

Committee on Trade and Environment

REPORT OF THE MEETING HELD ON 13-14 FEBRUARY 2001

Note by the Secretariat

1. The Committee on Trade and Environment (CTE) met on 13-14 February 2001 under the Chairship of Ambassador Yolande Biké. The agenda in WTO/AIR/1474 was adopted.

Schedule of meetings

2. The CTE will hold an Information Session with Multilateral Environmental Agreements at its meeting on 27-28 June 2001. It was agreed to invite the Secretariats of the Convention on International Trade in Endangered Species of Wild Flora and Fauna, the Basel Convention on Transboundary Movements of Hazardous Wastes and Their Disposal, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Convention on Biological Diversity, the UN Framework Convention on Climate Change, and UNEP Chemicals (on the PIC and POPs Conventions). The Chair noted that, due to the keen interest in these Sessions, it might be necessary to extend the June meeting by half a day in order to allow sufficient time for discussion.

3. In view of the preparations for the 4th WTO Ministerial Conference in Qatar, it was agreed to change the date of the final meeting this year to 3-4 October.

4. An updated list of documents circulated in the CTE is contained in WT/CTE/INF/3.

Observer status for intergovernmental organizations

5. Pending discussion in the General Council on observer status for intergovernmental organizations, it was agreed to postpone discussion of the requests from OPEC, the League of Arab States, and the Gulf Organization for Industrial Consulting.

Item 7: The issue of exports of domestically prohibited goods

6. The representative of Egypt said the importance of the UN Consolidated List of Products Whose Consumption and/or Sale have been Banned, Withdrawn, Severely Restricted or Not Approved by Governments (the "Consolidated List"), set out in WT/CTE/W/161, was its wide-ranging coverage of pharmaceuticals, agricultural, industrial and consumer products as well as the regulatory actions of Governments. At previous meetings, Egypt had raised a concern of developing countries, mainly in Sub-Saharan Africa, regarding soap and cosmetics containing mercury manufactured in Europe and marketed in developing countries. WT/CTE/W/161 showed that mercury and cosmetics were classified separately in the UN List. The UN List enabled countries to match listed products with imports and helped national authorities to take actions ranging from the review of licensing provisions, laws and regulations to the enforcement of new laws and regulations. All concerned countries recognized the importance of the UN List and its annual issuance. Egypt thus urged the UN Secretariat to prepare the seventh issue of the List in due time, in view of its importance to developing countries faced with DPG imports, which endangered public health and lives. Egypt supported posting the UN List on the Internet for easier access by regulatory bodies. Capacity building and technical assistance were essential in order to enhance the ability of developing and

least-developed countries to deal with DPGs. Egypt welcomed the copies of the UN List made available in the WTO and requested the Secretariat to coordinate with the UN to make available issues one to four and the forthcoming issue.

7. The representative of India supported Egypt. India observed that the UN List did not specify whether products were being exported despite domestic restrictions, which was an important lacuna. The UN Secretariat had cautioned that decisions taken by a few Governments on a specific product might not be representative, particularly in view of differing risk-benefit considerations. Thus, it would depend on the circumstances in a given society whether a product were harmful. A developing importing country needed to know the conditions of domestic use of a product so that it could conduct independent risk-benefit analysis based on its domestic circumstances. Applying the principle of common but differentiated responsibility, developed countries should inform the importing country of their risk-benefit analysis and their regulations of DPG exports.

8. The representative of Argentina highlighted the importance of WT/CTE/W/161 to the DPG debate, a topic which related to Bovine Spongiform Encephalopathy (BSE). In 1988, the United Kingdom had prohibited the use of bonemeal for stockbreeding. In 1996, the United Kingdom prohibited the export of bonemeal. Thus, the UK had exported bonemeal world-wide for eight years. The World Health Organization had stated recently that this practice might have spread BSE to countries where no risk existed before. Fortunately, this was not the case of Argentina, which had never used bonemeal for stockbreeding. The CTE should analyse this case in which a product had been prohibited domestically, but had been exported with huge consequences. The WTO contribution should include an analysis of this issue, and what should be done to avoid its repetition.

9. The representative of Canada felt that the reference to the Cartagena Protocol on Biosafety in WT/CTE/W/161 was misleading. The implication that the Protocol dealt with dangerous products was mistaken. Of the existing MEAs, several dealt with products that were deemed to be dangerous at the national level; for example, the prior informed consent (PIC) procedure for certain hazardous chemicals in international trade, i.e. the Rotterdam Convention, listed substances that were prohibited or whose uses were severely restricted. Risk analysis at the national and international levels had shown that those substances were extremely noxious and that their uses should be discouraged. These substances had been placed by consensus on the PIC list. The draft international legally-binding instrument on persistent organic pollutants (POPs), the draft Stockholm Convention, dealt with substances, industrial chemicals and pesticides deemed to have negative environmental impacts. However, in the case of the Cartagena Protocol, the situation was different. Products developed through biotechnology were not deemed, a priori, to be environmentally hazardous; they were new products which for that reason had yet to be assessed for their environmental impacts. There was no presumption that biotechnology products were dangerous. In Canada, these products were subject to risk assessment, as with any new product, to determine whether they presented an environmental risk.

10. The representative of the European Communities felt it would be useful for the Secretariat to facilitate wider knowledge of the UN List, which could also be made available on the Internet. The EC suggested that the Secretariat liaise with the UN to signal that the CTE had discussed this List and felt it was useful and should be more broadly available. This was an example of where Members could contribute to coherence between intergovernmental organizations.

11. The Chair recalled the importance of this topic, particularly for developing and least-developed countries and suggested inviting the UN Secretariat to the 27-28 June 2001 meeting to provide further information on the UN Consolidated List. The Chair also drew attention to the first Continental Conference for Africa on prevention and environmentally sound management of hazardous wastes, Morocco, 8-12 January 2001, the report of which had been circulated to CTE Members by the Basel Convention Secretariat. Recalling the paper submitted by Bangladesh, WT/CTE/W/141, the Chair said Members should continue to provide information on their national experience with DPGs.

12. The CTE agreed with the proposal to invite the UN Secretariat for the next CTE meeting.

Item 8: The relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights

11. The representative of Peru presented Peru's national experience paper on traditional knowledge and access to genetic resources in WT/CTE/W/176. Given its geographical setting, Peru was among the ten countries with the most extensive biodiversity in the world, also known as "mega-diverse countries", because of their range of eco-systems, species, genetic resources and indigenous cultures with valuable knowledge. To preserve this wealth of genetic resources, there had been a joint effort between the Government, production sectors and civil society to implement policies designed to improve the quality of life of the Peruvian people and to use the vast genetic resources in a sustainable manner. The process of integrating environmental considerations in the policy-making process at the national, regional and international levels began through the promulgation of legislation and participation in international bodies. Recently, Peru had adopted a new approach to the adoption and sustainable use of biodiversity, genetic resources and traditional knowledge and had emphasized the global approach to this subject. Peru's national strategy elaborated in 1994 had the objective: (a) to conserve the biodiversity of the essential eco-systems, species, genes and ecological processes on which the survival of species depends; (b) to promote fair and equitable sharing of the benefits arising out of the use of biodiversity; (c) to promote education, the building of human and institutional resource capacity, information exchange, scientific research, and technology transfer; and (d) to promote Peru's economic development based on sustainable use of biodiversity and participation by the private sector.

12. The main legal tools that had been established in Peru in the 1990's were listed in WT/CTE/W/176, including the Environmental Code; the National Strategy and the Law on the Conservation and Sustainable Use of Biological Diversity; the Law on National Protected Areas; and the proposed Protection Regime for the Collective Knowledge of Indigenous Peoples and Regulation of Access to Genetic Resources. With respect to the latter, Peru had established a *sui generis* system recognizing the right of indigenous peoples to decide how their traditional knowledge should be used through prior informed consent. A fund for indigenous peoples had been established from products developed on the basis of traditional knowledge. The Regulation on Access to Genetic Resources set out several requirements and provided for the establishment of a fund for the conservation and development of genetic resources.

13. Peru's paper also referred to regional instruments, such as the Andean Community Common System for Access to Genetic Resources. Efforts at the international level were important, such as *Agenda 21* and the Convention on Biological Diversity (CBD), which should be accompanied by an international regulatory framework to give effect to the intellectual property rights of local and indigenous communities and to regulate access to genetic resource. International recognition of traditional knowledge would give those possessing it the legal possibility of asserting their rights outside their own countries, and would result in economic benefits. It would also curtail misappropriation and unauthorised exploitation of knowledge and provide alternatives at the international level to take account of the protection of new plant varieties in Article 27.3(b) of the TRIPs Agreement, as well as the obligation in the CBD to respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities. Peru requested that its paper, WT/CTE/W/176, be circulated in the TRIPs Council.

14. The representative of Brazil presented Brazil's paper, WT/CTE/W/186, also circulated in the TRIPs Council, on the checklist of issues under the review of Article 27.3(b) of the TRIPs Agreement. On "technical issues relating to patent protection under Article 27.3(b)", Brazil felt Article 27.3(b) should preserve Members' flexibility to exclude patentability of plants and animals, but considered that clarification was necessary to establish a precise definition of terms such as "micro-organism" in order to determine the scope of patentability of Article 27.3(b), as the use of

that term had different meanings, according to whether it was used in a scientific, legal or market context. On "technical issues relating to *sui generis* protection of plant varieties", Article 27.3(b) should also preserve Members' flexibility to decide on the most effective *sui generis* systems for plant variety protection. International instruments, such as UPOV (1978 and 1991), FAO and the CBD, as well as national systems, were useful references for *sui generis* plant variety protection systems.

15. Brazil ascribed particular importance to "the relationship to conservation and sustainable use of genetic material." Brazil felt the TRIPs Agreement and the CBD should be mutually supportive and should ensure sustainable use of genetic resources. To avoid conflicts in the implementation of both Agreements, Brazil proposed to amend Article 27.3(b) to include the requirements of: (a) the identification of the source of the genetic material; (b) the related traditional knowledge used to obtain that material; (c) evidence of fair and equitable benefit sharing; and (d) evidence of prior informed consent from the Government or the indigenous community for exploitation of the subject matter of the patent. An interpretative note to Article 27.3(b) should also be made to clarify that discoveries or naturally occurring material were excluded from patentability.

16. On "the relationship with the concepts of traditional knowledge and farmers' rights," Brazil said protection of traditional knowledge should be seen from two complementary perspectives. On the one hand, the review of Article 27.3(b) should ensure that traditional knowledge was not patented without due regard to the principles of prior informed consent and fair and equitable benefit sharing. On the other, Brazil was open to discuss adequate multilateral ways of protecting traditional knowledge. In view of its link with development, the review of Article 27.3(b) was an adequate occasion to discuss *sui generis* protection systems. Thus, synergies between the TRIPs Council and other fora, such as the CBD, WIPO, FAO and UNCTAD were necessary. The CTE had a role to play in discussions on traditional knowledge to ensure clarity between TRIPs and CBD provisions. At the 24-25 October CTE meeting, several Members had pointed out certain inconsistencies in the position of others with respect to the lack of desire to clarify GATT Article XX concerning the WTO-MEA relationship, while desiring to clarify TRIPs Article 27.3(b) concerning the TRIPs-CBD relationship. Brazil noted that this position was understandable in that GATT dealt with trade in goods, whereas the TRIPs Agreement dealt with intellectual property rights. Moreover, Article 27.3(b) was under review and amendments may be necessary to clarify certain provisions.

17. Brazil appreciated Peru's contribution and felt that Peru's experience with biodiversity and traditional knowledge protection was a model for others. The involvement of all sectors of society, including local communities in economic activities was important. In establishing the proposed legislation, the concept of equitable benefit sharing and the protection of traditional knowledge had been fully taken into account by Peru. Brazil was also pursuing programmes to combine sustainable development, traditional knowledge protection and equitable benefit sharing. In June 2000, legislation had entered into force to regulate access to genetic resources, protection of and access to associated traditional knowledge, benefit sharing, access to, and transfer of technology for its conservation and use. Brazil encouraged others to present their national experience.

18. The observer of the World Intellectual Property Organization made a statement, circulated in WT/CTE/W/182-IP/C/W/242, on its activities on intellectual property, biodiversity and traditional knowledge and the new WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, the first meeting of which was on 30 April-3 May.

19. The representative of Thailand welcomed Peru's contribution, which illustrated its efforts to implement a national strategy for protecting genetic resources, while taking into consideration socio-economic and environmental factors. This systematic approach was an example for countries with biodiversity and genetic resources, which was the case for many developing countries. Peru's effort proved that a *sui generis* system was effective and could promote intellectual property rights and sustainable genetic resource use, as well as protect traditional knowledge and ensure equitable benefit sharing. Thailand supported a harmonized system for protection of intellectual property that

conformed to the CBD's objectives, and was committed to equitable access to genetic resources and benefit sharing, including farmers' rights, as recognized by the ongoing negotiations in the International Undertaking on Plant Genetic Resources (IUPGR). This would ensure benefits were shared by all parties, and that genetic resources were used in a sustainable manner.

20. In 1999, Thailand had enacted the Traditional Medical Promotion and Protection Act and the Plant Varieties Protection Act, which complied with effective international plant protection systems and equitable benefit sharing, including protection of farmers' rights and indigenous knowledge. Thailand's new Constitution, enacted in 1997, supported the rights of traditional communities to conserve their customs, local knowledge, arts and culture. These communities also had the legal right to participate in the management, preservation and exploitation of natural resources. While the TRIPs Agreement did not recognize the concept of fair and equitable benefit sharing for holders of traditional knowledge and genetic resources, Article 27.3(b) should remain unchanged. States would thus retain the sovereign right to protect new plant varieties through patents, effective *sui generis* systems, or a combination of the two. To ensure all parties benefited, Thailand supported Article 27.3(b) that required new plant varieties to conserve traditional knowledge, the innovations and practices of indigenous and local communities, as in the CBD, and farmers' rights, as in the IUPGR.

21. The representative of the European Communities said this was an Item on which debate had been richest recently. This was an interdisciplinary issue where the need for progress in the WTO was clear. The EC welcomed Peru and Brazil's papers, and noted Peru's inclusive legislative process. The EC clarified that it was open to tackling all the TRIPs-related issues of interest to developing countries, including those in the TRIPs review and any others Members may wish to see in a broad negotiations. The EC was a *demandeur* for some issues, particularly geographical indications, an issue not alien to environmental management. As Brazil, the EC saw a link between this issue and MEAs. The EC welcomed the recognition of the TRIPs-CBD linkage, and supported understanding why some MEAs had an impact on trade and how to make that linkage positive.

22. The EC agreed with Brazil that the fact that many Members were just beginning to consider the need for national legislation for traditional knowledge did not mean that international action was not yet needed. International availability of data on traditional knowledge was essential and could be the most cost-effective area for immediate action. Cases had arisen concerning patents that had been given and then, after becoming controversial, rescinded, such as turmeric and neem. These patents had been granted due to the absence in patent offices of data on prior traditional knowledge in other countries. Although favouring international action, the EC noted that individual countries were free to develop protection systems and establish appropriate mechanisms. The EC supported this process, including national legislation to control access to genetic resources. The EC raised the point of proportionality and the international impact of legislation, about which the CTE had expertise. It was important that when drafting legislation, laws not be cumbersome. The EC recalled that the CBD set out that access should be available on mutually agreed terms. That meant an end to biopiracy, but also that laws should strike a balance between sustainable exploitation of traditional knowledge and genetic resources. The EC thus had difficulties with Brazil's proposed conditions on granting patents. For example, it was difficult to provide evidence of fair and equitable division of assets or prior informed consent when countries did not have a legislative framework to enable companies and holders of traditional knowledge or genetic resources to certify that this was the case. Thus, international action was timely, which was an issue for the agenda of a broad negotiating process.

23. The representative of India said this issue was important for India. India referred to the communication from the CBD asking the WTO to acknowledge the relevant provisions of the TRIPs Agreement. Noting previous references to coherence between intergovernmental organizations, India appealed to Members to accept the request from the CBD, an organization to which most WTO Members were signatories, for observer status in the TRIPs Council.

24. India welcomed Peru's national biodiversity legislation, which included the principle of fair and equitable benefit sharing arising out of the use of traditional knowledge and genetic resources, as well as prior informed consent. The TRIPs-CBD relationship should be explored further. International recognition of traditional knowledge would give those possessing it the legal possibility of asserting their rights outside their own jurisdiction or country. In the majority of circumstances, the holders of traditional knowledge did not have the means to benefit from it, nor protect it from misappropriation. The linkages between trade and environment which should be furthered to harmonize the CBD and the TRIPs Agreement included: (i) that there should be international recognition of *sui generis* systems developed at the national level on access and benefit sharing for biological resources and traditional knowledge, including a requirement that patent applications disclose the source of origin of biological material or traditional knowledge used in an invention; and (ii) that environmentally sound technologies and products should be made available to developing countries on fair and most favourable terms by operationalizing the relevant TRIPs provisions.

