEAs was not trusted. Proposed criteria for multilateral actions were stricter than WTO rules on domestic measures, which sent an unfortunate signal concerning respect for multilateralism. Criteria also appeared to allow the WTO to second guess MEAs in areas outside WTO competence. Several proposals would require MEA negotiators to use the least-trade restrictive option, which inappropriately went beyond obligations applying at the national level. Under CITES, most parrots were listed as endangered and subject to trade restrictions. Even though most parrots were not endangered, they were all listed due to the difficulty of customs officials in distinguishing one type from the other. A less trade restrictive approach might be to educate customs officials on parrots or strengthen exporting countries' capacity to control the trade. CITES Parties had not seen this as reasonably available. He asked if the WTO should second guess this decision.

4. He was not familiar with any WTO jurisprudence that read effectiveness into WTO disciplines; to the contrary, as the Appellate Report on Gasoline Standards argued, Article XX(g) did not incorporate an effects test: "…in the field of conservation of exhaustible natural resources, a substantial period of time, perhaps years, may have to elapse before the effects attributable to implementation of a given measure may be observable. The legal characterization of such a measure is not reasonably made contingent upon occurrence of subsequent events". Discussion had focused too much on Article XX(b) and the various concepts imputed to it. Attention should be paid to Article XX(g) as many MEAs related to the conservation of natural resources. Examining the jurisprudence, the US felt there was flexibility, subject to reasonable disciplines, in Article XX(g) for countries to take action in MEAs. Such analysis put in question arguments for amending Article XX. The issue was whether to ensure coherence between trade and environmental activities at the international level or to regulate the negotiation of MEAs. The latter course was inappropriate and cast doubts on the commitment to multilateralism. The US felt there was broad recognition: (i) trade measures were important tools for achieving the goals of MEAs; (ii) trade measures were not always needed and should be used prudently; (iii) cooperation between environment and trade officials was essential, at national and international levels; (iv) trade rules should provide sufficient flexibility to allow MEA trade measures to address transboundary and global environmental problems; (v) consideration should be given to the impacts of the use of trade measures in MEAs; and (vi) MEA non-parties should not be discriminated against if they took action equivalent to that required of MEA Parties.

5. Like the EC proposal, the Swiss proposal provided a safe harbour for trade measures in MEAs without creating new obligations for MEA negotiators, but the legal approach was of concern. It appeared to effectively amend WTO decision-making provisions, which were fundamental to the operation of the WTO Agreement as reflected in the fact unanimous agreement was needed to change it. The US also had concerns on the Swiss proposal's reliance on WTO Article IX.1 which provided for majority voting and was not intended for decisions on substantive obligations. The US had difficulty understanding what Japan's proposal accomplished and why MEA negotiators would see benefit from it. It suggested MEA negotiators accept new substantive requirements, but offered nothing in return. Substantive guidelines attempted to regulate the negotiation of MEAs, albeit in a non-binding fashion, with criteria that went beyond what governments were subject to *vis-à-vis* national measures. While all MEAs presumably had a scientific basis, it seemed inapt that MEA trade measures should have this basis. For example, while there could be a reasonable basis for banning trade in look-alike parrot species in CITES, this would not be considered "scientific". Of the proposals tabled, Korea's went the furthest in

proposing new restrictions on the use of trade measures in MEAs, while providing the least certainty for MEA negotiators. It focused on how to treat measures among MEA Parties where WTO conflict was least likely. Substantive obligations would still be applied even for specific measures between Parties, and WTO disputes were still possible.

6. The representative of Sierra Leone said MEAs had a preference for first-best solutions to environmental problems. Most dealt with non-participation through various incentives and disincentives, through funding and technology transfer for developing countries. Disincentives tended to take the form of trade restrictions. MEAs were careful to tailor the use of trade measures to the type of environmental threat addressed with some success; trade restrictions had proven a useful tool in encouraging participation. WTO Members had differing social conditions, levels of economic development and environmental problems, which proposals to reconcile MEAs and the WTO must take into account. Conflicts arising therefrom might lead to unilateral trade restrictions. One delegation was on record as considering the use of unilateral measures in the following cases: when required by an MEA to which it was a Party; when the environmental impact extended into its territory; when a species anywhere was endangered or threatened; or when the effectiveness of a scientifically-based environmental standard had been diminished. This approach raised the expectation of policy makers as to what could be achieved through unilateral action. Sierra Leone supported multilateral efforts to address transboundary problems and acknowledged the usefulness of trade restrictions when they were sufficiently mandated by an MEA with broad participation, but was wary of potential abuse through unilateral action. Any result on this Item must preclude the possibility of such action. She recalled the WTO preamble, which balanced environmental protection with development. The Swiss non-paper provided elements for a result in Singapore. Its use of "with the view to" suggested a specific measure taken under an MEA and approved by the WTO could be challenged only if applied with the intent of achieving trade advantages. She asked whether this imposed too heavy a burden of proof for developing countries. In light of the recent Appellate Body Report, this proposal could be revisited to take into account that invoking an Article XX exception faced a two-fold hurdle.

7. The representative of the European Communities felt interest in this Item, including all the proposals, was evidence of its importance to real world interests, which would not abate until a solution was found. As Nigeria had said *à propos* another subject, in the interests of its effective functioning, the WTO could not afford to send the wrong signal. This was not an issue with the characteristics of traditional negotiation. The goal was not to gain individual advantage, but to strengthen the system. This Item was among the priorities for a result in Singapore. Governments were making multilateral commitments with WTO implications and policy choices reflecting a commitment to multilateral action for sustainable development. The EC was committed to an open, equitable and non-discriminatory WTO and to a high level of environmental protection which could best be achieved through multilateral environmental action supported by a clearly articulated WTO framework. Multilaterally-agreed trade measures taken in an MEA could play a role in a balanced package of measures, including positive measures. He responded to comments on his delegation's non-paper (dated 19 February 1996). Some delegations had said the EC approach provided for exceptions from Article XX exceptions, thereby making them into provisions. However, the intention had been to devise rules to clarify the relationship between the WTO and permanent, legitimate exceptions. The EC approach would not result in a wide-open environmental window as it proposed accommodation for a limited number of clearly-defined measures. It did not cover unilateral action, which should be avoided. To discourage unilateralism, a more stringent framework than existed should be devised. The EC agreed increased cooperation at the level of international institutions was not a panacea for lack of coordination in capitals.

8. The representative of Japan commented on his delegation's proposed guidelines (WT/CTE/W/31). A conflict concerning an MEA would be solved in accordance with WTO dispute settlement with respect to the relationship between the WTO and the trade measures concerned. Japan would further examine the criteria for its proposed guideline on the extent to which the WTO should defer decisions made by a relevant MEA Convention of the Parties. Japan did not intend to impose stricter conditions on the use of trade measures in MEAs than already existed. If Japan's proposed criteria were met, a trade measures against an MEA non-party could avoid WTO conflict. Each panel, however, would have to judge each case. In response to whether existing MEAs with trade measures met Japan's proposed criteria, he clarified Japan was not challenging their legitimacy. The Basel Convention, the Montreal Protocol and CITES qualified for paragraph 11.2 of Japan's proposal. However, in the case where there was no conflict in relation to major existing MEAs, Japan was not in a position to make a preliminary judgement on individual MEAs. Bearing in mind the importance of precautionary measures for environmental protection as stated in Rio Principle 15, Japan's requirement of no other effective alternative did not require scientific certainty, but a reasonable scientific basis to support the use of a trade measure. Unilateral measures to deal with global environmental problems extra-jurisdictionally and not pursuant to an MEA should be avoided as they infringed on market access and were not necessarily effective to deal with global environmental problems. It seemed discussion had been postponed on case C of Korea's proposal, which was a crucial issue.

9. The representative of New Zealand said the contributions on this Item, while differing in key respects, were showing the emergence of common ground on which to base consensus. All the proposals appeared to agree specific measures could be taken between MEA Parties without raising questions of WTO-consistency. On specific measures aimed at non-parties and non-specific measures between Parties consensus was still evolving, but these measures could be acceptable if they passed the Article XX tests or other agreed criteria. It was clear proposals to date were generally not supportive of non-specific measures taken against non-parties, nor supported unilateral measures. There was some agreement that cooperation between the WTO and MEAs was desirable, although proposals differed on how this would be operationalized. There was also common ground on the structure of a WTO approach to trade measures in MEAs. To an extent, all the approaches employed Korea's "differential disciplines", which varied according to the nature and context of trade measures. While it was critical to focus on the detail and implications of proposals, agreement might be reached on issues of structure and content. He gave preliminary comments on Korea's non-paper, which resembled New Zealand's paper in differentiating disciplines applying to trade measures according to their specificity and use among Parties and non-parties. Korea's non-paper differed in key specifics. New Zealand would reflect on the implications of the procedural elements applying to codification of specific and non-specific measures between Parties. For certain specific measures taken against non-parties, Korea's proposal relied on the *status quo*, plus non-binding guidelines for MEA negotiators. Korea's non-paper foresaw a time when criteria for such measures, as proposed by New Zealand, would be developed. Like New Zealand, Korea ruled out accommodation for unilateral measures and non-specific measures aimed at non-parties. The CTE might need to address, as noted in Korea's proposal, the post-Singapore process. A shape was emerging under this Item to allow for understandings in some areas, while "policy directions" might need to be established in others.

10. The representative of Brazil said the proposals reflected differences among Members. However, all approaches encompassed, explicitly or not, that there should be no accommodation of extra-jurisdictional unilateral trade measures. To a certain extent, there was no accommodation of non-specific measures for third parties, which were comparable to unilateral measures. Several proposals favoured arrangements for cooperation between the WTO and MEAs. Differences remained for measures taken between MEA Parties and for specific measures against third parties. Although merit could be seen in New Zealand and Korea's proposals, particularly on the necessity

test for such measures, and in Japan's proposed guidelines, his comments were preliminary. Brazil felt Article XX, combined with Articles III and the relevant TBT and SPS disciplines, provided sufficiently broad scope for the use of trade measures in MEAs without conflict with WTO rules. Non-specific trade measures should be avoided, even among Parties. Brazil would consider guidelines for the negotiation of trade measures in MEAs if they were interpretative and non-legally-binding. They might promote a better understanding between the WTO and MEAs and permit mutually supportive trade and environment policies as envisaged in Agenda 21.

11. The representative of Switzerland responded to questions on his delegation's non-paper (dated 20 may 1996). On the cooperation mechanism, doubts had been raised on the need for formal Agreements. Some delegations felt coordination between trade and environmental authorities should be done at the national level. However, a cooperation mechanism would contribute to preventing conflicts between trade measures pursuant to MEAs and WTO rules. Dialogue between the trade and environmental communities was still rudimentary, resulting from lack of coordination at the national level. Like Canada, Switzerland felt if MEA Bodies submitted proposals for trade measures to the CTE, this would facilitate national coordination between trade and environment experts. Cooperation agreements would establish a systematic flow of information between relevant organizations, which would heighten the trade community's awareness of MEA objectives and vice versa. The form of cooperation could follow the model of the draft Agreement between the WTO and the International Office of Epizootics under consideration in the SPS Committee. Some delegations had questioned the need to authorize the WTO Secretariat to provide factual information to MEAs as the Secretariat already had this authority which should not be put in question. Although Switzerland agreed, a situation had arisen where an MEA Secretariat had not been able to obtain information from the WTO Secretariat. This situation should not be repeated and the Secretariat should be granted the limited competence to respond to MEA requests for factual information.

12. The basic idea of the coherence clause was that MEA Parties could judge the legitimacy of environmental objectives and select the appropriate means for their achievement. The WTO should focus on countering protectionist abuse of trade measures. If this was accepted, there was a need to develop an approach which accommodated the use of specific trade measures in MEAs in order to identify the applicable law in the event of a dispute. Only a specific trade measure foreseen in an MEA text would qualify; a general provision which left leeway to MEA Parties would not qualify. Switzerland proposed to establish a list explicitly setting forth MEAs subject to the coherence clause. Whichever of the two options proposed to develop this list, WTO Members would accept or object to the inclusion of an MEA. Once a MEA was on the list, this only meant the scrutiny of the panel established to settle a dispute on a trade measure taken pursuant to an MEA would be limited to whether the measure was applied in a manner which constituted a means of arbitrary discrimination between countries where the same conditions prevailed or to achieving a trade advantage. Unlike a waiver, this left the possibility of bringing a conflict to the WTO and better preserved WTO Members' rights. In response to Sierra Leone, he said the Swiss proposal did imply a reversal of the burden of proof.

13. The representative of Nigeria agreed this Item was a priority, but it should not be ranked above other Items which were also priorities. It could not be left unresolved, even though no disputes had been brought to the WTO concerning the use of trade measures in an MEA. Despite the multiplicity of proposals, consensus was emerging on the exclusion of unilateral measures, and the inadvisability of the use of non-specific measures against third parties. Korea's proposal synthesized previous proposals and was evidence of the complexity of the issue, for which there was no quick fix solution. Differentiated disciplines for trade measures based on their specificity among Parties or against non-parties should be considered. Korea's two step model showed that a balance should be achieved between procedure and substance. It was connected to New Zealand's

proposal, but it addressed *ex ante* predictability as well as *ex post* scrutiny. He agreed with Korea's definition of the problem, that trade measures in MEAs might conflict potentially with WTO provisions; with its starting point, that trade measures were not the most effective means of achieving environmental objectives; with its proposals on transparency; and on the rejection of extra-jurisdictional unilateral trade measures. He asked for clarification on the codification of a specific trade obligation in MEAs and the accommodation of exceptional circumstances under which a case was eligible for Article XX. He asked why a specific trade obligation in an MEA would prevail over the WTO if they were inconsistent; if codification modified WTO rights and obligations and involved the surrender of rights; why the necessity test would be redundant for case A; and how a panel would define least WTO-inconsistent as sufficient for codification. It was preferable to state the rules clearly and agree to exceptions, rather than not to use tests which were difficult to define and operationalize and would have to be left to the judgment of panels. If codification or accommodation was challenged even by one Member and unanimity was required for case A, he asked how decisions would be made. Nigeria could not agree to the use of specific or non-specific trade measures in MEAs against non-parties.

14. The representative of Egypt presented the non-paper containing her delegation's comments (dated 18 June 1996). Differentiation should be made between specific and non-specific trade measures required by an MEA to be imposed by Parties. There were specific measures that were WTO consistent, which did not raise any problems, and WTO-inconsistent specific measures, which were the relevant measures for analysis. WTO-inconsistent trade measures could be dealt with through a waiver or could be challenged by Parties or non-parties. It was up to Parties to chose the forum in which to raise a dispute. If non-specific measures were WTO-inconsistent, the possibility of settling disputes in the WTO should be open to Parties and non-parties. Here a waiver approach was not applicable as it gave a blank check to unilateral measures. She asked what was the relevance of cases A, B, C and D in Korea's proposal, as the only difference was when measures were specified in an MEA or "pursuant to" an MEA. In the former category, only WTO-inconsistent measures were relevant. Measures "pursuant to" or non-specific measures were WTO-inconsistent and should be addressed case-by-case. Egypt supported Korea's principles on building a bridge between the WTO and MEAs. It was unnecessary to examine a range of trade provisions, as only specific WTO-inconsistent trade measures in MEAs were relevant. If MEAs contained trade provisions, they should respect WTO rules. There was merit in combining New Zealand's proposed criteria and Korea's *ex ante* predictability through non-legally-binding guidelines for MEA negotiators. *Ex ante* predictability would apply solely to trade measures specifically required in an MEA and deemed to be WTO-inconsistent. Egypt supported Korea's proposal on transparency and its rejection of unilateralism.

15. The representative of Hong Kong said paragraph 3 of Korea's non-paper cast doubts on the need to address the compatibility between MEAs and the WTO. Unless adverse effects of not addressing the question were demonstrated, or the present system was inadequate to cope with trade measures in MEAs, Hong Kong felt many Members would find it difficult to accept proposals to modify WTO rights and obligations. Viewed in this light, Korea's proposal was realistic. The starting point should be the existing WTO framework. Korea's proposed case-by-case qualification of codification by consensus was a fair balance. Unlike the waiver approach, once accepted by consensus, no annual review or extension of a waiver would need to be sought for an MEA, providing long-term security for its implementation. The acceptance of codification would discourage the Members concerned from invoking DSU although they were legally entitled to do so. Preservation of dispute settlement rights would enable Members to favourably consider codification. Hong Kong supported Korea's proposals on transparency.

16. Hong Kong saw merit in Japan's proposal; the use of guidelines had an important role in the discussion on the relationship between MEAs and the WTO. The argument that without rules

on MEAs the situation might result in allowing unilateral measures to be taken in the name of environmental protection was not clear. Unilateral measures of the type envisaged by Japan were not allowed in the WTO, with or without new rules; the safeguard was Article XX and nothing in the dispute settlement process had suggested this safeguard was inadequate. The case for applying guidelines for MEA negotiators was stronger than for guidelines in WTO dispute settlement. Common elements in the proposals and candidates for recommendations were there should be no accommodation of unilateral measures and cooperation between WTO and MEAs should be pursued. On option 1 of the Swiss coherence clause, he said only a few trade measures in MEAs were potentially WTO-inconsistent. Thus, Hong Kong had reservations on the need for a new WTO mechanism to examine all MEAs containing trade measures. The problem was not the MEA, *per se*, but how a measure was applied. Bearing in mind MEAs contained essentially environmental, not trade measures, the proposed examination went beyond WTO-competence. Option 2 suggested *prima facie* a blanket exemption for trade measures pursuant to notified MEAs, which might open a floodgate for exceptions to WTO obligations and was vulnerable to protectionist abuse.

17. The representative of Canada said the increasing number of proposals indicated the interest in finding a solution. Not to succeed would be a lost opportunity to integrate trade and environmental policies and would postpone a solution to a possible future conflict. This was a practical issue given the dynamic nature of MEA negotiations. Principles to address MEAs in the WTO would reinforce the CTE's credibility. A review of the proposals and an examination of the NAFTA model suggested areas of consensus were emerging. New Zealand's framework, which had been elaborated by Korea, helped to assess the proposals. There was support for waiving the Article XX(b) necessity test to deal with conflicts arising from specific trade measures among MEA Parties. Agreement had not yet been reached to limit the settlement of trade disputes to MEA mechanisms, but there was a sense Parties should attempt to settle them in the MEA. In dealing with a specific trade measure among MEA Parties, proposals suggested grounds for WTO dispute settlement might be limited to situations where a measure's application had been arbitrary or discriminatory. There was no apparent support for special accommodation of an MEA with non-specific measures, either among Parties or against non-parties, for which the necessity test should be applied in WTO dispute settlement. Proposals supported a case-by-case approach to trade measures in MEAs, that Members retained the right to bring Party/non-party disputes to the WTO.