25. In the TRIPs Council, India had supported Brazil's paper, WT/CTE/W/186, which raised important issues for developing countries. Brazil was correct in noting that the review of Article 27.3(b) of the TRIPs Agreement raised several issues with respect to obligations undertaken by Members in other agreements, such as the CBD. Brazil was also correct in raising the link between Article 27.3(b) and development issues, which should be explored further in the CTE and the TRIPs Council. India agreed that Article 27.3(b) should preserve Members' flexibility to exclude patentability of plants and animals, and that there should be a more precise definition of terms such as "micro-organisms" to determine the scope of patentability in Article 27.3(b). India also agreed that Article 27.3(b) provided for *sui generis* systems of protection enabling countries to devise systems that best suited their needs. India supported retaining this flexibility; there should not be prejudgement of what *sui generis* should be in terms of its relationship with UPOV. Brazil was correct in referring to need to implement the TRIPs Agreement and the CBD in a mutually supportive way. India thus supported Brazil's proposal to amend Article 27.3(b) to require the identification of: (i) the source of genetic materials; (ii) the related traditional knowledge used to obtain that material; (iii) evidence of fair and equitable benefit sharing; and (iv) evidence of prior informed consent from the Government or indigenous communities. India hoped that developed countries would respond to these concerns. India felt WIPO had contributed usefully to the discussions. India would be concerned if it were to be suggested that WIPO was the only forum in which to discuss biodiversity and traditional knowledge issues. Given that these issues impinged on important aspects of the TRIPs Agreement, this discussion should be undertaken first and foremost in the WTO.

26. The representative of Japan welcomed Peru's contribution, which provided a useful input, particularly when discussing the way the CBD should be implemented. The fact that Peru's proposed legislation for the Protection of Collective Knowledge of Indigenous People had three main objectives: (a) to ensure that the Peruvian State and indigenous peoples received fair compensation for the use and commercial exploitation of their resources; (b) to promote national and foreign private investment, as well as scientific research; and (c) to prevent the irrational exploitation of resources. These objectives were a guiding principle to be applied in devising ways to protect biodiversity and sustainable use of genetic resources. However, Japan had concerns about Peru's regime. Peru noted that a fund had been created for the development of indigenous peoples, which would receive 0.5 per cent of the sales resulting from the marketing of products developed on the basis of traditional knowledge. According to the proposed regulation, among the minimum conditions for access projects was a commitment to pay the national authority 5 per cent of the value of the transaction agreed between the resource provider and the applicant. Japan felt it was controversial to oblige applicants to pay royalties and impose a rigid rule on benefit sharing when traditional knowledge had not yet been well defined as an intellectual property right. It would be necessary to discuss this issue further.

27. Article 22 of the CBD stipulated that the provisions of the CBD should not affect the rights and obligations of any parties deriving from existing agreements. If legislation to implement the CBD were inconsistent with other international agreements, or unnecessarily hampered access to property

rights by other parties, Japan doubted that it would benefit that country, and supposed that it might not contribute to conservation and sustainable use of biodiversity. The CBD should constructively discuss this issue. Peru expressed the view that an international regulatory framework and implementation measures were needed to give effect to the CBD's principles. Japan felt attention should be paid to discussions in those international organizations with the relevant expertise. In WIPO, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore had been established and its examination would start in May 2001. In the FAO, discussion was ongoing on whether the International Undertaking on Plant Genetic Resources was in harmony with the CBD. On Peru's legislation, Japan noted that economic benefits accruing from genetic resources varied depending on the commercial efforts applied; hence, uniform rules should not be imposed in order to ensure balanced benefit sharing between resource providers and users. Rather, this issue should be dealt with case-by-case according to the principle of mutual approval. Rigid rules on benefit sharing might hamper access to genetic resources.

28. The representative of Norway welcomed Peru's initiatives to ensure Peruvian cultural and biological diversity. Norway was aware of the vast importance of Peru's biodiversity, and was encouraged to learn about the Andean regional cooperation for environmental protection and sustainable resource development. WIPO had also contributed to the CTE discussions. Norway agreed with India that this discussion demonstrated the WTO-MEA linkage, as well as the relevance of discussion on the WTO-MEA relationship. Practical discussion under this Item demonstrated the impact of an MEA on a WTO Agreement and *vice versa*, which helped to clarify the WTO-MEA relationship. Norway considered the TRIPs Agreement and the CBD should be mutually supportive. Members should be aware of the principles under both sets of treaties when implementing both agreements. Article 16.5 of the CBD contained obligations for Parties to ensure compatibility between the CBD and other agreements, including the TRIPs Agreement. The TRIPs Agreement provided minimum standard provisions. Whilst the CBD and the TRIPs Agreement had different areas of application, the implementation of one had a bearing on the other. Both instruments should be interpreted in a sufficiently flexible manner for Members to enact non-conflicting measures for the implementation of both. Biotechnology was one of the most promising and important areas of research and development. An important part of this new area was patentability of plants and animals, micro-organisms and microbiological processes. These issues raised fundamental ethical, social and environmental questions pertaining to sustainable development, access to and transfer of resources, and benefit sharing. Norway recognized developing country concerns on this subject.

29. According to the CBD, States had sovereign rights over their genetic resources, and the authority to demand prior informed consent before transferring resources. The TRIPs Agreement did not make prior informed consent a prerequisite for achieving patent protection; it did not touch on this subject. During a new round of WTO negotiations, Norway would support the introduction in the TRIPs Agreement of an obligation to disclose the origin of genetic resources when applying for a patent. Norway supported incentives to create national regulations to protect sovereign rights over domestic resources. However, countries should provide sufficient flexibility to permit access to plant genetic resources for food and agricultural products. The ongoing FAO negotiations should allow for an open exchange of these resources in order to provide for food security. Technical assistance should be provided to help developing countries with the drafting, if requested.

30. Biodiversity conservation and sustainable development was the CBD's primary objective. It was claimed that developing countries would not give priority to conservation or development if patenting of their genetic resources were carried out by developed country industries. To reduce the potential for this to occur, there should be fair and equitable sharing of the results of patents. Benefit sharing systems must be established, taking account of the interests of providers and users of genetic resources. Benefit sharing was not specifically recognized in the TRIPs Agreement. A benefit sharing system should be part of the national legislation implementing the CBD, which should also include a provision on prior informed consent. Traditional knowledge was valuable for developing countries. Patents on genetic resources may limit the use of the material and knowledge involved.

The TRIPs Agreement was silent here. Members were free to legislate, for example on farmers' rights, to protect traditional knowledge. Norway supported work to secure developing country rights in this area. The TRIPs Agreement recognized *sui generis* systems for plant variety protection. A national *sui generis* system could include farmers' rights and traditional knowledge on plants.

31. The representative of Cuba welcomed Peru and Brazil's submissions. Cuba supported work to apply *Agenda 21* and the CBD, as well as the establishment of a framework regime in this area as recommended by the UNCTAD Expert Meeting. Cuba supported prior informed consent procedures, such as those set out in Peru's paper. Cuba also supported the conclusions in paragraphs 42-48 of Brazil's paper. Cuba supported giving observer status to the CBD in the TRIPs Council.

32. The representative of Chile thanked Peru for its paper. One of the characteristics of traditional knowledge and genetic resources was that they did not recognize political boundaries and were developed in areas in which more than one country might be involved. Chile asked how Peru's proposal foresaw possible cross-boundary conflicts between indigenous peoples; what was the mechanism for decision-making by indigenous communities to agree on the exploitation of a given resource; what was the duration of traditional knowledge protection; and, what type of tax system was suggested with respect to the distribution of royalty benefits?

33. The representative of Colombia thanked Peru, Brazil and WIPO for their contributions. Colombia was the second largest biodiverse country and, like Peru, felt protection of traditional knowledge and access to genetic resources was essential. In the Andean Community, laws had been established to ensure protection of traditional knowledge. On applying *Agenda 21* and the CBD, Colombia felt an international regulatory framework and implementing measures should be established to ensure protection of traditional knowledge.

34. The representative of Guatemala welcomed Peru's submission. Guatemala asked for Chile's questions and Peru's responses to be circulated. Guatemala welcomed Brazil's contribution, on which it would comment at a later stage. Guatemala inquired as to WIPO technical assistance in this area.

35. The representative of Venezuela welcomed Peru, Brazil and WIPO's contributions. Venezuela had also been developing laws to apply the Andean legislation on protection of traditional knowledge, and had encountered difficulties with its domestic implementation. Venezuela highlighted the importance for developing countries of ensuring protection of traditional knowledge and the right to regulate access to biodiversity. The Andean Community met regularly to follow up on implementation and to ensure that legislation would not be an access barrier to genetic resources. In seeking to protect these resources, countries should be flexible, taking account of difficulties that might be encountered, such as with the private sector, research institutes and indigenous peoples. This should not, however, be an obstacle to Andean countries' right to protect their genetic resources. Venezuela agreed with Brazil on the need to modify Article 27.3(b) to take into account traditional knowledge and access to genetic resources. Venezuela welcomed Norway's recognition of the importance of traditional knowledge, and that international provisions must be flexible.

36. The representative of the United States thanked Peru for its informative paper, which was helpful to delegations in understanding Peru's perspective on the protection and sustainable use of biodiversity, genetic resources and traditional knowledge. The United States recommended that discussions concerning the TRIPs Agreement and the CBD take place in the TRIPs Council, the body with IPR expertise. In view of the questions raised by some delegations as to whether non-traditional intellectual property issues raised in the context of the CBD were relevant to the TRIPs Council reviews, the United States welcomed the creation of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. The United States also welcomed WIPO's paper and recommended that substantive discussions on the issues originally raised in the CBD take place in the WIPO Intergovernmental Committee. The United States thanked Brazil for its paper, on which the United States would comment at a later stage. The United States

noted its belief that the TRIPS Agreement and the CBD, to the extent that they are related, are compatible.

37. The representative of Costa Rica welcomed Peru and Brazil's papers. Peru's experience paralleled that in Costa Rica. Costa Rica would comment on Brazil's paper at a later stage.

38. The representative of the Côte d'Ivoire thanked Peru and Brazil for their papers, although these papers were not yet available in French. In Côte d'Ivoire, issues of natural resources were intimately related to traditional knowledge. India's comments on the difficulties met by developing countries in protecting traditional knowledge were welcome.

39. The representative of Switzerland welcomed Peru and Brazil's papers. Switzerland asked how Peru intended to implement the proposed regime on access to genetic resources and protection of traditional knowledge. Switzerland also asked Peru to explain the "intangible components" in the Andean system for access to genetic resources, and how this new tool fitted with the TRIPs Agreement. Switzerland welcomed WIPO's statement and the WIPO Intergovernmental Committee established to clarify the role of IPRs and genetic resources, traditional knowledge and folklore. As there was no point in dealing with traditional knowledge twice, Switzerland suggested tackling this issue only in the WIPO Intergovernmental Committee, not in the WTO.

40. The representative of Kenya welcomed the statements of Brazil, Peru and India, which supported the African Group's proposal in the TRIPs Council. Kenya underscored the CBD objectives of conservation, sustainable use, and benefit sharing of genetic resources in relation to the TRIPs Agreement. In the context of food security, both the CBD and the TRIPs Agreement had a role to play. Both agreements, in addition to serving as control mechanisms, should ensure sustainable management of genetic resources. Kenya looked forward to work in UNCTAD and WIPO.

41. The representative of India expressed his delegation's appreciation for Norway's comments and hoped other developed countries would show similar flexibility.

42. The representative of Peru thanked Members for their comments and questions on his delegation's paper. Peru felt it was necessary to improve the legal instruments for the protection of traditional knowledge and access to genetic resources. Peru's experience was not only a national experience, but a regional one. As noted by the EC, better information was needed on traditional knowledge in order to protect it. Peru's legislative proposal in paragraphs 15-18 of WT/CTE/W/176 was being commented on in the domestic context. Peru took note of Japan's concern regarding the Fund for the Development of Indigenous Peoples. Peru also took note of Chile's concerns on resolving potential disputes across boundaries in connection with indigenous peoples' property rights, as well as on the duration of the proposed protection. Peru noted that the proposed tax system was *sui generis*, recognizing indigenous peoples' ownership and associated rights over their traditional knowledge, as well as their right to decide how it should be used. This was related to a voluntary register and the possibility of direct licenses and contracts with indigenous peoples. The Andean Community was preparing a regional biodiversity strategy, which would touch on this aspect. Peru would continue to consult on the proposed legislation at the national, regional and international levels.

43. The representative of Brazil said WIPO had a relevant role to promote discussions on the protection of traditional knowledge and the relationship between intellectual property, genetic resources and folklore. As such, Brazil welcomed the creation of the WIPO Intergovernmental Committee. Brazil will participate actively in that forum, especially to add momentum to synergies between the WTO and WIPO in these areas. Brazil endorsed India's comment that WIPO was one, but not the only forum to discuss traditional knowledge. UNCTAD was another organization that could contribute to the debate. The WTO was at the core of this discussion, particularly given the review of Article 27.3(b), as well as the comprehensive CTE discussions.

44. Brazil said that Norway has shown an open minded position in the CTE and the TRIPs Council. Brazil encouraged Norway to circulate in the CTE the paper it had presented on the review of Article 27.3(b) in the TRIPs Council. The EC had made interesting remarks on the need for international action on genetic resources and traditional knowledge. Brazil appreciated the constructive approach of the EC. Brazil was not against biotechnology, but against biopiracy. As a country rich in genetic resources, it made sense that Brazil was interested in encouraging biotechnology and benefitting from it. Hence, the relevance of benefit sharing. Brazil had suggested in the TRIPs Council that an outcome of the review of Article 27.3(b) should be its amendment to include, for example, the requirement of the identification of the genetic material when filing for a patent, the associated traditional knowledge, evidence of benefit sharing schemes, and prior informed consent. Agreeing with the EC that national legislation should not be cumbersome, Brazil said its proposed requirements would not be more cumbersome than existing patent filing requirements. Brazil's proposed requirements already constituted the practice of bilateral contracts between companies and traditional communities. These requirements should be included in Article 27.3(b) to ensure they could be easily enforced and to provide a predictable environment for access to genetic resources and traditional knowledge protection. These requirements would be important to promote biotechnology in a balanced and sustainable manner. Brazil did not fully understand Japan's concern on Peru's requirement to ensure that patent holders should pay royalties to traditional communities in Peru. Since it was not far fetched to pay royalties to patent holders, traditional communities should benefit from their significant role in providing access to their genetic material.

45. The observer of WIPO said that WIPO had an extensive technical assistance programme, including assistance, advice and information on intellectual property and traditional knowledge and genetic resources, including Article 27.3(b). WIPO also provided legal advice on draft laws, including intellectual property laws to protect traditional knowledge, or *sui generis* laws. WIPO invited Governments to request assistance in this respect.

46. The observer of UNCTAD reported on the UNCTAD Expert Meeting on Systems and National Experiences for Protecting Traditional Knowledge (TK), Innovations and Practices in Geneva, 30 October to 1 November 2000, with participation from Governments, intergovernmental organizations, indigenous and local communities, NGOs, industry and academic institutions. Over 200 experts from 80 countries had participated. The experts had addressed the objectives of, and means of achieving traditional knowledge protection systems and means of achieving those ends, including prior informed consent, access and benefit sharing, strengthening customary law, IPR instruments, *sui generis* systems, documenting traditional knowledge; as well as measures to encourage TK-based innovations and the development of TK-derived products. The Expert Meeting had been planned in consultation with WIPO, CBD, FAO, WHO, WTO and others. The outcome had been circulated in the TRIPs Council in IP/C/W/230, and was available at www.unctad.org/trade_env/index.htm.

47. The CTE took note of the letter from the Convention on Biological Diversity informing the relevant WTO bodies of Decision V/26 taken by the CBD Parties in May 2000. This Decision invited the WTO "to acknowledge the relevant provisions of the CBD, and to take into account the fact that the provisions of the TRIPS Agreement and the CBD are inter-related and to further explore this inter-relationship." It was decided that the Secretariat would respond by sending the most recent Secretariat papers.

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

48. The observer of UNEP said UNEP had been developing methodologies for the environmental assessment of trade liberalization since 1998. UNEP had commissioned country projects to assess the environmental effects of trade policies, and a group of international experts were helping UNEP to draft a *Reference Manual for the Integrated Assessment of Trade-Related Policies*. The term "integrated" referred to the linkages between the environmental, economic and social effects of trade-related policies and required an examination of the linkages between these different effects. A second round of country projects was under way involving Argentina (fisheries), China (cotton), Ecuador (bananas), Nigeria (cocoa and rubber), Senegal (fisheries) and Tanzania (forestry). Experience gained from these assessments was being used in the development of the *Reference Manual*, which would provide options for countries to select assessment methodologies, according to their needs and conditions. Experts from the national institutions conducting the projects were also members of the group of international experts set up to review the *Reference Manual*.

49. Among the lessons learnt from these assessment projects were: (i) assessment methodologies would always have to be adapted to local conditions, needs and priorities; (ii) there was no substitute for "learning by doing", both for capacity building and development of the assessment tool; (iii) an open, transparent and informed multistakeholder assessment process, allowing for sharing of perspectives, expertise and experience, was crucial to accurate assessment and for acceptance of policies in response to assessment; and (iv) capacity building was the key to strengthening developing countries' ability to use the assessment tool to maximize the net development benefits of trade policies. It was clear from the country projects that there was no lack of commitment to environmental protection in those countries, but that what was needed was strengthened capacity to conduct assessments and develop effective policy packages. The country projects and *Reference Manual* would be discussed at a Ministerial Meeting in Berlin on 20-22 March, co-hosted by the German Federal Environment Ministry and UNEP. This meeting would address the work of UNEP and others on assessment and explore how to build WTO-MEA synergies. Environment and trade Ministers would examine how to enhance policy coherence between trade, environment and development at the national and international levels. UNEP introduced the research institutions in Argentina and Senegal, which it had commissioned to assess to undertake case-study assessments.