18. Several proposals recognized the advantages of the WTO clearly expressing its views on the use of trade measures in MEAs to MEA negotiators to avoid WTO conflict. Canada was attracted to a guidelines approach to guide MEA negotiators contemplating the use of trade measures. This approach could be integrated with all the proposals for accommodation. Canada had not yet determined what form of accommodation would best be associated with a guidelines approach and was refining the criteria it had outlined. Canada proposed the following MEA qualifying principles: (i) the MEA was open to all countries ; (ii) the MEA reflected broad-based support; (iii) provisions specifically authorizing trade measures should be drafted as precisely as possible; (iv) trade with non-parties was permitted on the same basis as Parties if non-parties provided equivalent environmental protection; and (v) the MEA explicitly considered the WTO criteria for the use of trade measures in MEAs. Canada felt the criteria MEA negotiators should consider in examining the potential for trade provisions were: (i) that trade measures were chosen only when effective and when alternative measures were ineffective in achieving the environmental objective, or when other measures were ineffective without trade measures as part of the MEA; (ii) that trade measures be no more trade-restrictive than required to achieve the environmental objective; and (iii) that trade measures did not constitute arbitrary or unjustifiable discrimination.

19. While his comments focused on Switzerland and the EC's proposals, some points applied to New Zealand and Korea's proposals. While not part of the Swiss proposal, guidelines could be added as criteria for listing an MEA. Once an MEA had been listed, certainty was provided that its provisions would withstand the necessity test if challenged. However, there would still be the possibility of WTO dispute settlement on restricted grounds for arbitrary or discriminatory application. There was a precedent in the NAFTA for a similar approach. Amendments to MEA trade provisions have to be specifically notified and treated separately. The proposal raised the following issues. It required a formal WTO decision, and Members would be seen as passing judgment on individual MEAs. The mechanism for making that decision needed to be established. The MEAs least likely to be challenged in the WTO would be the most likely to be listed. He asked when an MEA would be eligible to be listed (e.g. upon ratification, or when a large majority of WTO Members had ratified) and, if an MEA was not listed, whether this implied WTO disapproval of the MEA, even if not challenged.

20. A WTO Understanding based on Article XX had advantages and disadvantages. While the EC proposal was for an amendment, an Understanding could achieve the same objectives more readily. Similarly, while the EC proposal did not contain extensive guidelines, these could be strengthened as Canada had suggested. An advantage of an Understanding over the listing approach was the WTO would only be required to review the MEA in a dispute, which lessened the potential for conflict between trade and environment fora. Also, a panel and not the WTO would apply the guidelines to an MEA, which lessened the potential for politicization. However, it raised the spectre of trade bureaucrats deciding the future of MEAs and provided less certainty than a listing as an MEA would not know whether it qualified for the waiving of necessity until it was challenged and there could be a disincentive to legitimately challenge an MEA due to public profile considerations. If part of an accommodation approach, Japan's proposed non-binding guidelines would have the advantage of flexibility. It did not have to be a "yes or no" decision on whether an MEA met the guidelines, as a panel could take into account how closely the guidelines were followed to determine the amount of accommodation. Non-binding guidelines provided less certainty as to the degree of accommodation an MEA meeting the guidelines received. Although Canada had referred to the value of a WTO waiver, this was a temporary measure and had complex procedural requirements. MEAs had an on-going existence and it was undesirable to repeatedly judge MEAs. The MEAs most likely to receive a waiver would be least likely to require one. For these reasons, Canada had moved away from support of the waiver approach. With respect to unilateral trade measures, i.e. measures not mandated in an MEA, the proposals did not provide support for accommodation. Some called for explicit condemnation of unilateral actions. Canada supported associating accommodation for multilateral approaches with a clear signal on the dangers of unilateral approaches, along the lines of Rio Principle 12. Canada supported improved cooperation between the WTO and MEA Secretariats. The WTO Secretariat needed direction from Members to cooperate formally with MEA Secretariats as information exchange between them had been inadequate and cumbersome. Although several proposals supported improvement of information flows, too formal an approach might be counterproductive.

21. The representative of Chile said Canada's proposal took the CTE along a certain line of consensus. As Brazil had noted, the emerging consensus did not include room to accommodate extra-territorial unilateral action. However, this should not imply the scope of application of trade measures for environmental protection could not be more far reaching when taken pursuant to a globally-accepted MEA. He noted the US comment that MEA negotiators' hands should not be tied. However, restrictions already existed in the form of declaratory instruments endowed with broad acceptability in the international community, such as the Stockholm Principles, Rio Declaration and Agenda 21. Proposals by Australia and Argentina outlined the complementarity of policies related to trade liberalization, environmental protection and sustainable development. He inquired as to how to choose the appropriate guidelines bearing in mind options such as

WTO Article IX waiver provisions, and Article X amendment provisions. The EC proposal deserved attention. Panellists' decision making capacity might be limited by such an Understanding. Chile preferred an agreement in the form of an Understanding in the context of New Zealand's proposal, taking into account Egypt's notes of caution. There was a general consensus on instituting cooperation between the WTO and MEAs, for which there should be a clear-cut mandate. MEA negotiators were aware of the need to reconcile different interests, for example, a clause similar to that proposed by Switzerland had been proposed during the negotiations of the Montreal Protocol and Climate Change Convention. Chile's paper (WT/CTE/W/2) drew attention to the reference in the Agreement for the Implementation of Part IX of the Convention on the Law of the Sea, whereby trade competence was given to the WTO. Even though this Convention was not an MEA, *per se*, it encompassed environment-related aspects. If Parties to the Law of the Sea Convention were also WTO Members, then WTO dispute settlement procedures and substantive rules would apply; if one of them was not a WTO Member, the dispute settlement mechanism of the Law of the Sea Convention would apply, but the substantive law of the WTO would apply broadly to production activities in the international seabed area, irrespective of the fact that environmental factors also could be involved in the dispute. There was a fine distinction between reconciling substantive rules and establishing procedures.

22. The representative of Mexico said her delegation was examining all the proposals and suggested any further proposals should be submitted as soon as possible to be able to have a complete picture. This was important to carry out an assessment of the issues and give an opinion based on this analysis. The quantity and diversity of proposals was such that in order to focus discussion on their contents, she suggested the Secretariat could draw up an indicative summary table comparing the elements and general concepts of proposals, permitting similarities of structure and content to be identified. Korea's proposal defined categories of non-specific measures which should be analyzed. Unilateralism should be defined to determine the borderline between a unilateral measure based on national legislation and one applied based on an MEAs objective without being explicitly defined. Until all proposals were on the table, it was difficult to reach a consensus on the Report. She agreed there were points on which consensus could be reached, such as rejection of unilateralism.

23. The representative of Colombia said, in considering the proposals, the DSU must be safeguarded. As only 18 of 180 MEAs contained trade provisions and there had not been any WTO conflict, Colombia was not convinced WTO reform should be introduced to make trade and environment compatible. The WTO offered an adequate framework to take measures to protect the environmental. Panels had stated there was ample autonomy for countries to set up environmental policies in their sovereign territory. Discussion should continue, without taking a decision one way or another. He supported Mexico's proposal to draw up a table on current proposals.

24. The representative of India said current WTO provisions were adequate to deal with trade measures for genuine environmental goals. Their conformity with Article XX was the only way to ensure the WTO remained multilateral and non-discriminatory. Without prejudice to this view, he gave preliminary comments on proposals. He hesitated to consider the use of punitive measures to achieve environmental objectives, such as trade measures in existing MEAs, or guidelines or codification, unless discussion focused on existing MEAs so as not to provide a blank cheque for future MEAs. If the CTE considered sanctioning punitive measures in existing MEAs, then it should consider also positive measures to meet MEA objectives, including transfer of technology and products. In this context, Korea's proposal offered concrete ideas. India shared Korea's call to reject unilateralism in the use of environment-related trade measures, as well as its ideas for transparency. India would study the proposal further.

25. The CTE mandate should not go into the environmental issues these measures, taken as an integral, negotiated package, addressed. Focusing on one part of the package, i.e. trade measures, would contribute to distorting the essence of the MEA. Repeatedly discussing trade measures might encourage dependence on them to achieve environmental objectives. While in principle India agreed trade measures were chosen only when alternative measures were ineffective, the first alternative should be positive measures, such as a financial mechanism for transfer of technology and sale of final products as India proposed in its revised submission on Item 8 (dated 18 June 1996). Various factors influenced the formulation of MEAs, such as compromises to reach consensus, changing scientific information, availability of financial resources, costs of substitute products, and changes in technology and regulatory approaches. To balance environmental protection and greater market access, the relevant provisions of all WTO Agreements should be examined. India could not accept *a priori* assumptions that trade measures incorporated in MEAs would successfully pass the tests of necessity, effectiveness, least amount of trade distortion and proportionality. Only existing MEAs fulfilling the following criteria should be considered: (i) it should have been negotiated under the UN aegis (i.e. UNEP); (ii) its procedures should stipulate participation in the negotiations was open to all countries; (iii) there must have been effective participation in the negotiations by countries from different geographical regions and stages of economic and social development; and (iv) procedures should provide for accession of countries on terms equitable to those of original Parties.

26. The representative of Singapore, on behalf of ASEAN, agreed with paragraphs 3 and 4 of Korea's non-paper. Unilateral trade measures to address environmental issues extra-jurisdictionally should be rejected. He had concerns on the concept of differentiated disciplines, which could require subjective interpretation. Codification would not allow an annual review of trade measures in MEAs. Specific trade measures in MEAs should not prevail over WTO obligations. ASEAN preferred a multi-year waiver approach. Members' rights to invoke the DSU should be reserved. ASEAN would submit a paper on this Item for the July meeting.