50. The Research Institute from Argentina, Centro de Estudios Ambientales (CEDEA), presented the UNEP case study on the environmental impacts of trade liberalization in the Argentine fisheries sector, considering environmental and socio-economic impacts. The UNEP *Global Environmental Outlook 2000* classified the exploitation of Argentine fisheries as the fastest growing in the world, an effect of trade liberalization. The application of structural adjustment policies in Argentina in the 1990s had had strong impacts on the economic structure of the country. The positive impacts caused by structural changes (such as price stabilization and fixed foreign exchange rates) had created conditions that encouraged growth in the fisheries sector. This growth had been accompanied by the opening up of trade for Argentine fisheries products in foreign markets and diminishing resources in oceans in developed countries' jurisdiction. Thus, there had been an increase in fisheries production and exports; improvement and growth of fishing fleets and technological innovation; and transfer of fleet overcapacity from some countries to Argentina, which had benefitted from subsidies. Exploitation of fisheries resources had been minor in Argentina until the economy had been opened, following which exploitation had taken place at unprecedented rates, with fisheries representing one of Argentina's most dynamic economic sectors and the world's fastest growing fishery. Value added had grown steadily, with exports rising by 478 per cent from 1985 to 1995. Exports had even surpassed, for some years, trade in traditional agricultural products.

51. A strong international dimension was present in current fisheries patterns, represented not only by growth in trade and reliance on foreign markets by the harvesting sector (with 10 per cent of fishery products consumed domestically and 90 per cent exported), but also due to the globalization of capital. Following a side agreement with the EU, fishing capacity had greatly increased from 1990 to 1995. Increasing and unregulated trade had impacted negatively on resources, such as degradation of fisheries biomass, nearing collapse for some species; variations in fishing effort; ecological degradation; increased costs for fisheries regulation and control; increased fiscal costs and subsidies; increased corruption; non-diversification of catches (about three species made up ninety per cent of the catch); and fleet overcapitalization. Socio-economic impacts were increasing unemployment and a worsening of labour conditions. Social conflict had been another negative impact that had risen in periods of fisheries scarcities. A quantifiable economic cost-benefit analysis indicated that the policy situation of the 1990s (i.e uncontrolled fishing and lack of adequate economic instruments) had implied a net direct cost of about US\$500 million for the most exploited species. If a similar analysis were used for a hypothetical situation of maximum sustainable yield, this policy could have had a net benefit of about US\$5.1 billion. Economic instruments for sustainable management can be used to benefit from fisheries trade, while maintaining natural capital, developing the industry and generating employment, such as changes in the sector's productive and economic structure (adding value to the resource); re-dimensioning fishing fleets; and implementing tradeable quotas. Other management measures included technological adaptations in fishing gear, overhauling command and control mechanisms, and effectively applying sustainable management.

52. The Research Institute from Senegal, ENDA Tiers Monde, presented the UNEP case study on the environmental impact of trade liberalization in the fisheries sector in Senegal. The Senegalese economy had depended heavily on phosphates and groundnuts. Since the drought years and the resulting agricultural crisis, fishing had become the primary economic sector. As an essential component of rural development, fishing was a multipurpose activity strongly integrated in the Senegalese socio-economy. Fishing played a strategic role in ensuring sustained economic growth by contributing to a reduction in the balance of payments deficit (accounting for one-third of the value of exports) and an increase in employment (fisheries employed about 15 per cent of the work force). Small-scale processing and fish trade played an important role in the economy, especially in terms of food security, with 75 per cent of animal protein consumption supplied by fish. The objectives of the project were to analyse the factors that had favoured the rapid growth of fisheries exports, to assess the socio-economic and environmental impacts of export strategies and to develop a framework for sustainable fisheries management. In order to protect fish stocks and optimise their value, Senegal had established fisheries legislation in 1976, 1987 and 1998 to define usage rights and standards.

53. Measures had been taken to encourage export-led growth as part of structural adjustment. External demand had increased as a result of a 50 per cent devaluation of the Senegalese currency due to structural adjustment. The fisheries agreements since the beginning of the 1980's, particularly the EU Agreement, also had played a role in increasing exports two-fold from 1980 to 1990. The new Lomé Agreement would phase out Africa, Caribbean and Pacific (ACP) country trade advantages. Also, the process of tariff reduction in the WTO was expected to further erode ACP country trade preferences. The Lomé Convention contained fisheries provisions, and provided technical and financial assistance to improve knowledge of fisheries in ACP countries to increase the contribution of fishing to development through increasing catches, processing and exports. EU support encouraged sustainable fisheries management and promoted development of small-scale fishing. The Senegalese fisheries sector had faced serious disequilibria in resource exploitation and market supply, as well as a shift in the catch of individual species. Coastal demersal (deep-lying fish) stocks with high market value, and mainly exported, were over-exploited and risked facing local market supply shortages. There also had been a reduction in pelagic (surface fish) stocks, mainly consumed locally, which threatened food security. In view of the many purposes served by the Senegalese fishery, solutions should take into account socio-economic and environmental factors. Policies to enhance fisheries sustainability included resource management systems; making general support measures to the sector more specific; enforcing fisheries regulations and quotas; and developing port and storage

infrastructures to add value to exports. This study would be reviewed and policy conclusions drawn at the national level, including participation from fishing communities.

54. The representative of Japan stated his delegation's concern about the possible negative effects of trade liberalization on fisheries sustainability. The Argentine and Senegalese case studies showed that, under certain circumstances, trade promotion could have a negative impact, compromising food security and fisheries sustainability. Fisheries depletion in the Argentine case had been caused by subsidies and trade promotion. The Senegalese case illustrated the negative impact of trade on fisheries sustainability. Trade promotion should be considered with fisheries management in mind. Care should be taken to liberalization trade in the absence of sustainable fisheries management regimes as it could provide economic incentives to increase fishing effort.

55. The representative of India asked for clarification of the cost-benefit analysis undertaken in the Argentine study.

56. The Research Institute from Argentina said that, although it was not possible to determine whether subsidies were the cause or effect of mismanagement, they could exacerbate the situation and lead to overfishing. Subsidies were one of the integral policy failures, along with command and control problems. At a practical level, it was difficult to differentiate where one policy instrument stopped and the other started. The figure of US\$500 million, referred to in the study, was the result of a standard cost-benefit analysis. The biomass of hake in Argentina was on the verge of collapse and would require time to recover, if appropriate management systems were in place.

57. The Research Institute of Senegal said the purpose of the case studies was to enable countries to place trade policies in a comprehensive framework and to increase understanding of their impacts. Various factors had led to the current situation in the Senegalese fisheries. It was not so much what was exported, but how a country exported. During the process of trade liberalization, consideration should be given to putting in place a framework in which export-led growth could be sustained.

58. The representative of Canada presented Canada's paper, WT/CTE/W/183, which outlined a process for conducting strategic environmental assessments of trade negotiations in keeping with the 1999 Federal Government Cabinet Directive on the Environmental Assessment of Policy Plans and Programme Proposals. The overarching goal of these assessments was to integrate environmental considerations in decision-making from the earliest stages, on an ongoing basis. Environmental assessments contributed to more open decision-making with the Federal Government by engaging representatives from other levels of Government, the public, the private sector and NGOs; they addressed public concerns by demonstrating how environmental factors were being considered during trade negotiations. Environmental assessments could also improve policy coherence at the national level by providing decision-makers with the means to integrate environmental considerations into trade policy at an early stage. These assessments were largely focused on the Canadian environment. Ideally environmental issues should be examined in a global context. However, in view of limited data, sovereignty issues and practicalities, the focus would be on assessing the likely environmental impacts of trade negotiations in relation to Canada. Although the proposed framework called for national assessment, transboundary, regional and global environmental impacts would be considered if they impacted directly on the Canadian environment. Canada urged Members undertaking environmental assessments to exchange information on these assessments in the CTE, including criteria and indicators used and possible environmental impacts. The Secretariat note on environmental assessments, WT/CTE/W/171, could be updated as the situation developed.

59. The representative of the European Communities presented his delegation's paper on the precautionary principle, WT/CTE/W/181-G/SPS/GEN/225-G/TBT/W/154, which contained the Resolution adopted at the European Council meeting in Nice in December 2000. This was a response by member States to the Commission's Communication on how to implement precaution in an optimal manner, which had been circulated in the CTE and the SPS and TBT Committees. This document

laid out principles on the way to approach precaution in implementing legislation within the EC. The Council had adopted a science-based approach, whereby science must be involved in risk assessment and in the definition of risk management. There was a commitment to a transparent process at all stages, including the earliest possible consultation of European and other interested parties, as well as civil society. Proportionality was emphasized taking into account the short and long term risks. The Council undertook that measures should not be applied so as to result in arbitrary or unwarranted discrimination and that least-trade restrictive measures should be selected where possible. This was an important aspect of implementing precaution. The EC was also committed to consistency and to coherence from one decision to another and to a cost-benefit examination of action and inaction. Decisions in accordance with precaution should be reviewed in the light of developments in scientific knowledge. Hence, recognition of the need for continued monitoring and research. These principles, which represented a new set of obligations for the legislatures and executive in the EC, were also worth studying in the CTE, as they were a strong statement of how precaution and open trade principles could be mutually supportive. With ever-wider application of precaution, it was in the collective interest to reflect on those principles and to consider whether there was room in the WTO for greater clarity on a shared set of principles for on applying precaution. The Resolution set out the principles that the EC was committed to applying. The EC hoped this would reassure its trading partners that precaution was not an excuse for protectionism, and that it would guide dialogue towards the application of similar open trade principles where precaution was needed.

60. The EC also drew attention to an informal discussion paper that addressed the issue of sustainable trade, *The Non-Trade Impacts of Trade Policy – Asking Questions, Seeking Sustainable Development*, a contribution from the Commission's Directorate-General for Trade to internal debate within the EC, about the link between issues on the agenda of the WTO and sustainable development including the agenda of the World Summit for Sustainable Development in 2002, available at www.cc.cec.8082/com/trade/index_en.htm. The EC was interested in reactions to this paper, which addressed cross-cutting issues relevant to CTE work.

61. The representative of the Czech Republic welcomed UNEP activities and cooperation with the WTO on environmental assessment, as well as the Ministerial Meeting co-hosted by UNEP and the German Federal Ministry of the Environment in Berlin on 20-22 March 2001. The Czech Republic presented a recent study initiated by the Ministry of Environment in 1999 on *Impacts of Trade Policy and International Trade Agreements on Environment, and on the Contrary Impacts of Environmental Policy and Environmental Agreements on International Trade*. This study was intended to serve as preparation for a new round of multilateral trade negotiations at the 3rd WTO Ministerial Conference in December 1999. The study included environmental assessment of trade liberalization in agriculture, energy and environmental services, and used the OECD *Methodologies for Environmental and Trade Reviews* (1994), and *Methodologies for Assessing the Environmental Effects of Trade Liberalization Agreements* (2000): it was available at www.env.cz.

62. The agricultural sector had been selected as a priority for assessment, given that agriculture was part of the built-in WTO negotiations, and of importance for the Czech Republic's preparation for accession to the European Union. The agro-environmental situation in the Czech Republic had been analysed. Since 1989, the ratio of gross agricultural output in terms of GDP had decreased from 7 to 2 per cent by 1997. Through restitution, privatization and transformations, a transition from collective to private ownership had occurred. Agricultural support also had decreased significantly from an average of 54 per cent in 1989-1991 to only 17 per cent in 1999. The main environmental effects of agriculture were: consumption of fertilisers, pesticides, water and its quality. The ratio of agricultural greenhouse gases (GHGs) in total emissions, which was approximately 3.4 per cent in 1993 had decreased by 30 per cent. The Czech landscape had been shaped by agricultural and forest activities for about 1,000 years. Collectivization of farms in the 1950's with destruction of balks between the fields of small farmers and the subsequent sharp increase in the size of fields of agricultural cooperatives had had a negative impact on biodiversity, so that currently 45 per cent of the higher plant species was endangered, 35 per cent of mammal species, 57 per cent of bird species,

28 per cent of fish species and 100 per cent of reptile species. Genetically modified (GM) organisms and GM crops had also been a controversial issue in the Czech Republic. Due to measures taken in 1991 on cattle feed, there had not been any problems with bovine meat and BSE.

63. Agricultural covered 54 per cent of land, of which 72 per cent was arable land. Contamination of land had its origin in industrial activities (extraction of raw materials, thermal power stations, metallurgy, etc.). The main source of risk from these substances was their high content in the air (90 per cent pollution of lead, 70 per cent of mercury and 60 per cent of cadmium). Fertilisers were a source of 32 per cent of pollution by cadmium and of 40 per cent of chromium. There were various kinds of supports for agriculture; for example the Ministry of the Environment provided positive subsidies in the form of soft loans for environment protection programmes, and the Ministry for Regional Development had programmes for village restoration.

64. The energy sector had been selected given its environmental impacts. During the socialist era it was the most polluting sector in the Czech economy. Electricity production was mainly based on brown coal combustion in power stations. Since then, efforts had been dedicated to the equipment of power stations with modern combustion and cleaning techniques and de-sulphurization units. Thus, from 1985 to 1999, emissions of SO₂ had decreased by 86 per cent, emissions of NO_x by more than 80 per cent, and suspended particulate matter by 92 per cent. The ratio of nuclear power in electricity production would increase after completion of the Temelin plant from a current 20 to 40 per cent. Thus, the Czech Republic would have no problems meeting its Kyoto Protocol commitment to decrease GHGs by 8 per cent in 2010, compared with 1990 levels. On 1 January 2001, new acts on energy and management of energy had come into force, increasing energy efficiency and decreasing a relatively high energy demand per production unit. The Czech Government had also endorsed a State Programme on Energy Conservation and Use of Renewable Sources in 2001.

65. The Czech Republic supported the liberalization of trade in environmental services. Four types of methods for providing environmental services were specified in the GATS. At an early stage, the Czech Republic had recognized the importance of pollution clean-up and environmental protection. Ecological NGOs had already been politically active during the socialist era. With the restructuring of Czech industry, there had been a growth of smaller enterprises focused on environmental goods and services. The current WTO Services Classification List was inadequate for "environmental services". Due to absence of statistics on environmental services the study used, for an approximation of the volume, information, such as on "Environment Market", and environmental services in waste management. The Czech Republic exported environmental services in production know-how. Approximately CZK1 billion had been obtained from the export of environmental goods and services to 21 countries. The main objective of Czech providers was to penetrate the markets of European post-communist countries, Russia and, eventually China, Indonesia and Thailand. With the implementation of environmental accounting, the Czech Republic would have more precise data on this sector. It was hoped to improve the classification of environmental goods and services, perhaps based on the proposals of the EC, the US and others in the GATS Council.

66. The representative of Australia said the precautionary principle had been raised in the SPS Committee and the CTE. When considering this subject, it was necessary to realize that the precautionary principle was related to a range of broader policies and approaches underpinned by the need to be cautious in situations of incomplete or preliminary scientific information. Australia raised this broader idea of caution in the hope of bringing clarity to a difficult and abstract debate. This debate was not just about a monolithic principle, but about a generic issue of caution in situations where scientific evidence was inconclusive and significant risks were involved. On the European Council Resolution, Australia noted that it contained references to, and recognition of, WTO rules that took into account the precautionary principle, and agreed that these rules could accommodate reasonable use of precaution. The Resolution referred to the need to avoid disguised, arbitrary and unwarranted trade discrimination. Australia agreed, and stressed that these concepts were reminiscent of WTO language and were crucial to WTO predictability and transparency. This

view on the precautionary principle and WTO rules also held for other decision-making based more broadly on caution, which also should be subject to the caveats on discrimination. The Resolution contained references to science, demonstrating the importance of incorporating scientific information in decision-making where uncertainty was significant enough to raise concerns. Australia supported this, science must underpin decision-making to the maximum extent possible. Australia agreed that other factors would be involved, included economic ones.

67. Several examples of situations existed where science had raised concerns albeit without consensus on serious public policy issues, and this had not been properly integrated in decision-making, with consequent serious harm. Proper handling of science was crucial. Australia also referred to the EC Resolution's mention of "case-by-case" and the specific features of a situation where precaution may be relevant, a key element in the debate where the focus had often been on the generic idea of the precautionary principle and its status in international law. The key issue facing governments was the application of precaution, which would vary according to circumstances. This focus had to be primary, given the increasing complexity of human technology and its environmental interactions. Given these complexities, Australia agreed that the WTO be involved in helping to explain issues related to its expertise. WTO disciplines not only provided scope for precautionary decision-making where trade and environment intersected, but placed limits on possible over-extension or abuse of precaution. This balance should be maintained. Australia queried the reference in paragraph 25 of the Resolution to a possible need for the WTO to "more fully" account for precaution. Australia also asked how this Resolution would feed into other areas of EC decision-making, where uncertainty in scientific evidence relevant to public policy gave cause for concern.