27. The representative of Australia said the US statement recalled that the focus should not only be on Article XX(b), but also on Article XX(g), which was relevant to MEAs related to the conservation of natural resources. Also, Articles XX(d) and (h) could be relevant. In regard to GATS, Articles XIV(b) and (c) needed examination. Several proposals responded to public concerns that trade measures in MEAs might be WTO-inconsistent. However, one of the consequences of speaking about a need for the WTO to "accommodate" the use of trade measures in MEAs was that it could be seen as confirming these fears. There was an unstated assumption that existing MEAs were not adequately covered by GATT Articles, or an unstated expectation that new MEAs or changes to existing MEAs would not be covered. The CTE must contribute to a greater public understanding and there should be a sound analytical basis to any conclusions or recommendations. He had doubts as to whether too much time had been spent in exploring solutions and not enough to identifying problems. The issue posed by MEAs was not a narrowly legal one of giving legal clarity to the relationship between WTO rules and trade measures in MEAs. Just as important was debate on the broader policy issue of ensuring policy coherence and complementarity between the WTO and MEAs. This was not an attempt by the trade community, or the WTO, to regulate the negotiation of MEAs. The issues were complex and interdisciplinary and there was a role for the CTE to explore policy questions raised by the use of trade measures in MEAs and to promote a dialogue between the trade and environment communities. The Report would be a constructive contribution to the policy issues raised.

28. The representative of the United States, referring to India's comment, said trade measures should not be equated with negative measures. In CITES, cooperative measures were not negative or coercive. Trade measures were a tool to which MEA negotiators needed to have access. Although common points had arisen in the discussion, it was premature to draw up a table on the

possibilities for accommodation. He asked why the WTO would want to suggest MEA negotiators be subject to disciplines beyond those in Article XX for domestic measures. He said the concept of effectiveness was not to be found in Article XX. The threshold issue was whether to explain current WTO rules to MEA negotiators, or to determine the extent to which WTO rules were appropriate to ensure environmental objectives could be attained in MEAs.

29. The representative of Korea responded to comments on his delegation's non-paper. Several delegations suggested the proposal was the most stringent thus far. Although trade measures based on multilateral consensus deserved favourable consideration, Korea felt a safety net should be provided to avoid their misuse based on competitiveness or protectionism. For case C, Korea advocated the *status quo* and possibly non-binding guidelines for MEA negotiators. Cases A and B already had been agreed on among Parties and should have special treatment, i.e. qualified codification. Several delegations had said the procedural criteria for this codification were too strict. Korea was flexible on this point. In case A, the necessity test should be exempted as the necessity of trade measures already had been reviewed by Parties and there was little room for their arbitrary or extra-jurisdictional use. On Nigeria's question as to why MEA obligations would prevail over WTO obligations in this codification, this was to ensure legal compatibility. However, Members' right to invoke the DSU should be preserved. On why case C measures should not be accommodated in the WTO, he said paragraph 15 and 16 explained these measures were non-consensual measures which could have extra-jurisdictional implications and there was no clear definition of an MEA or criteria to be applied. Korea had not precluded the possibility of accommodation, but this was premature. The guidelines proposed by Japan and Canada could be relevant to the non-binding guidelines for MEA negotiators Korea had proposed. Korea was not trying to postpone discussion on case C, but it was doubtful agreement could be reached on this complex issue before Singapore. Thus, he supported New Zealand's suggestion to elaborate areas of emerging consensus, such as the need to avoid unilateralism, and further transparency and cooperation between the WTO and MEAs. This would enable the CTE to give clear policy guidance on differentiated disciplines in Singapore and a detailed mandate to elaborate them post-Singapore. On Nigeria's questions on the definition of differentiated disciplines, Korea was open to discussing this matter, but it was not optimistic that agreement on clear definitions could be reached by Singapore.

Item 5: The relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements

30. The representative of the United States said there had been an increase in WTO dispute settlement activity. There would likely be an increase in disputes involving technical matters which might be beyond the competence and expertise of panellists. He recalled the importance the US placed on panellists making use of recourse to expert input envisaged in the DSU. To the extent MEAs contained dispute settlement mechanisms, the US felt unfavourable comparisons could be drawn between transparency inherent in those mechanisms and that inherent in the DSU.

31. The representative of India said US concerns were adequately covered by the DSU and there was no need to add special requirements for expertise to handle environment-related disputes. Article 8.4 of the DSU provided for the nomination of experts. Articles 13.1 and 13.2 of the DSU provided for expertise outside the trade field to be drawn on by a panel. Trade measures were tools which should be used for positive purposes such as transferring mandated environmentally-sound technology and products for achieving environmental objectives in MEAs.

Item 2: The relationship between environmental policies relevant to trade and environmental measures with significant trade effect and the provisions of the multilateral trading system

32. The representative of India said his delegation would submit a proposal on this Item.

33. The representative of the United States said his delegation would submit a proposal on environmental reviews.

Item 3(a): The relationship between the provisions of the multilateral trading system and charges and taxes for environmental purposes

34. The representative of Australia said the fact proposals had not been submitted on this issue should not be interpreted as lack of interest. Issues raised, such as border tax adjustment, were of importance to Australia.

35. The representative of India said sight should not be lost of the issues under this Item.

Item 3(b): The relationship between the provisions of the multilateral trading system and requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling

36. The representative of Canada outlined his delegation's views on what was attainable in Singapore. He said eco-labelling programmes were valid environmental policy instruments, which must be developed and implemented in a WTO consistent manner. He recalled the proposed four principles in Canada's paper (WT/CTE/W/21). There was support for Canada's position that eco-labelling programmes were covered by the TBT Agreement and its transparency-related disciplines. However, extending the scope to include non-product-related PPMs raised legitimate concerns, particularly the precedent that explicit recognition could create. Sharing some of these concerns, Canada proposed the scope of the TBT Agreement only be extended for voluntary programmes. Recognizing eco-labelling programmes were based on life-cycle approaches (LCA), resulting standards were a mixture of criteria based upon performance, product-related and non-product-related PPMs. LCA did not prejudge the type of standard that would emerge. For example, eco-labels for home appliances generally included performance standards pertaining to energy or water use. Product-related PPMs were pesticide residues or food additives. Eco-labels on products based on either of these standards did not differ from other labels or standards in terms of the TBT Agreement. Certain Members felt eco-labels based on non-product-related PPMs were different. Paper products were an example, given sustainable forest management. The development of product criteria through LCA could not predict *ex ante* which type of standard would predominate. As these programmes became more sophisticated in their use of LCA, criteria would be based on a mixture of the three types of standards outlined above. As such, it was not practical to separate coverage of eco-labelled products based on the nature of the standard. All criteria involved in granting the eco-label should be subject to similar disciplines.

37. He distinguished between TBT coverage (i.e. eco-labelling programmes were established by standardizing bodies which conferred labels on products that met their standards) and scope (i.e. whether non-product-related PPMs were within the scope of the TBT Agreement). Ambiguous wording of the definition of standards in the TBT Agreement left open whether non-product-related PPMs were within its scope. Rather than having panels decide, it was preferable to discuss and eventually determine under which circumstances their use could occur.

This would provide greater predictability and security to both exporters and policy makers. Canada had consulted with its business community on eco-labelling. While business leaders did not like non-product-related PPMs, they acknowledged them to be a market reality. Business already dealt with systems involving PPMs, such as quality management standards (ISO 9000), and environmental management standards (ISO 14000). Business leaders were more concerned about transparency and consultation than whether a standard was based on non-product-related PPMs. If the legitimate concerns of business were not considered, recourse to dispute settlement was needed. This "transparency with teeth" was the essence of the TBT Agreement. The concern was that non-product-related PPMs reflected only particular domestic technologies and environmental absorptive capacities. Adherence by eco-labelling programmes to the TBT Code of Good Practice provided industry with the assurance they would know what was under development, could participate in the development of standards, and that these would not be based solely on domestic considerations. For this reason, Canada's business leaders felt Canada's proposal to subject non-product-related PPMs to multilaterally-developed criteria was valid if such criteria referred to guiding principles, methodologies and procedures, rather than specific values or indicators. Multilateral development of principles, methodologies and procedures was distinct from agreement on individual standards and was sound on environmental and trade grounds. From an environmental perspective, agreement on the former recognized policy requirements differed between countries, whereas values or indicators could differ, reflecting sound environmental and scientific assessment. From a trade perspective, use of common methodologies with explicit recognition of different policy requirements was the basis for equivalency approaches, reflected in the paper by the Canadian Environmental Choice programme. Canada had tried to operate Environmental Choice in as least trade restrictive a manner as possible and had notified it under the TBT Agreement (G/TBT/Notif.96.190).

38. Informal discussions with several delegations indicated there was recognition the WTO needed to address the issue of non-product-related PPMs in voluntary eco-labelling programmes. However, for several other delegations discussion of this issue required reflection given its complex nature and possible repercussions. The Report should reflect both views and reaffirm the TBT Agreement covered all eco-labelling programmes, without prejudice to the issue of scope with respect to non-product-related PPMs. The post-Singapore agenda should include work on the latter issue jointly with the TBT Committee (CTBT). This meant voluntary eco-labelling programmes would be notified as per the Code of Good Practice and subject to TBT disciplines related to standards and voluntary labelling programmes. As eco-labelling was a joint CTE/CTBT issue, he would request this statement be included in the minutes of the CTBT's next meeting. Canada would work to secure agreement on points (a), (b), and (c) of its proposal with consideration of point (d) post-Singapore and would circulate a draft Decision prior to the July CTE meeting.

39. The representative of Brazil supported point (d), as well as points (a), (b), and (c) of Canada's proposal. The TBT Agreement should be considered as covering non-product-related PPM-based voluntary eco-labelling programmes, provided they adhered to multilaterally-agreed guidelines based on scientific criteria and were transparent, consensual and non-discriminatory. A fundamental guideline was the recognition of the exporting country's right to apply its environmental and developmental policies, particularly in developing countries, as stated in the Rio Declaration. For this reason, PPMs in the exporting country might not be equivalent or comparable to PPMs required for domestic producers. Brazil supported Canada's understanding that PPM criteria referred to guiding principles, methodologies and procedures, rather than specific values or indicators. As Brazil supported the Canadian proposal's first three points, it would undermine their efficacy not to agree also with point (d). Taking into account Argentina's comments on the ambiguity of language in the definition of standards in Annex I of the TBT Agreement and notwithstanding Brazil's belief that non-product-related PPMs were not otherwise

covered, the wide use of eco-labelling should be regulated where possible through multilateral negotiations. This issue should be discussed in the post-Singapore agenda.

40. The representative of Japan supported Canada's goal to enhance transparency of eco-labelling programmes. A decision on eco-labelling could have legal effects on standards based on non-product-related PPMs other than eco-labelling. While Japan was aware of the importance of LCA as an element of environmental policy, the CTE should be cautious in determining whether they were covered by the TBT Agreement. Japan was not sure whether the US proposal aimed at requesting public input in developing eco-labelling criteria by disclosing a draft to the public for comment at each stage. If so, it was not appropriate to impose requirements which were stricter than existing TBT notification requirements. These requirements would be time-consuming and would delay criteria development. Japan could support the US proposal if it expected eco-labelling executing bodies to involve academic experts and citizens' groups at each stage of criteria development.

41. The representative of Singapore, on behalf of ASEAN, recalled his delegation supported the first three points of Canada's proposal. However, ASEAN could not support the interpretation of the scope of the TBT Agreement to cover the use of standards based on non-product-related PPMs. This issue should not be addressed now, nor even post-Singapore.

42. The representative of India said the issue of eco-labelling was related to market access. India supported the consensus on transparency, with the understanding it was effective and of demonstrable WTO benefit, especially for small and medium exporters in developing countries. Ensuring the effectiveness of transparency would allow exporters to participate in the development of eco-labels. India could not join a consensus on interpreting the scope of the TBT Agreement. India could not look at the TBT Agreement's provisions on labels or other issues linked with technical barriers to trade in goods in isolation. Reference to the TBT Agreement must take into account the TBT Agreement's objective to ensure measures such as labels did not cause unnecessary barriers to trade. Article 12 of the TBT Agreement was relevant. It stipulated more favourable treatment for the "special development and trade needs" of developing countries and addressed the need to build capacity to ensure effective market access, provide financial assistance and transfer know how and technology. India did not subscribe to any interpretation of the TBT Agreement which recognized LCA-based labelling programmes, incorporating non-product-related PPMs. Attempts to incorporate the latter in eco-labels restricted market access of developing countries, led to the freezing of technology, restriction of product choice, and inflexibility of standards. It undercut the comparative advantage of developing countries. Since the CTE's mandate was negotiated to consider the trade and environment interface in a holistic manner in one WTO Body, India preferred discussion on eco-labels and other Items to be confined to the CTE. There was no need to have joint sessions of WTO Bodies.

43. The representative of Switzerland said his delegation supported points (a) (b) and (c) of Canada's proposal. Labelling of product characteristics or incorporated PPMs and their conformity assessment procedures were covered by the TBT Agreement, whether elaborated by governmental or non-governmental bodies. Switzerland expressed concern on an extensive interpretation of the TBT Agreement regarding labelling measures covering unincorporated PPMs. Referring to the definition of standards and regulations in the TBT Agreement, he said it was difficult to interpret the TBT Agreement's scope as extending to these labels, without having the same interpretation for terminology, symbols, packaging or marking requirements. As the CTE had not examined the consequences of such an interpretation, it was difficult at this stage to extend the scope so broadly. Information was the important issue related to voluntary labelling. Given the multiplication of labelling programmes, the CTE could examine usefully how to increase transparency for voluntary labelling schemes, including unincorporated PPMs.

44. The representative of Nigeria said eco-labels had potentially significant market access implications, but were valid policy instruments to deal with environmental problems within national jurisdictions. MEAs were the valid policy instruments to deal with transboundary or global environmental effects. Eco-labelling programmes addressing domestic environmental externalities should not have transborder effects. If they did, they were being used for purposes beyond the environment. The WTO TBT Agreement was concluded in 1990, prior to GATT/WTO discussion on trade and environment and prior to the design of eco-labelling programmes in many countries. While Nigeria supported points (a), (b), and (c) of Canada's proposal, it could not agree that the TBT Agreement's scope be interpreted to cover the use of standards based on non-product-related PPMs. Nigeria was concerned about the use of LCA, which was central to eco-labelling programmes. Existing WTO rules dealt with PPMs at the level of consumption and not with aspects of LCA regarding production. Countries had the right to impose restrictions under the TBT Agreement only when PPMs affected product characteristics at the level of consumption. Initiatives to seek accommodation to stretch WTO rules to encompass measures merely to reflect current practise should not be furthered if they were explicitly WTO-incompatible. Non-product-related PPMs had no place in WTO rules at this time. However, as Canada had consulted widely to seek a consensus on this matter, Nigeria agreed a recommendation could be made to discuss non-product-related PPMs post-Singapore.

45. The representative of Mexico supported the substance of the first three points of Canada's proposal. However, Mexico did not see any reason to reaffirm the TBT Agreement's coverage of eco-labelling. Eco-labelling was covered by the TBT Agreement and eco-labelling programmes were being notified to it. There was neither more, nor less on the table than what had been negotiated. Mexico did not want to cast doubt on what had already been negotiated. Mexico's position on PPMs was well known. However, this issue was recognized as a controversial one which required further consideration. The Report should sum up issues raised and reflect diverging positions. The only possible recommendation Mexico envisaged at this stage was for the CTE to continue work on this Item in a comprehensive manner (i.e. for eco-labelling as a whole). Mexico would consider Canada's comments further.

46. The representative of Sierra Leone said eco-labelling was a useful tool for environmental management. As technical regulations and standards they could fall within the scope of the TBT Agreement. Standardizing bodies should take into account the TBT Code of Good Practice in developing and implementing eco-labelling programmes. Her concern with Canada's proposal was it extended the scope of the TBT Agreement to include non-product-related PPMs which was not the intention of the negotiators. The issue was not how, but whether to include non-product-related PPMs. Work should focus on developing standards for mutual recognition of eco-labelling programmes and equivalencies of eco-criteria. This would assist in incorporating sensitivities to differing environmental and developmental conditions across countries and promote transparency. The feasibility of administering measures concerning non-product-related PPMs was a factor. The Montreal Protocol contained two provisions to restrict trade with non-parties in products containing controlled substances and products made with, but not containing controlled substances. Measures to enforce the former were in effect. As yet, no measure had been enacted to restrict trade of the latter. It had been deemed "not feasible to impose a ban or restriction on imports of products made with but not containing controlled substances…" (Report of the Technology and Economic Assessment Panel, July 1993). Methods to detect products made with these chemicals were to test for trade residues, or inspect the exporting country's manufacturing process in the exporting country. The former was technically feasible but had a high implementation cost and the latter was not feasible as it involved issues of sovereignty. A requirement to allow inspections could not be required as a condition of trade or to obtain an eco-label. If a programme was allowed which had problematic implementation, the possibility of arbitrary application and abuse increased. Given the TBT Agreement's clear scope

and difficulties in administering programmes covering non-product-related PPMs, discussion should shift from expanding the scope to harmonizing programmes that existed under the TBT Agreement.

47. The representative of Argentina reiterated his delegation's support for Canada's proposal. There was a controversial ambiguity related to the definition of standards concerning unincorporated PPMs. As noted by Brazil, the practise existed of using eco-labelling based on LCA, which included non-product-related PPMs. Ambiguity was being lost, and not necessarily in the right direction. As such, Canada's proposal was opportune as there was time to prevent this aspect of eco-labelling from spilling into other areas, such as technical regulations. The solution to the problem went beyond eco-labelling. Canada had suggested these standards strictly adhere to multilaterally-agreed guidelines, which would act as a barrier to unilateralism.

48. The representative of Egypt presented his delegation's comments in its non-paper (dated 18 June 1996). He did not share Canada's interpretation of the scope of the TBT Agreement. There were significant differences on PPM-related issues. He shared Sierra Leone, India, Mexico and Nigeria's view that the issue was not how, but whether to include non-product-related PPMs.

49. The representative of Morocco said his delegation could not accept point (d) of Canada's proposal. As India said, special and differentiated treatment in the TBT Agreement clarified the position of developing countries. TBT provisions should not be interpreted to include LCA or unincorporated PPMs. He recalled UNIDO's Resolution in December 1995 on eco-labelling. Account should be taken of activities in other international fora.

50. The representative of Korea said if it was agreed all eco-labelling programmes were covered by the TBT Agreement, this would acknowledge eco-labelling based on non-product-related standards were within the TBT Agreement's scope. The issue of TBT coverage included that of its scope. As such, points (a), (b), and (c) of Canada's proposal could not be separated from point (d). Multilaterally-agreed guidelines were similar to the *ex ante* approach in Item 1. Difficulties had been demonstrated in defining an MEA reflecting a genuine multilateral consensus. Korea had difficulty understanding what multilaterally-agreed guidelines meant. Korea would study Canada's proposal further.

51. The representative of the European Communities said there were positive elements in Canada's proposal which should not be underestimated. However, after listening to reactions by delegations, he had strong doubts on the possibility of separating points (a), (b), and (c) from point (d). He agreed with Mexico and Korea that these four points were inextricably linked. Separating them would lead only to further confusion.