68. The representative of Brazil asked whether Canada would consider the environmental impact assessment within its own borders or elsewhere. On the EC Resolution on the precautionary principle, Brazil felt that in the light of scientific uncertainty, countries took measures based on precaution. In Brazil, the environmental impact of genetically modified organisms was being analysed, involving several sectors of society. Given that science was lacking, this was a good example of the application of precaution. Thus, precaution was not to be disregarded, although Brazil would question whether precaution could be considered to be a principle. Brazil saw no need to further integrate precaution in the WTO. Indeed, the preamble to the EC Resolution affirmed that the WTO contained provisions that took precaution into account, such as Article XX, Article 5.7 of the SPS Agreement, and, implicitly, Article 2.2 of the TBT Agreement. Brazil questioned the need to further integrate this principle in the WTO or to establish guidelines to clarify the applications of precaution. On the proposal to better integrate precaution, the EC had not provided a definition of the principle. Although Brazil did not disagree with the EC on resorting to minority opinions, what were these opinions and when would they be taken into account? Brazil questioned who would set the desired level of protection set out in the EC Resolution, and on which scientific knowledge would a review of precautionary actions be based? There had not been sufficient clarification of issues in the EC Resolution for acceptance of the EC's proposed clarification.

69. The representative of Norway welcomed the EC communication on the precautionary principle. In general, Norway shared the EC's view on the precautionary principle, but wished to make comments on its application. Practical adaptation of the precautionary principle should be developed in relation to specific international instruments and according to sectoral specific risk assessment. Differences in the description of this principle could be seen in international agreements, such as the Biodiversity Convention, the Cartagena Protocol on Biosafety, as well as in Article 5.7 of the SPS Agreement and Codex Alimentarius work. This principle had to be adjusted to the context in which it was applied. Norway agreed with the EC that the application of the precautionary principle should be seen as part of risk management, not as a component of scientific risk assessment. As the EC pointed out, the precautionary principle should not be confused with the element of caution that scientists applied in their assessment of scientific data. Decision on what constituted an acceptable level of risk, as well as choices relating to measures, were ultimately political and should depend on the sector in question and on which international rules, standards and guidelines were applicable.

70. The principles proposed for application applied to all risk management measures, not just those based on precaution. Since the basic premise was a situation of scientific uncertainty, it followed that there were corresponding uncertainties with regard to the effects/benefits of any measure. The proposed guidelines could be seen as one of several relevant elements as to how decision makers should handle political decisions in the light of the inherent uncertainty connected with the use of the precautionary principle. On proportionality, Norway agreed with the EC that precautionary-based measures must be proportional to the desired level of protection against a risk. Long term and short term risks, as well as risks associated with cumulative effects, should be taken into account. However, uncertainties might also apply to the link between cause and effect. Facing such uncertainties, responsible Governments should be allowed to "err on the safe side". On cost-benefit analysis, comparison of the costs and benefits was needed to ensure cost-effectiveness and to avoid unnecessary trade restrictions. Analysis should include all costs and benefits, not letting the underlying uncertainty bias the analysis in favour of excluding factors to which it might be difficult to assign economic values. However, a complete cost-benefit analysis of action or non-action might not be possible, due to uncertainties that would necessarily be present in a case where the precautionary principle was to be applied, methodological problems in calculating costs and benefits, etc.

71. Norway welcomed Canada's paper, which shed light on issues that Norway was currently addressing in undertaking environmental assessment. Norway attached importance to environmental and sustainability assessment and to the information contained in WT/CTE/W/171, which could be updated to include analysis from other countries and organizations. Following an inter-ministerial process, in 1999 it had been decided to undertake environmental assessments of trade liberalization in areas of importance to Norway. The reviews would assess environmental implications of further trade liberalization and developments of the multilateral trading system in transport services (road, rail, air and shipping), and fish and fish products. Regulatory issues were also being addressed. Studies on agriculture and environment were also being compiled. It had been agreed that these sectoral studies should apply the 1994 OECD methodology for environmental reviews of trade policies and agreements and the OECD Environmental Indicators. Thereby, environmental impacts would be assessed via scale, structural, and product effects. It had also been agreed that the purpose of these *ex ante* reviews was to improve the basis for decisions related to WTO negotiations and to contribute to integrating environmental concerns into the multilateral trade system. Environmental impacts should be made visible to increase support for taking into account environmental considerations in trade negotiations. Norway's Bureau of Statistics had also carried out an *ex post* macro study to assess the effects on air pollution and waste generation of trade liberalization in the 1990s.

72. Sectoral Ministries were responsible for sectoral assessments, and the Ministries of Environment and Foreign Affairs for the macro study, with external research institutes carrying out the work. The sectoral reviews and the macro study would be subject to broad consultations with business, trade and environmental organizations to ensure an open discussion contributing to national transparency. As environmental reviews were relatively new, Norway's research institutes had faced challenges in conducting these studies. Valuable work had been done by international organizations, such as the OECD, UNEP and the World Bank, as well as NGOs, such as WWF, and national research institutes. Norway supported efforts to develop a methodologies for environmental reviews.

73. The representative of India said Brazil had raised important questions on the EC Resolution on the precautionary principle. The principle of precaution in the *Rio Declaration* was linked to scientific assessment, but also to irreversible environmental damage and cost-benefit analysis. Thus, India's understanding of the precautionary principle was that there had to be a set of carefully defined circumstances, in which there was no other option as the environmental damage was irreversible. India was interested in exploring the aspect of irreversibility.

74. On environmental assessments, India emphasized that such assessments was undertaken at the national level. The premise should be to encourage trade liberalization through international policy, in order to reap the economic dividends that would help developing countries devote more financial

resources to environmental protection. India agreed that where it was established that trade liberalization could result in transboundary environmental impacts, these impacts should be addressed through multilateral cooperation. India said the weight attached to the factors that were relevant for environmental impact assessment might vary between countries. Local environmental and developmental priorities would also vary between countries, as well as the environmental absorptive capacity and the economic relevance of specific sectors. Thus, India recognized there were limitations to developing a "one size fits all" multilateral approach to assessments. Nevertheless, India appreciated Members sharing their national experiences with environmental assessment.

75. The United States noted that the substance of the European Council resolution on the "precautionary principle" was similar to that in the communications submitted previously by the EC to the CTE and to other WTO committees. The United States noted that it shares some of the EU's views on precaution. Both the United States and the EU strive for the highest level of consumer protection and exercise precaution in their efforts to achieve this goal. The United States agreed on the need for non-discriminatory, science-based application of precaution to protect people and the environment. The United States agreed on the need to ensure that decision-making on precaution was transparent and inclusive. The United States also agreed that precaution is reflected in WTO rules - the SPS Agreement. However, like Brazil, the United States did not agree that there was a "precautionary principle" recognized as customary international law. Like Brazil, the United States was puzzled by the Council resolution's failure to define the "precautionary principle" and by the resolution's proposal for criteria on the application of this non-defined "principle." The United States noted that it has learned through its extensive use of precaution, dating back to 1906 with respect to food safety, that the use of precaution is context-specific – that it is used in different ways in different contexts, *e.g.*, food safety, environment, and fisheries. Thus, the United States felt it was impossible to conclude that a so-called "precautionary principle" exists in customary international law.

76. The US thanked Canada and the Secretariat for their papers on environmental assessment. The US looked forward to other countries presenting their national experiences, and welcomed discussion on this important area.

77. The representative of Mexico said it was important to have national experiences available on environmental assessment. Mexico inquired as to what would happen if the results of environmental assessments were negative. For example, if Canada found that the domestic environmental impact of tariff reductions would be negative, would Canada no longer negotiate this tariff reduction? If a country made an environmental assessment on a product that had been negotiated in the Uruguay Round, and determined that trade concessions had had a negative impact on the environment, would Canada be willing to accept the withdrawal of concessions granted by that country at a time when the environmental impacts had not been known. Justification for withdrawing the concessions would be that it had caused environmental harm. The possibility existed under Article XXVIII for financial compensation in this respect. Mexico had concerns about this aspect.

78. The EC had affirmed that the precautionary principle was already WTO-compatible, but required clarification. Mexico asked what should be clarified and why; and whether existing WTO provisions would prevent the EC from applying the precautionary principle? This principle applied when there was insufficient scientific basis for a decision, which was problematic as decisions could be taken for protectionist purposes. A Member was free to apply the precautionary principle under WTO provisions and, if this resulted in a violation of the rights of other Members, appropriate financial compensation should be paid.

79. The representative of Malaysia said environmental assessment of trade was a complex area and methodologies were under review, and would differ based on the circumstances in each country. Canada, Argentina and Senegal's presentations had used different approaches to environmental assessment; the UNEP studies in Argentina and Senegal examined various criteria, including economic criteria, whereas Canada's national experience focused on environmental impact. National

assessments would have different criteria and given that circumstances differ in each country, these reviews were more appropriately undertaken nationally, not multilaterally. Malaysia welcomed the sharing of national experiences.

80. Malaysia agreed with Mexico's comments on the EC Resolution on the precautionary principle. The WTO had a clear position on the application of precautionary measures. The SPS and TBT Agreements supported a science-based approach based on adequate risk analysis, and measures that were not more trade restrictive than necessary. While precaution may be recognized as an international environmental principle, in the trade context this principle should be integrated in accordance with trade-related provisions and considerations. Malaysia agreed that the WTO already accommodated reasonable use of precaution and that there was no reasonable alternative to a science-based approach, which would give certainty and predictability to this area of decision making.

81. The representative of Argentina recalled that the assessment of the environmental benefits resulting from the removal of trade restrictions and distortions fell under Item 6. As the objective of the WTO was trade liberalization, Argentina considered that the WTO's contribution should be the assessment of the environmental consequences of the existing trade restrictions and distortions. This assessment should not be carried on the basis of national trade policies, but by analysing sectorial trade restrictions and distortions, such as agricultural subsidies. It was necessary to assess the environmental effects of existing trade distortions to provide a basis on which to examine possible impacts of liberalization. Although national case studies were interesting, Argentina was sceptical as to the objectivity of these assessments, for it was unlikely that countries would criticize their own trade policies. For example, a country would hardly admit that its sugar policy had negative environmental impacts on specific national habitats or that what it fed its cattle had had a negative effect on consumer health. Nevertheless, environmental assessment would help at the national level.

82. Argentina supported India, Brazil and Mexico with respect to the EC Resolution on the precautionary principle. There were elements in Article 5.7 of the SPS Agreement that would permit the application of the precautionary measures, yet one did not appear in the EC Resolution, namely the provisional nature of measures based on insufficient scientific evidence. Measures based on precaution should be put in place provisionally, for a reasonable period of time, and be reviewed based on science. Scientific evidence was the ability to link two events without ambiguity; science might find an unambiguous cause and effect relationship, but it could not affirm that two events were never related. For science to prove the non-existence of such a relationship, a time limit for scientific research should be established. This was why the provisional nature of precautionary measures was crucial, where scientific evidence was lacking. Argentina would continue to study the EC Resolution, but it did not agree that a principle of precaution existed in international law.

83. The representative of Japan made preliminary comments on the EC Resolution on the precautionary principle. The Resolution did not clearly specify that trade restrictive measures had to be WTO consistent. Since the conception of the precautionary principle, the definition and the relationship between risk assessment and management were not clear. Discussions by experts in UNEP and CODEX should be monitored to determine how best to handle this issue in the WTO.

84. The representative of Switzerland said application of the precautionary principle was important to Swiss policymaking. Switzerland's federal law relating to environmental protection explicitly required in Article 1.2 the adoption of a precautionary approach. The EC's analysis of the precautionary principle and its relationship with the WTO was important, particularly the clear statement that precaution was relevant for risk management, not for risk assessment. The precautionary principle should not be confused with caution scientists applied in assessing data. While caution was part of scientific approaches, precaution was relevant only once a scientific evaluation had been completed and if, at that stage, uncertainty was still attached to the results. Thus, a science-based assessment was prerequisite for applying the precautionary principle. Switzerland shared the EC's view that the precautionary principle should never serve to justify protectionism, and

that transparency was required in the decision-making process. The EC Resolution had contributed to the WTO discussion in terms of responding to misunderstandings of this principle.

85. The representative of Canada said that the Canadian environmental assessment would review how trade-induced economic change was affecting the national environment. Canada emphasized that its approach to these assessments was "learning by doing." Environmental assessment was a non-binding tool for decision-makers to increase coherence through self assessment. There would also be scope for mitigation options outside a trade agreement. If environmental degradation valued in economic terms were greater than expected economic benefits of liberalization, there would be a case to reassess how to proceed, particularly in the long term if the production base were being degraded.

86. Canada viewed precaution as a pervasive element of health and environmental policies. Canada had a domestic process under way to operationalize the concept and application of precaution, including guiding principles such as sound science and transparency.

87. The representative of the European Communities felt the CTE was progressing in the discussion on precaution. Concerns were disappearing as it was realized that countries were using a precautionary approach in similar ways. Although the EC was confident that the precautionary principle would be recognized as part of international law, this was not a problem at this stage. On India's comment on whether precaution was only relevant when the consequences were irreversible, the EC felt that if it were necessary to find a monolithic definition, this issue should be addressed. Irreversibility was set out in the *Rio Declaration*, but not explicitly in other contexts. The EC Resolution addressed the short and long term effects, with irreversibility at one extreme of a continuum. The EC gave the example of ozone layer depletion and the Montreal Protocol, where countries had taken precautionary action as it was feared that the consequences of inaction might be irreversible. The shrinking of the ozone hole illustrated that if countries acted soon enough, even the most egregious environmental damage could be reversed.

88. The distinction between risk identification, assessment and management was complex. Risk identification might be if, according to scientific knowledge, A were taken, B might follow, but B was not a positive outcome. Risk assessment addressed the likelihood of B following A. Given the assessment of this likelihood, risk management determined how to manage the situation so as to reduce or eliminate the likelihood of B resulting from A. Precaution did not come into the identification or assessment of risk. When managing risk, however, the fact that an assessment would be less than completely certain had to lead to the application of the precautionary approach. Therefore, it was difficult to determine with ultimate certainty the likelihood of B following A. Minority scientific opinion referred to opinions of scientists in good standing with given expertise. Political institutions would determine the level of protection through the democratic process, taking into account the level of risk the society was willing to bear. The EC agreed that this was a case-by-case issue, but questioned whether the fact that precaution was applied in that manner meant that it would not be possible to make general rules. In many fields, good governance principles or administrative practices were applied case by case.

89. The EC asked whether Members could subscribe to the principles in paragraphs 7 to 22 of the European Council Resolution, in WT/CTE/W/181, and whether the invocation of precaution was acceptable under Article 2.2 of the TBT Agreement? At this stage, it was important to address these operational issues. Clarification of what was meant by precaution was in process. Reference to compensation would in effect nullify the concept of precaution only if compensation were paid, as if it were a departure from a country's WTO rights and obligations. This proposition was a priori incompatible with the EC interpretation of the WTO Agreement. The EC agreed with Argentina that science could not prove a negative and that science presented less and less certainty. Even with a sound scientific basis, ambiguity could not be avoided and provisional measures based on precaution were needed. From a trade perspective, there were two objectives in discussing precaution: to ensure that a wide ranging approach to precaution did not create unjustified trade obstacles; and to ensure

the WTO accommodated precaution. It was necessary to clarify the precautionary principle, particularly in the European context, where there were suspicions that the WTO might undermine this principle. Thus, there was a strong political motivation for clarification. If the responses to the above-mentioned questions were affirmative, work could be concluded succinctly.

90. The observer of UNCTAD presented an overview of the UNEP-UNCTAD Capacity Building Task Force on Trade, Environment and Development (CBTF) activities. The CBTF aimed to help developing countries and countries with economies in transition to address trade-environment-development issues at the national level, and to participate effectively at the international level. The CBTF had been launched in March 2000. To date, contributions had been received for the first year of activities from Germany, Norway and the United Kingdom. Contributions were being sought to support CBTF activities in 2001. A call for proposals from Governments and national research institutions for CBTF activities had been circulated, with over 25 countries responding and 40 projects proposed. Evaluation of these proposals had been completed and seven projects were currently under way, including: (i) in Indonesia on Economic Instruments for the Management of Natural and Environmental Resources; (ii) in Lebanon on Trade Liberalization and the Environment; (iii) in El Salvador on the Recycling of Wastes; (iv) on a national basis in Cuba and Vietnam, and on a regional basis in Africa for African LDCs, delivery of the CBTF TrainForTrade programme on trade, environment and development; and (v) in Mexico a policy dialogue in March 2001 to discuss regional perspectives, with additional financing from Canada and the Ford Foundation. The CBTF was currently unable to support other projects, but as additional funds were contributed, the scale and scope of CBTF implementation would increase. A new CBTF call for proposals had been issued on 31 January 2001; information was available at www.unep-unctad.org/cbtf.

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

91. The Chairman of the Nordic Technical Working Group on Fisheries Eco-Labeling Criteria (Iceland) presented the report of the Working Group to the Nordic Council of Ministers entitled *An Arrangement for the Voluntary Certification of Products of Sustainable Fishing*, 21 June 2000 (available <http://fisk.norden/fisk/sk/kriterier.pdf>). The Unilever-WWF establishment of the Marine Stewardship Council in 1996 had promoted discussion of fisheries eco-labelling. The Nordic Council of Ministers had felt it important to ensure that fisheries management was the responsibility of Governments for practical purposes. Establishing eco-labelling called for a dialogue in which Governments had an organizing role; roles in eco-labelling should be separate and carried out by independent actors. On the scope of criteria, labelling was voluntary and should not be a condition for market access; it must be possible to verify that criteria had been fulfilled. It had been decided to focus on harvest sustainability, i.e. how fisheries management avoided overfishing and negative ecosystem effects. Overfishing was the primary issue in discussions of fisheries eco-labelling in Europe. Food security, health and quality aspects had not been included in the Working Group's mandate as they were the prime responsibility of Governments. The report did not address fish processing and other land-based processes as these aspects should be uniformly dealt with for all food products. The management process was included, from scientific advice to identification of total allowable catch and governmental controls. It was felt that criteria should be based on the precautionary approach to fisheries management, as defined in the FAO Code of Conduct for Responsible Fisheries and developed for the North Atlantic by the International Commission for the Exploration of the Seas.