52. The representative of the United States said there was wisdom in Mexico's comment on this point. Responding to India's comment on joint CTE-CTBT sessions, he said this was a decision which had already been taken and TBT experts were of value when discussing issues of technical complexity. Although views differed on TBT coverage, there appeared to be agreement on the importance of transparency in eco-labelling, which was the issue of his delegation's proposal on this Item (WT/CTE/W/27). He reiterated that this proposal did not prejudice any delegation's views on the TBT Agreement's coverage. There was agreement certain types of eco-labelling were covered by the TBT Agreement, but disagreement as to how far this went. This should not stand in the way of examining if the transparency obligations of the TBT Agreement were adequate from the standpoint of those aspects of eco-labelling which were covered, without having to agree on exactly what was covered. The US assessment was the current disciplines did not go far enough and there were two areas of weakness. Firm disciplines on transparency and participation were important in the process of defining product criteria for a

label. To the extent LCA entered into the creation of a label there should be an opportunity for input. He did not equate LCA automatically with the PPM issue. In response to Japan's question on input into criteria development, he recalled the US proposal suggested public input could occur separately or simultaneously. In looking at the lacuna in transparency disciplines, it was essential to have the participation of all stakeholders both foreign and domestic to provide input, particularly to define product coverage of an eco-labelling programme. The US felt there were useful considerations for designers of eco-labelling to take into account to achieve the environmental purposes of eco-labelling which also avoided trade friction, including transparency, non-discrimination, truthfulness, and scientific basis. The US might come back to this issue.

53. The representative of Hong Kong supported ASEAN's statement. However, after examining Canada's draft Decision, his delegation might decide to confirm or modify its position.

54. The representative of Venezuela said points (a), (b) and (c) were positive elements of Canada's proposal. Although Venezuela had serious reservations on non-product-related PPMs, it would consider favourably discussion of this issue in the future. Reference should be made to the on-going work in the ISO expert group on eco-labelling.

55. It was agreed the Chairman would consult informally with the Chair of the CTBT concerning a joint CTE-CTBT meeting on eco-labelling.

Item 4: The provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects

56. The representative of Hong Kong said his delegation was encouraged by interest in its proposed database. After further consultation, Hong Kong would follow-up with suggestions agreeable to all. He reiterated the main points of Hong Kong's non-paper (dated 28 May 1996). He noted the concerns related to possible duplication of effort, especially in two areas: (i) Environmental enquiry points might duplicate TBT and SPS enquiry points. He agreed a closer examination was warranted to avoid duplication. However, enquiry point services should be available for the range of trade-related environmental measures and new enquiry points could be adjusted to reconcile available mechanisms. The proposal envisaged that enquiry points would provide the WTO Secretariat with information, including questions and answers and would entail counter notification functions. (ii) Enquiry points might duplicate other fora's information systems on trade-related environmental measures, such as UNCTAD's GREENTRADE. Based on information provided by UNCTAD, there was no duplication between the UNCTAD project and the proposed WTO database. GREENTRADE was based on UNCTAD research, not on notifications by national governments and only covered some WTO Members. Since the proposed WTO database did not involve additional research, duplication was not an issue. As the WTO Secretariat had confirmed, the proposal had no budget implications. The purpose of the TPRM proposal was to use environmental information already available in the TPRM. This was a data gathering exercise which should not have policy implications. He asked the Secretariat to prepare an information note on the coverage and operation of the Central Registry of Notifications.

57. The representative of Morocco supported Hong Kong's proposals. Notification obligations on trade-related environmental measures should be clarified. Morocco proposed a periodic up-date of Hong Kong's proposed database. He supported the creation of environmental enquiry points and that the TPRM should refer to environment-related trade measures. To enhance transparency, the proposed enquiry points should cooperate with multilateral agreements dealing

with similar issues, such as the draft Agreement on Prior Informed Consent (PIC), as well as with international organisations, such as UNCTAD.

58. The representative of the United States said Hong Kong's proposal to clarify notification obligations was useful with respect to using the CTE to identify whether there were any ambiguities which might lead to their inconsistent application. Care should be taken to differentiate problems of ambiguity from those of compliance, which had been a problem in the past. Should areas of ambiguity be identified, the matter should be referred to the Working Party on Notification Procedures and the relevant Committees and Councils as the notification requirements in question covered more than environmental measures; it would not be wise to clarify them with respect to only one element of their coverage. As most trade-related environmental measures already should be covered by the TPRM, he asked if Hong Kong's proposal would reach measures not already covered. If the idea was to enrich the TPRM, the US had some doubt on the efficacy of seeking information on any particular measure just because it was used to achieve an environmental goal. For example, concerns about tax measures were not augmented or assuaged by the fact that the purpose of the tax measure was environmental. He was not convinced of the need to have environmental enquiry points. The Secretariat's collation of environmental measures might not be necessary, but was not troubling. The concern was over singling out environmental measures for additional notification, or special transparency.

59. It was decided the Secretariat would prepare an information note on the coverage and operation of the WTO Central Registry of Notifications.

Item 6: The effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions

60. The representative of Norway said increased market access was important to all Members, particularly developing countries. Evaluation of the environmental consequences of trade policies, including trade liberalization, and of other measures affecting trade was essential as a basis for the market access debate on trade and the environment. Central issues were how to avoid negative environmental consequences following trade liberalization and how to promote environmental cost internalization. He presented Norway's non-paper (dated 20 June 1996), which gave guidance on how to identify products which were candidates for liberalization from an environmental perspective. In certain conditions, the removal of trade restrictions might play a role from an environmental policy perspective by contributing to environmental cost internalization. From an economic point of view, liberalization contributed to economic growth and more efficient resource allocation. As such, trade liberalization might entail both environmental and economic gains. One way to proceed was to identify sectors with a potential double dividend and to prioritize the removal of barriers in those areas. Energy was a key factor for global economic development and global environmental protection. A central concern for the energy market was how to achieve global reduction of polluting emissions to restrict them to the limits set by nature. It was rational to have incentives for using the most environmentally-benign energy sources and disincentives for the most unfriendly. However, this was not the case and, in many countries, the use of coal was not taxed and tax advantages existed for coal used in industry and power generation. Coal production was subsidized, whereas the use of oil and gas was heavily taxed. Studies indicated the elimination of energy subsidies would lead to increased economic growth and a cleaner environment. The Agreement on Subsidies and Countervailing Measures prohibited subsidies contingent on the use of domestic over imported goods and contained incentives that favoured environmental concerns. It was paradoxical it allowed for non-actionable subsidies to promote adaptation to new environmental requirements, but not those that restricted subsidies for

environmentally-damaging products, where more benign products could be substituted. Norway suggested recommendations to Ministers include, *inter alia*, the following. (i) In negotiations on further trade liberalization, the WTO should ensure environmental consequences were considered, focusing on products and services with positive environmental effects. (ii) The WTO should be supportive of efforts to internalize environmental costs. In this respect, the CTE should examine links between trade rules and environmental principles, in particular the polluter-pays principle and the precautionary principle. (iii) The CTE should examine how to integrate concerns related to the use of LCA in areas such as eco-labelling, packaging and re-use. (iv) The WTO should offer scope for incentives for the use of environmentally-friendly products; and (v) not encompass incentives for production and use of environmentally-damaging products.

61. The representative of India presented her delegation's non-paper (dated 20 June 1996). She said environmental measures covered a wide spectrum of measures and had significant market access effects, particularly for developing countries. The positive effects were not easy to exploit. The negative effects could be mitigated or eliminated if such measures were based on multilaterally-agreed criteria and were WTO compatible. The question was how trade could continue to be liberalized and market access improved while taking into account environmental imperatives. Trade measures had been applied based on environmental considerations to: (i) pursue defined environmental objectives; (ii) persuade other governments to change their environmental behaviour; (iii) protect domestic industry; or (iv) enforce international environmental commitments. India felt trade could not be the arbiter of all concerns of the international community. Sustainable development was a larger issue, encompassing, *inter alia*, efficient resource allocation and domestic environmental goals. Nevertheless, safeguarding and enhancing market access would help efficient resource allocation. This Item was cross-cutting, having a direct link with Items 1, 2 and 3. As India's non-paper outlined, discussion should focus on: (i) safeguarding existing trading opportunities and market access from adverse trade effects of environmental policies; (ii) obtaining additional market access as it promoted environmental protection; and (iii) removing trade restrictions and distortions so trade liberalization could promote environmental protection. India would be refining its proposal and welcomed comments.

62. The representative of Nigeria said Norway's non-paper addressed issues of interest to his delegation. Norway had introduced new concepts which required clarification. In principle, he supported Norway's objective for the WTO to include positive incentives for environmentally-friendly products. Norway focused on the energy sector and the internalization of environmental costs for more polluting forms of energy and less taxation for cleaner ones. Not questioning the need to internalize environmental costs, he asked how and for which sectors the WTO could promote the integration of environmental costs in the production process. He asked if WTO efforts in this respect would be undertaken in concert with the environmental community. As the coefficients of cost internalization had yet to be determined and taking into account work in this area, he asked for clarification on how this could be done. He asked how the concepts of "nature's limits" and "tolerance" could be defined and operationalized, and if they varied among countries. Norway's proposal was built on the premise of LCA, which provided the foundation for environmental policies to solve global and regional environmental problems. Although LCA was an important concept, Nigeria believed non-product-related PPMs were outside the WTO's scope, a point which he had made under Item 3(b). If incentives were given to environmentally-friendly products in the Subsidies Agreement, particularly in the energy sector, he asked what form this would take, for which products, and if they would include technical assistance and transfer of ESTs to developing countries on favourable terms and taking into account IPRs. Concerning Norway's focus on the energy sector as an example of an area where the WTO could grant incentives to environmentally-friendly products, he said it would be more productive to adopt a more comprehensive approach, such as one which reviewed traded products in the Harmonized System based on environmental considerations. Norway's recommendations were

built on concepts which needed development to be operationalized. The CTE was not at the stage of making recommendations. More analytical work was needed before any recommendations could be made, including an examination of the assumptions on which Norway's proposal were based.

63. The representative of Japan presented his delegation's forthcoming non-paper (dated 28 June 1996). Importance was attached to empirical and theoretical analysis in discussing this Item. In this context, the WTO should cooperate with other international organizations, such as UNCTAD and the OECD. Japan's views on trade liberalization and the environment needed to be fully reflected in the Report. He recalled the 1995 OECD Ministerial Report stated trade liberalization would have positive environmental impacts provided effective environmental policies were implemented and the environmental effects of trade liberalization would vary, depending on the country, sector and circumstance. Empirical and theoretical analysis should focus on whether trade liberalization was accompanied by appropriate environmental policies and analyze the conditions necessary for their introduction, including environmental cost internalization. The CTE should define its future agenda in broad terms and not focus only on agriculture. Agriculture and the environment influenced each other closely and agriculture had both positive and negative environmental effects. As such, trade policies to promote sustainable agriculture should be discussed in a comprehensive manner. Japan recognized the link between poverty and environmental problems in developing countries, which necessitated the adoption of appropriate environmental policies to ensure agricultural trade liberalization led to environmental improvement. Japan felt the relation between domestic agricultural subsidies and the environment was not as simple as had been claimed, i.e. that subsidies were trade-distorting and likely to cause solely negative environmental impacts. Japan noted the importance of environmentally-friendly agricultural policies promoted in many countries. Other issues remained to be discussed, such as tariff-escalation, export restrictions and export taxes. The OECD Joint Session had concluded tariff escalation did not have a major environmental impact. To make the Ministerial Conference fruitful, the CTE should advance empirical and theoretical analysis on this Item.

64. The representative of the United States supported the way Australia's non-paper dealt with complementary environmental policies. He agreed with the premise trade liberalization could contribute to environmental protection, but this was not automatic. Complementary environmental policies were essential to ensure trade achieved its potential in support of environmental quality; trade contributed by fostering economic efficiency. Environmental policies often were designed to foster economic efficiency by correcting market failures and ensuring cost internalization. He agreed with Australia's assessment of the potential benefits of trade liberalization in fostering environmental objectives. Although the relationship between tariff escalation and the environment was not simple, there was a need to study it in depth. The US would analyze Norway's non-paper to study all "win-win" areas. He was confused by paragraph 8 on input subsidies, which were violations of the Subsidies Agreement, the TRIMs Agreement and GATT Article III. Creating greater opportunity for incentives for the use of environmentally-friendly products was important, although there could be too much even of a good thing. The US would examine Norway and Japan's proposals further.

65. The representative of Sierra Leone referred to the priority of "win-win" reforms in furthering environmental and trade objectives. The relationship between trade liberalization and environmental protection was indirect. Market distortions and inappropriate domestic policy measures, not trade, were the source of most environmental problems. This point should be made to demonstrate the link was not automatic; liberalizing trade would help facilitate, but not guarantee environmental protection. However, trade liberalization offered benefits which could be channelled into efforts for environmental protection. Efforts to liberalize trade should be accompanied by environmental policies by national governments or through international

environmental fora, keeping in mind environmental protection might differ between countries. LLDCs should implement policies to address economic growth and environmental protection for their specific situation. She agreed the CTE should examine the concerns of low-income, commodity-dependent countries and agricultural reform. Since developing countries were vulnerable to declines in export earnings, a heavy reliance on primary commodity exports could make sustainable resource management difficult. Eliminating high tariffs and tariff escalation could contribute to solving this problem by facilitating the means to diversify economies. Technical assistance would enable industry to take advantage of markets and ensure sustainable economic growth. Argentina's paper provided a framework for addressing the issues. The paper had drawn some criticism as it focused on agricultural reform. As the issues were complex, it was unwise to examine them using generalities. Agricultural issues were central to sustainable development, as food security was essential to achieving sustainability. Since sustainable agriculture was of concern to developing countries, the CTE should examine this issue. The approach of identifying the problem, the solution, and then determining further action could be used for many sectors of interest to developing countries. Further agricultural trade reform was an example of the "win-win" possibilities highlighted by Norway and Australia. Current agricultural support policies encouraged inappropriate resource use which led to environmental degradation. The CTE should examine how the WTO could reduce trade-distorting policies and market access barriers to further trade liberalization and support long-term resource sustainability by providing a more predictable trading framework. This would provide opportunities for the rural poor to increase their income, thus alleviating environmental problems linked to poverty. Sectors yielding a double dividend should be identified. The core issues under this Item related to safeguarding and enhancing market access.

66. The representative of Egypt said Australia's proposed elements for the Report attempted to strike a balance, but fell short of suggesting concrete complementary environmental policies to be addressed within WTO competence. He asked Australia to elaborate on the forum and elements for complementary policies and how the WTO would address potential environmental concerns arising from trade liberalization. The contribution a more liberal trading system had only been partially realized, as many countries remained marginal participants in world trade. The CTE should come up with effective measures within the WTO framework to address this problem. Further trade liberalization in the agricultural sector was not a panacea. Measures to address concerns of low-income, commodity-dependent countries should be complemented by measures to build capacity and improve market access. Egypt was hesitant to support further trade liberalization for environmental goals while leaving to other international fora the complementary actions needed to mitigate their adverse effects in developing countries. A case in point was the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries (NFIDCs) which needed to be implemented. To ensure direct and substantial environmental benefits, trade liberalization should be complemented by additional resources and access to ESTs. Tariff peaks in sectors such as textiles and clothing and disguised protectionism should be addressed. Egypt supported Australia's emphasis on the policy mix between Agenda 21, UNCED, World Summit on Social Development and international fora. However, mere acknowledgement of the complementarity of a strong multilateral trading system and other international fora raised doubts as to the balance and degree of implementation of obligations.

67. The representative of the European Communities said her delegation would submit a paper on this Item for the July meeting. She focused on the linkages between agriculture, trade liberalization and environment. An open multilateral trading system allowed for a more efficient use of natural resources in both economic and environmental terms, contributed to lessening demands on the environment and was one of many factors which promoted sustainable development. However, trade liberalization was not sufficient to guarantee sustainable agriculture

and it was not clear it automatically resulted in lower prices, which depended on market evolution and food demand. The economic concept of efficiency optimisation of income through better resource allocation should not be confused with the wider approach to efficiency, including environmental efficiency, which necessitated the inclusion of environmental costs in the economic calculation. If environmental costs were not accounted for, market mechanisms alone would not lead to ecologically-optimal resource allocation. Including environmental costs was not a function of price level, but of political will. The intensity of agricultural production depended largely on the demand for food; regardless of the trading mechanism in place, the challenge was to manage soundly environmental risks induced by growing food demand, in particular by sound land use. Technological evolution played a role in resource management. Extensive agriculture could be environmentally-damaging, which could be avoided through agricultural practices appropriate to the environmental sensitivity of local conditions, existing farming systems and commodities.

68. Public management of agricultural land ensured environmental best-practice was maintained, e.g. to avoid polarization in the territorial distribution of agricultural production. Concentration of production and increased intensification in fertile lands could lead to environmental damage, such as water pollution, soil contamination and biodiversity loss. Abandonment of production on marginal lands with limited productive capacity had social implications and might lead to loss of environmental assets, such as semi-natural habitats and site-specific biodiversity which required up-keep. The 1992 CAP reform had shifted emphasis from price support to compensatory payments; environmental concerns had been central in formulating the new CAP. New policies included agro-environmental measures to promote environmentally-friendly agricultural practices. CTE work on the linkages between agricultural policies and the environment should consider work in other fora, such as FAO, CSD, UNCTAD and the OECD to establish the importance of policy measures to achieve sustainable agriculture, and analyze their consequences for the multilateral trade approach.

69. The representative of Switzerland recognized the synergies between trade liberalization, greater market access and sustainable development. As positive effects were not automatic, complementary environmental policies should be put in place. He commented on Norway's incentives granted to polluting energy consumption. These incentives, in the form of subsidies, might be covered by certain WTO Agreements. Work to strengthen such disciplines could promote sustainable development. Switzerland fully subscribed to the EC's comments. Agricultural reform should be considered bearing in mind environmental aspects. The Agricultural Agreement stipulated non-trade concerns were an integral part of agricultural policies; of particular concern was environmental protection. The Swiss agricultural reform process to implement the WTO Agreements encouraged agriculture which respected sustainable development. The Agriculture Agreement provided for such types of support in the Green Box if decoupled from production. In this connection, the provision of support to agriculture could help promote sustainable development. In the medium term, Switzerland aimed to have its agriculture governed by the principles of integrated production and biological cultures for sustainable development.

70. The representative of Peru said India's holistic approach addressed important issues of market access for developing countries and its proposals for future CTE work were balanced.

71. The representative of Cuba supported India's approach to the issues under this Item.

72. The representative of the Korea supported the comments made by Japan and the EC. He recalled the WTO preamble recognized the goal of sustainable development. Trade liberalization contributed to sustainable development if effective environmental policies were in place. The effectiveness of such policies should be judged by each country according to its specific conditions. Where markets failed to adequately reflect the social and environmental values of

agricultural production, the absence of policy interventions in the agricultural sector would bring about negative consequences for, *inter alia,* socio-economic stability, food security and sustainable development. These cases had received little attention, and had been overlooked in the generalized conclusions drawn by some proposals. This blind spot should be addressed. A spectrum of transmission channels between agricultural policy and the environment existed, each having different environmental effects. It could not be concluded that removing trade distortive agricultural measures had environmental benefits in all cases, or distortive measures had negative environmental effects in all cases. In certain cases, a combination of factors indicated government intervention in the agriculture sector might not have negative environmental consequences. In some cases, so called trade restrictive measures were measures to correct market failure. Supporting the income of rural households in developing countries might benefit the environment. The price mechanism might not reflect the societal value of agricultural output. For example, the social, cultural, and historical importance of rice production was of more value to Korea than indicated by the world price. Agricultural environmental benefits should not be overlooked. He recalled the CSD had decided at its third session in 1995 that non-trade concerns such as economic, social, food security and environmental impact of trade policies should be monitored to promote sustainable development, taking into account their impact on developing countries.