92. A first category of fisheries eco-labelling criteria was related to fisheries management. As set out in the FAO, there should be a fisheries management plan in place based on regular scientific advice on the state of fish stocks and recommendations for sustainable exploitation, including pre-agreement management measures that came into force immediately when precautionary reference points had been reached. A variety of management measures could be considered, including reductions in TAC, reductions in effort, and fleet reductions. Efficient monitoring and control

mechanisms must be in place. Another category of effects related to the eco-system, based on the FAO Code of Conduct. To avoid negative eco-system effects, the following criteria were proposed: not to use destructive fishing practices, such as explosives; to minimize discards of fish, crustaceans and molluscs by using best available technology; and putting in place eco-system plans.

93. Eco-labelling provided fishing communities with market incentives to support responsible fisheries management; eco-labelling was an opportunity to market exports at a higher price. Governments had an incentive to operate fisheries management practices and improve markets for fisheries products. The FAO had an incentive to work on a precautionary approach to fisheries management. The Nordic eco-labelling proposal was appropriate for the Northern Atlantic and was not necessarily applicable to other regions. Thus, comparable work should be done separately in other regions. The Nordic Working Group considered it important to have an open international discussion on this issue, to avoid a private monopoly on eco-labelling, proliferation of labels leading to consumer confusion, as well as avoiding technical trade barriers, and expensive verification processes.

94. The representative of Iceland said, on behalf of the Nordic Council of Ministers, that his delegation presented the report and proposal of the Nordic Technical Working Group on Fisheries Eco-Labelling Criteria as a way forward for fisheries eco-labelling. This applied to the scope of eco-labelling; the role of various players, including Governments; transparency; the voluntary nature of eco-labelling; the need for scientific advice; and the need for verifiable criteria. The global application of these premises required parallel development of criteria applicable to other regions, in particular developing countries. Iceland considered it desirable to reach shared basic criteria for eco-labels for products from sustainable fisheries. Iceland referred to WT/CTE/W/150, which underscored the concern over proliferation of eco-labels and the need for shared eco-labelling criteria. Shared criteria were necessary to ensure that eco-labelled seafood products did not evolve into trade barriers; to avoid consumer confusion; and to reduce the possibility of private labels gaining monopolies. Shared criteria for fisheries eco-labelling should be discussed in international fora, such as the CTE and FAO. The WTO was the competent forum to address the trade aspects. Private fisheries eco-labelling had already been established in Europe in response to market forces. Eco-labels could be regarded as a threat or an opportunity; it was important to ensure equal opportunity, especially for developing countries, to benefit from new market trends for fish products, and to give consumers verifiable information on the sustainable use of living marine resources.

95. The representative of Japan thanked Iceland and the Secretariat for their papers, and stressed the importance of sustainable fisheries. Eco-labelling could contribute to this objective if based on a scientific and objective approach. Since the concept of fisheries eco-labelling was related to fisheries management, as set out in the Nordic report, Japan felt scientific and objective criteria for establishing eco-labels should be discussed in the FAO. The FAO had held a technical consultation on fisheries eco-labelling, and had planned a second one in 2000. However, at the FAO Sub-Committee on Fish Trade, in Bremen in February 2000, developing countries had been against the idea, resulting in a suspension of the consultations. There appeared to be a misunderstanding among developing countries to the effect that fisheries eco-labelling might become mandatory once the FAO had established criteria. However, this was not the case as there were many eco-labels in the world, mostly private ones. Failing the development of objective and scientific criteria, subjective private labelling schemes would proliferate, and fish-exporting developing countries would likely suffer most. Thus, Japan asked developing countries which scenario would be better, i.e. no objective criteria and more subjective eco-labels, or the development of objective criteria? This subject would be raised at the FAO Committee on Fisheries in March 2001.

96. Fisheries eco-labelling was related to sustainable fisheries use, but had trade implications. Consideration should be given to implementation of the relevant provisions of the TBT Agreement. While this issue should be handled by the FAO, Japan also welcomed discussion and the presentation of case studies in the CTE to contribute to FAO work. This would also diversify fisheries discussions in the CTE, which had narrowly focused on subsidies. For future discussion, Iceland could explain

how their proposed criteria could be applied to individual species in the Northeast Atlantic. As the Nordic report recognized, eco-labelling criteria should vary depending on the area and species. Thus, flexibility should be allowed to reflect conditions in different areas, as well as different biological characteristics of species. Consideration should also be given to how to operate the scheme.

97. The representative of New Zealand said that, in developing its fisheries eco-labelling scheme, Iceland had noted the need to take into account that conditions considered appropriate in the Nordic region should not automatically be applied to products from other regions. This highlighted the concept of equivalency, discussed in the CTE and the TBT Committee, whereby consideration could be given to recognizing as equivalent other countries' schemes. New Zealand asked whether this concept had been explored in relation to Nordic schemes and whether any approaches from other regions had been studied to determine if equivalency could be advanced. Many national and regional schemes could be overly prescriptive if they did not take into account conditions in different regions.

98. The representative of India made preliminary comments on the Nordic proposal on fisheries eco-labelling criteria, which were specific to a particular region. It might be better if this task were performed by an international organization with representation from various regions in order to have a comprehensive programme. Possible trade effects of fisheries eco-labelling were worth exploring, particularly for developing countries. It would be advisable to consider FAO results, and equivalence of standards. The principles set out in the scheme should be non-discrimination, without unnecessary trade obstacles. Although India broadly agreed that eco-labelling of marine capture fisheries might help in developing more sustainable practices, it was not correct to suggest that these criteria were relatively simple and could be implemented without delay. Taking into account the complexity of fisheries resources and different economic interests, it might not be possible to implement the criteria without delay, as in India's case. Development aspects, including trade concerns, should be addressed.

99. The representative of Thailand said that, as a major fisheries exporter, her delegation was concerned about the proposed Nordic eco-labelling criteria, and would have to study the proposal. Any measures considered should be consistent with WTO rules, such as those in the TBT Agreement.

100. The representative of Malaysia thanked Iceland for its presentation on the Nordic approach to fisheries eco-labelling, whereby schemes would be based on open international discussions, be voluntary, and guided by Governments, avoiding proliferation of labels and expensive verification processes. Malaysia asked how the international consultations would be coordinated with FAO and other parties, such as exporting countries. This would be important if the process were to be transparent and non-discriminatory. In the studies cited in WT/CTE/W/150, reference had been made to the experience of some countries on the multiplicity of labels, which had tended to lead to consumer confusion and increased costs to the industry. A properly run eco-labelling scheme, based on consultations with relevant international bodies and taking into account developing country interests, would more appropriately serve to ensure these programmes were transparent and non-discriminatory.

101. The representative of Venezuela appreciated Iceland's presentation on the Nordic fisheries eco-labelling criteria. Venezuela echoed the concerns expressed by India, Thailand and Malaysia. Venezuela's experience with fisheries eco-labelling had been frustrating, especially with tuna exports to North America. Venezuela felt that, although voluntary, these schemes had become a trade-distorting instrument that constituted a market access barrier. Venezuela was open to discussing this issue, but was concerned about the possible negative market access impacts.

102. The representative of Korea said that, as Korea attached importance to sustainable fisheries resources, Korea appreciated the Nordic initiative to develop voluntary eco-labelling criteria. This initiative should address each country's individual situation. In principle, Korea supported eco-labelling as it was expected to promote sustainable fisheries management and ensure consumers' right

to information on the environmental aspects of fish products. However, implementation of eco-labelling schemes should take into account differences between countries and regional circumstances, preferences and priorities, particularly in developing countries. Given differences in the fisheries industry and culinary cultures, rapid introduction of eco-labelling might adversely affect its effectiveness, which was based on it being voluntary and objective. It would be desirable first to implement an eco-labelling scheme in certain countries and regions before it were expanded to others.

103. The representative of Mexico shared Venezuela's views on eco-labelling, particularly on dolphin-safe tuna labels. Clearly, even a voluntary label permitted pressure to be brought to bear on the marketing of certain products unless they contained a given label. The legitimacy of these voluntary labels was a concern at the practical level and gave rise to concerns about market access barriers. The criteria devising these labels did not necessarily reflect the different situation in exporting countries and might condition market access.

104. The representative of the European Communities supported Mexico's comment with respect to the relationship between eco-labels and trade in the real world. If a market were big enough and if consumers cared enough about labels, then however voluntary the label, the ability to affix that label to a given product would become a condition for selling that product in a given market. Thus, it was necessary to clarify how to develop labelling criteria and to move towards an inclusive approach to eco-labelling. This was an issue of real world importance, although not necessarily a legal issue. The CTE should reflect on a practical approach to eco-labelling. The EC felt this was an area where clarification was necessary with respect to negotiation of the definitions of regulations and standards in the TBT Agreement. There was a convenient myth that the drafting history clearly showed that production and processing methods (PPMs) were excluded. In the first sentence of the definitions of regulations and standards, this might be the case. However, the second sentence indicated otherwise. Part of the reason the EC was concerned about addressing this issue was that it would be necessary to reopen the myth that the PPM issue had been settled. The EC was not confident that, if eco-labelling were addressed in coming negotiations, it would be possible to settle the PPM issue. There were potentially dangerous grey areas in the labelling debate. Whether or not these were resolved, there were other practical issues regarding the legitimacy of domestic decision-making processes, in which progress could be made that would be beneficial for global trade.

105. The representative of Indonesia said that, as a major fish exporter, his delegation echoed the concerns expressed about eco-labelling. Indonesia recognized that eco-labelling was a tool to promote sustainable fisheries management and provide consumer information. Although eco-labels were voluntary, they could become market access barriers. Indonesia was open to discussing this issue and felt eco-labels should be WTO-compatible.

106. The representative of Iceland thanked Members for their comments on the Nordic fisheries proposal, which emphasized the need to develop shared, basic criteria, such as the use of scientific and verifiable premises. Iceland clarified that the proposal in the Nordic Working Group's report was not yet an eco-labelling scheme. Iceland had not yet started international consultations. Iceland looked forward to discussing this issue at the FAO Fisheries Committee in March 2001. On the applicability of the criteria in other countries and regions, the Nordic discussions had stressed the need for international guidelines for criteria development that would be equivalent. While the types of criteria that could realistically be applied would differ based on the region, there were similar aspects. Thus, coordination across regions would be useful. At this stage, work was needed to develop applicable criteria. In presenting this report, the intention of the Nordic countries was to inform others of their work underway in this field.

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

107. The Secretariat was updating the Environmental Database for 2000, which contained the environment-related notifications to the WTO. Members were invited to provide the Secretariat with suggestions on the search words used in its compilation.

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

108. The representative of India presented his delegation's paper, WT/CTE/W/177, which analysed the effects of environmental measures on developing countries' market access. Compared with developed countries, the impact of environmental measures on developing countries' market access was much more acute and adverse, particularly for small and medium-sized enterprises (SMEs), in terms of availability of information and compliance costs. While acknowledging that positive trading opportunities might be generated by environmental considerations, SMEs lacked the resources, skill and technology required to exploit these market niches. While India favoured harmonization of environmental standards as opposed to a proliferation of standards, developing countries had widely differing environmental standards in accordance with their national priorities, which rendered harmonization difficult and inadvisable compared to mutual recognition and equivalence. The paper included examples from India, the Philippines and South Africa in various sectors, in order to illustrate the market access challenges faced by developing countries. With respect to non-product related production and processing methods (PPMs), an issue to which the EC had referred, there were market access barriers in labelling based on life cycle approaches. As noted by Mexico under Item 3, these measures, though voluntary, affected market access. India suggested a pragmatic way forward in the paper to mitigate market access impacts of environmental requirements, including measures by developing countries, such as enhanced domestic coordination and increased domestic dissemination of environmental requirements. India emphasized technology transfer, capacity building and technical assistance, as well as investment in domestic infrastructure. Participation of developing countries in the process of multilateral standard setting should be increased. Developed countries should promote developing country participation before environmental measures were put in place.

109. The representative of Norway welcomed India's paper, which cited practical examples of the effects of standards on market access, and suggested concrete steps forward. These examples showed that environmental requirements might appear to be non tariff trade barriers. However, there was domestic political pressure from the public to ensure health and safety. It had been easier to deal with tariff barriers, which could be gradually eliminated. In terms of how best to address environmental requirements, Norway felt India had put forward constructive suggestions, such as increased developing country participation in standardization processes. The Integrated Framework could also be used to mainstream capacity building and technical assistance to enable developing countries to respond to environment-related challenges that impacted on trade. There were practical problems that should be addressed. Norway appreciated India's efforts on Mode four in the services negotiations.

110. The representative of the European Communities welcomed India's constructive contribution, which stressed the opportunities for developing countries in export markets where environmental needs were being addressed in the market-place. There could be practical obstacles for developing country exporters. The EC suggested that it was not as important whether the requirements in export markets were PPM or product-related requirements, but that it would be necessary to change what was being produced. Standards setting processes should be inclusive so that representatives of exporting manufacturers in developing countries were involved at an early stage, and should reduce the multiplicity of requirements. Business and NGOs were holding a multistakeholder dialogue on

the development of a European Sustainable Trade Center to provide information on potential standards and minimize capacity-related obstacles.

111. The representative of Argentina supported India's paper, which highlighted the relationship between poverty and environmental protection. When Governments adopted environmental policies, a choice was being made between postponing short-term gains to invest in sustainability and allowing producers to achieve greater short-term profit without full consideration of the environmental effects. Different options open to developing countries concerning environmental protection entailed significant compliance costs, a point illustrated in India's paper. Argentina had always emphasized that rural poverty was one of the main causes of environmental degradation, particularly in agriculture. While environmental measures might be taken in good faith in a developed country, given differences in income levels, that same measure might have negative impacts on both income and the environment in developing countries.

112. The representative of Malaysia welcomed India's paper, which stressed the effects of environmental requirements on developing country market access. Malaysia said that charges and taxes could be easier to comply with than requirements related to technical standards and regulations, as well as recycling. As set out in India's paper, these requirements imposed prohibitive compliance costs, difficulties in assessing technology, and might not be the least-trade restrictive manner of achieving environmental objectives. SMEs were at a particular disadvantage in adapting to the proliferation of requirements in exporting markets, including HACCP, certification and testing. Malaysia referred to the potential EC ban on the use of hazardous substances in electronic and electrical equipment, which called for substitutes for certain hazardous materials in the production of this equipment. These substitutes might not be available for developing country SMEs, or might be costly and favour larger or local companies with the requisite technology. Where there were alternative ways to protect the environment, Malaysia felt the least-trade restrictive should be favoured. Malaysia's experience with shrimp export requirements had shown that the alternative to non-compliance with a particular standard usually resulted in loss of export markets. India's paper was forward looking and included practical proposals. Malaysia stressed the importance of prior consultations with affected parties, longer phase-in periods for developing countries, and positive measures to mitigate the negative impacts of environmental requirements.

113. The representative of the Philippines thanked India for its contribution, which highlighted the challenges faced by developing countries in balancing the demands of trade liberalization, which was not an end in itself, and sustainable development, which was the overriding objective. India rightly pointed out the difficulty faced by semiconductor manufacturers in the Philippines in adapting to ISO 14001 certification requirements. This was an example of developing countries' vulnerability to environmental measures, i.e. the costs of compliance with international environmental standards. The Philippines' efforts to comply with its international treaty obligation under the Basel Convention might be forcing both intermediate and end-users of used-lead acid batteries to source their feedstock from domestic sources. However, the ban on imports of used-lead acid batteries could not be regarded as solely affecting the trade of countries from which the Philippines would otherwise have sourced the batteries; it also affected sustainable development in the Philippines. While the Convention's objectives were intended to reduce environmental wastes, limited technological choices and inadequate access to environmentally friendly raw materials might result in smaller, informal recyclers in the Philippines, acting against the spirit of the agreement. This was so especially as there was no corresponding domestic regulatory policy or legislation in place. The Philippines emphasized that its domestic Clean Air Act was a serious effort to reduce pollution. However, its requirements, including the ban on incinerators, were non-discriminatory and applied equally to foreign and domestic investors. Whereas it might affect trade in incinerators, this was an issue which demonstrated that not everything which affected trade was necessarily a trade issue. Philippine law prohibited the manufacture, importation, distribution and/or sale of laundry and industrial detergents containing hard surfactants, and encouraged the use of natural oleo-chemicals, including plant-based natural oils, such as palm, palm kernel, sunflower, rapeseed and coconut. Thus, India's paper

provided justification for the distinction between petroleum-based detergents, which were not considered biodegradable, and natural oleo-chemical-based detergents, which were.

114. The representative of Egypt said India's paper touched on developing country concerns regarding practical market access obstacles, as well as defining a way forward that emphasized technical assistance, technology transfer and capacity building for standards setting. India drew attention to compliance costs of SME, of particular relevance to developing countries. Malaysia highlighted the EC Directive on electronic and electrical equipment, an issue which Egypt had raised in the TBT Committee. It would be necessary to consult on the suggestions set out in India's paper.