73. Although perfectly competitive markets offered food security, uncertainty in food markets might necessitate a minimum level of domestic production. The current surplus in the world grain market was not guaranteed in the long run. Countries lacking sufficient foreign reserves might face threats if overly dependent on foreign food supply. He drew the following conclusions: (i) the perception there was no inherent conflict between trade liberalization and environmental protection was valid. However, it was inappropriate to declare all trade restrictive agricultural measures had negative environmental consequences; (ii) while it could be recognized some distortions had negative environmental effects, other distortions were environmentally-neutral, or even positive depending on the conditions. It was inappropriate to draw generalized conclusions or recommendations; (iii) the Agriculture Agreement was the forum to consider agricultural liberalization, given many relevant factors, such as market failures and food security, were cross-cutting and could not be considered in the CTE. The Agricultural Agreement had a built-in structure to deal with such issues; (iv) the need for consideration of NFIDCs and heterogenic socio-economic conditions should be emphasized; and (v) it was inappropriate to overemphasize only a few sectors. Korea's above statement should be regarded as a formal proposal.

74. The representative of New Zealand said Australia and Argentina's proposals were a basis for the Report. There might be environmental benefits from trade liberalization even without complementary environmental policies. If not, environmental policies were the best way to secure environmental benefits. He would comment further on the proposals of Norway, India and Japan.

75. The representative of Australia said his delegation would submit a formal paper on the basis of comments on its non-paper (dated 21 May 1996). Issues of food security should not be equated with concerns of NFIDCs; the communique of the Cartagena Cairns Group Ministerial noted trade liberalization was the solution to the concerns of NFIDCs.

76. The representative of Argentina referred to Japan's comment that internal support measures were not trade distorting. If so, then there would not be a Subsidies Agreement. He agreed with the EC that trade liberalization was not a guarantee for sustainable agricultural policies. As outlined in Argentina's paper (WT/CTE/W/24), implementing sustainable agricultural policies must reflect private costs of production, which were affected by intervention policies, subsidies, and tariff escalation. Marginal private costs above the distorted market price led to the overuse of natural resources. It was impossible to implement sustainable agricultural policies on the basis of distorted prices.

77. The representative of Norway responded to comments on his delegation's non-paper. The definition of terms requested by Nigeria had taken place in other fora and should be accepted in the WTO. It was preferable to explore how incentives could be further introduced in the WTO to contribute to sustainable development. The WTO must be responsive to environmental concerns by allowing the use of environmental instruments to achieve environmental goals. The Uruguay Round had adopted environmental incentives into WTO rules, such as in the Subsidies, Agriculture and TBT and SPS Agreements. An illustration was the Subsidies Agreement's provision to permit non-actionable subsidies to promote adaptation to new environmental requirements. Although cost internalization was mainly the responsibility of national governments, Norway was interested in how other delegations felt the WTO could contribute in this respect. There should be a comprehensive approach to discussion of incentives; energy was only an illustration of the use of subsidies without regard to the environment.

Item 7: The issue of the export of domestically prohibited goods

78. The representative of the European Communities supported Nigeria's proposal and recalled his delegation's support for the GATT 1991 draft Decision. Developments in the 15 international instruments in WT/CTE/W/29 revealed lacuna in coverage was limited and products not covered were difficult to identify. The EC supported the negotiation towards a PIC Convention for potentially dangerous chemicals and hoped it would cover as many chemicals as possible and adopt a notification procedure for their export. The EC supported the WTO carrying out the role of a safety net, which should be precisely defined without risk of overlap. The appropriate manner to take into account other fora's work should be an element of the Report.

79. The representative of Sierra Leone said Nigeria's draft Decision (WT/CTE/W/32) provided a basis for discussion. The analysis in WT/CTE/W/29 indicated the need to proceed with caution not to undermine or duplicate progress in other fora, but did not suggest a course of WTO inaction. As Nigeria had outlined, gaps existed, specifically for certain cosmetics and consumer products of importance to African countries, which were not covered by any international instrument. The voluntary nature of many instruments combined with their lack of participation restricted information on those DPGs that were covered. Although it had been argued covering these gaps lay outside WTO competence, since the issues concerned trade the WTO was the place to address them. International instruments had progressed in the DPG area and their expertise must not be undermined. Any WTO action should allow the development of PIC procedures, while covering gaps created by its voluntary nature and currently limited coverage. The PIC procedure applied only to chemicals, not products containing chemical residuals. Gaps in coverage could be filled without undermining what was covered already through a proposal similar to the GATT 1991 draft Decision. The draft Decision encouraged participation in existing international instruments and stipulated exports of a product concerned did not need to be notified under GATT if the exporting contracting party had notified it already under an instrument listed in an Annex to the Decision.

80. Nigeria's proposal called for technical assistance for LLDCs to build capacity for controlling DPGs and contribute to the success of mechanisms, like PIC, which relied on an infrastructure in the importing country. Nigeria's proposal encouraged Members to use appropriate international organizations to facilitate technical assistance. The Report from the third meeting of the Conference of the Parties to the Basel Convention suggested this reinforcement could be helpful, given the lack of financing in the Basel Convention's Trust Fund. Although it had been suggested the WTO lacked expertise to provide technical assistance in this area, it had the expertise to provide technical assistance to prepare technical regulations and to "adjust to, and comply with, SPS measures necessary to achieve the appropriate level of SPS protection"

(Article 9 of the SPS Agreement). Recalling the WTO preamble, she asked how trade in goods which presented serious and direct danger to human, animal or plant life or health or the environment could contribute to raising living standards without the exchange of information on such goods and their hazards. At the 38th Session of the Contracting Parties, a Ministerial Declaration called for DPG notification to provide a database to study the problem. The "notifications received did not provide a sufficient database to assess" the situation (PC/SCTE/W/7). The Declaration was repeated at the 40th Session with discouraging results. Action on Nigeria's proposal would ensure that compliance with future requests for notification would not follow this trend.

Item 8: TRIPS and the environment

81. The representative of India introduced her delegation's revised non-paper (dated 18 June 1996). India would submit a separate proposal on the relationship between the TRIPS Agreement and MEAs which contain IPR-related obligations, such as the Biodiversity Convention. While India still believed in the use of the conceptual framework in its first non-paper (dated 2 April 1996), the scope of environmentally-sound technologies had been broadened to cover products produced by such technologies. Where environmentally-sound technologies and products (EST&Ps) were covered by IP, they were called "proprietary EST&Ps", irrespective of the IP type covered if relevant to situations covered in the proposal. Three situations for proprietary EST&Ps were covered: (i) mandated for use directly or indirectly by an MEA, which was linked to the definition of an MEA under Item 1; (ii) related to mandatory national environmental standards or measures affecting exports; and (iii) related to multilaterally-agreed environmental standards or measures affecting exports, even if voluntary. If MEA provisions called for transfer of technology on "fair and most favourable terms", this should be reconciled with the TRIPS Agreement. In the interests of the global environment, trade measures, essentially negative measures, and technology transfer provisions, essentially positive measures, should be reconciled with WTO provisions. Relevant to the first two situations were the guiding principles in Article 12 of the TBT Agreement. The reasons for selecting these three situations and the likely solutions to the issues raised were described in sections III to VI of India's non-paper.

82. For copiable technologies, there was either the use of patent revocation which was already TRIPS compatible, or an interpretation of Article 31 to allow for easier use of compulsory licensing. Shortening the term of protection was a "win-win" situation. India recognized weakening of IP protection only helped countries with the technological capability to copy the required EST&Ps and was not useful for technologies that were difficult to copy without the IP owner's cooperation. As compliance with mandatory environmental standards affected MEA Parties and exporters to countries imposing these requirements, India's revised non-paper proposed the following obligation be added: "The owners of the EST&Ps shall sell these technologies and products at fair and most favourable terms and conditions, upon demand, to any interested party which has an obligation to adopt these under national law of another country or under international law". To maintain incentives for EST&P generation, international organizations and national governments which had mandatory environmental standards should institute financial mechanisms for compensation. India was open to solutions on how to reconcile EST&P generation with easy access to and transfer of them on fair and most favourable terms.

83. The representative of the United States said IP systems based on the TRIPS Agreement promoted technological innovation and efficient and effective technology transfer. Companies routinely licensed IPRs in establishing joint ventures which resulted in transboundary technology transfer. The focus should not be exclusively on IP protection as the factor affecting technology transfer. Policies related to investment, ownership and operation of foreign businesses were also

significant for technology transfer involving proprietary technology. He gave preliminary comments on India's non-paper. Based on Articles 27, 32 and 33 of the TRIPS Agreement, he said unfettered discretion did not exist to revoke patents on grounds not specified in the TRIPS Agreement. India had interpreted the phrase "fair and most favourable terms" as contained in certain MEAs to mean "preferential and non-commercial terms". The US had concerns with this interpretation based on the negotiation of Article 16 of the Biodiversity Convention, during which India's interpretation had been an alternative proposal to the current language.

84. The representative of Indonesia, on behalf of ASEAN, supported the thrust of India's non-paper and would comment further on this Item.

85. The representative of the European Communities said the EC had high levels of IP and environmental protection. The EC would study further the relationship between these two areas.

86. The representative of India said patent revocation was a matter of interpretation of the TRIPS Agreement; Article 32 did not restrict the grounds of revocation and Members were free to have any grounds of revocation compatible with the Paris Convention. She did not dispute that, at a subsequent stage, any revocation could be subject to judicial review. If a country had grounds, such as public interest, for patent revocation this was not TRIPS-incompatible. India's interpretation remained "preferential and non-commercial terms".

87. The Chairman said the meeting to be held on 24 July would constitute the last opportunity to submit proposals. At this meeting, he would report on the results of the informal consultations on specific issues, Items and proposals.