115. The representative of Brazil said India's paper highlighted common concerns for developing countries about market access impediments arising from environmental measures. Even voluntary eco-labelling had market access effects for developing country exports. Brazil had faced difficulties with timber exports. The challenge was to avoid that trade opportunities turned into trade barriers. In Brazil, civil society was also active in eco-labelling. Brazil agreed with India on the importance of standards setting, which should be inclusive, transparent, and accessible for developing countries.

116. The representative of Venezuela said India's paper reflected developing country concerns. Through its practical examples set, it was possible to appreciate the actual market access impacts of environmental measures, particularly for developing country exports. As Venezuela had noted on eco-labelling, these concerns should be kept in mind when seeking solutions. Venezuela supported India's suggestions on how to find a cooperative solution to these concerns. Venezuela was committed to environmental protection, but its exports had faced environment-related market access barriers that did not take into account the specific conditions of Venezuela.

117. The representative of the United States welcomed India's suggestions for transparency and inclusiveness in the process used by countries to develop their environmental measures. The United States noted the attention given to "win-win" opportunities in India's paper, whereby it was for "governments and industry to take advantage of the competitiveness of their products, particularly environmentally friendly products to increase their shares in environmentally conscious markets." In trade and environment debates, it was important to focus on the opportunities for a confluence of interests, as opposed to a divergence of interests between environmental protection and trade liberalization and the potential for conflict. Focusing on "win-wins" permitted a discussion in a less negative atmosphere and pointed the way forward for concrete initiatives or "deliverables" that could clearly demonstrate areas in which governments could advance the interests of environmental and commercial constituencies at the same time.

118. The representative of Cuba welcomed India's paper, which presented relevant examples on the market access difficulties encountered by developing country exports as a result of environment-related measures. Studies in Cuba had identified exports in which this type of concern had arisen, such as honey and lobsters. Amongst the solutions proposed by India, Cuba noted the need for technical assistance and special and differential treatment.

119. The representative of Kenya said India's paper set out the concerns of developing countries regarding environmental measures in developed countries. There were cases where product standards in developed countries had not been met for exports from those countries. This was a contradiction. Kenya called for special and differential treatment, and flexibility so that developing countries could be integrated in the multilateral trading system.

120. The representative of Switzerland welcomed India's paper as a constructive starting point for the discussions. Developing countries could benefit from environmental standards resulting from an increasing environmental awareness in developed countries and new markets for environmentally friendly products, such as organic coffee, tea, and tropical fruits. Although environmental standards might cause adjustment problems, market opportunities would also be created.

121. The representative of Chile said developing countries could take advantage of comparative advantages in exporting their products to environmentally conscious markets. Chile shared India's suggestions on the way forward regarding transparency. Chile added that cooperation with trading partners was important with respect to solving environmental problems with exports, including in the framework of trade agreements, such as with Canada. Chile asked for India's comments on using cooperation to resolve difficulties that may arise in this area.

122. The representative of Mexico felt India's paper contained useful examples of the vulnerability of developing countries with respect to the negative market access effects of environmental measures on their exports. Difficulties frequently faced by developing countries in adjusting to the increasingly numerous environmental requirements in their export markets. India also set out ways in which to move the discussions and to increase the potential of developing countries to adjust to environmental requirements. Mexico noted that the cooperative approach set out in India's proposals were constructive and would increase the possibility of "win-win" opportunities. The imposition of trade measures to accelerate environmental objectives were counter-productive; impeding developing country market access may only reduce the financial resources available for environmental protection and for meeting the established environmental requirements in export markets. For example, progress of Mexican tuna fishers towards dolphin conservation had taken longer to achieve due to a lack of appropriate financial resources to put towards this goal. Transparent and comprehensive policies were necessary to attain solutions through cooperation, including sufficient phase-in periods for developing country implementation and adaptation of environment-related requirements.

123. The representative of Indonesia supported the premise of India paper that market access effects of environmental measures should be viewed from the broader, balanced perspective of sustainable development to achieve "win-win" opportunities. If the focus were solely on environmental protection at the expense of economic development, developing country market access may suffer at the expense of the environment. Indonesia noted the importance of environmental requirements, yet felt caution was necessary; it was difficult to accept that these standards should necessarily result in non-tariff trade barriers, which would impose conditionality on developing country market access that would not take into account their situations. Environmental requirements should be complemented by positive measures for technical cooperation, technology transfer and capacity building. Developing countries would thus improve their capacity to meet market requirements and enhance their awareness of environmental factors in trade.

124. The representative of Thailand supported India's suggestions for prior consultation with developing countries during the development of environmental standards. On the EC multistakeholder dialogue with the private sector and NGOs, Thailand asked if developing country stakeholders would be included?

125. The representative of Peru shared the importance of the issues outlined in India's paper. Environmental standards could represent trade obstacles, including those in multilateral environmental agreements. There were procedures to establish a scientific basis for the development of standards, even if voluntary. For voluntary eco-labelling, however, clarity was lacking in the TBT provisions and their scientific basis required further examination. Voluntary standards could have a greater impact than other standards and could result in non-tariff trade barriers. There should be greater developing country participation in the standards making process to take into account their interests and have sufficient time to adapt to these standards. Peru inquired as to which other conditions India felt should be required in the standards making process to ensure that developing country interests were represented and their exports not marginalized.

126. The representative of India thanked delegations for their support of India's paper. Chile's comment on cooperation was an important addition, building on India's references to multilateral initiatives. On Peru's comment, India's paper cited concrete examples of market access difficulties faced by developing countries and suggested a way forward. As such, the CTE should clarify the

range of environmental requirements in the main export markets for sectors of importance to developing country exports, such as agriculture, textiles, tropical products and primary commodities. India suggested that developed countries provide illustrations of the process in which environmental measures were developed, including multistakeholder dialogues with consumers. This would enable developing countries to understand the process and suggest ways to improve existing lacunae in transparency and participation. This would help the CTE move to a practical understanding of the situation of developing countries *vis-à-vis* the market access effects of environmental measures.

Agriculture

127. The representative of Argentina referred to his delegation's paper to the Agriculture Committee, G/AG/NG/W/88, on the legitimate non-trade concerns to be taken into account in the agriculture negotiations: rural poverty, unemployment and environmental degradation. Argentina would also submit this paper to the CTE. Argentina raised a matter related to health and phytosanitary measures with environmental consequences, bovine spongiform encephalopathy (BSE). This problem related to intensive stock breeding, which had given rise to high tariffs, price support and subsidies offered to meat production in the EC. The root of the problem had been recognized to be the encouragement by the EC of the use of bonemeal for cattle feed. Argentina drew attention to consequences of price distorting practices on health, rural development and the environment. The health consequences for the EC were familiar; the consequences for importers of EC animal feed were being evaluated by the World Health Organization. The consequences for developing countries that competed with EC-subsidized exports were also crucial. The EC Common Agricultural Policy had given rise to enormous excessive production of meat, which was exported at subsidized prices. This unfair competition resulted in rural poverty, unemployment and reduced food security.

Energy

128. The representative of the European Communities presented his delegation's paper on environmentally harmful and trade distorting measures and policies in energy markets, WT/CTE/W/185, which built on the Secretariat's note in WT/CTE/W/67. The latter set out that there was an array of measures that had trade and environmental distorting effects. Based on recent developments, the EC suggested that work on the energy sector be updated, including work in the OECD and the International Energy Agency. This update should follow the same structure as WT/CTE/W/67, taking into account the specificity of energy and the fact that it was an intermediary good, as well as examining energy trade, particularly the relationship between the environmental and electricity trade liberalization. The update could usefully include the issue of environment and climate change effects of current policies and measures as compared to possible changes in policies to be undertaken, including trade in greenhouse gas emissions, and the possible trade distorting effects of starting trade (emissions rights) with different principles and countries. The importance of energy matters for trade and the environment necessitated an update of WT/CTE/W/67 and further attention to this sector on a regular basis.

129. The observer of UNEP informed the CTE that UNEP and the International Energy Agency (IEA) had jointly organized a series of four regional workshops on the potential contribution of energy subsidy reform to sustainable development. These workshops aimed to improve the understanding of social, economic and environmental effects of energy subsidy reform. Three workshops had already been conducted, each involving 40-50 energy experts who discussed case studies, focussing on each of four regions: (i) the Paris Workshop, 6-7 November 2000, focussed on OECD countries and European countries with economies in transition; (ii) energy subsidies in African countries had been addressed during the Durban Workshop, 15-16 December 2000; (iii) energy subsidies in Asia had been examined in Bangkok, 16-17 January 2001; and (iv) the last workshop would be in Santiago, 27-28 March 2001, emphasizing the Latin American region and including a concluding session to consolidate the outputs of the four workshops.

130. Preliminary recommendations from these workshops were: (i) traditional energy subsidies often created disincentives for investing in energy efficiency and renewable energy; and (ii) subsidies often failed to achieve their underlying objectives, such as socio-economic development and energy security. Nevertheless, energy subsidies could be beneficial under certain conditions, for example, subsidies to R&D and to infant industries if they were eliminated as soon as the technology or the industry became competitive. Social concerns, as well as insufficient access to energy, was more pressing in developing countries, and there was a need to focus on the social component of sustainable development in subsidy design. Reform, instead of removal of energy subsidies, was generally required, and should be part of overall energy policy reform. There was a need for more accurate definition and measurement of energy subsidies, and for more analytical work on the environmental, social and economic impacts of energy subsidies and their reform. Policy-makers should explore the benefits of subsidy reform for sustainable development, taking into account the specific circumstances of each country. There was a need for education and awareness raising amongst citizens. There should be a greater focus on renewable energy technology, which could be an efficient and competitive alternative to traditional sources, especially in rural areas. UNEP-IEA would submit a synthesis report on these workshops to CSD9 in April 2001, and organize a side-event on energy.

131. The representative of Mexico asked whether it would be useful to factually update all the sectors set out in WT/CTE/W/67.

132. The representative of Venezuela noted that energy issues related to the Kyoto Protocol were complex and she would consult with her capital on the EC's proposals in this respect.

133. It was agreed that the Secretariat would update the energy section in WT/CTE/W/67 based on available reports and research.

Fisheries

134. The observer of the FAO informed the CTE of FAO meetings related to fisheries and aquaculture, including the second meeting of FAO and non-FAO regional bodies, 20-21 February 2001; the second technical consultation on Illegal, Unreported and Unregulated Fishing, 22-23 February 2001; and the 24th Session of the Committee on Fisheries, 26 February-2 March. Information was available at www.fao.org/fi. The FAO had been providing information to the CTE since October 1999 on its implementation of the FAO work plan on fisheries subsidies. In 2000, FAO had studied the effects of subsidies on trade in fish and fish products; and the effects on sustainability of wild fish stocks, as well as reviewed the concepts of fisheries subsidies. This work had been reviewed by the FAO Expert Consultation on Economic Incentives and Responsible Fisheries, in Rome, on 28 November - 1 December 2000, which had included experts from Africa, Asia, Latin America, Europe, North America, Oceania and the WTO.

135. The Expert Consultation had focused on: (i) the definition of subsidies and how best to divide them into categories; (ii) the impact of subsidies on fisheries resources sustainability; and, (iii) the impact of subsidies on trade in fish and fish products. The consultation had adopted a report for consideration by the 24th Session of the FAO Committee on Fisheries. The experts had discussed an operational definition of "subsidy" for the purpose of analysing the effects on resource sustainability and trade. Four sets of subsidies had been defined. Set 1 was "Government financial transfers that reduce costs and/or increase revenues of producers in the short term". Sets 2, 3 and 4 expanded this concept. Set 2 subsidies were: "any Government intervention, regardless of whether they involve financial transfers, that reduce cost and/or increase revenues of producers in the short term". Set 3 expanded Set 2 by adding: "the short-term benefits to producers that result from the absence or lack of intervention by governments to correct distortions (imperfections) in production and markets that can potentially affect fisheries resources and trade". Set 4 was "all government actions, including the absence of correcting interventions, that could potentially affect, positively or negatively, the benefits

of firms active in the fishery sector; also in the long run." The experts recommended that these sets of subsidies be referred to in future analyses.

136. The experts had classified subsidies according to their effects on the firm. The experts found the empirical knowledge of the impacts of subsidies on trade and fisheries resource sustainability to be weak. However, there was general agreement that the impact on fisheries resources sustainability was critically dependent on the effectiveness of fisheries management, being least where fishing effort was fully controlled. Building on available data and analytical methods, as well as familiarity with the estimates of the magnitude of subsidies, the experts identified priorities for research on the impacts of subsidies. To facilitate this analysis, it was agreed that it was not essential to use the same categories when studying resource impacts as trade impacts. Concerning the impact on fishery resources, priority for future study was assigned to "capital expansion", "tax waivers and deferrals" and "price support". Regarding the impact on trade, priority was given to actions that "reduce the relative price of inputs", "reduce fishing effort," and to "management and regulatory actions". The experts also discussed the methods best suited to carry out these studies.

137. While the exact nature and magnitude of impacts were not known for most categories of subsidies, following the Consultation there was a relatively good understanding of the magnitude of various sets of subsidies, and of the mechanisms by which subsidies affected costs and revenues. However, there was only limited empirical knowledge of the magnitude and exact nature of the impact of subsidy-induced, modified, behaviour of firms on trade, resources and development. The Consultation had concluded that methods were available for empirical studies of the effects; the question was where to start, who to involve, and what form studies should take. This Consultation, by defining sets of subsidies, had produced a useful tool to facilitate analysis of subsidy impacts and to clarify the policy debate. The new issue of the *State of World Fisheries and Aquaculture* (SOFIA 2001) would be presented to the 24th Session of the Committee of Fisheries.

138. The observer of the OECD reported on the ongoing OECD study on market liberalization, the mandate of which was to explore world and regional fish trade flows, issues and problems, including an analysis of how fisheries trade and production were likely to be affected by reductions in present tariff levels and changes in non-tariff barriers. The study also would explore the effects of changes in restrictions on investment, access to services, fisheries subsidies, and other relevant factors. The OECD Committee for Fisheries, on 5-7 March 2001, would review progress on four main areas for this study: (i) more transparency had been added to the inventories of measures as additional information had become available; (ii) the work included a preliminary assessment of the measures currently in place; (iii) the Committee for Fisheries will address a conceptual framework developed to analyse how, and under which circumstances, measures affected trade and resource sustainability; and (iv) an analytical framework had been developed to identify priorities for future study.

139. The observer of UNEP said the aim of the UNEP Workshop on Fisheries Subsidies on 12 February 2001 was to build understanding and consensus on fisheries policy reform in order to contribute to sustainable fisheries management. Over 120 participants from governments, international organizations, experts and NGOs had participated. The Chairman's summary was circulated as WT/CTE/W/187, and could be accessed along with the other papers prepared for the meeting at www.unep.ch/etu. The key outputs from the Workshop and options for moving forward were set out in paragraphs 6-9 of the Chairman's summary. UNEP would inform Members of the follow-up activities. UNEP acknowledged New Zealand's financial support for the workshop, which had increased the participation of fisheries experts from developing countries.

140. The representative of New Zealand thanked FAO, OECD and UNEP for the reports on their work in the fisheries area. CTE discussions on fisheries issues, particularly subsidies, had contributed significantly to enhancing international awareness of the trade and sustainable development problems associated with government financial transfers in the fisheries sector and had encouraged a greater interest in international organizations in this area. Much of the work carried out to date on the adverse

impacts of fisheries subsidies had focused primarily on resource sustainability. Available evidence showed conclusively that fisheries subsidies played an important part in promoting excess efforts, overfishing and adverse conservation and management outcomes. Fisheries subsidies were a problem not only for resource sustainability, but also in terms of their trade effects and sustainable development. Given the WTO context of the discussions, New Zealand emphasized the importance of ensuring that the significant trade dimensions of the issue were understood and addressed. As pointed out in New Zealand's paper, WT/CTE/W/134, the level of fisheries subsidies remained high and represented as much as 30 per cent of the value of landed catch in key developed exporters. These transfers had significant trade distorting effects that inhibited sustainable development, particularly of exporting developing and least-developed countries. The analysis thus far underlined the important role of the WTO in promoting solutions to the trade and sustainable development problems associated with fisheries subsidies. Accordingly, the CTE should keep this issue in its focus so that Members were better able to consider concrete actions aimed at effectively addressing these adverse effects of fisheries subsidies. Fisheries subsidy reform would represent the most concrete "win-win-win" for trade, environment and development identified to date in the CTE. Given the WTO expertise in the area of trade rules and subsidies, it had a valuable contribution to make.

141. The WTO should be kept fully involved in any work that other fora were pursuing on the trade dimension of fisheries subsidies. Some of the concerns expressed in the WTO had not been adequately reflected in some of the work in relevant fora. New Zealand welcomed FAO work on fisheries subsidies, but noted that the FAO Expert Consultation's report included a general comment on their goal in studying the trade dimensions: "The experts assumed that the FAO Committee on Fisheries was interested primarily in the state of knowledge regarding the extent to which producers in a particular country were able to improve their position relative to competing industries in other countries as a result of subsidies whether through increased exports or the displacement of imports." This indicated that the messages from the WTO debate that the focus should be on the trade distorting impact of fisheries subsidies had not been fully understood. There was a need to continue to be vigilant in any discussions on the trade dimensions. New Zealand welcomed further updates of WT/CTE/W/167 on ongoing subsidies related work, and WT/CTE/W/80/Add.1 on notifications under Article 25 of the SCM Agreement. The lack of clear information on fisheries subsidies continued to impede the exploration of reform options. In addition to seeking to ensure that Members carried out their notification obligations, New Zealand encouraged Members to cooperate in relevant international fora to provide the information needed to advance the empirical analysis in this area.

142. The representative of the Philippines thanked the FAO and the OECD for sharing their recent work on sustainable fisheries, which contributed to an integrated analysis in the CTE; and UNEP for its Fisheries Workshop, which had increased the understanding and facilitated Members' exchange of views on fisheries subsidies. While gaps existed on the effects of subsidies, there was sufficient information available to begin to act. The main challenge was not in terms of analysis, but with respect to the willingness to take the necessary action. This issue should be dealt with in a comprehensive, yet effective manner, which did not mean that work needed to be done in a single organization; different issues could be dealt with in the competent bodies. The Philippines requested that the update of WT/CTE/W/167 reflect ongoing work in other fora.

143. The representative of Iceland thanked the FAO, OECD and UNEP for their reports, which illustrated how fisheries subsidies were being seriously considered. Iceland welcomed the growing attention this issue was receiving. In order to resolve this issue, expertise in all the relevant international organizations was necessary to advance the conceptual understanding of fisheries subsidies and to improve empirical knowledge about their practice. The reports of the FAO and UNEP confirmed the widespread agreement among experts that fisheries subsidies encouraged overcapitalization and excessive fishing effort, and hence overfishing. The reports advanced a conceptual understanding of the issues and emphasized the need to move beyond abstract or legalistic definitions, towards analysing the impacts of subsidies on trade and resource sustainability in the real world. It was regrettable that the reports did not offer empirical substantiation of their findings.

While contributing to the analysis of fisheries subsidies, the approach in these reports was limited to resource sustainability and the impact of subsidies on fishing effort. When the analysis was limited to the implications of subsidies in the domestic circumstances where they were applied, the conclusion was bound to be that subsidies were only partially responsible for overfishing, and that the degree of their impact depended on the context in which they were applied, notably whether and what type of fisheries management system was in effect. This masked the reality as it ignored the more important issue of the systemic implications of distorted global markets.

144. The bulk of marine-captured fish was destined for export, with the economic return dependant on the cost of its production and the market conditions where it was sold. A distorted export market created an incentive to meet a low return by increasing supply. Thus, the systemic impact of global market conditions distorted by fisheries subsidies fuelled domestic pressures to increase harvesting, even beyond the production capacity of the stocks. Distorted global market conditions thus undermined sustainable domestic fisheries management and diminished returns to exporting countries. Their negative impacts emerged in the domestic circumstances, where they were applied, and the global market due to market distortions. Only by viewing the issues from the perspective of trade and resource sustainability was it possible to see the damage caused by, and the benefits of the removal of, fisheries subsidies to trade, resource sustainability and sustainable development. These benefits were particularly important for those developing countries, which supplied over 50 per cent of fish trade. This was why this issue should be addressed in the WTO, which had the competence and expertise to address the issues in the context of the global market. It was the global market that conditioned the ability of individual countries to manage their fisheries resources sustainably. Iceland encouraged continued WTO work in this area, and also welcomed continued technical FAO work. Iceland welcomed updates of WT/CTE/W/167 and the notifications under Article 25 of the SCM Agreement.

145. The representative of the European Communities thanked the FAO and OECD for their presentations. The EC thanked UNEP for its Fisheries Workshop and agreed with the Chairman's conclusions set out in WT/CTE/W/187. To have a better knowledge of the effects of subsidies, more information was necessary on their volume and nature, as acknowledged by some participants at the UNEP Workshop. Given the importance of WTO notifications in this process, the EC joined New Zealand in appealing to Members to increase their notifications. The "matrix approach," identified at the UNEP Workshop, combining subsidy types with other key factors, such as the fisheries regime and the state of the stocks, was also useful. The development dimension had to be taken into account when assessing subsidies. The EC agreed with the Philippines that each forum had a role to contribute to the discussions, depending on its expertise. The EC saw a leading role for the FAO, given its broad membership.

146. The representative of Argentina welcomed the FAO and OECD for their presentations, and UNEP for the Fisheries Workshop. Argentina noted its commitment for increased transparency highlighting that the UNEP-commissioned study came from an NGO (the Centro de Estudios Ambientales - CEDEA) that was totally independent from the government and the analysis was critical to the way in which the previous Argentine government had administered resources. Argentina supported New Zealand's comments and also requested updates of WT/CTE/W/167 and the notifications under the SCM Agreement. He noted that Argentina was facing a serious subsidies and management-related problem concerning the over-exploitation of squid just outside Argentina's 200-mile Exclusive Economic Zone (EEZ) of jurisdiction by distant water fleets. While fishing efforts were increasing, catch was diminishing constantly. If these fleets did not have production incentives in the form of subsidies that masked private costs and risks, they would be less likely to be over-exploiting these squid stocks. This was a case that could not be solved with better management in Argentina, as it was occurring outside Argentina's EEZ. It was not possible to justify economic incentives for fisheries production if these incentives led to over-exploitation of resources, and aggravated environmental and trade problems. Fisheries management could not be ignored, but subsidies were also part of the problem. As such, the WTO had to be part of the solution and the CTE should continue its work in this area.

147. The representative of Argentina noted that his Government was not responsible for the independent, UNEP-sponsored case study on the Argentine fisheries sector. Argentina noted that the figures referred to by Japan came from an OECD study. The study's conclusion was that subsidies increased resource management problems. On the distant water fleets operating outside Argentina's EEZ, he was not willing to identify their nationality at this meeting. These vessels threaten Argentina's capacity to sustain squid stocks and to use this resource in its EEZ.

148. The representative of the United States thanked UNEP for the comprehensive discussions at its Fisheries Workshop on how to address fisheries subsidies from a resource sustainability and global trade perspective. The United States agreed with the comments by New Zealand, Iceland, the Philippines and the EC on the need to address the trade dimensions of fisheries subsidies. The United States supported continued work in the CTE on fisheries subsidies, particularly for the update of WT/CTE/W/167 and the subsidies notifications under Article 25 of the SCM Agreement. The United States noted that while each organization could contribute to the fish subsidies discussion, given their respective areas of expertise, this work should be coordinated. The United States emphasized that the CTE should continue to focus on the elimination of fisheries subsidies, an initiative that presented an opportunity for a "win-win" outcome.

149. The representative of Mexico welcomed the UNEP Fisheries Workshop, which had increased Members' understanding. Although not much time had elapsed, Mexico supported updating WT/CTE/W/167, and the notification under the SCM Agreement, which should be descriptive and not pass judgement on subsidies or their categorization. Subsidies were a state tool governed by the SCM Agreement, in which it was stipulated that there were actionable and non-actionable subsidies.

150. The representative of Korea thanked the FAO and the OECD for their work on fisheries subsidies, and UNEP for its Fisheries Workshop, which had offered an opportunity to enhance knowledge on this complex issue. It had been debated for years whether fisheries subsidies affected resource sustainability and distorted trade. These debates remained unclear given that some arguments relied on ungrounded predictions. Links between subsidies and fisheries sustainability should be investigated multilaterally and transparently. A network of international organizations studying subsidies should be formed, including the body specializing in fisheries, the FAO. The scope of the discussion should not be restricted to the relationship between sustainability and fisheries subsidies, but encompass all the factors affecting resource sustainability, including unrestricted fishing practices such as IUU, open access regimes and the effects of rapid trade liberalization. Only then could it be discerned whether subsidies had a negative impact on fisheries sustainability and whether other factors needed further discussion. Apart from environmental and economic efficiency, resultant socio-economic effects of fisheries subsidies should be included. Rapid industrialization forced the slow-changing fisheries sector into an inferior situation. Respect should be given to the multifunctional purpose of subsidies for food security, conserving the marine environment, preventing urbanization and countering the high social costs of job re-education. Korea had always taken a keen interest in sustainable fisheries programmes, such as the resource richness programme to reduce fishing vessels, marine ranching, artificial reefs, release of seeds and fingerling; as well as the HACCP system, enrolment of processing factories, total allowable catches, fishing ground recess systems based on "fishing ground management law." Korea encouraged others to share their experience with sustainable fisheries and build international cooperation.

151. The representative of Chile welcomed the UNEP Fisheries Workshop, and the FAO and OECD presentations. Chile rejected the use of instruments, such as subsidies, which impacted adversely on fisheries sustainability. Each organization had its field of competence, with the WTO responsible for trade distorting measures, such as subsidies. Chile supported updating WT/CTE/W/167 and the notifications under the SCM Agreement. Chile asked how multifunctionality of fisheries supported by subsidies was acceptable for countries such as Chile, which on one hand may have similar concerns, but on the other, think that those concerns should be addressed through means that do not distort trade as subsidies do.

152. The representative of Japan thanked UNEP, FAO and OECD for their presentations. The FAO Expert Consultation's report would be discussed at the FAO Committee on Fisheries, and would serve as a basis for further work. Japan supported FAO's role in advancing work on fisheries subsidies work from a sustainability perspective. Japan understood that the report of the FAO Expert Consultation on fisheries subsidies would be discussed at the upcoming Fisheries Committee meeting, and thus refrained from commenting on it. Clearly, more work should be done. Japan felt work on fisheries subsidies should be continued in the FAO. Japan was planning to make a proposal on the holding of a second expert consultation, possibly followed by a government consultation. Japan stressed that the OECD fisheries study on the effects of trade liberalization included positive and negative effects. Japan was impressed with the two UNEP case studies on the effects of fishery subsidies on resource sustainability in Argentina and Senegal, which demonstrated that subsidies had a negative impact on fisheries sustainability when fisheries management was inadequate, which endorsed Japan's past assertion. These case studies illustrated that trade promotion impacted negatively on sustainability. This was important given the WTO's trade mandate, which included the effects of trade as well as subsidies. If Members focussed only on the subsidies, and ignored the possible negative effects of trade on sustainability, it would be a biased approach.

153. Japan was puzzled by New Zealand and Iceland's statements. The initial discussion on fisheries subsidies had concerned their negative effects on resource sustainability, now the focus was on trade distortions. If this were the case, Japan asked why the SCM Agreement could not address the trade concerns within its mandate. The SCM Agreement prohibited certain subsidies and provided a framework within the WTO for addressing actionable subsidies and their trade distorting effects. Otherwise, the FAO was the appropriate forum in which to discuss sustainable management issues. In response to Argentina, Japan noted that Japanese squid vessels did not receive subsidies, thus the problem was a matter of how to share straddling stocks between high seas and coastal fishing nations. Japan was not aware that squid resources in this area were being depleted, as Argentina asserted. Japan would like to see the scientific evidence in this respect. Japan agreed to update WT/CTE/W/167 and include the recently concluded APEC study, whose conclusion differed from the old version cited in the Secretariat's paper.

154. The representative of Australia thanked the FAO, OECD and UNEP for their presentations. Fisheries subsidies would continue to be an active item on the CTE agenda in 2001, building on the support for further work evident in the lead-up to the Seattle Ministerial Conference. WTO discussions were again focusing on a potential new round of negotiations being launched in the near future, possibly towards the end of 2001. This provided an opportunity to build support for negotiations on fisheries subsidies. Australia supported: (i) identification of the extent to which subsidies were being notified under the SCM Agreement; (ii) assessment of whether existing WTO disciplines relating to these subsidies were effective in limiting the impacts of overproduction; (iii) assessment of whether additional disciplines were needed to reduce the overall level of support and to ensure it was provided in less distorting forms and, if considered necessary, what form these disciplines should take; and (iv) consideration of the best way the WTO could coordinate its work with other international organizations. The Secretariat should work on fisheries subsidies, in particular to provide an overview of work to categorize fisheries subsidies, which would assist the CTE in identifying environmentally harmful and trade distorting subsidies, and assessing how adequate WTO rules were in disciplining them.

155. The representative of Canada thanked UNEP for a valuable Fisheries Workshop. Canada shared Members' concerns on subsidies and their potential to contribute to overcapacity, to cause a variety of pressures on fish stocks and marine habitat and distort trade. Overcapacity, overfishing and other fisheries management issues should be addressed by the FAO. The FAO International Plan of Action on the Management of Fishing Capacity aimed to achieve efficient, equitable and transparent management of fishing capacity. The Plan of Action took a holistic approach to addressing fishing overcapacity and recommended that the management of fishing capacity should consider all relevant factors in national and international waters; one of which was the contribution of subsidies. Members

thus should recognize the roles of FAO, OECD, APEC and UNEP in developing guidelines for managing capacity. The CTE should not duplicate work already being undertaken in other fora. There was also a trade dimension to fisheries subsidies and thus the WTO had a role to play in these discussions. However, there was a fisheries management component to these discussions, as recognized by the FAO Plan of Action.

156. On Korea's paper, Canada felt there was value in Members sharing national experiences on fisheries and the role of subsidies. All aspects of government financial transfers should be considered, including their potentially positive role. Korea provided practical examples of government-funded programmes that contributed to fish habitat conservation and resource sustainability. Members should ensure that such positive contributions were not ignored in CTE discussions. Canada shared the view that the potential environmental effects of government financial support to fisheries could not be isolated from other considerations. The starting point for the CTE should be how subsidies were defined. The SCM Agreement provided the WTO definition of subsidies, which applied to the fisheries sector. The SCM Committee should have a role to determine how this definition applied to fisheries subsidies. While the CTE had a positive role to play, the elimination of fisheries subsidies comprised only part of the solution to global overcapacity and overfishing. The FAO was the forum best able to take a comprehensive approach to this issue.

157. The representative of Norway thanked FAO, OECD and UNEP for their presentations. Norway recognized that, in many cases, government transfers to the fisheries sector contributed to overcapacity, overexploitation and fish stock depletion. Fisheries subsidies should be reduced. However, fisheries subsidies were only one of several elements that might have a negative impact on sustainable fisheries. Lack of fisheries management regimes was a key factor, which caused unsustainability and overfishing. If agreement were to be reached to include fisheries subsidies in WTO negotiations, these subsidies needed to be identified and categorized. To progress on removing environmentally damaging and trade distorting subsidies, concrete steps were needed. Further research was needed. Work in the FAO and the OECD, as well as UNEP, was contributing to categorizing fisheries subsidies. The WTO had a central role in this context. Norway supported the updating of WT/CTE/W/167 in light of recently completed work, and encouraged cooperation between the FAO and CTE Secretariats to ensure a sufficient scientific basis for further CTE work.

158. The representative of Argentina noted that his Government was not responsible for the independent, UNEP-sponsored case study on the Argentine fisheries sector. Argentina noted that the figures referred to by Japan came from an OECD study. The study's conclusion was that subsidies increased resource management problems. On the distant water fleets operating outside Argentina's EEZ, he was not identifying their nationality. These vessels threaten Argentina's capacity to sustain squid stocks and to use this resource in its EEZ.

159. The representative of New Zealand clarified that his delegation had never seen this issue as solely a trade, environment, or development issue. New Zealand's contribution had been to view these issues as intersecting. New Zealand's concern was that as CTE analysis had developed that a number of Members wished to minimize the trade dimension of the debate and seek comfort in the notion that it was such a complex sustainability issue that the WTO could not deal with subsidies as they were only part of the sustainability aspect. The SCM Agreement applied to the fisheries sector, but whether its provisions were adequate to address all the issues raised in relation to fisheries subsidies, trade and broader sustainability concerns was a question that had been raised. Ongoing work to examine and categorize different financial transfers in the fisheries sector suggested that were questions in this regard that remained to be answered.

160. The representative of Iceland supported New Zealand's response to Japan; Iceland had not changed its position on this issue. The elements at stake were trade, resource sustainability and sustainable development. Discussion at the UNEP Fisheries Workshop and the CTE raised the issue of whether it were possible to focus on one of these aspects. Iceland stressed that the impact of

resource sustainability could not be isolated from trade; subsidies had implications domestically and distorted global markets, which undermined resource sustainability. Iceland also stressed the critical role of the WTO in addressing these issues.

161. It was agreed that the Secretariat would update WT/CTE/W/167 to include recently completed work on fisheries subsidies in relevant international fora.

Non-Ferrous Metals

162. The representative of Chile referred to international initiatives to prepare a plan of action for the sustainable development of non-ferrous metals, which was supported by the International Copper, Lead and Zinc Study Groups. As the largest producer of copper, Chile participated in the Copper Group along with over 20 countries, as well as producers, consumers, international organizations and NGOs, to enhance sustainable use in this sector. Work focused on promoting the production, use, recycling and reuse of products, and manufacturing products which were efficient and environmentally sound. The initiative sought to find common ground with respect to emerging quality standards and to prepare for environmental issues in order to avoid that this sector would be unjustifiably penalized. The sector had to comply with certain standards that reflected the characteristics of each country and region. Investment in policies, technology and human resources to manage resources sustainably had been made in the non-ferrous metals sector. Chile hoped that non-ferrous metals could be given greater attention in the CTE to enhance capacity to deal with environmental considerations.

LINKAGES BETWEEN THE MULTILATERAL ENVIRONMENT AND TRADE AGENDAS

Items 1 and 5: The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to MEAs; and the relationship between the dispute settlement mechanisms in the multilateral trading system

163. The representative of New Zealand referred to his delegation's submission, WT/CTE/W/162, which emphasized that the negotiation of MEAs remained an essential mechanism through which to address environmental objectives. Trade measures would continue to be used in MEAs and, thus, it was important to enhance understanding of and seek clarity in the relationship between MEAs and WTO rules. New Zealand also emphasized that the range of potential conflicts between MEAs and the WTO should not be exaggerated. However, there may be a lack of clarity when provisions of an MEA were unclear as to the action they mandated, even among MEA Parties, or in situations where MEA Parties were applying trade measures against a non-party. In the context of these observations, New Zealand proposed, *inter alia*, the consideration of a consultative mechanism to help clarify the WTO-MEA relationship. At its meeting on 24-25 October 2000, Members had expressed interest in this proposal and sought further information. New Zealand's submission, WT/CTE/W/180, responded to this request by elaborating precisely how such a consultative mechanism might operate in practice.

164. New Zealand noted that the consultative mechanism was purely voluntary. As it was the process which was important, the mechanism did not seek to prescribe a "one size fits all" solution. New Zealand acknowledged the important point made by Members at the October meeting that, depending on the circumstances, there would always be a wide range of possible policy options for consideration. A solution that may work in one case may not work in another. Use of the proposed voluntary mechanism did not rule out the use of MEA-related trade measures. New Zealand recognized that, in certain circumstances, trade measures could play an important role in delivering effective and efficient solutions to address environmental problems. Use of the voluntary mechanism did not preclude the parties participating in the consultative process from engaging in other actions.

165. New Zealand felt that the use of a voluntary instrument for consultation may: (i) facilitate an improved understanding of differing perspectives on particular problems; (ii) allow for the identification of a wider range of responses/solutions to a particular situation; (iii) maximize the potential for an agreed solution which was satisfactory to all parties; (iv) minimize the potential for conflict between parties on trade and environmental policies, while avoiding inefficient environmental and economic outcomes; (v) ensure a substantive engagement by countries to identify first-best policy solutions; and, in particular, (vi) enhance transparency, while reducing the potential for discriminatory or arbitrary measures.

166. The consultative mechanism could assist in a practical manner the attempts to come to terms with the complexity of this relationship. New Zealand's proposal should be seen as complementing other suggestions in the CTE, which were designed to seek clarity in the WTO-MEA relationship. New Zealand supported continued and substantive information exchanges with MEA Secretariats. New Zealand was also willing to consider a "code of conduct" for MEA trade measures. Over the medium term, MEA negotiators representing countries which were WTO Members should consider including voluntary consultative mechanisms in new MEAs along the lines proposed by New Zealand. In the meantime, New Zealand recommended that WTO Members participating in existing MEAs might consider using a consultative mechanism voluntarily to assess whether a trade measure were the most effective and efficient instrument to address the environmental problem.

167. The representative of India supported New Zealand's approach to a consultative mechanism, as opposed to the approach preferred by the EC and Switzerland. India understood that that this approach: (i) acknowledged that trade measures were not the best solutions for all environmental problems, which was India's position; (ii) did not seek, like other approaches, to automatically widen the environmental window in GATT Article XX, or to fundamentally change the TBT or SPS Agreements; and (iii) emphasized multilateral as opposed to unilateral action, which would oblige those envisaging a trade measure to discuss better solutions with exporting countries before resorting to trade measures. India asked whether it was possible to incorporate the development dimension in the consultative mechanisms, and to elaborate on positive measures for developing countries, such as financial assistance, capacity building and technology transfer. These were the first-best policy instruments to achieve environmental goals.

168. The representative of Mexico supported New Zealand's views, which stressed that trade measures were not always adequate to achieve environmental goals. Mexico gave the example of a situations in which a developing country could not comply with an MEA provisions for various reasons. As a result, this country would be unable to comply with the environmental goal, and would be punished from a trade perspective, as it would not be able to fully exploit its resources. This scenario was why Mexico objected to including trade measures in MEAs. Mexico supported New Zealand's paper because it clearly underscored the situation in which a trade measure was not necessarily the best solution in all cases. There were other options that should be considered before resorting to trade measures. Mexico had some doubts about New Zealand's conclusions, particularly concerning applying the proposed mechanism in new MEAs. The first-best option would be to include all the options and measures referred to by New Zealand directly in the MEA, rather than creating a voluntary consultative mechanism outside the MEA. Mexico felt that New Zealand's approach should be included in the MEA itself to generate obligations for MEA Parties.

169. Mexico also had concerns about New Zealand's proposal for the consultative mechanism to be applied to existing MEAs. There were two possibilities. Mexico understood that New Zealand started from the premise that the Member applying the trade measure had a right to do so. Thus, in the approach of a consultative mechanism, there was already a presumption of non-compliance of the provisions of an MEA on the part of one of the Parties. Mexico also referred to the suggestion that, rather than resorting to a voluntary mechanism, a WTO Member that was not party to an MEA and that was applying a trade measure should ascertain whether it was in compliance with its WTO obligations. Mexico stressed that the WTO contained a range of dispute settlement procedures that

could be used, such as consultations. Mexico asked where New Zealand's consultation mechanism would actually take place, with the framework of the WTO or an MEA. Mexico sought further clarification of the structure and procedure of the mechanism, and felt that at this stage it would not be viable to make any recommendations on this matter.

170. The representative of Hong Kong, China said that New Zealand's approach to a voluntary consultative approach was headed in the right direction. Hong Kong, China, however, was uncertain as to whether this mechanism were pragmatic and could provide the legal certainty sought by some in this debate. The success of the proposed mechanism depended on, among others, the willingness of disputing countries to cooperate. The fact that countries would likely adopt different policy instruments given diverse circumstances raised concern about consistency and discrimination. Hong Kong, China would examine the proposed mechanisms in detail; Hong Kong, China agreed with Mexico that certain aspects needed further clarification.

171. The representative of Korea saw the merits of New Zealand's paper in two aspects. There had been no conclusion to discussions on the MEA-WTO relationship given Members' wide differences of views. First, New Zealand's proposal provided a practical way to deal with possible WTO-MEA conflicts. Second, New Zealand addressed the concerns of many Members, while accepting the effectiveness of trade measures in achieving global environmental objectives. Trade measures were one possible option envisaged in MEAs and should be the last resort, used only when other options had been exhausted. New Zealand's proposed consultative mechanism provided the process through which parties could find the most appropriate way to settle a potential dispute. The CTE should examine the idea of making the proposed mechanism more binding so that if a party indicated its intended to resort to the mechanism, the other party would have to respond to that request.

172. The representative of Brazil felt that New Zealand's proposal was a constructive approach to the issue of WTO-MEA compatibility. Considering that New Zealand had not proposed amending, changing or clarifying WTO Agreements, Brazil supported the consultative mechanism as a step forward. Brazil expressed certain doubts concerning the operation of the mechanism. If it were proposed that the mechanism would operate between MEA Parties, it would not be necessary as most MEAs already contained mechanisms to deal with trade related measures, e.g. the Basel Convention and CITES. The next step should be to examine how MEAs would deal with New Zealand's proposed consultative mechanism. Brazil understood that New Zealand was referring to a situation involving an MEA Party and a non-party that was applying a trade-related measure that would affect the MEA Party. In this situation, New Zealand's proposed mechanism would be useful. Brazil asked whether the proposed mechanism would operate on a bilateral level, as suggested by Mexico, or a multilateral level, which would not be in the MEA itself if an MEA non-party were involved. Brazil asked for clarification on the operationalization of the proposed mechanism, and expressed concern about bringing such a mechanism into the WTO. It might be possible to further discussion of the proposed mechanism in the CTE Information Sessions.

173. The representative of Malaysia said New Zealand's proposal merited further discussion. New Zealand suggested an approach whereby MEA-Parties and non-parties could meet to consider the range of available options, particularly those measures consistent with Article XX, to resolve a potential dispute. Malaysia agreed with Mexico and India, that the first-best measure was seldom a trade restriction, but a measure which provided incentives and assistance to solve the environmental problem. Malaysia agreed that the proposed mechanism might not deliver mutually satisfactory solutions, and felt that trade measures should not be put in place before trade consultations took place. Countries should await the conclusion of consultations before putting in place a trade measure. Malaysia asked the extent to which the mechanism worked on a voluntary basis; whether third parties, such as interested WTO Members, could be involved; whether parties would have to agree that the first-best option need not be a trade measure before consultations began; whether this would circumscribe the right to WTO dispute settlement if the outcome were not mutually satisfactory; and whether a trade measure would be subject to the requirements of Article XX?

174. The representative of the European Communities said New Zealand's paper had contributed constructively to discussions on the WT-MEA relationship. The idea of a voluntary consultative mechanism merited consideration. The EC felt that the way forward would likely have to be found in a mixture of elements, as proposed by the EC at the 24-25 October 2000 meeting. New Zealand's proposal contained procedural approaches that could be helpful in tackling environmental problems more directly and effectively and in a way that was least-trade distortive, whilst acknowledging that there would sometimes be a need for trade measures in MEAs. Although the voluntary nature of a consultative mechanism could play a useful role in a package of elements, the EC felt that any package of complementary elements would also need to include some form of accommodation mechanism in order to deal with the non-party issue. The EC recalled the benefits of MEAs, namely that they were the most effective way of tackling global environmental problems, and that ensuring support for MEAs helped discourage unilateral action.

175. The representative of the United States expressed the support of her delegation for New Zealand's emphasis on the importance of clear drafting of trade-related provisions in MEAs. The United States noted that many Parties participating in recent MEA negotiations were WTO Members and had included trade experts in their delegations. The United States felt that such cross-fertilization between trade and environment experts, as well as more clarity in trade-related MEA provisions, were valuable suggestions. On New Zealand's proposed consultative mechanism, the United States wished to raise some key questions before it responded to the substance of the proposal. The United States asked what the venue for, and the form of, the proposed mechanism would be, citing these as aspects that would be crucial to its view of the mechanism. Specifically, the United States asked whether the mechanism would be housed in the MEAs, in the WTO, or elsewhere.

176. The representative of Canada said New Zealand's paper was constructive. Canada would review the recent proposals on the WTO-MEA relationship, and comment further at the June meeting.

177. The representative of Indonesia agreed with New Zealand that trade measures were seldom the first-best policy to achieve environmental objectives, and that environmental problems often could not be tackled by trade measures. It was necessary to determine the root of the environmental problem and find a way to solve it. Moreover, trade measures were only one tool used to address environmental concerns. Solutions would also differ given a country's development level. Thus, consensus among the parties to a potential dispute as to how best to solve a problem was needed. Although the possibility of WTO-MEA conflicts was limited, Indonesia felt New Zealand's proposals were an interesting tool to achieve greater synergies between trade and environment.

178. The observer of UNEP said that the Chairman's summary of the UNEP-sponsored meeting on Enhancing Synergies and Mutual Supportiveness of MEAs and the WTO in Geneva on 23 October 2000 had been circulated in WT/CTE/W/184. As follow-up, UNEP was cooperating with the WTO and MEAs Secretariats to prepare a paper on compliance and dispute settlement in MEAs and the WTO, which were vital topics within UNEP and MEAs, as in the WTO. UNEP also intended to circulate this joint paper in preparation for its 26 June meeting on this issue. The Executive Secretary of the CBD Secretariat had indicated interest in collaborating with UNEP on an assessment of the impact on biodiversity of specialization in the agricultural sector. The UN Convention to Combat Desertification and CITES had also expressed interest in exploring the use of environmental assessments to identify possible "win-win" opportunities arising from WTO and MEA implementation. These possibilities would be explored at the UNEP Ministerial Meeting on 20-22 March. The potential for enhancing technology transfer by identifying synergies between the relevant MEAs and the TRIPs Agreement could strengthen MEA implementation, and benefit sustainable development. This would require exploration of the technology transfer provisions in the WTO and MEAs. It might be worth exploring this issue first in the context of an individual MEA such as, for example, the Basel Convention, which had shown interest in pursuing this matter. Observer status for MEAs and UNEP in WTO Bodies, including the General Council, the

TRIPs Council and the Agriculture Committee, was vital in order to enhance transparency and collaboration, particularly on MEA-UNEP-WTO synergies. Thus, UNEP urged Members to agree to the pending requests for observer status in the relevant WTO Bodies. Further UNEP activities would need to take into account the World Summit on Sustainable Development (WSSD) in Johannesburg in 2002, which would follow up on the implementation of *Agenda 21*, adopted at the 1992 UN Conference on Sustainable Development. UNEP hoped that efforts to enhance MEA-WTO synergies would yield analytical policy inputs for the WSSD.

179. The representative of Switzerland appreciated New Zealand's constructive proposals. Switzerland shared New Zealand's view that WTO rules contained considerable scope for the use of trade measures for non-trade objectives, but that there was nevertheless a potential for WTO-MEA conflicts. Any conflicts should be addressed through preventive mechanisms, such as: (a) drafting trade-related provisions in MEAs clearly and precisely; (b) developing solid dispute settlement mechanisms in MEAs; (c) taking into consideration consultative mechanisms; and (d) establishing informal mechanisms for a broader dialogue on issues related to the WTO-MEA relationship, which could include the WTO, UNEP and MEA Secretariats, as well as NGOs and industry. Switzerland felt consultative mechanisms played an important role in preventing conflicts, specifically in cases where measures were not explicitly and precisely drafted in MEAs. In cases where trade measures were precisely drafted in MEAs, consultations were not of the same relevance. Switzerland said the issue of consultative mechanisms, although important, was not the main problem; what remained unclear was the WTO-MEA relationship. Switzerland was convinced, as set out in its submissions, that it would be useful to clarify this relationship through a mutual supportiveness approach. Thereby, the WTO and MEAs would focus on their primary competence and respect each other's competence. Assessing whether a specific measure were discriminatory or protectionist would fall within WTO competence, while determining the necessity and proportionality of a measure to achieve an environmental goal would remain the competence of the MEA.

180. The representative of New Zealand said it would be possible to incorporate development and other positive measures into the mechanism in response to India and others. New Zealand's proposed mechanism could incorporate a hierarchy of policy options, in which analysis of the first-best option would deliver the efficient economic and environmental outcome. On Mexico's comments, New Zealand said it was difficult to comment on the idea of including the entirety of policy options in future MEA negotiations. The consultative mechanism had been designed to bring parties together to resolve potential conflicts. The issue of the venue of the mechanism should be solved pragmatically. If the conflict were between two MEA Parties, the MEA would be a logical place in which to open consultations. If a non-party were involved, UNEP would be a potential forum. New Zealand had not addressed this issue in its paper as it was hoped that it could be elaborated in the discussions. On the form and procedures of the mechanism, New Zealand preferred a practical approach, whereby the parties could establish mutually acceptable terms, as opposed to developing a rigid set of structures and specific procedures. On Malaysia's question, New Zealand said that if a compulsory mechanism had been proposed, the discussion would have been extremely short. Thus, New Zealand had suggested a voluntary mechanism. The decision to involve third parties in the consultations should be left to the mutual agreement of the concerned parties. The proposed instrument was not intended to circumscribe WTO legal procedures as it was designed to be a voluntary, consultative mechanism.

Item 10: Appropriate arrangements for relations with intergovernmental and non-governmental organizations referred to in Article V of the WTO

181. The representative of Canada said that, at the 24-25 October meeting of the CTE, Canada had noted its appreciation for the WTO regional seminars on trade and environment and confirmed that Canada would fund the seminar for the Caribbean region later in 2001. Canada had also suggested that the CTE consider holding another symposium on trade and environment, along the lines of the symposia held in 1997, 1998 and 1999. This suggestion was in keeping with Canada's position on enhancing WTO transparency. Canada believed that such events would help to inform the public

about the role of the WTO, and build support for the multilateral trading system. However, given the considerable effort that went into organizing such symposia, and the practical constraints on the Secretariat, particularly in the lead-up to the 4th WTO Ministerial Conference in Qatar, alternative approaches should be examined as it might not be advisable to hold a symposium in the next few months. Canada attached importance to the Secretariat continuing its public outreach efforts so as to promote a constructive dialogue on trade and environment and further understanding of WTO work.

182. The representative of Peru recalled that Peru had hosted a Latin American seminar to increase understanding of trade and the environment and the WTO in March 2001.

183. The representative of the United States thanked Canada for its proposal, as it followed in the spirit of past outreach and transparency efforts.

184. The representative of the European Communities called for public outreach in the approach to the 4th WTO Ministerial Conference in Qatar, the form of which would need to be decided.

Closing remarks by the Chair

185. The Chair noted the importance of Members' contributions to progressing CTE work and deepening the analysis. The Chair encouraged the continued participation of developing countries, especially from Africa, in the work of the CTE and emphasized the need to look for financial resources to permit such participation, if possible for capital based experts. It was also necessary to increase domestic coordination between the various Government Ministries responsible for trade and environment, particularly in the developing countries. The Chair also expressed concern about the management of hazardous wastes, which constituted an emergency situation in Africa, and which should be solved as quickly as possible.

186. Members expressed appreciation for the leadership of Ambassador Biké and for the progress made in the Committee this year. The Chair's insight and knowledge had permitted a constructive discussion and exchange of ideas on the wide range of issues under the CTE mandate.

187. Furthermore, the Chair stated that the communications of delegations had speeded up the debate on certain aspects of the work programme of particular importance. These contributions and communications have been the best way of going into an analysis in greater detail and pushing the debate forward. The debate had been a very lively and productive one. The chair concluded by thanking the Secretariat for its support as well as all delegations for the constructive discussions and exchanges of ideas.
